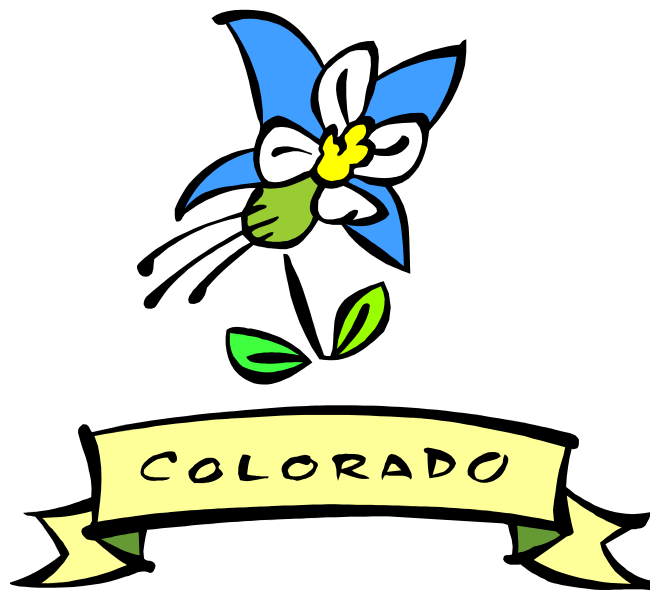


Colorado Campaign and Political Finance Manual



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Using the Campaign and Political Finance (CPF) Manual

This manual provides guidelines and helpful tips for proper compliance with the law. It is also a useful guide for conducting research. You may wish to begin at the end – with the Appendix – and read Article XXVIII of the Colorado Constitution, the FCPA (Fair Campaign Practices Act) statutes, and the Rules Concerning Campaign and Political Finance.

In this manual, the Colorado Constitution may be referred to as the Constitution or Article XXVIII (also known as Amendment 27). Title 1 Article 45 of the Colorado Revised Statutes (C.R.S.) may be referred to simply as C.R.S., and “Rule” refers to the Rules Concerning Campaign and Political Finance. TRACER refers to the Secretary of State’s online campaign finance filing system, accessible at <http://tracer.sos.colorado.gov>

REMEMBER: You must read Article XXVIII of the Colorado Constitution; Colorado Revised Statutes (C.R.S.) Title 1, Article 45 and the accompanying Rules Concerning Campaign and Political Finance to fully understand Colorado Campaign and Political Finance procedures and requirements.

NOTICE

This manual was created for reference and training purposes only and should not be used as a substitute for legal advice and actual knowledge of the campaign finance laws and regulations.

A NOTE ABOUT HOME RULE

Home rule counties and municipalities (those that have adopted their own charter and local ordinances) may not, in certain circumstances, be subject to state campaign finance law. Candidates in a home rule county or municipal election should consult the county or municipal office for information about applicable campaign finance laws. Statutory counties and municipalities follow state campaign finance law.

Contacting the Campaign Finance Support Team

Phone: (303) 894-2200 ext. 6383
E-mail: cpfhelp@sos.state.co.us
Fax: (303) 869-4861
Address: 1700 Broadway Suite 200
Denver, CO 80290
Web: www.sos.state.co.us
TRACER: <http://tracer.sos.colorado.gov>

QUICK REFERENCE OF CHANGES TO THIS VERSION

From the January 2013 version, the changes to the CPF manual include:

CHANGES TO THE MANUAL

Recent Court Decisions Affecting Campaign Finance Rules

There are no changes since the previous version.

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PART ONE:

Candidates and Candidate Committees

BECOMING A CANDIDATE

You become a candidate when you publicly announce your intent to run for office and thereafter receive a contribution or make an expenditure in support of your candidacy.

Public announcement includes, but is not limited to; making a statement a reasonable person would expect to become public signifying an interest in a public office by means of a speech, advertisement, or other communication reported to or appearing in public media or any place that is accessible to the public. This also includes a stated intention to explore the possibility of seeking an office and/or the registration of a candidate committee.

Documents and Where to File

You must file a candidate affidavit with the appropriate filing office within 10 days of becoming a candidate for public office. Candidates required to file affidavits with the Secretary of State must file the affidavit electronically using the online campaign finance reporting system, TRACER. **The affidavit is an attestation that the candidate has familiarized themselves with campaign finance laws and regulations, so be sure to read the laws before submitting the affidavit.**

State candidates (except for Regional Transportation District (RTD) candidates) must file a personal financial disclosure statement (PFD) within 10 days of filing the candidate affidavit. Incumbents must file a new PFD or an update to the existing PFD on file on or before January 10 of each year, and within 10 days of filing a candidate affidavit if seeking re-election or election to new office. Failure to file within 10 days will result in a penalty.

Candidates running for **state office**—including Attorney General, CU Regent, District Attorney, Governor, Secretary of State, State Board of Education, State House of Representatives, State Senate, and

Treasurer for the State of Colorado— must file their candidate affidavit and personal financial disclosure statement with the Secretary of State.

State candidates choosing to accept voluntary spending limits, must file their acceptance with their candidate affidavit.

Candidates running for a **county office**—including Assessor, Commissioner, Coroner, County Clerk and Recorder, County Treasurer, Sheriff, Surveyor, as well as candidates running for school board— must also file their candidate affidavit with the Secretary of State, but no personal financial disclosure statement is required.

Candidates in **special district elections** file a self-nomination and acceptance form with the Special District Designated Election Official (DEO) in lieu of the candidate affidavit. No personal financial disclosure statement is required. The Secretary of State is the appropriate filing officer for all other campaign finance filings for special district candidates.

Candidates in **municipal elections** file with the municipal clerk of the applicable municipality.

Please refer to our website at www.sos.state.co.us for the qualifications required of candidates for each statewide office, or contact your county clerk for county offices.

CANDIDATES WITHOUT COMMITTEES (STANDALONE CANDIDATES)

Standalone candidates do not have a candidate committee. You do not need a candidate committee if you will not seek or accept contributions during your candidacy or if you will only spend your own money. You must have a committee if you will accept money from any other person/entity.

Standalone candidates must report all expenditures to the appropriate filing officer (Secretary of State or the municipal clerk, depending on the office sought).

Standalone candidates must itemize all expenditures of \$20 or more. Itemized expenditures must list the name and address of the payee and the purpose of the expense.

The law does not require standalone candidates who do not make expenditures to file disclosure reports, but candidates may file a zero report if they choose.

Standalone candidates are no longer considered candidates upon losing the election to office. These individuals do not need to take affirmative action to end their candidacy, and need not file disclosure reports. Candidates wishing to exit the race prior to the election must submit a written withdrawal, and must file disclosure reports for any reporting periods in which they made expenditures until submitting such a withdrawal or until the election occurs.

CANDIDATE COMMITTEES

A candidate committee accepts contributions and makes expenditures under the authority of the candidate. A candidate committee includes the candidate. It is not necessary for the committee to have other members besides the candidate. A candidate may have only one candidate committee.

When considering running for office, you, your agent, fundraisers, and campaign manager should become familiar with the requirements of Article XXVIII of the Colorado Constitution, Title 1, Article 45, C.R.S., and the Rules Concerning Campaign and Political Finance.

Registering your Committee

Under the Colorado Constitution, a person becomes a candidate when they:

- ♦ publicly announce an intent to run for office and thereafter;
- ♦ Receive a contribution or make an expenditure in support of their candidacy.

The Secretary of State recommends registering a candidate committee with the appropriate filing office before accepting contributions or making expenditures.

All committees who register with the Secretary of State must do so electronically. To register a candidate committee, go to <http://tracer.sos.colorado.gov> for the online campaign finance filing system, TRACER, and click the register a committee button. You will need a committee name (including the name of the candidate, such as “Jane Doe for House District 1”), physical, mailing, and e-mail addresses, a description of your committee’s purpose, your party affiliation for partisan elections, the details of the office sought, and financial information including the name of the bank where the committee has or will have an account. You also need to designate a registered agent who acts as the committee’s representative. The candidate may be the registered agent or may designate another person to serve as registered agent.

Note: a governor candidate and lieutenant governor candidate must run together, and may have only one committee. They may not maintain separate candidate committees.

Registered Agents

All committees must have a registered agent. The registered agent is like a treasurer – he or she keeps track of all contributions and expenditures, and can file the committee’s reports. The registered agent has important duties, and access to all of the committee’s financial information. The Secretary of State communicates primarily with the registered agent via e-mail. The candidate may serve as the registered agent for his or her candidate committee, or may appoint someone else to serve. Committees must list the person serving as the registered agent on the committee registration form.

In addition to the candidate or the registered agent, the committee may also assign, and register a designated filing agent for the timely filing of Contribution and Expenditure reports.

The registered agent can be replaced after a formal resignation, after which the committee must file an amended registration. To resign, a registered agent must file a resignation letter with the appropriate filing officer via certified mail. A new registered agent must assume the role before Secretary of State records will reflect a resignation. Please see Rule 9.3 for more information.

Amending your Committee Registration

Committees must report any changes to their committee registration information—including address, phone, e-mail, registered agent, or purpose—within ten days of the change. Committees may file amendments using the online campaign finance filing system, TRACER, or by completing and submitting a paper Committee Registration Amendment form. Municipal candidates should contact the municipal clerk for more information.

committees	
Sanctions	Art. XXVIII, Sec. 10

Terminating your Committee

Candidates remain candidates for office as long as they have an open candidate committee, and must file all assigned disclosure reports while the committee is open. Candidates may terminate their committee by filing a termination report that reflects a zero balance.

The appropriate filing office will impose penalties of \$50 per day, including weekends and holidays, for reports filed after the due date, even if your committee has no activity during the reporting period.

A committee which has a loan or outstanding debt, including late filing penalties, cannot be terminated until the loan or debt has been paid and the committee has reached a zero balance.

Inactive candidate committees must terminate after nine years. Inactive candidates do not seek access to the ballot in an upcoming election.

Relevant laws and rules for Candidate and Candidate Committees

Definitions	Art. XXVIII, Sec. 2
Registration and amendments	1-45-108(3), C.R.S.; Rule 2.2, Rule 8.1, Rule 12.1
Disclosure requirements	1-45-108-109, 1-45-110, 24-6-202, C.R.S.; Rule 10
Deposits and records	Art. XXVIII Sec. 3(9); Rule 10
Filing dates	1-45-108(2), C.R.S.; Rule 17
Contribution limits	Art. XXVIII, Sec. 3; 1-45-103.7, C.R.S.; Rule 10.14
Unexpended campaign funds	Art. XXVIII, Sec. 2(15); 1-45-106, C.R.S.; Rule 12.4
Terminating	Rule 2.2, Rule 12.3
Inactive candidate	1-45-106 (1)(a)(III), C.R.S.

CONTRIBUTIONS AND EXPENDITURES

A candidate committee must report all contributions received, and all expenditures made to the appropriate filing office (the Secretary of State for all candidates except those in municipal elections). Standalone candidates must report all expenditures. Candidates and committees filing reports with the Secretary of State must file reports electronically.

Candidate committees for special district elections must file reports once the committee has accepted or spent \$200 in aggregate.

Filing dates and reporting periods vary depending on the office sought. You can view campaign finance filing calendars on the Secretary of State website at www.sos.state.co.us. The Secretary of State imposes penalties of \$50 per day for late filings.

Contributions and Contribution Limits for Candidates and Candidate Committees

Remember that you must register a committee prior to accepting contributions. Candidate committees must report all contributions they receive to the appropriate filing office.

Depending on the contribution amount, Colorado law requires committees to report certain additional information as follows:

- ◆ Committees must disclose contributions of less than \$20 on their report although itemization is not required
- ◆ Committees must report and itemize contributions of \$20 or more, including non-monetary (in-kind) contributions. Itemization means listing each contribution individually with the name and address of the contributor.
- ◆ Committees receiving contributions of \$100 or more from natural persons, including non-monetary contributions, must also include the occupation and employer of the contributor on the report.

Contributors may make contributions using cash, check, money order, credit card, EFT, etc.; but cash or coin contributions can not exceed \$100.

Non-monetary donations of goods, equipment, supplies or services constitute contributions, and require disclosure. Non-monetary contributions count against contribution limits.

Contributions include anything of value given directly or indirectly to a candidate “for the purpose of promoting the candidate’s nomination, retention, recall, or election.”

Contributions from natural persons made by check come from the person who signed the check. For contributions or donations made by check, the date the committee deposits the check into their account is the date of receipt. Please see page 28 of this manual for information on contributions from joint account holders. If a committee receives a contribution five or more business days before the end of a reporting period, the committee must deposit the check or return it to the contributor by the close of that reporting period.

Contributions of \$1,000 or more received within 30 days before the primary or general election must be reported within 24 hours of receipt as a Major Contribution. This is a supplemental report and is filed separately from regular reports.

Volunteer services by an individual do not constitute contributions. This includes volunteers who donate time to the campaign at no charge. Keep in mind that donated services that are not time-based may be subject to disclosure and contribution limits. See Rule 1.3.3

No person shall act as a conduit for a contribution to a candidate committee, and the law prohibits anonymous contributions of \$20 or more.

Prohibited Contributions

Candidates and candidate committees may not accept contributions from:

- ◆ Corporations
- ◆ Foreign citizens, corporations, or governments
- ◆ Another candidate committee (local, state, or federal)
- ◆ Lobbyists, principals of lobbyists, or political committees who retain a lobbyist, when the General Assembly is in session (applies to

member of or candidate for the General Assembly or Executive Office)

- ◆ Anonymous contributions of \$20 or more
- ◆ Limited Liability Companies (LLCs), *if* any of the LLC members are a:
 - Corporation or labor organization
 - Natural person who is not a U.S. Citizen
 - Foreign government
 - Professional, volunteer lobbyist, or a principal of a lobbyist prohibited from contributing by 1-45-105.5(1), C.R.S.
- ◆ The law prohibits contributions to candidates from LLCs whom the IRS treats as corporations, and from LLCs with publicly traded shares

Colorado law prohibits a person from making a contribution with the expectation that the recipient will reimburse all or a part of the contribution.

Colorado law permits LLC contributions subject to the following requirements:

- ◆ The LLC must provide the candidate or committee with a written statement affirming the permissibility of the contribution. (The Secretary of State’s office has a sample form on its website, or the LLC may create a form.)
- ◆ Affirmation must include:
 - Name & address of all LLC members.
 - Information on how to attribute the contribution among the LLC members. The attributed amount must reflect the capital the member has invested in the company at the time of the contribution (percentage of ownership).
 - For contributions of \$100 or more attributed to an LLC member, occupation and employer information for that member must also be provided.
- ◆ The committee must:
 - Retain affirmation statement for 1 year after the end of the election cycle.
 - Itemize LLC contributions regardless of amount.
 - List both the individual LLC member’s name as the contributor as well as the name of the LLC.

Limits

Major party candidates may accept contributions for both the primary and general election. Contribution limits apply once for the primary election and again for the general election.

Note: A candidate committee may accept and spend contributions for the primary and general election at any time during the election cycle.

Unaffiliated and minor party candidates who do not appear on a primary election ballot may only accept contributions for the general election.

Minor party candidates may only accept contributions for a primary election if the candidate’s name will appear on a primary election ballot. Minor party candidates who *do* appear on the primary election ballot may accept and spend contributions for the primary and general election at any time, including before the primary election.

Contribution Limit Amounts for Candidates

From persons and political committees

Limits apply separately to both the primary and general election, if applicable. For example, a major party candidate for governor may accept \$550 for the primary AND \$550 for the general election from one individual.

Governor/ Lt. Governor, Secretary of State, Attorney General, State Treasurer\$550

State Senate, State House of Representatives, State Board of Education, CU Regent, District Attorney.....\$200

From small donor committees

Limits apply separately to both the primary and the general election, if applicable.

Governor/ Lt. Governor, Secretary of State, Attorney General, State Treasurer \$5,675

State Senate, State House of Representatives, State Board of Education, CU Regent, District Attorney \$2,250

From political parties

Contribution limits apply using the election cycle for a specific office. The election cycle starts the 31st day after the

general election for a particular office and ends the 30th day after the next general election for that office.

Governor/Lt. Governor (one committee)	\$569,530
Secretary of State, Attorney General, State Treasurer.....	\$113,905
State Senate	\$ 20,500
State House of Representatives, State Board of Education, CU Regent, District Attorney.....	\$ 14,805

Note: These contribution limits reflect inflationary adjustments made March 15, 2011.

Candidates in home rule municipalities and counties may be subject to different contribution limits, or none at all.

Voluntary Spending Limits

Most state candidates can choose to accept voluntary spending limits (but may only do so at the time the candidate’s candidate affidavit is filed). This will limit the total amount that a candidate or candidate committee may spend during the entire election cycle.

Under voluntary spending limits, contributions by a candidate to his or her own campaign constitute contributions from the political party, and therefore must remain within the political party limit. Combined contributions from the candidate and the political party may not exceed the limit for the political party.

A candidate who has accepted voluntary spending limits may accept double the listed limits if another candidate enters the race, does not accept voluntary spending limits, and raises more than 10% of the limit. Political party contributions may not be doubled.

The acceptance of voluntary spending limits is irrevocable except that a candidate who has accepted the limits may withdraw acceptance within 10 days of a new candidate entering the same political race if the new candidate does not accept voluntary spending limits. This option is available each time a new candidate enters the race and does not accept voluntary spending limits.

The following limits apply:

Governor/Lt Governor	\$2,847,650
Attorney General, Secretary of State, State Treasurer	\$ 569,525
State Senate.....	\$ 102,500
CU Regent, District Attorney, State Board of Education, State House of Representatives	\$ 74,025

Note: These limits reflect inflationary adjustments made March 15, 2011. Voluntary spending limits do not apply for RTD candidates.

Major Contribution Report

Committees must file a Major Contribution report in the TRACER system within 24 hours of receiving any contribution of \$1,000 or more within 30 days of the primary or general election. Colorado law requires the filing of a Major Contribution report **in addition to** reporting such contributions on the regularly scheduled disclosure reports.

Loans

Candidates may receive loans from financial institutions, if the loan bears the usual and customary interest rate.

Contribution limits do not apply to loans from a financial institution; however the candidate must report the loan as a contribution

Loans from a financial institution cannot be forgiven.

Candidates may forgive loans made to their own committee and contribution limits do not apply to these loans. For candidates who have accepted voluntary spending limits, loans count towards those limits.

Candidates may not receive loans from other individuals or entities.

Legal provisions related to contributions

Definitions	Art. XXVIII, Sec. 2(5)
Registration required	1-45-108(3), C.R.S.
Limits	Art. XXVIII, Sec. 3; 1-45-

	103.7 C.R.S., Rule 10.14
Conduits prohibited	Art. XXVIII Sec. 3(7)
Reimbursement prohibited	Art. XXVIII Sec. 3(11)
Major Contributors	1-45-108(2.5), C.R.S.
LLCs	1-45-103.7, C.R.S.
Voluntary spending limits	Art. XXVIII, Sec. 4
Loans	Art. XXVIII, Sec. 3(8); Rule 10.10
Sanctions	Art. XXVIII, Sec. 10

Expenditures by Candidates and Candidate Committees

Simply stated, expenditures refer to the money an individual or committee spends. Money spent on anything for the purpose of expressly advocating the election or defeat of a candidate is considered an expenditure.

An expenditure occurs when it is made, when funds are obligated, or when a contract is established, whichever occurs first.

Expenditures controlled by or coordinated with a candidate or a candidate’s agent are deemed to be both contributions by the person making the expenditure, and expenditures by the candidate committee.

Mileage should be reported as an expenditure using the Internal Revenue Service (I.R.S.) rate.

No committee or candidate may spend more than \$100 in cash or coin on any single expenditure.

Committees must itemize all expenditures of \$20 or more. Itemized expenditures must list the name and address of the payee and the purpose of the expense.

Candidate committees may not make contributions to another candidate committee.

Committees that do not reimburse third-party expenditures (those made on behalf of the committee by someone other than the candidate, agent, or other person affiliated with the committee) should report them as non-monetary (in-kind) contributions.

Reimbursements

Committees should report reimbursements by the campaign to candidates, staff, and volunteers as expenditures.

Candidate committees may reimburse the candidate for expenditures the candidate made on behalf of the committee at any time. The disclosure report should list this as a reimbursement, and should detail what the original expenditure was for. (For example, if the payee is the candidate’s bank or the candidate because it is a reimbursement for credit card or out-of-pocket expenses, the purpose should include what the candidate purchased and from whom. Simply stating “credit card payment” or “reimbursement” as the purpose is insufficient.

Each reimbursement of \$20 or more shall be separately disclosed.

Bank Accounts

Candidate committees must deposit all contributions they receive in a financial institution in a separate account with a title that includes the name of the committee

The financial institution with which you have your committee account may be any bank that you choose. Please consult your bank and I.R.S. regulations concerning account requirements, which may vary depending on the institution.

Legal provisions related to expenditures

Definitions	Art. XXVIII, Sec. 2(8, 9)
Cash/coin expenditures	Art. XXVIII, Sec. 3(10)
Itemized expenditures	1-45-108(1)(a)(I), C.R.S.; Rule 10.2
Independent expenditures	Art. XXVIII, Sec. 5; 1-45-108(2.5), C.R.S.
Sanctions	Art. XXVIII, Sec. 10
Reimbursement of Expenditures	Rule 10.9

REPORTING AND TRACER

Your filing office

For state offices including Attorney General, CU Regent, Governor, Regional Transportation District, Secretary of State, State Board of Education, State House of Representatives, State Senate, and Treasurer for the State of Colorado, your filing officer is the Secretary of State.

County offices—including Assessor, Commissioner, Coroner, County Clerk and Recorder, County Treasurer, Sheriff, and Surveyor, as well as candidates in special district or school board elections—also file campaign finance documents and reports with the Secretary of State. However, keep in mind that documents to access the ballot are filed with the county or municipal clerk, as appropriate.

Candidates in municipal elections file with the applicable municipal clerk.

Filing calendars: dates and deadlines

Municipal candidates and committees should check with their municipal clerk for filing calendars.

For candidates and committees that file with the Secretary of State:

- ◆ Campaign finance filing schedules and reporting periods vary depending on the office sought. Please consult the Secretary of State website, or your TRACER account, for information about which calendar applies to you.
- ◆ Candidates and candidate committees typically file on a “frequent” schedule during the election year, and an “infrequent” calendar during non-election years. “Election year” means the year in which the office appears on the ballot.

Amended reports

Whenever a committee becomes aware of an error in past reporting, the committee must amend the report as soon as possible by filing an Amended Report of Contributions and Expenditures using the TRACER

system. Municipal candidates and committees file amended reports with the appropriate municipal clerk.

TRACER

TRACER is the Secretary of State’s online campaign finance filing system and can be accessed at the following address:

<http://tracer.sos.colorado.gov>

Using the system, you can electronically register your committee, enter contribution and expenditure information, and file campaign and political finance reports.

Under Campaign and Political Finance Rule 19, all filings with the Secretary of State must be submitted electronically with the exception of personal financial disclosures, and Gift and Honoraria reports. Candidates and committees may apply for an exemption to this rule based on hardship or other good cause.

The Secretary of State’s office provides three ways to file campaign finance information electronically. You may submit information via regular data entry directly into TRACER; via electronic data interchange (EDI) with pre-approved Excel spreadsheets; or via EDI with XML. All filers may use EDI, but the technical requirements of EDI make it more practical for committees with very large numbers of contributions and expenditures. EDI enables the management of contributions and expenditures using specific spreadsheet templates or XML prior to report filing. Please contact the Campaign Finance Support Team at cpfhelp@sos.state.co.us for more information on EDI filing.

You do not have to wait until the end of the reporting period to enter your transactions. You can work on the report and save your information throughout the reporting period, and the public can not view the information until you file the report.

If you do not currently have a user account in TRACER, you will need to register a committee online. When the Secretary of State’s office accepts your registration, the system will generate a user ID and PIN and e-mail them to you. The Secretary of State generally issues the user ID and PIN within one business day of your registration.

Keep your e-mail address current with the Secretary of State’s office because the office uses e-mail as the primary method to send reminders about filings, changes to campaign finance laws and regulations, and other important information. If you need to update your e-mail address, you may do so in the TRACER system, or you may call the Campaign Finance Support Team at (303) 894-2200 ext. 6383 or e-mail cpfhelp@sos.state.co.us

After the election

Candidate committees remain open until affirmatively closed by the candidate, registered agent or designated filing agent. Failure to win the election does not automatically close your candidate committee. The candidate or agent must file a termination report reflecting a zero balance to close the committee. A committee must pay all outstanding loans, debts and penalties before terminating, and the committee must file all required reports on time as long as the committee remains open.

Committees must keep financial records for 180 days following any general election in which the committee received contributions, and keep LLC affirmations for 1 year. Committees subject to a complaint must maintain records and make them available until after the matter is resolved.

Inactive candidate committees must terminate, and all funds must be disposed of appropriately, after nine years.

Unexpended campaign contributions

The law places some restrictions on what a candidate committee may do with unexpended campaign funds.

Committees may use unexpended funds in the following ways:

- ◆ Contributed to a political party, up to the limit
- ◆ Contributed to a new committee established by the same candidate for a new office. Limits apply as to how much may be contributed to the new committee
- ◆ Donated to an IRS-recognized charitable organization

- ◆ Returned to contributors
- ◆ Retained for use in a later campaign by the same candidate

If elected to office, unexpended campaign funds may be used for voter registration, political issue education (the law prohibits contributions to issue committees), postsecondary educational scholarships, or to defray reasonable and necessary expenses related to duties as an elected official (this includes communicating with constituents)

If you wish to run for a different office, you may use some or all of your old committee funds, subject to the following restrictions:

- ◆ Transfers to the new committee may not exceed 20% of the voluntary campaign spending limit for the new office if the new committee is for a state office, excluding RTD (this limit applies also to committees remaining open and carrying over for the same office in a new election cycle)
- ◆ The committee funds rolled over to the new committee count as a contribution from a political party
- ◆ You must open a new candidate committee if you run for a different office and terminate the old candidate committee within 10 days of opening the new committee for the new office
- ◆ Under certain circumstances, such as those in which the previous race was not subject to contribution limits but the new race is, unexpended funds cannot be carried over

Standalone Candidates

Standalone candidates must file disclosure reports for any reporting period up to and including the election during which expenditures were made. Standalone candidates not elected to office cease to be candidates once the election is over.

Relevant laws and rules

Unexpended campaign funds	1-45-106, C.R.S.
Subsequent elections	Art. XXVIII Sec. 3(3)(e); Rule 2.2.4

PART TWO:

NONCANDIDATE COMMITTEES

Political Committees, Small Donor Committees, Political Parties, Issue Committees, Recall Committees, Independent Expenditure Committees, and Federal Groups (Federal PACs and 527s)

REGISTERING YOUR COMMITTEE

Colorado law associates different types of political activity with different types of committees. Prior to raising or spending money, read Article XXVIII of the Colorado Constitution, Title 1 Article 45 of the C.R.S., and the Rules Concerning Campaign and Political Finance to determine committee registration requirements.

The type of committee that you register depends on the activities of your committee. Under most circumstances, it is not possible to “choose” the type of committee that you want to register. If your activities meet the definition of a committee listed below, you must register with the appropriate office and follow the laws governing that type of committee.

Filing dates for municipal, county, and some special district committees differ from state committees. Please be certain you have the correct filing dates. The Secretary of State imposes penalties of \$50 per day for every day a required report is late, including weekends and holidays.

Types of Committees

Political committees

Definition: Any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates. Refer to Colo. Const. Art. XXVIII, Section 2(12)(a).

Features of political committees:

- ♦ Political committees support or oppose candidates for public office in Colorado.
- ♦ Committees advocating for or against candidates—except those related exclusively to municipal elections—register with the Secretary of State.

Political committees may not accept more than \$550 per contributor per House of Representatives election cycle (every two years).

Political committees may accept contributions from corporations and unions but cannot accept contributions from foreign citizens, foreign corporations, or foreign governments.

Colorado law treats all political committees organized, established, maintained and financed by the same labor organization, corporation, or other group of persons as a single political committee. Colorado law treats all political committees established, financed, maintained, or controlled by the same person or group of persons as a single political committee subject to contribution limits.

There is no requirement that a political committee segregate contributions received from corporations and labor organizations from those received from natural persons.

Reporting requirements

A political committee must report all contributions received and expenditures made, to the Secretary of State (except for municipal committees, who report to the municipal clerk).

Reports must contain the name and address of the contributor for all contributions of \$20 or more, and the contributor’s employer and occupation for those totaling \$100 or more if the contributor is a natural

person. Contributions under \$20 may be combined and reported as one lump sum in a reporting period as “non-itemized” contributions.

All contributions from limited liability companies (LLCs) must be itemized. The LLC must provide the candidate committee, political committee or political party with a written affirmation statement that the contribution is permitted by law.

Only the registered agent or designated filing agent may electronically file committee reports.

Major Contribution Report

Committees must file a Major Contribution report in the TRACER system within 24 hours of receiving any contribution of \$1,000 or more within 30 days of the primary or general election. Colorado law requires the filing of a Major Contribution report **in addition to** reporting such contributions on the regularly scheduled disclosure reports.

Terminating a political committee

With the exception of municipal committees, you must submit a termination report through the TRACER system in order to terminate a political committee. Municipal committees terminate with the applicable municipal clerk. The committee must have a zero balance, which means there are no funds on hand, and no outstanding debts or other obligations. Committees may file a termination report at any time. As long as the committee remains open, it must file disclosure reports in every reporting period, even those during which the committee has no activity.

Statute does not limit the use of unexpended funds for political committees

Legal provisions applicable to political committees

Definition	Art. XXVIII, Sec. 2(12);
Registration and amendments	1-45-108(3), C.R.S.; Rule 8.1, Rule 12.1
Disclosure requirements	Art. XXVIII, Sec. 7; 1-45-103.7, 1-45-108, 1-45-109, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Contribution limits	Art. XXVIII, Sec. 3; 1-45-

	103.7, C.R.S.; Rule 10.14
Major contributions	1-45-108(2.5), C.R.S.
Sanctions	Art. XXVIII, Sec. 10

Small donor committees

Definition: Any political committee that has accepted (or will accept) contributions only from natural persons who each contribute no more than fifty dollars in the aggregate per calendar year.

Small Donor Committees (SDCs) are a form of political committee that may only accept contributions of \$50 or less per person, per calendar year from natural persons who are U.S. citizens.

Corporations and labor organizations may establish small donor committees, and their members may contribute. However, corporations and labor organizations themselves cannot contribute to SDCs, and money contributed to a SDC cannot be given back to a corporation or labor organization for general use.

Small donor committees established by substantially the same group of persons will be treated as a single committee.

Colorado law permits small donor committees to make larger contributions to candidates and parties than political committees.

Dues transferred to a SDC from a membership organization (including aggregated dues transfers) are considered pro-rata contributions to the committee from individual members. The actual transfer itself is not considered a contribution from the membership organization to the SDC. If the pro-rata amount from each individual is \$20 or more in a reporting period, each individual member must be listed as a contributor.

Reporting requirements

A small donor committee must report all contributions received and expenditures made to the Secretary of State (except for municipal committees, who report to the municipal clerk).

Reports must include the name and address of the contributor for all contributions of \$20 or more.

The law prohibits contributions from corporations, unions and LLCs because they are not “natural persons.”

Only the registered agent or designated filing agent may sign and electronically file committee reports.

Terminating a small donor committee

You must submit a termination report through the TRACER system to terminate a small donor committee, with the exception of municipal committees. The committee must have a zero balance, no funds on hand and no outstanding debts or other obligations. As long as the committee remains open, it must file disclosure reports.

The termination report may be filed at any time.

Statute does not limit the use of unexpended funds for small donor committees.

Legal provisions applicable to small donor committees

Definitions	Art. XXVIII, Sec. 2(14)
Registration and amendments	1-45-108(3), C.R.S.; Rule 8.1 and Rule 12.1
Disclosure requirements	1-45-108, 1-45-109, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Contribution limits	Art. XXVIII, Sec. 3; Rule 10.14
Sanctions	Art. XXVIII, Sec. 10

Political parties

Definition: Any group of registered electors who, by petition or assembly, nominate candidates for the official general election ballot. “Political party” includes affiliated party organizations at the state, county, and election district levels, and all such affiliates are considered to be a single entity for the purposes of Article XXVIII except with respect to disclosure requirements in section 1-45-108, C.R.S.

Registration and reporting requirements

State and county political parties register with the Secretary of State.

Only the registered agent or designated filing agent may electronically file the committee reports.

The political party must file any amendments or changes to their registration with the appropriate officer within five days of the change.

Reports must contain the name and address of the contributor for all contributions of \$20 or more, and the contributor’s employer and occupation for all contributions of \$100 or more if the contributor is a natural person.

Major Contribution Report

Committees must file a Major Contribution report in the TRACER system within 24 hours of receiving any contribution of \$1,000 or more within 30 days of the primary or general election. Colorado law requires the filing of a Major Contribution report **in addition to** reporting such contributions on the regularly scheduled disclosure reports.

Contributions to political parties

Political parties cannot accept contributions from foreign citizens, foreign corporations, foreign governments, corporations, or labor organizations.

Political parties cannot accept contributions intended for a specific candidate.

No political party may accept aggregate contributions from any person—other than a small donor committee—that exceed \$3,400* per year at the state, county, district, and local levels combined. Aggregate contributions to a state political party shall not exceed \$2,825 per year. State, county, district, and local branches of the party should ensure proper communication to avoid exceeding aggregate contribution limits.

No political party may accept aggregate contributions from any small donor committee that exceed \$17,075 per year at the state, county, district, and local levels combined. The state level may receive no more than \$14,225 of that amount.

* Contribution limits reflect inflationary adjustments made March 15, 2011.

Purely social groups organized within a political party that do not participate in the formal nomination process are not considered part of the political party for campaign finance reporting purposes.

Contributions to political parties from limited liability companies (LLCs) are subject to additional restrictions and reporting requirements. Please see the section on candidate committees for more information on what is required for LLC contributions.

Legal provisions applicable to political parties

Definitions	Art. XXVIII, Sec. 2(13)
Registration and amendments	1-45-108(3), C.R.S.; Rule 8.1 and Rule 12.1
Disclosure requirements	Art. XXVIII, Sec. 7; 1-45-108, 1-45-109, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Contribution limits	Art. XXVIII, Sec. 3(3); 1-45-103.7, C.R.S.; Rule 10.14
Corporations and labor organizations	Art. XXVIII Sec. 3(4)(a); 1-45-103(7), 1-45-103.7, C.R.S.
Sanctions	Art. XXVIII, Sec. 10

Issue committees

Colorado law defines an issue committee as any person, other than a natural person, or any group of two or more persons, including natural persons, that has:

- ◆ A major purpose of supporting or opposing any ballot issue or ballot question; or
- ◆ That has accepted or made contributions or expenditures in excess of \$200 to support or oppose any ballot issue or ballot question OR has printed two hundred or more petition sections.

An organization or group of people who support or oppose an issue in their community should familiarize themselves with the laws concerning issue committees before the group engages in political activity, to ensure compliance with any campaign finance laws that may apply.

You must register an issue committee if you:

- ◆ Are a group of two or more individuals (natural persons) or a business (or both);
- ◆ That supports or opposes a ballot issue or ballot question (see following section); OR one of the following two criteria has been met:
- ◆ You have accepted or made contributions or expenditures in excess of \$200 to support or oppose that ballot issue or ballot question; OR
- ◆ You have printed more than 200 petition sections or more than 200 petition sections have been accepted.

Registration timeline and reporting requirements

Each issue committee must register within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

Issue committees at the state, county, or special district level, or those active in multiple counties or special districts, register with and report to the Secretary of State. Municipal issue committees (those supporting or opposing ballot measures at the local municipal level only) register with the municipal clerk.

An issue committee’s jurisdiction will determine when it must file disclosure reports. Filing dates for issue committees registered with a jurisdiction of statewide, county, special district, school district, etc. vary, so please consult the Secretary of State’s website or TRACER for the filing calendar applicable to your committee.

Only the registered agent or designated filing agent may sign and electronically file the committee’s reports.

Issue committees must file any amendments or changes to their registration with the appropriate officer within five days of the change.

Contribution limits do not apply to issue committees, except that Colorado law prohibits contributions made with the expectation that the committee will reimburse all or part of the contribution.

Reports must contain the name and address of the contributor for all contributions of \$20 or more, and the contributor’s employer and occupation for all

contributions of \$100 or more if the contributor is a natural person.

An issue committee may terminate by filing a termination report, but only if the report indicates a zero balance and no outstanding obligations.

Issue committees may return unexpended campaign funds to the contributors or donate them to a charitable organization recognized by the IRS.

A disclaimer statement is required on communications produced by expenditures of more than \$1,000 made by an issue committee.

Major Contributor Report

Committees must file a Major Contribution report in the TRACER system within 24 hours of receiving any contribution of \$1,000 or more within 30 days of the primary or general election. Colorado law requires the filing of a Major Contribution report **in addition to** reporting such contributions on the regularly scheduled disclosure reports.

Ballot Issues and Ballot Questions

A ballot issue is “a state or local government matter arising under Section 20 of Article X of the state constitution, as defined in sections 1-41-104(4) and 1-41-103(4), respectively.”

A ballot question is “a state or local government matter involving a citizen petition or referred measure, other than a ballot issue.”

Legal provisions applicable to issue committees

Definitions	Art. XXVIII, Sec. 2(10); 1-45-103, C.R.S.
Registration and amendments	1-45-108(3), (3.3), and (6), C.R.S.; Rules 8.1 and 12.1
Disclosure requirements	Art. XXVIII, Sec. 7; 1-45-108, 1-45-109, C.R.S.; Rule 4.4 and Rule 15
Disclaimers	1-45-108.3, C.R.S.
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Major contributions	1-45-108(2.5), C.R.S.
Unexpended funds	1-45-106(3), C.R.S

Ballot issues and questions	1-1-104(2.3), 1-1-104(2.7), C.R.S.
Sanctions	Art. XXVIII, Sec. 10

Recall committees

A recall committee is an issue committee formed to support or oppose the recall of a public officer. *Note:* Committees authorized by a candidate are still candidate committees.

An incumbent subject to a recall, who wishes to oppose the recall election, must form an issue committee. An incumbent may not use their candidate committee to oppose the recall. Any person seeking to fill the vacancy created by a successful recall must form a candidate committee if accepting contributions in support of their election.

Persons supporting or opposing candidates to fill the vacancy created by a successful recall must form a political committee.

A recall committee must register within ten calendar days of accepting or making contributions or expenditures in excess of \$200 to support or oppose the recall. The same campaign finance requirements that apply to issue committees apply to recall committees including itemization, termination, etc.

The date of the election determines the filing calendars for committees participating in a recall election, or by the date that the recall petition is deemed insufficient. The filing officer will prepare and issue the calendar.

Legal provisions applicable to recall committees

Registration and reporting	1-45-108(6), C.R.S.; Rule 15
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Independent expenditure committees

Definition: One or more persons that makes independent expenditures in an aggregate amount in excess of one thousand dollars, or that collects in excess of one thousand dollars from one or more persons for the purpose of making an independent expenditure. The requirements applicable to independent expenditure committees apply to *all*

persons, groups, businesses, and other entities that meet the definition of independent expenditure committee.

Please see the section of this manual covering independent expenditures and electioneering communications (page 21) for more information.

Legal provisions applicable to independent expenditure committees

Definitions	1-45-103(11.5), C.R.S
Registration and disclosure requirements	1-45-107.5, C.R.S.

Federal groups

The political activity of two types of federal political organizations may subject them to Colorado campaign finance requirements: **Federal Political Action Committees (PACs) and 527 Political Organizations (527s)**. For definitions and more information about these groups, consult the Federal Elections Commission (FEC) and the Internal Revenue Service (IRS). This manual only discusses these groups to the extent that they are subject to Colorado campaign finance law.

Federal PACs

Federal Political Action committees (PAC) subject to registration and reporting requirements under Section 1-45-108, C.R.S., must register with the Colorado Secretary of State’s Office as a political committee and file disclosure reports accordingly once they receive or spend more than \$200 to support or oppose the nomination or election of one or more Colorado candidates.

If a Federal PAC determines it must register a political committee, the Federal PAC must:

- ◆ Identify contributions received by the Federal PAC used to support or oppose candidates in Colorado;
- ◆ Itemize contributions of \$20 or more and list the occupation and employer for any person who has made a contribution of \$100 or more if the contributor is a natural person;

- ◆ Use only contributions received by the Federal PAC within the source and contribution limits established by Colorado law;
- ◆ Itemize expenditures of \$20 or more; and
- ◆ Deposit funds into a separate bank account that is used for the Federal PAC exclusively.

A Federal PAC that is required to register a Colorado political committee must separately raise funds for the political committee and report only those contributions and expenditures used to support or oppose candidates in Colorado. The Federal PAC may transfer only \$550 to the political committee in each two-year election cycle. For information on political committees, see page 17.

Federal PACs must also comply with any applicable federal laws and regulations. Please consult the FEC at www.fec.gov with questions related to federal law.

Legal provisions related to Federal PACs

Registration and amendments	1-45-108(3), 1-45-108.5, C.R.S.; Rule 7 and Rule 8.1
Disclosure requirements	1-45-108, 1-45-109, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Terminating	Rule 7.1.4
Sanctions	Art. XXVIII, Sec. 10

527 Political Organizations

“527s” (named for the section of IRS code that governs them) must register with and report to the Secretary of State if:

- ◆ The organization is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state.
- ◆ The organization is exempt (or intends to seek exemption) from taxation by the IRS [I.R.C. § 527 (i)(5)(B)(2010)]

Organizations that register as a 527 with the Secretary of State’s Office must report all contributions and expenditures over \$20 in a reporting period used to influence or attempt to influence the election or defeat of any individual to any state or local public office.

Contributions of \$20 or more must list the name and address of the contributor, and contributions of \$100 or more must include the contributor’s employer and occupation if the contributor is a natural person.

527 organizations must comply with all applicable IRS and any other federal regulations in addition to complying with Colorado law. Please consult the IRS at www.irs.gov with any questions pertaining to federal law or tax regulations.

Legal provisions related to 527’s

Registration and amendments	1-45-108(3), 1-45-108.5, C.R.S.; Rule 7 and Rule 8.1
Disclosure requirements	1-45-108, 1-45-108.5, 1-45-109, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Sanctions	Art. XXVIII, Sec. 10

Registered Agents

All committees registered with the Colorado Secretary of State must have a registered agent. The registered agent must be a natural person and is responsible for maintaining all committee records and filing all reports on time. A candidate may be their own registered agent. The Secretary of State will address all correspondence regarding the committee to the agent.

The committee may replace the registered agent upon formal resignation of the agent, but the committee must file an amended registration. To resign, a registered agent must file a resignation letter with the appropriate filing officer. There must be a registered agent associated with each committee at all times.

Legal provisions that govern registered agents

Definition	1-45-108(3)(b)
Registration and amendments	1-45-108(3), C.R.S.; Rule 2.2.1 and Rule 9
Disclosure requirements	1-45-108, C.R.S.; Rule 10
Filing dates	1-45-108(2)(a), C.R.S.; Rule 17
Deposits and record-keeping	Rule 10
Contribution limits	Art. XXVIII, Sec. 3

Sanctions	Art. XXVIII, Sec. 10
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How to register a committee

All registration and reporting required by committees subject to campaign finance law, with the exception of municipal candidates, is done through the TRACER system, available at <http://tracer.sos.colorado.gov> To register your committee, you will need the following:

- ◆ Know which type of committee you will register;
- ◆ A committee name (and acronyms you will use (if using acronyms, you must spell out the meaning));
- ◆ A registered agent and/or designated filing agent;
- ◆ The physical and mailing addresses for the committee’s principal place of business;
- ◆ An e-mail address and phone number for the registered agent;
- ◆ A detailed description of your committee’s purpose (such as candidates, ballot measure numbers, or policy positions you will support or oppose); and,
- ◆ Financial information, including the name of the bank where the committee has (or will have) an account.

Committees must file any amendments or changes to their registration with the Secretary of State within five days of the change. Committees may file amendments using TRACER. Reportable changes include (but are not limited to): name and address changes, a change in the committee’s purpose, and changes in the financial institution. A committee may change its registered agent in the TRACER system at any time.

Registration requirements differ for independent expenditure committees. Please see page 21 of this manual.

CONTRIBUTIONS AND EXPENDITURES

All committees registered with the Secretary of State must report contributions and expenditures (and donations, for independent expenditure committees).

Filing dates and reporting periods vary depending on the office sought. You can view campaign finance

filing calendars on the Secretary of State website at www.sos.state.co.us . The Secretary of State imposes penalties of \$50 per day for late filings.

Contributions and donations to committees

Contributions from natural persons made by check are attributed to the person who signed the check. Please see page 28 of this manual for information on contributions from joint account holders. For contributions or donations made by check, the date the committee deposits the check into their account is the date of receipt.

Colorado law prohibits contributions made with the expectation that the committee will reimburse all or part of the contribution.

Depending on the contribution amount, Colorado law requires committees to report certain additional information as follows:

- ◆ Committees must disclose contributions of less than \$20 on their report although itemization is not required
- ◆ Committees must report and itemize contributions of \$20 or more, including non-monetary (in-kind) contributions. Itemization means listing each contribution individually with the name and address of the contributor.
- ◆ Committees receiving contributions of \$100 or more from natural persons, including non-monetary contributions, must also include the occupation and employer of the contributor on the report.

Contributors may make contributions using cash, check, money order, credit card, EFT, etc.; but cash or coin contributions shall not exceed \$100.

Non-monetary donations of goods, equipment, supplies or services constitute contributions, and require disclosure. Non-monetary contributions count against contribution limits.

Major Contributor Report

Committees must file a Major Contribution report in the TRACER system within 24 hours of receiving any contribution of \$1,000 or more, 30 days before the primary or general election. Colorado law requires the filing of a Major Contribution report **in addition to** reporting such contributions on the regularly scheduled disclosure reports.

Expenditures by committees

An expenditure occurs when it is made, when it is obligated, or when a contract is established, which ever occurs first.

No committee (except an independent expenditure committee) may spend more than \$100 in cash or coin.

Committees must itemize all expenditures of \$20 or more.

Third-party expenditures are reported as non-monetary contributions, as are some coordinated expenditures. This does not include reimbursements for expenditures made on behalf of the committee.

Committees must report reimbursements to committee staff and volunteers as expenditures. Reimbursements can take place at any time. Committees must list reimbursements to service providers initially paid for goods or services in addition to listing the person receiving the reimbursement.

Independent expenditure committees, and donors to such committees, are subject to additional disclosure requirements. Please see page 21.

Bank Accounts

Committees must deposit all contributions they receive into a financial institution in a separate account with a title that includes the name of the committee.

The financial institution with which you have your committee account may be any bank that you choose, and is not required to be located in Colorado. Please consult your bank and I.R.S. regulations concerning

account requirements, which may vary depending on the institution.

Independent expenditure committees must have a dedicated bank account to use solely for its donations and expenditures.

Legal provisions related to contributions and expenditures

Definitions	Art. XXVIII Sec. 2
Disclosure requirements	1-45-108, C.R.S.; Rule 10
Filing dates	1-45-108, C.R.S.; Rule 17
Contribution limits	Art. XXVIII Sec. 3; 1-45-103.7, C.R.S.; Rule 10
Bank accounts	Art. XXVIII Sec. 3(9) and 1-45-107.5(7), C.R.S.
Reimbursements	1-45-108(1)(e); Rule 10.9.1

REPORTING AND TRACER

TRACER is the Secretary of State’s online campaign finance filing system. Using the system, you can electronically register your committee, enter contribution and expenditure information, and file campaign and political finance reports.

Under Campaign and Political Finance Rule 19, all filings with the Secretary of State shall be submitted electronically (with the exception of personal financial disclosures, and Gift and Honoraria reports). Candidates and committees may apply for an exemption to this rule based on hardship or other good cause.

The Secretary of State provides three ways to file electronically. Campaign finance information may be submitted via regular data entry directly into TRACER; via electronic data interchange (EDI) with pre-approved Excel spreadsheets; or via EDI with XML. All filers may use EDI, but the technical requirements of EDI make it more practical for committees with very large numbers of contributions and expenditures. EDI enables the management of contributions and expenditures using specific spreadsheet templates or XML prior to report filing. Please contact the Campaign Finance Support Team at

cpfhelp@sos.state.co.us for more information on EDI filing.

You do not have to wait until the end of the reporting period to enter your transactions. You can work on the report and save your information throughout the reporting period, and the public can not view the information until you file the report.

If you do not currently have a user account in TRACER, you will need to register a committee online using the Committee Registration feature. A user ID and temporary PIN will then be generated and e-mailed to you. The temporary PIN expires after 7 days so be sure to log in as soon as you receive the emails. The Secretary of State generally issues the user ID and PIN within one business day of your registration.

Keep your e-mail address current with the Secretary of State’s office because the office uses e-mail as the primary method to send reminders about filings, changes to campaign finance laws and regulations, and other important information. If you need to update your e-mail address, you may do so in the TRACER system, or you may call the Campaign Finance Support Team at (303) 894-2200 ext. 6383 or e-mail cpfhelp@sos.state.co.us

You do not have to wait until the end of the reporting period to enter your transactions. You can work on the report and save your information throughout the reporting period and it is not publically viewable until you file the report.

Failure to file reports on or before the report deadline will result in penalties of \$50 per day until the report is filed.

PART THREE: INDEPENDENT EXPENDITURES, ELECTIONEERING, AND FUNDRAISING

INDEPENDENT EXPENDITURES AND INDEPENDENT EXPENDITURE COMMITTEES

Laws governing independent expenditures apply only to expenditures made to expressly support or oppose a candidate or candidates. They do not apply to expenditures made to support or oppose ballot measures.

Colorado law defines independent expenditures as expenditures made by individuals, businesses, and other entities—without the support of or coordination with a candidate, candidate committee, or candidate’s agent—to support or oppose candidates running for office.

Expenditures made by a candidate committee in support of the candidacy, or those controlled by or coordinated with a candidate or their agent, do not constitute independent expenditures.

An **Independent Expenditure Committee** must register with the Secretary of State within two business days of the time when any person, group, business, or other entity makes independent expenditures totaling more than \$1,000, or accepts donations for independent expenditures in excess of \$1,000. The committee must establish a separate bank account to use exclusively for independent expenditures.

Independent expenditure committees may accept unlimited donations, but may not make contributions to candidate committees or coordinate expenditures with candidates. Committees organized to make contributions to candidates are political committees. (See page 15)

Independent expenditure committees report on the schedule outlined for political committees. Independent expenditure committees must itemize all expenditures of more than \$20 and all donations of more than \$250. Independent expenditure

committees must also disclose the occupation and employer information for donors giving \$250 or more.

Independent expenditure committees must file a separate **48 Hour Notice of Independent Expenditure** in addition to, not in lieu of, the regular disclosure report within 48 hours of obligating funds for expenditures of more than \$1,000 made within thirty days of a primary or general election.

In addition to other reporting requirements, independent expenditures of more than \$1,000 must contain a disclaimer identifying the person making the expenditure.

Failure to register an independent expenditure committee or to file independent expenditure reports on or before the required due date will result in a penalty of \$50 per day. Additionally, independent expenditure committees who fail to file three consecutive reports may be subject to \$500-\$1,000 per day in additional penalties.

Independent Expenditure Donor Reports

Persons giving more than \$1,000 or more in a calendar year to independent expenditure committees for use as an independent expenditure must file **Independent Expenditure Donor Reports** with the appropriate officer for every reporting period in which they make such donations.

“Paid for by” Statements

Colorado campaign finance law only requires “Paid for by” statements for communications that meet the definition of an independent expenditure or communications made by issue committees. Independent expenditures must prominently feature on the communication the name of the person making the independent expenditure together with a statement that the communication or advertisement is not authorized by, coordinated with, or controlled

by a candidate. Broadcast communications by issue committees that cost more than \$1,000 must contain a disclaimer including the name of the issue committee.

The Federal Communications Commission (F.C.C.) regulates political advertising for television and radio and may require a “Paid for by” statement. For more information, visit their website at www.fcc.gov. In some instances a newspaper or other publication may require, at their own discretion, the inclusion of a “Paid for by” statement as a condition of publishing the communication.

The Federal Communications Commission (FCC) regulates pre recorded telephone calls, or robocalls, that involve state candidates and issues. Such calls must state at the beginning of the message the identity on whose behalf the call is made and regulations prohibit such calls from being made to certain numbers, including emergency numbers, guest/patient rooms at a hospital, etc. For more information please refer to the FCC at www.fcc.gov.

Relevant legal provisions

Definitions	Art. XXVIII, Sec. 2(9); 1-45-103, C.R.S.
Registration and Reporting	Art. XXVIII, Sec. 5; 1-45-107.5, C.R.S.
Donor Reports	1-45-107.5(9), C.R.S.

ELECTIONEERING

Electioneering Communication

(1) is any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

- (I) Unambiguously refers to any candidate; and
- (II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and
- (III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to,

or otherwise distributed to an audience that includes members of the electorate for such public office; and

(2) is the functional equivalent of express advocacy. A communication is not the functional equivalent of express advocacy if it:

- (I) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public,
- (II) Does not take a position on any candidate’s or officeholder’s character, qualifications, or fitness for office, and
- (III) Merely urges a candidate to take position with respect to an issue or urges the public to adopt a position and contact a candidate with respect to an issue.

A communication meets the definition of electioneering if subject to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Any person, including a candidate and/or candidate committee, spending \$1,000 or more per calendar year for an electioneering communication distributed 30 days before the primary or 60 days before the general election, is required to report these expenditures.

Electioneering reports are due at the same time as committee reports for contributions and expenditures.

Reports must include all spending made on electioneering communications, and the name and address of contributors giving more than \$250 per year for electioneering.

Electioneering reports must include occupation and employer of “natural persons” contributing more than \$250 per year.

Please note that many electioneering communications may also meet the definition of an independent expenditure, and therefore subject to additional legal requirements pertaining to independent expenditures.

Relevant legal provisions:

Definition	Art. XXVIII, Sec. 2(7); Rule 1.7 and Rule 11
Reporting	Art. XXVIII, Sec. 6, 1-45-108, C.R.S; Rule 11.6
Sanctions	Art. XXVIII, Sec. 10

FUNDRAISING

Note: The information contained in this section provides only examples of some types of activity related to fundraising. If you have further questions about fundraising activities, please contact a member of the Campaign Finance Support Team for guidance, or an attorney for legal advice.

Fish Bowls and Pass the Hat Events

Traditional fish bowls and pass-the-hat events are permissible provided the committee lists all contributions received of \$20 or more during a reporting period individually on the contribution and expenditure report, including names and addresses of the contributors and employer and occupation for contributions totaling \$100 or more. If an individual contributor gives more than \$20 during a reporting period, the contributor must be listed individually on the report, regardless of the amount of each contribution. It can be helpful to provide envelopes printed with spaces to enter this information at your event.

If you are required to provide the occupation and employer information for a contribution and fail to do so within 30 days, the contribution must be returned on the 31st day or fines will result.

Meet and Greet Events

The law treats these events the same whether held in a rented space or someone’s private home. A committee or party must report anything of value they receive, even if it is food brought for attendees to eat while they mingle. Committees would report the food as a contribution at the fair market value.

Cost of Admission to Fundraising Events

Any amount paid for a ticket to a fundraising event in excess of the value of the meal (which is typically stated) constitutes a contribution to the organization benefitting from the event. For example, if a ticket to an event is \$100 and the meal costs \$25, the ticket purchaser makes a contribution of \$75 to the entity hosting the event.

Silent Auctions

Items donated for silent auctions are considered, and reported as, non-monetary (in-kind) contributions. The fair market value of goods or services donated count against contributions limits, if applicable, for both the contributor and the recipient committee or party.

When a silent auction item is purchased, the full purchase price is considered a contribution from the purchaser and is reported as a monetary contribution.

Non-monetary (in-kind) Contributions of Goods or Services

The use of a space (room, building, etc.), telephones, office equipment, printed material, or any other goods or services by a committee or party is considered a contribution to the committee or party from the person who owns the space, office equipment, business providing the service, etc. Such a donation is therefore subject to contribution limits and prohibitions. For example, law typically prohibits the donation of the use of a ballroom at a corporate-owned hotel (whether donated outright, or given for use at a reduced rate) as a corporate contribution with the possible exception if, and only if, the hotel provides free use to other entities in the usual course of its business.

Contributions from a Couple or Joint Account Holders

A contribution cannot come from two people. Therefore, couples and joint account holders should each write their own separate checks, and note in the “memo” space which person the contribution is from.

Absent such notation, the recipient committee shall attribute the contribution to the person signing the check. A couple cannot write one check for an amount in excess of the individual contribution limits with the intent of the check total representing a contribution from two separate persons.

Online Contributions: PayPal and other Payment Intermediary Services

PayPal or other payment intermediary services may be used to solicit campaign contributions. The amount the contributor agrees to contribute is the contribution amount. The committee should report any fees charged by the service provider for the transaction as expenditures.

Fundraising During the Regular Session of the General Assembly

General Assembly (GA) members, executive office holders, and candidates for these offices may not accept contributions from lobbyists, principals of lobbyists, or political committees who retain a lobbyist while in regular session.

Additionally, Colorado law prohibits the governor and candidates for governor from accepting contributions from lobbyists and their principals during consideration of legislation pending signature (usually 30 days following the adjournment of the regular session of the General Assembly).

Contributions from lobbyists are considered received at the time the contribution leaves the possession of the lobbyist as opposed to contributions from non-lobbyists, which are considered received at the time of deposit.

Candidate Committees Sharing Expenses

Candidate committees may share expenses for the cost of brochures, offices, office equipment, etc. so long as each committee pays for its proportionate cost of the expense. If one committee pays for the entire cost initially and the other committee reimburses the paying committee within 30 days, then the purchase and reimbursement do not constitute contributions from one candidate committee to the other.

PART FOUR: COMPLAINTS, PENALTIES, AND WAIVERS

COMPLAINTS

Any person who believes that there has been a violation of campaign finance laws and regulations may file a complaint with the Secretary of State's office within 180 days of the alleged violation.

COMPLAINTS MUST INCLUDE:

- ✧ Complaint cover sheet (from the SOS website)
- ✧ Complainant's name, address, and signature
- ✧ Counsel's name, address, and signature (if Complainant is represented by counsel)
- ✧ Name and address of each respondent alleged to have committed a violation
- ✧ Description of the violation

The Secretary of State's office will verify that submitted complaints contain all required information and then refer the complaint to an Administrative Law Judge at the Office of Administrative Courts (OAC) for a hearing.

The Secretary of State's office does not investigate or prosecute complaints; the citizen complaint process adjudicates alleged violations of campaign finance.

After the Secretary of State's office transfers the complaint to the OAC, all future communications and pleadings should be directed to that office only:

The Office of Administrative Courts
633 17th Street, Suite 1300
Denver, CO 80202
☎ 303-866-2000
🌐 www.colorado.gov/dpa/oac

Complainants must gather evidence related to the complaint and present that evidence at the hearing as if they were prosecuting a case. The Secretary of State's office cannot offer legal advice or interpret the law although our office will provide assistance related to the procedures for filing a complaint. Frivolous, groundless, or substantially vexatious complaints may result in an order for the complainant to pay attorney's fees.

Legal provisions for complaints

Complaint procedure	Art. XXVIII, Sec. 9(2)(a), Rule 18.4
Sanctions	Art. XXVIII, Sec. 10

Violations of contribution limits or voluntary spending limits

An administrative law judge may impose civil penalties of at least double and up to five times the amount contributed, received, or spent in violation of contribution or voluntary spending limits following a citizen complaint, if the judge finds that a violation of limits has occurred.

Legal provisions for penalties

Sanctions	Art. XXVIII, Sec. 10
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PENALTIES

Late filing penalties

Colorado law requires The Secretary of State and municipal clerks to impose penalties upon candidates or committees for failure to file disclosure reports or for disclosure reports filed past the due date. Colorado law requires the imposition of a penalty of \$50 per day, including weekends and holidays, for every day that a report remains outstanding beyond the due date.

The Secretary of State or the municipal clerk has the discretion to reduce or waive penalties upon a showing of good cause in accordance to Rule 18.1

WAIVERS AND WAIVER REQUESTS

If a state or county candidate, committee, or party receives a penalty, that person or committee may submit a written request, addressed to the Secretary of State, explaining why a waiver or reduction in the penalty should be granted. **Waiver requests must show good cause as to why the campaign finance report was not timely filed and why the assessed**

penalty should be reconsidered. Rule 18.1 outlines the standards of good cause and the Secretary of State’s office considers requests for waiver or reduction of campaign finance penalties using this rule.

Waiver requests must be submitted within 30 days of the date the notice of the imposed penalty was mailed. Waiver requests may be submitted in the TRACER system (at the “overview” tab), or mailed to the Colorado Secretary of State, Attn: Elections Division, 1700 Broadway, Suite 200, Denver, CO 80290.

The candidate, committee, or party will be notified in writing as to the determination of their request within 60 days of submission. An invoice will accompany the letter if a penalty remains. Failure to respond within 60 days, however, will not constitute an approval of the request.

If a candidate, committee, or party does not agree with the determination made by the Secretary of State, they may appeal the decision by filing a complaint with the Secretary of State’s office and the Secretary of State’s office will forward the appeal to the Office of Administrative Courts for review by an Administrative Law Judge (ALJ). The last resort for appealing a penalty is the Court of Appeals.

Municipal clerks have the discretion to grant penalty waivers for municipal candidates and committees. Municipal candidates and committees should direct such requests to the appropriate municipal clerk.

Please review Article XXVIII, Sec. 9 and 10 for more detailed information about the complaint and appeals process.

Legal provisions for waiver requests

Waiver or reduction	Art. XXVIII, Sec. 10(2)(b)
Waiver process	Rule 18.1

PART FIVE:

TRACER – the Online Campaign Finance Filing System

Overview

TRACER stands for Transparency in Contribution and Expenditure Reporting. It is the Secretary of State's online campaign finance filing system.

The Secretary of State's Office introduced the new TRACER system in January 2010. Using the system, you may register your committee, enter contribution and expenditure information, and file required campaign and political finance reports electronically. This section summarizes how to perform basic tasks in the TRACER system. TRACER contains step by step help screens on each page to guide you through the system and short instructional videos (webinars) providing detailed instruction on using the various modules in TRACER.

Committee Registration

New users of the TRACER system will need to register their committee online. To register a committee, you may go to the TRACER homepage at: <http://tracer.sos.colorado.gov> and click on the button labeled Committee Registration. You can also access the new committee registration page by clicking on the tab labeled Registration or the link in the left hand menu labeled Committee Registration. Enter the committee information as instructed and click Submit. Once the Secretary of State's Office has reviewed and approved your registration, you will receive two e-mails, one containing your username and a second with a temporary PIN, which the system will prompt you to change after you log in for the first time.

Committee Workspace

Upon logging in, the system will direct you to the Candidate/Committee Overview page. This page contains detailed information pertaining to your committee including account status, recent transaction history and any reports due for your committee. From the Candidate/Committee Overview page, you can also access the different sections of the

TRACER system by clicking on the appropriate tab across the top of the page or clicking on the appropriate link on the left hand menu in order to enter, modify, or update contributions, expenditures and other required information for your committee.

Contribution Entry

To access the Contribution Administration page, click on the Contribution tab on the top of the page. From the Contribution Administration page, to enter a new contribution, click the Add button which will take you to the Contribution Entry page where you can enter information for a contribution. Please note that you must enter information in all required fields.

You can also associate a contributor to each contribution in one of two ways on this page. You can enter information into the fields manually or, if you have already entered information for that contributor for a previous contribution, you can click the search button, locate the contributor and have the system pre-populate the contributor information fields for you. You can also choose to "lock" this contributor information when entering multiple contributions from the same contributor.

You can enter contributions into the system throughout the reporting period and you can modify previously entered contributions either by clicking on the Update link from the Contribution Administration page for recently entered contributions, or by clicking the Find button to modify older contributions. The system will store this information and it will only become publically viewable once you file a report. Standalone candidates, or candidates without committees, do not need to enter contributions but must report expenditures.

Expenditure Entry

Expenditure entry is done in the same way as contribution entry. To access the Expenditure Administration page, click on the Expenditure tab on the top of the page. From the Expenditure

Administration page, to enter a new expenditure, click the Add button which will take you to the Expenditure Entry page where you can enter the information. Please note that you must enter information in all required fields.

You may enter Payee information into the system either by entering information into the fields manually or by clicking the Search button, to locate a previously entered payee. You can enter expenditures into the system throughout the reporting period. The system will store this information and it will only become publically viewable once you file a report.

You can modify previously entered expenditures either by clicking on the Update link from the Expenditure Administration page for recently entered expenditures, or by clicking the Find button to modify older expenditures.

Filing a Report

You can view and access the Reports Due section from the Candidate/Committee Overview page. This section lists the name of a required report, its due date, and the status of that report (Filed, Past Due, etc.). The reporting schedule assigned to your committee by the Secretary of State's office dictates report due dates. Please note, you can only file current or past due reports when logged into the system.

To file a current or past due report, click on the View/File link next to that report which will take you to the File Report of Contributions and Expenditures page. The Detailed Summary section contains information about your committee. The Reporting Period Covered lists the dates of the reporting period and also allows you to file an amended report or a termination report. Lines 1 through 20 contain financial information for entries included in this report. TRACER automatically includes contributions, expenditures and loan entries you entered into the system during this reporting period and will calculate totals for you.

If you need to enter additional contributions or expenditures or modify existing entries, follow the instructions on the report page. To file the report, click the File button at which point you will receive a

confirmation dialog box confirming that you wish to file the report. To complete the filing, click "OK." You can now view the filed report, print it or export it in a variety of desired formats for your personal records.

You must click "File," click okay when asked if you're sure, then "Finished" on the next page. Until you do so, your report has not been filed (it has only been saved).

Major Contributor Reports and 48 Hour Notices of Independent Expenditure

If you enter a contribution or expenditure that triggers a Major Contributor Report (due within 24 hours of the contribution) or 48 Hour Notice of Independent Expenditure (due within 48 hours of the expenditure), TRACER will automatically generate these reports at the time of entry. You must file these reports separately from regularly scheduled contribution and expenditure disclosure reports. Delinquent entry of a triggering contribution or expenditure may result in late filing penalties of \$50 per day, so enter any Major Contributions or Independent Expenditures that require a 48 Hour Notice in a timely fashion.

Searching the Database

To search for information contained in the database, click the Search tab on the top of the TRACER homepage or from the left hand menu. From the Search the Campaign Finance Database page, you can choose what type of information you wish to search for.

The system allows users to search for various types of information including searching for candidate information, committee information, contributions and expenditures, and detailed financial information for specified political races. You can also search for penalties and complaints filed against committees registered with the Secretary of State's Office. Follow the instructions listed on the page or by using the "Help with this page" link to enter information in the various search fields to complete your search. Once the system displays the search results, you can choose to print the results grid or export the search results into a CSV or Excel file.

You can use the links on the left hand side of the page to conduct public searches of TRACER. If logged into the TRACER system as a candidate or committee, using the links on the left hand side (the public search links) will take you out of your workspace and into the public search and resource pages. Once you've completed your search you may click on the red button that says Return to Secure Site. This will take you back to your logged-in workspace.

All electronic filing

Under Campaign and Political Finance Rule 19, all filings with the Secretary of State shall be submitted electronically (with the exception of personal financial disclosures, and Gift and Honoraria reports). Candidates and committees may apply for an exemption to this rule based on hardship or other good cause.

The Secretary of State's office provides three ways to file campaign finance information electronically. You

may submit information via regular data entry directly into TRACER; via electronic data interchange (EDI) with pre-approved Excel spreadsheets; or via EDI with XML. All filers may use EDI, but the technical requirements of EDI make it more practical for committees with very large numbers of contributions and expenditures. EDI enables the management of contributions and expenditures using specific spreadsheet templates or XML prior to report filing. Please contact the Campaign Finance Support Team at cpfhelp@sos.state.co.us for more information on EDI filing.

Keep your e-mail address current with the Secretary of State's office because the office uses e-mail as the primary method to send reminders about filings, changes to campaign finance laws and regulations, and other important information. If you need to update your e-mail address, you may do so in the TRACER system, or you may call the Campaign Finance Support Team at (303) 894-2200 ext. 6383 or e-mail cpfhelp@sos.state.co.us

Appendix

QUICK REFERENCE: ELECTION CYCLE / CONTRIBUTION LIMITS

Contribution limits may not necessarily be based on election cycles. If contribution limits apply to your committee please review all applicable laws thoroughly and carefully. The contribution limits below have been adjusted by CPF Rule 10.14 as required by Article XXVIII, Section 3(13) of the Colorado Constitution effective March 15, 2011 and remain current until the next adjustment in 2015, and apply to all committees (state, county, and municipalities that follow state law).

Committee Type	Contribution Cycle	Contribution Limits to Committees
Candidate Committee	<p>Election cycle starts 31 days following a general election for the particular office and ends 30 days following the next general election for that office.</p> <p>6 years – State Board of Education, CU Regent 4 years – Governor/Lt. Gov, Sec. of State, Attorney General, State Treasurer, State Senate, District Attorney, RTD, County Executive Offices 2 years – State House of Representative</p>	<p><i>State candidates:</i> Please review CPF Rule 10.14 and the Quick Reference guide for candidate committees in this manual.</p> <p><i>Municipal/County candidates:</i> Contribution limits may or may not apply to home rule municipal or county candidates. Check with the municipality or county to verify if Home Rule charters or ordinances apply. Municipal or county candidates may not accept corporate or labor union contributions unless a home rule charter or ordinance specifies otherwise.</p>
Political Party (state, county, district and local level combined)	Per year (calendar year) - January 1 st through December 31 st .	<p>\$3,400 per year from any person; no more than \$2,825 to the state party. \$17,075 per year from a Small Donor Committee; no more than \$14,225 to the state party.</p>
Political Committee	Colorado House of Representatives Elections Cycle (2 years). This applies to state, county, and local political committees.	\$550.
Small Donor Committee	Per year (calendar year) - January 1 st through December 31 st . This applies to state, county and local small donor committees.	\$50 maximum by <u>natural persons who are U.S. citizens only.</u>
Issue Committee	Not applicable.	<p><i>State issue committees</i> do not have contribution limits.</p> <p><i>Municipal/County issue committees:</i> Please check with the designated election official to see if a Home Rule Charter or ordinance establishes contribution limits.</p>
Independent Expenditure Committee	Not applicable.	<p><i>State independent expenditure committees</i> do not have donation limits.</p> <p><i>Municipal/County independent expenditure committees:</i> Please check with the designated election official to see if a Home Rule Charter or ordinance establishes donation limits.</p>

QUICK REFERENCE OF STATE CANDIDATE CONTRIBUTION LIMITS

MAXIMUM CONTRIBUTION LIMITS FOR CANDIDATES PER ELECTION CYCLE

Contribution limits in this chart reflect adjustments made by Rule 10.14 as required by Art. XXVIII, Sec. 3(13) of the CO Constitution and remain current through 2015.

From ↓ To ⇨	Governor / Lt. Governor	Secretary of State	Attorney General	State Treasurer	State Senate	State House of Representatives	State Board of Education	CU Regent	District Attorney	Regional Transportation District	County Candidates (under state law)
Natural Person / Political Committee & Business Entity (Other than a corporation)	Primary* \$550	Primary* \$550	Primary* \$550	Primary* \$550	Primary* \$200	Primary* \$200	Primary* \$200	Primary* \$200	Primary* \$200	No Limit	No Limit
	General* \$550	General* \$550	General* \$550	General* \$550	General* \$200	General* \$200	General* \$200	General* \$200	General* \$200		
Small Donor Committee	Primary* \$5,675	Primary* \$5,675	Primary* \$5,675	Primary* \$5,675	Primary* \$2,250	Primary* \$2,250	Primary* \$2,250	Primary* \$2,250	Primary* \$2,250	No Limit	No Limit
	General* \$5,675	General* \$5,675	General* \$5,675	General* \$5,675	General* \$2,250	General* \$2,250	General* \$2,250	General* \$2,250	General* \$2,250		
Political Party	\$569,530	\$113,905	\$113,905	\$113,905	\$20,500	\$14,805	\$14,805	\$14,805	\$14,805	No Limit	No Limit
Candidate Committee (to another Candidate committee)	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Issue Committee	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Indep. Expenditure Committee	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Corporations & Labor Unions	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Federal PAC (see Rule 7.1)	Primary* \$550	Primary* \$550	Primary* \$550	Primary* \$550	Primary* \$200	Primary* \$200	Primary* \$200	Primary* \$200	Primary* \$200	No Limit	No Limit
	General* \$550	General* \$550	General* \$550	General* \$550	General* \$200	General* \$200	General* \$200	General* \$200	General* \$200		
527 Organization	Consult Internal Revenue Service Regulations										

* All major party candidates may accept contributions for the primary and general election. Minor party candidates who appear on a primary election ballot may accept contributions for the primary and general elections. Unaffiliated and minor party candidates who do not appear on a primary election ballot may only accept contributions for the general election. Colorado law recognizes the Governor and Lt. Governor as one committee and the contribution and spending limits for governor apply to the joint committee.

Contribution limits double for a candidate who has accepted voluntary spending limits if his or her opponent has not accepted the voluntary spending limits and has raised more than 10 percent of the spending limit. Contributions from a political party are based on a candidate's election cycle and cannot be doubled.

Contributions to a candidate committee by the candidate count as political party contributions when a candidate accepts voluntary spending limits. Any unexpended campaign contributions that carry forward to a subsequent election cycle also count as a political party contribution.

QUICK REFERENCE: STATE VOLUNTARY SPENDING LIMITS

Please note that Article XXVIII of the Colorado Constitution and Title 1, Article 45 of the Colorado Revised Statutes do not address voluntary spending limits for county or municipal candidates. If running for office in a home rule county or municipality, please contact your county clerk and recorder or municipal clerk to see if your county or municipality has its own spending limit guidelines or restrictions.

VOLUNTARY SPENDING LIMITS

This chart reflects the voluntary spending limits as adjusted by CPF Rule 10.14 as required by Article XXVIII, Section 4(7) of the Colorado Constitution effective March 15, 2011, and remain current until the next adjustment in 2015.

OFFICE / CANDIDATE	VOLUNTARY SPENDING LIMITS
Governor / Lieutenant Governor	\$2,847,650
Secretary of State	569,525
Attorney General	569,525
State Treasurer	569,525
State Senate	102,500
State House of Representatives	74,025
State Board of Education	74,025
Regent of the University of Colorado	74,025
District Attorney	74,025
Regional Transportation District (RTD)	No Limit

Remember: Contribution limits double for a candidate who has accepted voluntary spending limits if his or her opponent has not accepted the voluntary spending limits and has raised more than 10 percent of the spending limit; however, **this does not double the candidate's spending limit**. Political Party contribution limits cannot be doubled.

QUICK REFERENCE OF COMMITTEE CONTRIBUTION LIMITS

This chart reflects contribution limits for all political committees, small donor committees, issue committees and political parties within the State of Colorado. Home Rule counties or municipalities may have their own contribution limits; therefore, you should contact the county clerk and recorder or municipal clerk. The limits in this chart reflect adjustments made by CPF Rule 10.14 as required by Article XXVII, Sec. 3(13) of the Colorado Constitution. In addition, please review Campaign and Political Finance Rules 3.1 and 4 relating to issue committee and political committee contributions.

Contributor	Committee Receiving Contribution				
	Political Committee (per State House of Representatives election cycle)	Small Donor Committee (per calendar year)	Political Party (per calendar year)	Issue Committee	Independent Expenditure Committee (donations)
Natural Person	\$550	\$50	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	No Limit	No Limit
Political Party	\$550	Prohibited	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	No Limit	No Limit
Political Committee (PC)	\$550	Prohibited	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	Prohibited	No limit
Small Donor Committee (SDC)	Prohibited	Prohibited	\$17,075 (State, County, district, and local levels combined of which no more than \$14,225 may be given to the state party.)	Prohibited	No limit
Candidate Committee	\$550, but only if the stated purpose of the political committee includes supporting the candidate who is contributing.	Prohibited	\$3,400 of unexpended campaign funds only. (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	Prohibited	No limit
Issue Committee	Prohibited	Prohibited	Prohibited	No Limit	Prohibited
Independent Expenditure Committee	Prohibited	Prohibited	Prohibited	Prohibited	No limit
Business Entity (Other than a Corporation)	\$550	Prohibited	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	No Limit	No Limit
Corporations & Labor Unions	\$550	Prohibited	Prohibited	No Limit	No Limit
Federal PAC	\$550	Prohibited	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	No Limit	No Limit
Federal 527 Organization	\$550	Prohibited	\$3,400 (State, county, district, & local levels combined of which no more than \$2,825 may be given to the state party.)	No Limit	No Limit

GLOSSARY OF TERMS AND ACRONYMS

527

The term “527” refers to a section of the Internal Revenue Code governing a type of tax-exempt political organization. 527s are typically federal organizations created to influence or attempt to influence the selection, nomination, election, or appointment of candidates.

Amendment 27

Refers to Article XXVIII of the Colorado Constitution (as it appeared on the ballot), a voter-approved constitutional amendment providing campaign finance laws for the state of Colorado.

Article XXVIII

A voter-approved amendment to the Colorado constitution providing campaign finance laws for the state of Colorado.

Candidate Affidavit

Form filed with the appropriate filing office to certify one’s intent to run for public office.

Committee

A person or group of persons that raises and spends money for the purpose of supporting or opposing candidates running for office, or supporting or opposing ballot measures.

Contribution

A contribution represents money given to, or received by, a campaign committee.

CPF – Campaign and Political Finance

Includes all the laws pertaining to, and methods of, financing political campaigns and related activities.

C.R.S. – Colorado Revised Statutes

The laws enacted by the Colorado General Assembly.

Designated Filing Agent

Any person appointed by a committee responsible for the timely filing of campaign finance reports.

Electioneering Communications

Any communication broadcast in some form within 30 days of a primary or within 60 days of a general election, to members of the electorate that represents the functional equivalent of express advocacy.

Expenditure

Money spent by a candidate, committee, other political entity, or individual in the case of Independent Expenditures.

FCPA – Fair Campaign Practices Act

Title 1, Article 45 of the Colorado Revised Statutes.

Fair Market Value

The normal or average price that a good or service would ordinarily command in the marketplace.

FCC – Federal Communications Commission

The federal agency that is responsible for oversight of broadcast communications, including, television, internet, and radio.

FEC – Federal Elections Commission

The federal agency that is responsible for oversight of federal elections and campaign and political finance.

Filing Office

The office you or your committee is required to file campaign finance reports with. For all candidates and committees except those at the municipal and federal levels, the appropriate filing officer is the Colorado Secretary of State.

GA – General Assembly

The State Senate and State House of Representatives together comprise the General Assembly.

Independent Expenditure

A campaign finance expenditure not controlled or coordinated by the candidate, or candidate’s agent that it references.

Independent Expenditure Committee

A person, business, group, or other entity, that spends more than \$1,000 on independent expenditures.

IRS – Internal Revenue Service

Federal agency tasked with administration of the federal tax code.

Issue Committee

A person or group of persons that has a major purpose of supporting or opposing any ballot issue or ballot question or raises or spends money in excess of \$200, or prints 200 or more petition sections, to support or oppose ballot measures.

Major Contributor Report

Separate report required by law when a committee receives any contribution of \$1,000 or more that is received 30 days before a Primary or General Election, and names the contributor and his or her address, occupation, and employer.

Municipality

A subdivision of the state most often a city or town.

PAC – Political Action Committee

A federal political organization regulated by the Federal Elections Commission. Colorado does not have PACs, only political committees.

P.C. – Political Committee

A person, or group of people, that raises and spends money (more than \$200) to support or oppose the nomination or election of one or more candidates.

PFD – Personal Financial Disclosure

Required document filed by public officials and those running for office under Colorado’s Sunshine Law.

Political Organization

See the definition of 527

Political Party

A group of registered electors that nominates candidates for the general election ballot, whether by petition or by assembly.

Recall Committee

An issue committee established for the purpose of recalling an elected official.

Registered Agent

The agent authorized to act on behalf of a committee. Only the agent, or the designated filing agent (and, in the cases of candidate committees, the candidate) may file committee reports and engage in other activities related to the control of a committee. The agent also represents the point of contact for penalties assessed against the committee and complaints lodged against the committee.

Report of Contributions and Expenditures

Report outlining all of the contributions received, and expenditures made by, a committee, or other entity governed by campaign and political finance laws that is required by Colorado law. Independent expenditure committees file a similar report called a report of donations and expenditures. Standalone candidates file a report of expenditures also known as a statement of personal expenditures by a candidate.

RTD – Regional Transportation District

Regional authority that operates public transportation in the Denver metro area; A 15 member Board of Directors oversees RTD.

Rules – Rules Concerning Campaign and Political Finance

These are legally-binding regulations promulgated by the Colorado Secretary of State that govern campaign and political finance activities in Colorado.

SD – Senate District OR Special District

SD refers to both senate districts and special districts.

Senate District: Colorado has 35 Senate Districts, each represented by one State Senator in the Colorado Legislature.

Special District: A political subdivision of the state of Colorado; typically created to provide services to citizens (such as water and sanitation) that are not provided by the county or municipality. Special districts have their own elections for their governing boards.

SDC – Small Donor Committee

Political committee that accepts contributions of \$50 or less from natural persons only.

SOS – Secretary of State

An elected official that oversees a non-partisan state agency by the same name, (Secretary of State's Office), that administers many laws including Colorado's business and commercial statutes pertaining to profit and nonprofit corporations, limited liability companies, partnerships, trade names, secured transactions under the Uniform Commercial Code and miscellaneous liens, Colorado Election Code, Voter Registration Law, Campaign Finance Laws, Lobbyist Regulation, Colorado Charitable Solicitations Act, Bingo and Raffles Laws, and Notaries Public Laws.

TRACER – Transparency in Contribution and Expenditure Reporting

The Colorado Secretary of State's online campaign and political finance filing system.

VSL – Voluntary Spending Limits

Campaign spending limits that a candidate running for state office may elect to abide by.

References:

Article XXVIII, Colorado Constitution; Title 1 Article 45, C.R.S.; and Rules Concerning Campaign and Political Finance

COLORADO CONSTITUTION ARTICLE XXVIII (Amendment 27)

Campaign and Political Finance

Editor's note: (1) Section 1(4) of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The Governor's proclamation on Amendment 27 implementing this article was issued on December 20, 2002; however, § 13 of this article provides that the effective date of this article is December 6, 2002. (See L. 2003, p. 3609.)

(2) (a) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however, the Governor's proclamation date on Amendment 54 was January 8, 2009.

(b) In the case of **Dallman v. Ritter**, the Denver District Court declared Amendment 54, which amended certain provision of this article, unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

(3) In the case of **In re Interrogatories by Ritter**, the Supreme Court declared §§ 3(4) and 6(2) of this article unconstitutional in light of *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

Cross references: For the "Fair Campaign Practices Act", see article 45 of title 1.

Law reviews: For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007).

Section 1. Purpose and findings. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption; that large campaign contributions made to influence election outcomes allow wealthy individuals, corporations, and special interest groups to exercise a disproportionate level of influence over the political process; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; that because of the use of early voting in Colorado timely notice of independent expenditures is essential for informing the electorate; that in recent years the advent of significant spending on electioneering communications, as defined herein, has frustrated the purpose of existing campaign finance requirements; that independent research has demonstrated that the vast majority of televised electioneering communications goes beyond issue discussion to express electoral advocacy; that political contributions from corporate treasuries are not an indication of popular support for the corporation's political ideas and can unfairly influence the outcome of

Colorado elections; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3597. For the effective date of this article, see the editor's note following the article heading.

Section 2. Definitions. For the purpose of this article and any statutory provisions pertaining to campaign finance, including provisions pertaining to disclosure:

(1) "Appropriate officer" means the individual with whom a candidate, candidate committee, political committee, small donor committee, or issue committee must file pursuant to section 1-45-109 (1), C.R.S., or any successor section.

(2) "Candidate" means any person who seeks nomination or election to any state or local public office that is to be voted on in this state at any primary election, general election, school district election, special district election, or municipal election. "Candidate" also includes a judge or justice of any court of record who seeks to be retained in office pursuant to the provisions of section 25 of article VI. A person is a candidate for election if the person has publicly announced an intention to seek election to public office or retention of a judicial office and thereafter has received a contribution or made an expenditure in support of the candidacy. A person remains a candidate for purposes of this article so long as the candidate maintains a registered candidate committee. A person who maintains a candidate committee after an election cycle, but who has not publicly announced an intention to seek election to public office in the next or any subsequent election cycle, is a candidate for purposes of this article.

(3) "Candidate committee" means a person, including the candidate, or persons with the common purpose of receiving contributions or making expenditures under the authority of a candidate. A contribution to a candidate shall be deemed a contribution to the candidate's candidate committee. A candidate shall have only one candidate committee. A candidate committee shall be considered open and active until affirmatively closed by the candidate or by action of the secretary of state.

(4) "Conduit" means a person who transmits contributions from more than one person, directly to a candidate committee. "Conduit" does not include the contributor's immediate family members, the candidate or campaign treasurer of the candidate committee receiving the contribution, a volunteer fund raiser hosting an event for a candidate committee, or a professional fund raiser if the fund raiser is compensated at the usual and customary rate.

(4.5) "Contract holder" means any non-governmental party to a sole source government contract, including persons that control ten percent or more shares or interest in that party; or that party's officers, directors or trustees; or, in the case of collective bargaining agreements, the labor organization and any political committees created or controlled by the labor organization;

Editor's note: Subsection (4.5) was declared unconstitutional (see the editor's note following this section).

(5) (a) "Contribution" means:

(I) The payment, loan, pledge, gift, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, small donor committee, or political party;

(II) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, small donor committee, or political party;

(III) The fair market value of any gift or loan of property made to any candidate committee,

issue committee, political committee, small donor committee or political party;

(IV) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election.

(b) "Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, small donor committee, issue committee, or political party; a transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments by a corporation or labor organization for the costs of establishing, administering, and soliciting funds from its own employees or members for a political committee or small donor committee.

(6) "Election cycle" means either:

(a) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the next general election for that office;

(b) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the special legislative election for that office; or

(c) The period of time beginning thirty-one days following the special legislative election for the particular office and ending thirty days following the next general election for that office.

(7) (a) "Electioneering communication" means any communication broadcasted by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:

(I) Unambiguously refers to any candidate; and

(II) Is broadcasted, printed, mailed, delivered, or distributed within thirty days before a primary election or sixty days before a general election; and

(III) Is broadcasted to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(b) "Electioneering communication" does not include:

(I) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(IV) Any communication that refers to any candidate only as part of the popular name of a bill or statute.

(8) (a) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

(b) "Expenditure" does not include:

(I) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;

(II) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;

(III) Spending by persons, other than political parties, political committees and small donor

committees, in the regular course and scope of their business or payments by a membership organization for any communication solely to members and their families;

(IV) Any transfer by a membership organization of a portion of a member's dues to a small donor committee or political committee sponsored by such membership organization; or payments made by a corporation or labor organization for the costs of establishing, administering, or soliciting funds from its own employees or members for a political committee or small donor committee.

(8.5) "Immediate family member" means any spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner;

Editor's note: Subsection (8.5) was declared unconstitutional (see the editor's note following this section).

(9) "Independent expenditure" means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate. Expenditures that are controlled by or coordinated with a candidate or candidate's agent are deemed to be both contributions by the maker of the expenditures, and expenditures by the candidate committee.

(10) (a) "Issue committee" means any person, other than a natural person, or any group of two or more persons, including natural persons:

(I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or

(II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

(b) "Issue committee" does not include political parties, political committees, small donor committees, or candidate committees as otherwise defined in this section.

(c) An issue committee shall be considered open and active until affirmatively closed by such committee or by action of the appropriate authority.

(11) "Person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons.

(12) (a) "Political committee" means any person, other than a natural person, or any group of two or more persons, including natural persons that have accepted or made contributions or expenditures in excess of \$200 to support or oppose the nomination or election of one or more candidates.

(b) "Political committee" does not include political parties, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this article, the following are treated as a single political committee:

(I) All political committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All political committees established, financed, maintained, or controlled by a single labor organization; except that, any political committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be deemed separate from the political committee of the state and national unit;

(III) All political committees established, financed, maintained, or controlled by the same political party;

(IV) All political committees established, financed, maintained, or controlled by substantially the same group of persons.

(13) "Political party" means any group of registered electors who, by petition or assembly, nominate candidates for the official general election ballot. "Political party" includes affiliated party

organizations at the state, county, and election district levels, and all such affiliates are considered to be a single entity for the purposes of this article, except as otherwise provided in section 7.

(14) (a) "Small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year. For purposes of this section, dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members.

(b) "Small donor committee" does not include political parties, political committees, issue committees, or candidate committees as otherwise defined in this section.

(c) For the purposes of this article, the following are treated as a single small donor committee:

(I) All small donor committees established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All small donor committees established, financed, maintained, or controlled by a single labor organization; except that, any small donor committee established, financed, maintained, or controlled by a local unit of the labor organization which has the authority to make a decision independently of the state and national units as to which candidates to support or oppose shall be deemed separate from the small donor committee of the state and national unit;

(III) All small donor committees established, financed, maintained, or controlled by the same political party;

(IV) All small donor committees established, financed, maintained, or controlled by substantially the same group of persons.

(14.4) "Sole source government contract" means any government contract that does not use a public and competitive bidding process soliciting at least three bids prior to awarding the contract. This provision applies only to government contracts awarded by the state or any of its political subdivisions for amounts greater than one hundred thousand dollars indexed for inflation per the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley after the year 2012, adjusted every four years, beginning January 1, 2012, to the nearest lowest twenty five dollars. This amount is cumulative and includes all sole source government contracts with any and all governmental entities involving the contract holder during a calendar year. A sole source government contract includes collective bargaining agreements with a labor organization representing employees, but not employment contracts with individual employees. Collective bargaining agreements qualify as sole source government contracts if the contract confers an exclusive representative status to bind all employees to accept the terms and conditions of the contract;

Editor's note: Subsection (14.4) was declared unconstitutional (see the editor's note following this section).

(14.6) "State or any of its political subdivisions" means the state of Colorado and its agencies or departments, as well as the political subdivisions within this state including counties, municipalities, school districts, special districts, and any public or quasi-public body that receives a majority of its funding from the taxpayers of the state of Colorado.

Editor's note: Subsection (14.6) was declared unconstitutional (see the editor's note following this section).

(15) "Unexpended campaign contributions" means the balance of funds on hand in any candidate committee at the end of an election cycle, less the amount of all unpaid monetary obligations incurred prior to the election in furtherance of such candidacy.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3597. For the effective date of this article, see the editor's note following the article heading. **Initiated 2008:** (4.5), (8.5), (14.4), and (14.6) added, effective December 31, 2008, see **L. 2009**, p. 3381.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter**, the Denver District Court declared the provisions of subsections (4.5), (8.5), (14.4), and (14.6) unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

Cross references: For the definition of "major purpose", as used in subsection (10)(a)(I), see § 1-45-103 (12)(b). **Section 3. Contribution limits.** (1) Except as described in subsections (2), (3), and (4) of this section, no person, including a political committee, shall make to a candidate committee, and no candidate committee shall accept from any one person, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five hundred dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two hundred dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(2) No small donor committee shall make to a candidate committee, and no candidate committee shall accept from any one small donor committee, aggregate contributions for a primary or a general election in excess of the following amounts:

(a) Five thousand dollars to any one:

(I) Governor candidate committee for the primary election, and governor and lieutenant governor candidate committee, as joint candidates under 1-1-104, C.R.S., or any successor section, for the general election;

(II) Secretary of state, state treasurer, or attorney general candidate committee; and

(b) Two thousand dollars to any one state senate, state house of representatives, state board of education, regent of the university of Colorado, or district attorney candidate committee.

(3) (a) No political party shall accept aggregate contributions from any person, other than a small donor committee as described in paragraph (b) of this subsection (3), that exceed three thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twenty-five hundred dollars per year at the state level;

(b) No political party shall accept aggregate contributions from any small donor committee that exceed fifteen thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twelve thousand, five hundred dollars at the state level;

(c) No political party shall accept contributions that are intended, or in any way designated, to be passed through the party to a specific candidate's candidate committee;

(d) In the applicable election cycle, no political party shall contribute to any candidate committee more than twenty percent of the applicable spending limit set forth in section 4 of this article.

(e) Any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any

subsequent election for purposes of paragraph (d) of this subsection (3);

(4) (a) It shall be unlawful for a corporation or labor organization to make contributions to a candidate committee or a political party, and to make expenditures expressly advocating the election or defeat of a candidate; except that a corporation or labor organization may establish a political committee or small donor committee which may accept contributions or dues from employees, officeholders, shareholders, or members.

(b) The prohibition contained in paragraph (a) of this subsection (4) shall not apply to a corporation that:

(I) Is formed for the purpose of promoting political ideas and cannot engage in business activities; and

(II) Has no shareholders or other persons with a claim on its assets or income; and

(III) Was not established by and does not accept contributions from business corporations or labor organizations.

Editor's note: Subsection (4) was declared unconstitutional (see editor's note following this section).

(5) No political committee shall accept aggregate contributions or pro-rata dues from any person in excess of five hundred dollars per house of representatives election cycle.

(6) No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

(7) No person shall act as a conduit for a contribution to a candidate committee.

(8) Notwithstanding any other section of this article to the contrary, a candidate's candidate committee may receive a loan from a financial institution organized under state or federal law if the loan bears the usual and customary interest rate, is made on a basis that assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule. The contribution limits described in this section shall not apply to a loan as described in this subsection (8).

(9) All contributions received by a candidate committee, issue committee, political committee, small donor committee, or political party shall be deposited in a financial institution in a separate account whose title shall include the name of the committee or political party. All records pertaining to such accounts shall be maintained by the committee or political party for one-hundred eighty days following any general election in which the committee or party received contributions unless a complaint is filed, in which case they shall be maintained until final disposition of the complaint and any consequent litigation. Such records shall be subject to inspection at any hearing held pursuant to this article.

(10) No candidate committee, political committee, small donor committee, issue committee, or political party shall accept a contribution, or make an expenditure, in currency or coin exceeding one hundred dollars.

(11) No person shall make a contribution to a candidate committee, issue committee, political committee, small donor committee, or political party with the expectation that some or all of the amounts of such contribution will be reimbursed by another person. No person shall be reimbursed for a contribution made to any candidate committee, issue committee, political committee, small donor committee, or political party, nor shall any person make such reimbursement except as provided in subsection (8) of this section.

(12) No candidate committee, political committee, small donor committee, or political party shall knowingly accept contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to article 115 of title 7, C.R.S., or any successor section.

(13) Each limit on contributions described in subsections (1), (2), (3) (a), (3) (b) and (5) of this section, and subsection (14) of section 2, shall be adjusted by an amount based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver- Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3601. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In the case of **In re Interrogatories by Ritter**, the Supreme Court declared subsection (4) of this section unconstitutional in light of *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

Section 4. Voluntary campaign spending limits. (1) Candidates may certify to the secretary of state that the candidate's candidate committee shall not exceed the following spending limits for the applicable election cycle:

(a) Two and one-half million dollars combined for a candidate for governor and governor and lieutenant governor as joint candidates under 1-1-104, C.R.S., or any successor section;

(b) Five hundred thousand dollars for a candidate for secretary of state, attorney general, or treasurer;

(c) Ninety thousand dollars for a candidate for the state senate;

(d) Sixty-five thousand dollars for a candidate for the state house of representatives, state board of education, regent of the university of Colorado, or district attorney.

(2) Candidates accepting the campaign spending limits set forth above shall also agree that their personal contributions to their own campaign shall be counted as political party contributions and subject to the aggregate limit on such contributions set forth in section 3 of this article.

(3) Each candidate who chooses to accept the applicable voluntary spending limit shall file a statement to that effect with the secretary of state at the time that the candidate files a candidate affidavit as currently set forth in section 1-45-110(1), C.R.S., or any successor section. Acceptance of the applicable voluntary spending limit shall be irrevocable except as set forth in subsection (4) of this section and shall subject the candidate to the penalties set forth in section 10 of this article for exceeding the limit.

(4) If a candidate accepts the applicable spending limit and another candidate for the same office refuses to accept the spending limit, the accepting candidate shall have ten days in which to withdraw acceptance. The accepting candidate shall have this option of withdrawing acceptance after each additional non-accepting candidate for the same office enters the race.

(5) The applicable contribution limits set forth in section 3 of this article shall double for any candidate who has accepted the applicable voluntary spending limit if:

(a) Another candidate in the race for the same office has not accepted the voluntary spending limit; and

(b) The non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit.

(6) Only those candidates who have agreed to abide by the applicable voluntary spending limit may advertise their compliance. All other candidates are prohibited from advertising, or in any way

implying, their acceptance of voluntary spending limits.

(7) Each spending limit described in subsection (1) of this section shall be adjusted by an amount based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index, rounded to the nearest lowest twenty-five dollars. The first adjustment shall be done in the first quarter of 2007 and then every four years thereafter. The secretary of state shall calculate such an adjustment in each limit and specify the limits in rules promulgated in accordance with article 4 of title 24, C.R.S., or any successor section.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3604. For the effective date of this article, see the editor's note following the article heading.

Section 5. Independent expenditures. (1) Any person making an independent expenditure in excess of one thousand dollars per calendar year shall deliver notice in writing to the secretary of state of such independent expenditure, as well as the amount of such expenditure, and a detailed description of the use of such independent expenditure. The notice shall specifically state the name of the candidate whom the independent expenditure is intended to support or oppose. Each independent expenditure in excess of one-thousand dollars shall require the delivery of a new notice. Any person making an independent expenditure within thirty days of a primary or general election shall deliver such notice within forty-eight hours after obligating funds for such expenditure.

(2) Any person making an independent expenditure in excess of one thousand dollars shall disclose, in the communication produced by the expenditure, the name of the person making the expenditure and the specific statement that the advertisement of material is not authorized by any candidate. Such disclosure shall be prominently featured in the communication.

(3) Expenditures by any person on behalf of a candidate for public office that are coordinated with or controlled by the candidate or the candidate's agent, or political party shall be considered a contribution to the candidate's candidate committee, or the political party, respectively.

(4) This section 5 applies only to independent expenditures made for the purpose of expressly advocating the defeat or election of any candidate.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3605. For the effective date of this article, see the editor's note following the article heading.

Section 6. Electioneering communications. (1) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall submit reports to the secretary of state in accordance with the schedule currently set forth in 1-45-108 (2), C.R.S., or any successor section. Such reports shall include spending on such electioneering communications, and the name, and address, of any person that contributes more than two hundred and fifty dollars per year to such person described in this section for an electioneering communication. In the case where the person is a natural person, such reports shall also include the occupation and employer of such natural person. The last such report shall be filed thirty days after the applicable election.

(2) Notwithstanding any section to the contrary, it shall be unlawful for a corporation or labor organization to provide funding for an electioneering communication; except that any political committee or small donor committee established by such corporation or labor organization may provide funding for an electioneering communication.

Editor's note: Subsection (2) was declared unconstitutional (see editor's note following this section).

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3605. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In the case of **In re Interrogatories by Ritter**, the Supreme Court declared subsection (2) of this section unconstitutional in light of *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S.Ct. 876, 175 L. Ed.2d 753 (2010).

Section 7. Disclosure. The disclosure requirements relevant to candidate committees, political committees, issue committees, and political parties, that are currently set forth in section 1-45-108, C.R.S., or any successor section, shall be extended to include small donor committees. The disclosure requirements of section 1-45-108, C.R.S., or any successor section, shall be extended to require disclosure of the occupation and employer of each person who has made a contribution of one hundred dollars or more to a candidate committee, political committee, issue committee, or political party. For purposes of this section and 1-45-108, C.R.S., or any successor section, a political party shall be treated as separate entities at the state, county, district, and local levels.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3606. For the effective date of this article, see the editor's note following the article heading.

Section 8. Filing - where to file - timeliness. The secretary of state shall promulgate rules relating to filing in accordance with article 4 of title 24, C.R.S., or any successor section. The rules promulgated pursuant to this section shall extend section 1- 45-109, C.R.S., or any successor section to apply to small donor committees.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3606. For the effective date of this article, see the editor's note following the article heading.

Section 9. Duties of the secretary of state - enforcement. (1) The secretary of state shall:

(a) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this article and make such forms and instructions available to the public, municipal clerks, and county clerk and recorders free of charge;

(b) Promulgate such rules, in accordance with article 4 of title 24, C.R.S., or any successor section, as may be necessary to administer and enforce any provision of this article;

(c) Prepare forms for candidates to declare their voluntary acceptance of the campaign spending limits set forth in section 4 of this article. Such forms shall include an acknowledgment that the candidate voluntarily accepts the applicable spending limit and that the candidate swears to abide by those spending limits. These forms shall be signed by the candidate under oath, notarized, filed with the secretary of state, and available to the public upon request;

(c) Maintain a filing and indexing system consistent with the purposes of this article;

(e) Make the reports and statements filed with the secretary of state's office available immediately for public inspection and copying. The secretary of state may charge a reasonable fee for providing copies of reports. No information copied from such reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;

(f) Refer any complaints filed against any candidate for the office of secretary of state to the attorney general. Any administrative law judge employed pursuant to this section shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S., or any successor section. Any hearing conducted by an administrative law judge employed pursuant to subsection (2) of this section shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section.

(2) (a) Any person who believes that a violation of section 3, section 4, section 5, section 6,

section 7, or section 9 (1) (e), of this article, or of sections 1-45-108, 1-45-114, 1-45-115, or 1-45-117 C.R.S., or any successor sections, has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint. The administrative law judge shall hold a hearing within fifteen days of the referral of the complaint, and shall render a decision within fifteen days of the hearing. The defendant shall be granted an extension of up to thirty days upon defendant's motion, or longer upon a showing of good cause. If the administrative law judge determines that such violation has occurred, such decision shall include any appropriate order, sanction, or relief authorized by this article. The decision of the administrative law judge shall be final and subject to review by the court of appeals, pursuant to section 24-4-106 (11), C.R.S., or any successor section. The secretary of state and the administrative law judge are not necessary parties to the review. The decision may be enforced by the secretary of state, or, if the secretary of state does not file an enforcement action within thirty days of the decision, in a private cause of action by the person filing the complaint. Any private action brought under this section shall be brought within one year of the date of the violation in state district court. The prevailing party in a private enforcement action shall be entitled to reasonable attorneys fees and costs.

(b) The attorney general shall investigate complaints made against any candidate for the office of secretary of state using the same procedures set forth in paragraph (a) of this subsection (2). Complainant shall have the same private right of action as under paragraph (a) of this subsection (2).

(c) A subpoena issued by an administrative law judge requiring the production of documents by an issue committee shall be limited to documents pertaining to contributions to, or expenditures from, the committee's separate account established pursuant to section 3(9) of this article to support or oppose a ballot issue or ballot question. A subpoena shall not be limited in this manner where such issue committee fails to form a separate account through which a ballot issue or ballot question is supported or opposed.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3606. For the effective date of this article, see the editor's note following the article heading.

Editor's note: In subsection (1) of this section, it appears that the fourth paragraph should have been lettered as paragraph (d) instead of (c); however, the original document filed with the secretary of state contains the lettering reflected in this section.

Section 10. Sanctions. (1) Any person who violates any provision of this article relating to contribution or voluntary spending limits shall be subject to a civil penalty of at least double and up to five times the amount contributed, received, or spent in violation of the applicable provision of this article. Candidates shall be personally liable for penalties imposed upon the candidate's committee.

(2) (a) The appropriate officer shall impose a penalty of fifty dollars per day for each day that a statement or other information required to be filed pursuant to section 5, section 6, or section 7 of this article, or sections 1-45-108, 1-45-109 or 1-45-110, C.R.S., or any successor sections, is not filed by the close of business on the day due. Upon imposition of a penalty pursuant to this subsection (2), the appropriate officer shall send the person upon whom the penalty is being imposed proper notification by certified mail of the imposition of the penalty. If an electronic mail address is on file with the secretary of state, the secretary of state shall also provide such notification by electronic mail. Revenues collected from fees and penalties assessed by the secretary of state or revenues collected in the form of payment of the secretary of state's attorney fees and costs pursuant to this article shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S., or any successor section.

(b) (i) Any person required to file a report with the secretary of state and upon whom a penalty has been imposed pursuant to this subsection (2) may appeal such penalty by filing a written appeal

with the secretary of state no later than thirty days after the date on which notification of the imposition of the penalty was mailed to such person's last known address in accordance with paragraph (a) of this subsection (2). Except as provided in paragraph (c) of this subsection (2), the secretary shall refer the appeal to an administrative law judge. Any hearing conducted by an administrative law judge pursuant to this subsection (2) shall be conducted in accordance with the provisions of section 24-4-105, C.R.S., or any successor section. The administrative law judge shall set aside or reduce the penalty upon a showing of good cause, and the person filing the appeal shall bear the burden of proof. The decision of the administrative law judge shall be final and subject to review by the court of appeals pursuant to section 24-4-106 (11), C.R.S., or any successor section.

(II) If the administrative law judge finds that the filing of an appeal brought pursuant to subparagraph (I) of this paragraph (b) was frivolous, groundless, or vexatious, the administrative law judge shall order the person filing the appeal to pay reasonable attorney fees and costs of the secretary of state in connection with such proceeding.

(c) Upon receipt by the secretary of state of an appeal pursuant to paragraph (b) of this subsection (2), the secretary shall set aside or reduce the penalty upon a showing of good cause.

(d) Any unpaid debt owing to the state resulting from a penalty imposed pursuant to this subsection (2) shall be collected by the state in accordance with the requirements of section 24-30-202.4, C.R.S., or any successor section.

(3) Failure to comply with the provisions of this article shall have no effect on the validity of any election.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3608. For the effective date of this article, see the editor's note following the article heading.

Section 11. Conflicting provisions declared inapplicable. Any provisions in the statutes of this state in conflict or inconsistent with this article are hereby declared to be inapplicable to the matters covered and provided for in this article.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 12. Repeal of conflicting statutory provisions. Sections 1-45-103, 1-45-105.3, 1-45-107, 1-45-111, and 1-45-113 are repealed.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 13. APPLICABILITY AND EFFECTIVE DATE. The provisions of this article shall take effect on December 6, 2002, and be applicable for all elections thereafter, except that the provisions of this article concerning sole source government contracts shall take effect on December 31, 2008. Legislation may be enacted to facilitate its operation, but in no way limiting or restricting the provisions of this article or the powers herein granted.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3609. For the effective date of this article, see the editor's note following the article heading. **Initiated 2008:** Entire section amended, effective December 31, 2008, see **L. 2009**, p. 3381.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter**, the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

Section 14. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 2002: Entire article added, **L. 2003**, p. 3609. For the effective date of this article, see the editor's note following the article heading.

Section 15. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, contract holders shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the contract holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009**, p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter**, the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

Section 16. To aid in enforcement of this measure concerning sole source contracts, the executive director of the department of personnel shall promptly publish and maintain a summary of each sole source government contract issued. Any contract holder of a sole source government contract shall promptly prepare and deliver to the executive director of the department of personnel a true and correct "Government Contract Summary," in digital format as prescribed by that office, which shall identify the names and addresses of the contract holders and all other parties to the government contract, briefly describe the nature of the contract and goods or services performed, disclose the start and end date of the contract, disclose the contract's estimated amount or rate of payment, disclose the sources of payment, and disclose other information as determined by the executive director of the department of personnel which is not in violation of federal law, trade secrets or intellectual property rights. The executive director of the department of personnel is hereby given authority to promulgate

rules to facilitate this section.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009**, p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter**, the Denver District Court declared the provisions of this section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

Section 17. (1) Every sole source government contract by the state or any of its political subdivisions shall incorporate article XXVIII, section 15, into the contract. Any person who intentionally accepts contributions on behalf of a candidate committee, political committee, small donor committee, political party, or other entity, in violation of section 15 has engaged in corrupt misconduct and shall pay restitution to the general treasury of the contracting governmental entity to compensate the governmental entity for all costs and expenses associated with the breach, including costs and losses involved in securing a new contract if that becomes necessary. If a person responsible for the bookkeeping of an entity that has a sole source contract with a governmental entity, or if a person acting on behalf of the governmental entity, obtains knowledge of a contribution made or accepted in violation of section 15, and that person intentionally fails to notify the secretary of state or appropriate government officer about the violation in writing within ten business days of learning of such contribution, then that person may be contractually liable in an amount up to the above restitution.

(2) Any person who makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.

(3) The parties shall agree that if a contract holder intentionally violates section 15 or section 17 (2), as contractual damages that contract holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years. The governor may temporarily suspend any remedy under this section during a declared state of emergency.

(4) Knowing violation of section 15 or section 17 (2) by an elected or appointed official is grounds for removal from office and disqualification to hold any office of honor, trust or profit in the state, and shall constitute misconduct or malfeasance.

(5) A registered voter of the state may enforce section 15 or section 17 (2) by filing a complaint for injunctive or declaratory relief or for civil damages and remedies, if appropriate, in the district court.

Editor's note: This section was declared unconstitutional (see the editor's note following this section).

Source: Initiated 2008: Entire section added, effective December 31, 2008, see **L. 2009**, p. 3380.

Editor's note: (1) In 2008, Amendment 54 amended § 13 of this article creating an exception to the effective date stating that the provisions of this article amended or added by Amendment 54 concerning sole source government contracts are effective December 31, 2008; however the Governor's proclamation date on Amendment 54 was January 8, 2009.

(2) In the case of **Dallman v. Ritter**, the Denver District Court declared the provisions of this

section unconstitutional and issued a preliminary injunction enjoining the enforcement of Amendment 54 (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)). The Colorado Supreme Court affirmed the district court's ruling (see **Dallman v. Ritter**, 225 P.3d 610 (Colo. 2010)).

(3) This section did not contain a headnote as it appeared on the ballot.

Colorado Revised Statutes

Title 1, Article 45

ELECTION CAMPAIGN REGULATIONS

ARTICLE 45

Fair Campaign Practices Act

Editor's note: (1) This article was added in 1974. This article was repealed and reenacted by initiative in 1996, resulting in the addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR: 928,148
AGAINST: 482,551

(2) For amendments to this article prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (September 1997). For article, "Public Moneys and Ballot Issues Under the Fair Campaign Practices Act", see 34 Colo. Law. 81 (September 2005).

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|-------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------|------------------------------------------------------------------|
| 1-45-101. | Short title. | 1-45-108. | Disclosure - definition. |
| 1-45-102. | Legislative declaration. | 1-45-108.3. | Issue committees - disclaimer. |
| 1-45-103. | Definitions. | 1-45-108.5. | Political organizations - disclosure. |
| 1-45-103.7. | Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - definitions. | 1-45-109. | Filing - where to file - timeliness. |
| 1-45-104. | Contribution limits. (Repealed) | 1-45-110. | Candidate affidavit - disclosure statement. |
| 1-45-105. | Voluntary campaign spending limits. (Repealed) | 1-45-111. | Duties of the secretary of state - enforcement. (Repealed) |
| 1-45-105.3. | Contribution limits. (Repealed) | 1-45-111.5. | Duties of the secretary of state - enforcement - sanctions. |
| 1-45-105.5. | Contributions to members of general assembly and governor during consideration of legislation. | 1-45-112. | Duties of municipal clerk. |
| 1-45-106. | Unexpended campaign contributions. | 1-45-112.5. | Immunity from liability. |
| 1-45-107. | Independent expenditures. (Repealed) | 1-45-113. | Sanctions. (Repealed) |
| 1-45-107.5. | Independent expenditures - restrictions on foreign corporations - registration - disclosure - disclaimer requirements. | 1-45-114. | Expenditures - political advertising - rates and charges. |
| | | 1-45-115. | Encouraging withdrawal from campaign prohibited. |
| | | 1-45-116. | Home rule counties and municipalities. |
| | | 1-45-117. | State and political subdivisions - limitations on contributions. |

1-45-117.5. Media outlets - political records. 1-45-118. Severability.

1-45-101. Short title. This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section is similar to former § 1-45-101 as it existed prior to 1996.

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section is similar to former § 1-45-102 as it existed prior to 1996.

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(1.3) "Ballot issue" shall have the same meaning as set forth in section 1-1-104 (2.3); except that, for purposes of section 1-45-117, "ballot issue" shall mean both a ballot issue as defined in this subsection (1.3) and a ballot question.

(1.5) "Ballot question" shall have the same meaning as set forth in section 1-1-104 (2.7).

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

(l) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state. For purposes of this article, "domestic corporation" shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and "nondomestic corporation" shall mean a corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, "corporation" includes the parent of a subsidiary corporation or any subsidiaries of the parent, as applicable.

(7.3) (a) "Donation" means:

(I) The payment, loan, pledge, gift, or advance of money, or the guarantee of a loan, made to any person for the purpose of making an independent expenditure;

(II) Any payment made to a third party that relates to, and is made for the benefit of, any person that makes an independent expenditure;

(III) The fair market value of any gift or loan of property that is given to any person for the purpose of making an independent expenditure; or

(IV) Anything of value given, directly or indirectly, to any person for the purpose of making an independent expenditure.

(b) "Donation" shall not include a transfer by a membership organization of a portion of a member's dues for an independent expenditure sponsored by such membership organization.

(7.5) "Earmark" means a designation, instruction, or encumbrance that directs the transmission by the recipient of all or part of a donation to a third party for the purpose of making one or more independent expenditures in excess of one thousand dollars.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" shall have the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution.

(10) "Expenditure" shall have the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(10.5) "Foreign corporation" means:

(a) A parent corporation or the subsidiary of a parent corporation formed under the laws of a foreign country that is functionally equivalent to a domestic corporation;

(b) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a combined ownership interest that exceeds fifty percent;

(c) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a majority of the positions on the corporation's board of directors; or

(d) A parent corporation or the subsidiary of a parent corporation whose United States-based operations, or whose decision-making with respect to political activities, falls under the direction or control of a foreign entity, including the government of a foreign country.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(11.5) "Independent expenditure committee" means one or more persons that make an independent expenditure in an aggregate amount in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons for the purpose of making an independent expenditure.

(12) (a) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(b) For purposes of section 2 (10) (a) (I) of article XXVIII of the state constitution, "major purpose" means support of or opposition to a ballot issue or ballot question that is reflected by:

(I) An organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended; or

(II) An organization's demonstrated pattern of conduct based upon its:

(A) Annual expenditures in support of or opposition to a ballot issue or ballot question; or

(B) Production or funding, or both, of written or broadcast communications, or both, in support of or opposition to a ballot issue or ballot question.

(c) The provisions of paragraph (b) of this subsection (12) are intended to clarify, based on the decision of the Colorado court of appeals in *Independence Institute v. Coffman*, 209 P.3d 1130 (Colo. App. 2008), cert. denied, ___ U.S. ___, 130 S. Ct. 165, 175 L. Ed. 479 (2009), section 2 (10) (a) (I) of article XXVIII of the state constitution and not to make a substantive change to said section 2 (10) (a) (I).

(12.5) "Media outlet" means a publication or broadcast medium that transmits news, feature stories, entertainment, or other information to the public through various distribution channels, including, without limitation, newspapers; magazines; radio; and broadcast, cable, or satellite television.

(12.7) "Obligating" means, in connection with a named candidate, agreeing to spend in excess of one thousand dollars for an independent expenditure or to give, pledge, loan, or purchase one or more goods, services, or other things of value that have a fair market value in excess of one thousand dollars as an independent expenditure. "Obligating" shall not require that the total amount in excess of one thousand dollars be finally determined at the time of the agreement to spend moneys for an independent expenditure or to give, pledge, loan, or purchase anything of value.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(14.5) "Political organization" means a political organization defined in section 527 (e) (1) of the federal "Internal Revenue Code of 1986", as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. "Political organization" shall not be construed to have the same meaning as "political organization" as defined in section 1-1-104 (24) for purposes of the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(16.5) "Spending" means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions" shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended, pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)). **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3. **L. 2007:** (7) amended, p. 1766, § 1, effective June 1; (6)(c), (14.5), and (16.5) added, pp. 1225, 1224, §§ 2, 1, effective July 1. **L. 2009:** (1.3) and (1.5) added, (HB 09-1153), ch. 174, p. 774, § 1, effective September 1. **L. 2010:** (7) amended and (7.3), (7.5), (10.5), (11.5), (12.5), and (12.7) added, (SB 10-203), ch. 269, p. 1229, § 2, effective May 25; (12) amended, (HB 10-1370), ch. 270, p. 1241, § 4, effective neJanuary 1, 2011. **L. 2011:** (12)(c) amended, (HB 11-1303), ch. 264, p. 1148, § 2, effective August 10.

Editor's note: (1) This section is similar to former § 1-45-103 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

Cross references: (1) For the legislative declaration in the 2010 act amending subsection (7) and adding subsections (7.3), (7.5), (10.5), (11.5), (12.5), and (12.7), see section 1 of chapter 269, Session Laws of Colorado 2010.

(2) For the legislative declaration in the 2010 act amending subsection (12), see section 1 of chapter 270, Session Laws of Colorado 2010.

(3) For the legislative declaration in the 2011 act amending subsection (12)(c), see section 1 of chapter 264, Session Laws of Colorado 2011.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject

to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified candidate committee or expenditures by a separate campaign committee composed of the candidate alone. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of

personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976), the court holds that the definition of "contribution" contained in subsection (4) does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to their members[,]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[,]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which may constitutionally be regulated. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified

candidate. This standard includes the words and phrases listed in *Buckley v. Valeo*, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational committee at issue amounted to "express advocacy" as that term is applied in *Buckley* and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. *Colo. for Family Values v. Meyer*, 936 P.2d 631 (Colo. App. 1997).

Telephone opinion poll was not "electioneering" and thus did not constitute an "electioneering communication" within the meaning of subsection (9) of this section and § 6 of article XXVIII of the state constitution. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster, "communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged,

expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended article XXVIII to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under subsection (9) of this section and article XXVIII of the state constitution. *Harwood v. Senate Majority Fund, LLC*, 141 P.3d 962 (Colo. App. 2006).

The term "issue committee" covers only those issue committees that were formed for the purpose of supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. *Common Sense Alliance v. Davidson*, 995 P.2d 748 (Colo. 2000).

A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. *Citizens for Responsible Gov't*

State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the "Campaign Reform Act of 1974". *Colo. Common Cause v. Meyer*, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

"Expressly advocating the election or defeat of a candidate" as that phrase is used in the definition of "expenditure" in subsection (10) that incorporates the definition from § 2(8) of article XXVIII of the state constitution encompasses only (1) communications using the so-called "magic words" delineated in Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), and substantially similar or synonymous words, and (2) an express exhortation that the reader, viewer, or listener take action to elect or defeat a candidate. Colo. Ethics Watch v. Senate Majority Fund, LLC, ___ P.3d ___ (Colo. App. 2010).

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons" that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring such payments within the definition of "expenditure". Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of "expenditure" indicates that an expenditure is

made if either criterion is met after the ballot title is submitted. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

Order by ALJ assessing penalty against nonprofit association engaging in political advocacy based upon determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's "major purpose" in 2004 was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

Court rejects interpretation of § 2(5)(a)(IV) of article XXVIII of state constitution and subsection (6)(a) of this section under which a city employee would be barred from providing to a candidate for elected office anything of value that had the effect of promoting the candidate's election. ALJ correctly construed the relevant phrase "for the purpose of" § 2(5)(a)(IV) of article XXVIII of state constitution in accordance with its plain meaning to indicate an anticipated result that is intended or desired. Court rejects construction under which phrase would mean "with the effect of". Such a construction would improperly conflate the distinct concepts of purpose and effect. Such an interpretation would also lead to unintended consequences far beyond the scope of issues presented in the case. CEW v. City & County of Broomfield, 203 P.3d 623 (Colo. App. 2009).

Since effect of city employees' actions, rather than their intent, is to be examined, court further rejects argument that intent is to be gauged by objective rather than subjective criteria. Inquiry into purpose requires examination of the intent of the person alleged to have made a campaign contribution. ALJ considered evidence concerning the city employees' intent and determined, on the basis of substantial evidence in the record, that

organization bringing campaign finance complaint had not met its burden of proving that the employees provided services for the purpose of promoting a campaign even though employees knew information would be helpful to the candidates to whom the information was provided. Organization's interpretation improperly equates knowledge of the possible effects of one's actions with an intent to achieve a particular result. Accordingly, ALJ correctly determined that city's contribution of staff time was not "for the purpose of" promoting a political campaign. *CEW v. City & County of Broomfield*, 203 P.3d 623 (Colo. App. 2009).

Payment by unions of staff salaries for time spent organizing walks to distribute political literature and payments of other costs associated with related political activities did not constitute prohibited expenditures in violation of § 3(4)(a) of article XXVIII of the state constitution. Whether payments made by the union are prohibited as "expenditures" depends upon whether they are exempt from regulation by the membership communication exception in § 2(8)(b)(III) of article XXVIII of the state constitution as payments for "any communication solely to members and their families". The membership communication exception must be construed broadly to reflect the plain language of this constitutional provision and to satisfy the demands of the first amendment. The membership communication exception as construed applies to most of the union's activities in this case. To the extent that the challenged union activities are not embraced by the membership communication exception, the administrative law judge correctly held that person filing campaign finance complaint failed to prove facts demonstrating that an expenditure was made. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65 (Colo. 2008).

The membership communication exception found in § 2(8)(b)(III) of article XXVIII of the state constitution must be extended to and embraced within the definition of "contribution". To hold otherwise nullifies the

exception. The same conduct may not be protected by the membership communication exception to expenditures, that is, treated as an exempt expenditure, yet, at the same time, be prohibited as a nonexempt contribution. Such a result would be contrary to the intent of the electorate and constitute an unreasonable and disharmonious application of this article. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65 (Colo. 2008).

Unions' challenged conduct does not meet the pertinent definitions of a contribution under § 2(5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution and subsection (6) of this section. Facts may reasonably be viewed in two contradictory ways: One advancing the union's argument that the payment of union staff salaries for organizing political events were paid for the benefit of the unions and their members and thus exempt from regulation; the other that the payments constituted payments made to a third party for the benefit of the candidate or anything of value given indirectly to the candidate and, thus, were prohibited contributions. When the first amendment is at stake, the tie goes to the speaker rather than to censorship and regulation. On the facts of this case, the unions did not make any prohibited contributions in violation of § 3(4)(a) of article XXVIII of the state constitution. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65 (Colo. 2008).

Because coordination, as a concept or as a matter of law, is not required to protect the rights of the maker of a contribution under the circumstances of this case, court declines to impose a requirement of coordination on the definition of contribution to satisfy first amendment requirements. While a finding of coordination may be necessary to protect the recipient of an indirect contribution from unwittingly violating this article, that issue is not raised by this case. *Colo. Educ. Ass'n v. Rutt*, 184 P.3d 65 (Colo. 2008).

Television advertisements urging voters to oppose incumbent member met the definition of electioneering communications under § 2(7)(a) of article XXVIII of state constitution. Unambiguous reference to "any communication" in definition does not

distinguish between express advocacy and advocacy that is not express. Further, subsection (7)(a) is triggered when a communication is made within 30 days before a primary election or 60 days before a general election, without regard to the communication's purpose. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Regular business exception in § 2(7)(b)(III) of article XXVIII of the state constitution is limited to persons whose business is to broadcast,

print, publicly display, directly mail, or hand deliver candidate-specific communications within the named candidate's district as a service rather than to influence elections. Wording of exception shows that the phrase "in the regular course and scope of their business" does not apply to political committees. Accordingly, political committee does not come within the regular business exception. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

1-45-103.7. Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - definitions. (1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(2.5) An independent expenditure committee shall not be treated as a political committee and, therefore, shall not be subject to the requirements of section 3 (5) of article XXVIII of the state constitution.

(3) A candidate committee may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate who wins the primary election may expend contributions received and accepted for a primary election in the general election.

(5) (a) No limited liability company shall make any contribution to a candidate committee or political party if one or more of the individual members of the limited liability company is:

(I) A corporation;

(II) A labor organization;

(III) A natural person who is not a citizen of the United States;

(IV) A foreign government;

(V) A professional lobbyist, volunteer lobbyist, or the principal of a professional or volunteer lobbyist, and the contribution is prohibited under section 1-45-105.5 (1); or

(VI) Otherwise prohibited by law from making the contribution.

(b) No limited liability company shall make any contribution to a political committee if one or more of the individual members of the limited liability company is:

- (I) An entity formed under and subject to the laws of a foreign country;
- (II) A natural person who is not a citizen of the United States; or
- (III) A foreign government.

(c) Notwithstanding any other provision of this subsection (5), no limited liability company shall make any contribution to a candidate committee or political party if either the limited liability company has elected to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 or any successor provision or the shares of the limited liability company are publicly traded. A contribution by a limited liability company with a single natural person member that does not elect to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 shall be attributed only to the single natural person member.

(d) (I) Any limited liability company that is authorized to make a contribution shall, in writing, affirm to the candidate committee, political committee, or political party to which it has made a contribution, as applicable, that it is authorized to make a contribution, which affirmation shall also state the names and addresses of all of the individual members of the limited liability company. No candidate committee, political committee, or political party shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee, political committee, or political party. The candidate committee, political committee, or political party receiving the contribution shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the contribution is received.

(II) Any contribution by a limited liability company, and the aggregate amount of contributions from multiple limited liability companies attributed to a single member of any such company under this subparagraph (II), shall be subject to the limits governing such contributions under section 3 of article XXVIII of the state constitution. A limited liability company that makes any contribution to a candidate committee, political committee, or political party shall, at the time it makes the contribution, provide information to the recipient committee or political party as to the amount of the total contribution attributed to each member of the limited liability company. The attribution shall reflect the capital each member of the limited liability company has invested in the company relative to the total amount of capital invested in the company as of the date the company makes the campaign contribution, and for a single member limited liability company, the contribution shall be attributed to that single member. The limited liability company shall then deduct the amount of the contribution attributed to each of its members from the aggregate contribution limit applicable to multiple limited liability companies under this subparagraph (II) for purposes of ensuring that the aggregate amount of contributions from multiple limited liability companies attributed to a single member does not exceed the contribution limits in section 3 of article XXVIII of the state constitution. Nothing in this subparagraph (II) shall be construed to restrict a natural person from making a contribution in his or her own name to any committee or political party to the extent authorized by law.

(6) No nondomestic corporation may make any contribution under article XXVIII of the state constitution or this article that a domestic corporation is prohibited from making under article XXVIII of the state constitution or this article.

(7) (a) Any person who believes that a violation of subsection (5) or (6) of this section has occurred may file a written complaint with the secretary of state no later than one hundred eighty days after the date of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who has violated any of the provisions of paragraph (a), (b), or (c) of subsection (5) or subsection (6) of this section shall be subject to a civil penalty of at least double and up to five times the amount contributed or received in violation of the applicable provision.

(c) Any person who has violated any of the provisions of subparagraph (I) of paragraph (d) of subsection (5) of this section shall be subject to a civil penalty of fifty dollars per day for each day that the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee, political committee, or political party to which a contribution has been made.

(8) As used in this section, "limited liability company" includes any form of domestic entity as defined in section 7-90-102 (13), C.R.S., or foreign entity as defined in section 7-90-102 (23), C.R.S.; except that, as used in this section, "limited liability company" shall not include a domestic corporation, a domestic cooperative, a domestic nonprofit association, a domestic nonprofit corporation, a foreign corporation, a foreign cooperative, a foreign nonprofit association, a foreign nonprofit corporation, as those terms are defined in section 7-90-102, C.R.S., a nondomestic corporation as defined in section 1-45-103 (7), or a foreign corporation as defined in section 1-45-103 (10.5).

Source: **L. 2003:** Entire section added, p. 2160, § 6, effective June 3. **L. 2004:** Entire section amended, p. 863, § 1, effective May 21. **L. 2007:** (5), (6), (7), and (8) added, p. 1766, § 2, effective June 1. **L. 2008:** (5)(d)(II) amended, p. 440, § 1, effective April 14. **L. 2010:** (2.5) added and (6) and (8) amended, (SB 10-203), ch. 269, p. 1230, § 3, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding subsection (2.5) and amending subsections (6) and (8), see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

Under section 9(2)(a) of article XXVIII of the state constitution, a complaint alleging that a contribution exceeds the applicable limit, either on its own or when aggregated with previous contributions, must be filed within 180 days of that excess contribution. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

To give effect to both the contribution limit in section 3 of article XXVIII and the time limit in

section 9(2)(a) of article XXVIII, a complaint may seek relief only as to contributions that, standing alone or aggregated, exceed the limit and are made within the preceding 180-day period, and the relief available under section 10(1) of article XXVIII or subsection (7)(b) of this section is limited to those excess contributions as to which the complaint is timely. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

1-45-104. Contribution limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2, effective May 27. **L. 99:** IP(2) amended, p. 1391, § 13, effective June 4. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: This section was similar to former § 1-45-111 as it existed prior to 1996.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: This section was similar to former § 1-45-112 as it existed prior to 1996.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2002:** (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) The provisions of this section were similar to several former provisions of § 1-45-104 as they existed prior to 2000.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

ANNOTATION

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of *Buckley v. Valeo*, 424 U.S. 1 (1976), the

court holds that the definition of "contribution" does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation. (1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to a candidate elected to any office described in paragraph (a) of this subsection (1) but who has not yet been sworn into such office shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

(B) The elected candidate who has not yet been sworn into office shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. L. 2012: IP(1)(c)(IV) and (1)(c)(IV)(B) amended, (HB 12-1070), ch. 167, p. 586, § 5, effective August 8.

Editor's note: This section is similar to former § 1-45-104 (13) as it existed prior to 2000.

1-45-106. Unexpended campaign contributions. (1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 3 of article XXVIII of the state constitution, if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3. **L. 2010:** (1)(a)(I)(B) amended, (SB 10-041), ch. 151, p. 522, § 1, effective July 1.

Editor's note: This section is similar to § 1-45-109 as it existed prior to 1996.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. *Citizens for Responsible Gov't State Political Action Comm. v. Buckley*, 60 F. Supp.2d 1066 (D. Colo. 1999).

Candidate's disclosure report not required to report unexpended campaign funds at the end

of an election cycle as contributions from a political party. To accomplish the purpose of subsection (5), it is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the

report. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

Candidate committee permitted to use unexpended contributions to pay elected state senator's legal fees. Although legal fees are not specifically mentioned as permissible expenses under subsection (1)(b)(V), the words "including, but not limited to," indicate that the statute merely illustrates the kinds of expenses that may be regarded as directly related to an

elected official's duties. Here, the legal fees may properly be characterized as directly related to official duties of elected state senator. The senator's duties include filing periodic reports with the secretary of state, and the fees were reasonably necessary to demonstrate that senator and his or her committee had properly performed this duty. *Williams v. Teck*, 113 P.3d 1255 (Colo. App. 2005).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former § 1-45-110.5 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-107.5. Independent expenditures - restrictions on foreign corporations - registration - disclosure - disclaimer requirements. (1) Notwithstanding any other provision of law, no foreign corporation may expend moneys on an independent expenditure in connection with an election in the state.

(2) In accordance with the decision of the supreme court of Colorado in the case of *In re Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Comm'n*, 558 U.S. ____ (2010), on *Certain Provisions of Article XXVIII of the Constitution of the State of Colorado*, 227 P.3d 892 (Colo. 2010), notwithstanding sections 3 (4) (a) and 6 (2) of article XXVIII of the state constitution, corporations and labor organizations shall not be prohibited from making independent expenditures. All such expenditures shall be disclosed in accordance with the requirements of this article and article XXVIII of the state constitution. For purposes of this article and article XXVIII of the state constitution, any use of the word "person" shall be construed to include, without limitation, any corporation or labor organization.

(3) (a) Any person that accepts a donation that is given for the purpose of making an independent expenditure in excess of one thousand dollars or that makes an independent expenditure in excess of one thousand dollars shall register with the appropriate officer within two business days of the date on which an aggregate amount of donations accepted or expenditures made reaches or exceeds one thousand dollars.

(b) The registration required by paragraph (a) of this subsection (3) shall include a statement listing:

- (I) The person's full name, spelling out any acronyms used therein;
- (II) A natural person authorized to act as a registered agent;

- (III) A street address and telephone number for the principal place of operations; and
 - (IV) The aggregate ownership interest in the person held by foreign persons calculated as of the time the person registers with the appropriate officer under paragraph (a) of this subsection (3).
- (c) If the person identified in subparagraph (I) of paragraph (b) of this subsection (3) is a corporation, a subsidiary may register on behalf of its parent corporation or for other subsidiaries of the parent corporation, and the parent corporation may register on behalf of all of its subsidiaries. In each such case, the registered agent of the person registering shall serve as the registered agent for all such affiliated corporations. Registration of a subsidiary shall include the name of its parent corporation as well as any names under which the subsidiary does business.
- (d) If the person identified in subparagraph (I) of paragraph (b) of this subsection (3) is a labor organization, a local labor organization may register on behalf of any affiliated local, national, or international labor organization that will be making independent expenditures, and a national or international labor organization may register on behalf of any affiliated local labor organization that will be making independent expenditures. In each such case, the registered agent of the labor organization that is registering shall serve as the registered agent for each affiliated local, national, or international labor organization.
- (4) (a) In addition to any other applicable disclosure requirements specified in this article or in article XXVIII of the state constitution, any person making an independent expenditure in an aggregate amount in excess of one thousand dollars in any one calendar year shall report the following to the appropriate officer:
- (I) The person's full name, or, if the person is a subsidiary of a parent corporation, the full name of the parent corporation, spelling out any acronyms used therein;
 - (II) All names under which the person does business in the state if such names are different from the name identified pursuant to subparagraph (I) of this paragraph (a);
 - (III) The address of the home office of the person, or, if the person is a subsidiary of a parent corporation, the home office of the parent corporation; and
 - (IV) The name and street address in the state of its registered agent.
- (b) (I) Any person who expends an aggregate amount in excess of one thousand dollars or more per calendar year for the purpose of making an independent expenditure shall report to the appropriate officer, in accordance with the requirements of this section, the name and address of any person that, for the purpose of making an independent expenditure, donates more than two hundred fifty dollars per year to the person expending one thousand dollars or more on an independent expenditure.
- (II) If the person making the donation of two hundred fifty dollars or more is a natural person, the disclosure required by subparagraph (I) of this paragraph (b) shall also include the donor's occupation and employer.
- (III) If the person making the donation of two hundred fifty dollars or more is not a natural person, the disclosure required by this paragraph (b) shall also include:
- (A) The donor's full name, or, if the donor is a subsidiary of a parent corporation, the full name of the parent corporation, spelling out any acronyms used therein;
 - (B) All names under which the donor does business in the state if such names are different from the name identified pursuant to subparagraph (I) of this paragraph (b);
 - (C) The address of the home office of the donor, or, if the donor is a subsidiary of a parent corporation, the home office of the parent corporation; and
 - (D) The name and street address in the state of the donor's registered agent.
- (c) The information required to be disclosed pursuant to paragraph (a) of this subsection (4) shall be reported in accordance with the schedule specified in section 1-45-108 (2) for political committees; except that any person making an independent expenditure in excess of one thousand dollars within

thirty days before a primary or general election shall provide such report within forty-eight hours after obligating moneys for the independent expenditure.

(5) (a) In addition to any other applicable requirements provided by law, and subject to the provisions of this section, any communication that is broadcast, printed, mailed, delivered, or otherwise circulated that constitutes an independent expenditure for which the person making the independent expenditure expends in excess of one thousand dollars on the communication shall include in the communication a statement that:

(I) The communication has been "paid for by (full name of the person paying for the communication)"; and

(II) Identifies a natural person who is the registered agent if the person identified in subparagraph (I) of this paragraph (a) is not a natural person.

(b) In the case of a broadcast communication, the statement required by paragraph (a) of this subsection (5) shall satisfy all applicable requirements promulgated by the federal communications commission for size, duration, and placement.

(c) In the case of a nonbroadcast communication, the secretary of state shall, by rule, establish size and placement requirements for the disclaimer.

(6) Any person that expends an aggregate amount in excess of one thousand dollars on an independent expenditure in any one calendar year shall deliver written notice to the appropriate officer that shall list with specificity the name of the candidate whom the independent expenditure is intended to support or oppose. Where the independent expenditure is made within thirty days before a primary or general election, the notice required by this subsection (6) shall be delivered within forty-eight hours after the person obligates moneys for the independent expenditure.

(7) Any person that accepts any donation that is given for the purpose of making an independent expenditure or expends any moneys on an independent expenditure in an aggregate amount in excess of one thousand dollars in any one calendar year shall establish a separate account in a financial institution, and the title of the account shall indicate that it is used for such purposes. All such donations accepted by such person for the making of any such independent expenditures shall only be deposited into the account, and any moneys expended for the making of such independent expenditure shall only be withdrawn from the account. As long as the person uses a separate account for the purposes of this subsection (7), in any complaint relating to the use of the person's account, no discovery may be made of information relating to the identity of the person's members and general donors and any discovery is limited to the sources, amounts, and uses of donations deposited into and expenditures withdrawn from the account.

(8) Any person that expends moneys on an independent expenditure in excess of one thousand dollars, regardless of the medium of the communication produced by the expenditure, shall disclose to the secretary of state, in accordance with the schedule specified in section 1-45-108 (2) for political committees, any donation in excess of twenty dollars given in that reporting period for the purpose of making an independent expenditure.

(9) (a) Any person that donates one thousand dollars or more to any person during any one calendar year for the purpose of making an independent expenditure shall report the donation in accordance with the schedule specified in section 1-45-108 (2) for political committees; except that no report is required for any reporting period in which no donation is made.

(b) On an annual basis, the secretary of state shall forward to the department of revenue a summary of the donation reports filed under paragraph (a) of this subsection (9) during the preceding calendar year, and the department shall use such information to ensure that no independent expenditure committee or person, or donor to such committee or person that has filed a report under paragraph (a) of this subsection (9), has deducted any amounts paid for the purpose of making one or more independent expenditures in establishing such committee's, person's, or donor's state income tax liability. The

department may use its audit and enforcement authority under section 24-35-108, C.R.S., to ensure the collection of unpaid or delinquent taxes owed by independent expenditure committees, persons that have paid for independent expenditures, or donors to such committees or persons that have filed a report under paragraph (a) of this subsection (9).

(10) Any earmarked donation given for the purpose of making an independent expenditure in excess of one thousand dollars shall be disclosed as a donation from both the original source of the donation and the person transferring the donation.

(11) On reports it files with the appropriate official, an independent expenditure committee that obligates in excess of one thousand dollars for an independent expenditure shall disclose a good faith estimate of the fair market value of the expenditure if the committee does not know the actual amount of the expenditure as of the date that a report is required to be filed with the appropriate official.

(12) All information required to be disclosed to the secretary of state under this section shall be posted on the web site of the secretary within two business days after its receipt by the secretary.

(13) Notwithstanding any other provision of this section, any requirement contained in this section that is applicable to a corporation shall also be applicable to a labor organization.

Source: L. 2010: Entire section added, (SB 10-203), ch. 269, p. 1231, § 4, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 269, Session Laws of Colorado 2010.

1-45-108. Disclosure - definition. (1) (a) (I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) In the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making a contribution of more than two hundred fifty dollars is a natural person, the disclosure required by this section shall also include the person's occupation and employer.

(IV) In the case of a limited liability company, the disclosure required by this section shall include, in addition to any other information required to be disclosed, each contribution from the limited liability company regardless of the dollar amount of the contribution.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election is not required to file reports under this section until the committee has received contributions or made expenditures exceeding two hundred dollars in the aggregate during the election cycle.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the

candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(2) (a) (I) Except as provided in subsections (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

(B) On the first Monday in May and on each Monday every two weeks thereafter before the primary election;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1) (a) (II) and (1) (c) shall be filed on the twenty-first day and on the Friday before and thirty days after the primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot; and "major election" means the election that decides an issue committee's issue and the election that elects a person to the public office sought by the candidate committee's candidate.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1) (a) (II) and (1) (c) shall close five calendar days prior to the effective date of filing.

(2.3) Repealed.

(2.5) In addition to any report required to be filed with the secretary of state or municipal clerk under this section, all candidate committees, political committees, issue committees, and political parties shall file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election or general election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

- (a) The organization's full name, spelling out any acronyms used therein;
- (b) A natural person authorized to act as a registered agent;
- (c) A street address and telephone number for the principal place of operations;
- (d) All affiliated candidates and committees;
- (e) The purpose or nature of interest of the committee or party.
- (f) (Deleted by amendment, L. 2010, (SB 10-041), ch. 151, p. 522, § 2, effective July 1, 2010.)

(3.3) Subject to the provisions of subsection (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question or upon receipt of the notice from the secretary of state pursuant to section 1-40-113 (1) (b). If required to register under the requirements of this subsection (3.3), the registration of the issue committee shall include a statement containing the items listed in paragraphs (a) to (e) of subsection (3) of this section in connection with other committees and a political party.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) (Deleted by amendment, L. 2010, (SB 10-041), ch. 151, p. 522, § 2, effective July 1, 2010.)

(5) The registration and reporting requirements of this section shall not apply to that part of the organizational structure of a political party which is responsible for only the day-to-day operations of such political party at the national level if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Any issue committee whose purpose is the recall of any elected official shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose the recall. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

(7) (a) Notwithstanding any other provision of law, and subject to the provisions of paragraph (b) of this subsection (7), a matter shall be considered to be a ballot issue or ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article and article XXVIII of the state constitution, at the earliest of the following:

- (I) A title for the matter has been designated and fixed in accordance with law;
- (II) The matter has been referred to the voters by the general assembly or the governing body of any political subdivision of the state with authorization to refer matters to the voters;

(III) In the case of a citizen referendum petition, the matter has been submitted for format approval in accordance with law;

(IV) A petition concerning the matter has been circulated and signed by at least one person; except that, where a matter becomes a ballot issue or ballot question upon such signing, any person opposing the matter shall not be considered to be an issue committee for purposes of this article and article XXVIII of the state constitution until one such person knows or has reason to know of the circulation; or

(V) A signed petition has been submitted to the appropriate officer in accordance with law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), where a matter concerns a municipal annexation brought pursuant to article 12 of title 31, C.R.S., the matter shall not be considered to be a ballot issue or ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article and article XXVIII of the state constitution, unless and until the first notice of the annexation election has been published in accordance with the requirements of section 31-12-112 (6), C.R.S.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21. **L. 2007:** IP(2)(a)(I) amended, p. 2017, § 2, effective June 1; IP(2)(a)(I) and (2)(a)(I)(B) amended, p. 1299, § 2, effective July 1. **L. 2008:** (1)(a)(IV) added, p. 441, § 2, effective April 14. **L. 2009:** (2)(a)(II), (2)(e), and (2.5) amended, (HB 09-1357), ch. 361, p. 1871, § 1, effective July 1; IP(3) and (3)(f) amended and (3.3) and (7) added, (HB 09-1153), ch. 174, p. 774, § 2, effective September 1. **L. 2010:** (1)(a)(III), (3)(f), (3.3), (4), and (6) amended, (SB 10-041), ch. 151, p. 522, § 2, effective July 1; (3.3) amended, (HB 10-1370), ch. 270, p. 1241, § 5, effective January 1, 2011. **L. 2012:** (2)(a)(I)(B) amended, (SB 12-014), ch. 1, p. 1, § 1, effective January 30; (1)(c) amended, (HB 12-1269), ch. 83, p. 274, § 1, effective August 8.

Editor's note: (1) This section is similar to former § 1-45-108 as it existed prior to 1996.

(2) The numbering of this section originated in an initiated measure. As a result of an amendment to this section by House Bill 00-1194, subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Subsection (2.3)(b) provided for the repeal of subsection (2.3), effective January 1, 2007. (See L. 2001, p. 1111.)

(4) Amendments to subsection (3.3) by Senate Bill 10-041 and House Bill 10-1370 were harmonized.

(5) Section 2 of chapter 83, Session Laws of Colorado 2012, provides that the act amending subsection (1)(c) applies to the portion of any election cycle or for the portion of the calendar year remaining after August 8, 2012, and for any election cycle or calendar year commencing after August 8, 2012, whichever is applicable.

Cross references: For the legislative declaration in the 2010 act amending subsection (3.3), see section 1 of chapter 270, Session Laws of Colorado 2010.

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made through a candidate committee and reported in accordance with this section. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

The disclosure requirements contained in this section do not violate the right to engage in anonymous speech and association. Disclosure of the contributors to ballot measures may constitutionally be required under the standards specified in Buckley v. Valeo, 424 U.S. 1 (1976). Challengers to disclosure requirements must show a reasonable probability that the compelled disclosure of contributors' names would subject them to threats, harassment, or reprisals from either government officials or private parties. Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008), cert. denied, __ U.S. __, 130 S. Ct. 625, 175 L. Ed. 2d 479 (2009).

Registration and disclosure requirements are unconstitutional as applied to ballot-initiative committee. There is virtually no proper governmental interest in imposing disclosure requirements on ballot-initiative committees that raise and expend minimal money, and limited interest cannot justify the burden that disclosure requirements impose on such a committee. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010).

The financial burden of state regulation on ballot initiative committee member's freedom of association approaches or exceeds the value

of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of the contributions. Therefore it is unconstitutional to impose that burden on the committee members. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010).

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of subsection (1)(a). Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. It is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Order by administrative law judge (ALJ) assessing penalty against nonprofit association engaging in political advocacy based upon

determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's "major purpose" in 2004 was the nomination or election of candidates. *Alliance for Colorado's Families v. Gilbert*, 172 P.3d 964 (Colo. App. 2007).

ALJ had authority to impose appropriate sanction under § 9(2)(a) of article XXVIII of the state constitution for violation of this section. The appropriate officer may either directly sanction the offending party under § 10(2)(b) of article XXVIII or initiate a complaint under § 9(2)(a). *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).

Nowhere in this article or in rules promulgated by secretary of state is the filing requirement conditioned upon posting by or receiving electronic transmissions from the county clerk and recorder. Instead, the requirement to disclose and file reports is unconditionally imposed until a committee is terminated. *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).

Section 9(2)(a) of article XXVIII of the state constitution authorizes ALJ to render a decision upon a complaint and, if ALJ concludes that a violation has occurred, "such decision shall include any appropriate order, sanction, or relief authorized by this article". Nothing in the article, however, recognizes or grants a defense of "good faith", and an ALJ is not at liberty to engraft any limitation or restriction not specifically provided. *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).

While § 9(2)(a) of article XXVIII of the state constitution requires ALJ to include in the decision an appropriate order, sanction, or relief as authorized by the terms of this article, ALJ has discretion to impose no section at all if he or she reasonably concludes one would not be appropriate. *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and §§ 1-1-107 (2)(a) and 1-45-111.5 (1). *Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream*, 187 P.3d 1207 (Colo. App. 2008).

1-45-108.3. Issue committees - disclaimer. (1) An issue committee making an expenditure in excess of one thousand dollars on a communication that supports or opposes a statewide ballot issue or ballot question and that is broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or otherwise distributed shall disclose, in the communication produced by the expenditure, the name of the issue committee making the expenditure. (2) (a) The disclaimer required by subsection (1) of this section shall be printed on the communication clearly and legibly in a conspicuous manner. (b) If the communication is broadcast on radio, the disclaimer shall be spoken at the beginning or end of the communication. (c) (I) If the communication is broadcast on television, the disclaimer shall be written or spoken at the beginning or end of the communication. If the disclaimer is written, it shall appear for at least four seconds of any communication broadcast on television. (II) The written disclaimer required by subparagraph (I) of this paragraph (c) shall appear in the communication in a conspicuous manner.

Source: L. 2010: Entire section added, (HB 10-1370), ch. 270, p. 1242, § 6, effective January 1, 2011.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 270, Session Laws of Colorado 2010.

1-45-108.5. Political organizations - disclosure. (1) Any political organization shall report to the appropriate officer in accordance with the requirements of sections 1-45-108 and 1-45-109:

(a) Any contributions it receives, including the name and address of each person who has contributed twenty dollars or more to the political organization in the reporting period, and the occupation and employer of each natural person who has made a contribution of one hundred dollars or more to the political organization; and

(b) Any spending by the political organization that exceeds twenty dollars in any one reporting period.

(2) No political organization shall accept a contribution, or undertake spending, in currency or coin exceeding one hundred dollars.

(3) Nothing in this section shall be construed to:

(a) Require any political organization to make any additional disclosure pursuant to this section to the extent the political organization is already providing disclosure as a committee or political party in a manner that satisfies the requirements of sections 1-45-108 and 1-45-109; or

(b) Authorize the secretary of state to require disclosure of the name of any natural person that is a member of an entity unless the natural person has made a contribution to a political organization in the amount of twenty dollars or more in a reporting period.

Source: L. 2007: Entire section added, p. 1225, § 3, effective July 1.

1-45-109. Filing - where to file - timeliness. (1) For the purpose of meeting the filing and reporting requirements of this article:

(a) The following shall file with the secretary of state:

(I) Candidates for statewide office, the general assembly, district attorney, district court judge, or any office representing more than one county; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications.

(II) Candidates in special district elections; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidates.

(b) Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk.

(c) All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the secretary of state.

(2) (a) Reports required to be filed by this article are timely if received by the appropriate officer not later than the close of business on the due date. Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.

(b) A person upon whom a penalty has been imposed for failure to file a statement or other information required to be filed pursuant to section 5, 6, or 7 of article XXVIII of the state constitution or section 1-45-108, this section, or section 1-45-110 by the due date may appeal the penalty by filing a written

appeal with the appropriate officer no later than thirty days after the date on which notification of the imposition of the penalty was mailed to the person's last-known address. Upon receipt of an appeal pursuant to this paragraph (b), the appropriate officer shall set aside or reduce the penalty upon a showing of good cause.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203, C.R.S.

(4) (a) All reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours. A copy of the report shall be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection.

(b) Any report that is deemed to be incomplete by the appropriate officer shall be accepted on a conditional basis and the committee or party treasurer shall be notified by mail as to any deficiencies found. If an electronic mail address is on file with the secretary of state, the secretary of state may also provide such notification by electronic mail. The committee or party treasurer shall have fifteen business days from the date such notice is sent, whether electronically or by United States mail, to file an addendum that cures the deficiencies.

(5) (a) The secretary of state shall operate and maintain a web site so as to allow any person who wishes to review reports filed with the secretary of state's office pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available immediately on the web site.

(c) The web site shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee.

(d) At the earliest practicable date, the secretary of state shall develop and implement improvements to the web site's design and structure to improve the public's ability to navigate, search, browse, download, and analyze information. Such improvements shall include but need not be limited to:

(I) Enhanced searching and summary reporting, including additional search fields such as zip code, employer, and vendor, the ability to search across multiple committees and all filers, the ability to filter or limit searches, such as by election cycle or candidate, the inclusion of smart-search features such as "name sounds like" or "name contains", and numerical totaling of amounts shown on search results;

(II) Features that facilitate the ability to download raw data and search results in one or more common formats to enable offline sorting and analyzing;

(III) Detailed, technical instructions for users;

(IV) Information to help users determine the scope of candidates' and committees' reports and campaign data available online, including explanations of which types of reports are available, the period covered by the online data, and which specific reports can be viewed for each campaign committee; and

(V) Resources that give the public comparative context when viewing campaign finance data, such as compilations of the total amounts of money raised and spent by individual candidates, lists of total amounts raised and spent by all statewide and legislative candidates, and compilations of fundraising and spending across candidates and election cycles.

(e) The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) The secretary of state shall establish, operate, and maintain a system that enables electronic filing using the internet of the reports required by this article to be filed with the secretary of state's office. In accordance with the provisions of section 24-21-111 (1), C.R.S., the secretary may require any filing under this section to be made by electronic means as determined by the secretary. The rules for

use of the electronic filing system shall be promulgated by the secretary in accordance with article 4 of title 24, C.R.S.

(b) Any person required to file with the secretary of state's office shall use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article, if so required by the secretary in accordance with paragraph (a) of this subsection (6), except insofar as an alternate method of filing may be permitted by the secretary. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(8) (a) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(b) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) and (III) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(c) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(9) Subsection (1) of this section shall not be construed to require the secretary of state to review reports electronically filed by persons beyond the duties specified in section 9 of article XXVIII of the state constitution.

(10) Repealed.

(11) Notwithstanding any other provision of this section, during the period commencing May 25, 2010, and continuing through December 31, 2010, any report, statement, or other document required to be filed under section 1-45-107.5 that is to be filed electronically with the secretary of state's office pursuant to this section may be filed manually or by means of a portable document format file acceptable to the secretary.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3. **L. 2005:** (9) amended, p. 760, § 7, effective June 1. **L. 2007:** (5), (6), (7), (8), and (9) amended, p. 1296, § 1, effective July 1; (2) amended, p. 1983, § 37, effective August 3. **L. 2009:** (1), (5)(a), (6), (8)(b)(II), (8)(b)(III), (8)(c)(II), and (9) amended and (10) added, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1. **L. 2010:** (11) added, (SB 10-203), ch. 269, p. 1235, § 5, effective May 25; (4)(b) and (6) amended, (SB 10-041), ch. 151, p. 523, § 3, effective July 1.

Editor's note: (1) This section is similar to former § 1-45-104 as it existed prior to 1996.

(2) Subsection (10)(e) provided for the repeal of subsection (10), effective January 1, 2011. (See L. 2009, p. 1872.)

Cross references: For the legislative declaration in the 2010 act adding subsection (11), see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under § 10 (2)(b)(I) of article XXVIII of the state constitution for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under subsection

(1) of this section once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's

candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under § 10 (2)(b)(l) of article XXVIII of the state constitution for purposes of underlying action merely because they could have been required to so file in other circumstances. *Sullivan v. Bucknam*, 140 P.3d 330 (Colo. App. 2006).

Nowhere in this article or in rules promulgated by secretary of state is the filing requirement

conditioned upon posting by or receiving electronic transmissions from the county clerk and recorder. Instead, the requirement to disclose and file reports is unconditionally imposed until a committee is terminated. *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210 (Colo. App. 2009).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a \$1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under subsection (2)(a) of this section, sanctions can be imposed for violations of this section. *Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream*, 187 P.3d 1207 (Colo. App. 2008).

1-45-110. Candidate affidavit - disclosure statement. (1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 32-1-804.3, C.R.S., if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3) (a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(3) Failure of any person to file the affidavit or the disclosure statement required by subsection (2) of this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the designated election official certifying the ballot pursuant to section 1-5-203 (3) (a) has sent a notice to the person by certified mail, return receipt requested, addressed to the person's mailing address. The notice shall state that the person will be disqualified as a

candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7. **L. 2010:** (3) amended, (SB 10-041), ch. 151, p. 524, § 4, effective July 1.

Editor's note: This section is similar to former § 1-45-105 as it existed prior to 1996.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former §§ 1-45-113 and 1-45-114 as they existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3597.

1-45-111.5. Duties of the secretary of state - enforcement - sanctions. (1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(1.5) (a) Any person who believes that a violation of either the secretary of state's rules concerning campaign and political finance or this article has occurred may file a written complaint with the secretary of state not later than one hundred eighty days after the date of the occurrence of the alleged violation. The complaint shall be subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution.

(b) Any person who commits a violation of either the secretary of state's rules concerning campaign and political finance or this article that is not specifically listed in section 9 (2) (a) of article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in this section.

(c) In addition to any other penalty authorized by article XXVIII of the state constitution or this article, an administrative law judge may impose a civil penalty of fifty dollars per day for each day that a report, statement, or other document required to be filed under this article that is not specifically listed in article XXVIII of the state constitution is not filed by the close of business on the day due. Any person

who fails to file three or more successive committee registration reports or reports concerning contributions, expenditures, or donations in accordance with the requirements of section 1-45-107.5 shall be subject to a civil penalty of up to five hundred dollars for each day that a report, statement, or other document required to be filed by an independent expenditure committee is not filed by the close of business on the day due. Any person who knowingly and intentionally fails to file three or more reports due under section 1-45-107.5 shall be subject to a civil penalty of up to one thousand dollars per day for each day that the report, statement, or other document is not filed by the close of business on the day due. Imposition of any penalty under this paragraph (c) shall be subject to all applicable requirements specified in section 10 of article XXVIII of the state constitution governing the imposition of penalties.

(d) In connection with a complaint brought to enforce any requirement of article XXVIII of the state constitution or this article, an administrative law judge may order disclosure of the source and amount of any undisclosed donations or expenditures.

(e) In connection with any action brought to enforce any provision of article XXVIII of the state constitution or this article, the membership lists of a labor organization or, in the case of a publicly held corporation, a list of the shareholders of the corporation, shall not be disclosed by means of discovery or by any other manner.

(f) Any person who is fined up to one thousand dollars per day for a knowing and intentional failure to file under paragraph (c) of this subsection (1.5) shall, if the person has shareholders or members, notify such shareholders or members of the penalty and the adjudicated violations on its publicly accessible web site in a prominent manner for not less than one hundred eighty days after the final adjudication. A copy of this notice, with the web site address used, shall be filed with the secretary of state and shall be a public record.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the office of administrative courts that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or administrative law judge, as applicable, has first considered the provisions of section 13-17-102 (5) and (6), C.R.S. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(3) Upon a determination by the office of administrative courts that an issue committee failed to file a report required pursuant to section 1-45-108, the administrative law judge shall direct the issue committee to file any such report within ten days containing all required disclosure of any previously unreported contributions or expenditures and may, in addition to any other penalty, impose a penalty not to exceed twenty dollars for each contribution received and expenditure made by the issue committee that was not timely reported.

(4) (a) Upon failure of a witness or party to comply with an administrative subpoena issued in relation to an alleged campaign finance violation pursuant to article XXVIII of the state constitution or this article, the party that requested the administrative subpoena or the issuing agency may petition the district court ex parte with a copy of the petition sent to the subpoenaed witness or party and the administrative law judge by regular mail, for an order directing the witness or party to comply with the administrative subpoena.

(b) If the petition required by paragraph (a) of this subsection (4) shows to the district court's satisfaction that the administrative subpoena was properly served pursuant to rule 4 of the Colorado rules of civil procedure, the district court shall order the subpoenaed witness or party to appear before the district court and show cause why the witness or party should not be ordered to comply with the administrative subpoena. A copy of the petition and the court order shall be served, pursuant to rule 5 of the Colorado rules of civil procedure, on the witness or party at least fifteen days before the date designated for the witness or party to appear before the district court.

(c) At a show cause hearing ordered by the district court pursuant to paragraph (b) of this subsection (4), the court shall review the administrative subpoena and any evidence presented by the parties to determine compliance with the Colorado rules of civil procedure. The subpoenaed witness or party shall bear the burden of showing good cause as to why he or she should not be ordered to comply with the administrative subpoena.

(d) If the court determines that the subpoenaed witness or party is required to comply with the administrative subpoena:

(I) The district court shall order compliance forthwith and may impose remedial and punitive fines, including attorneys' fees and costs, for the witness's or party's failure to comply with the administrative subpoena; and

(II) The administrative law judge shall schedule a hearing on the complaint to occur on a day after the occurrence of the required deposition and such other discovery as may be warranted due to such deposition.

(e) If the subpoenaed witness or party fails to appear at the show cause hearing, the district court may issue a bench warrant for the arrest of the subpoenaed witness or party and may impose other sanctions pursuant to the Colorado rules of civil procedure.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. L. 2005: (2) amended, p. 852, § 4, effective June 1. L. 2008: (1.5) added and (2) amended, p. 349, § 1, effective April 10. L. 2010: (1.5)(c), (1.5)(d), (1.5)(e), and (1.5)(f) added, (SB 10-203), ch. 269, p. 1236, § 6, effective May 25; (3) added, (HB 10-1370), ch. 270, p. 1242, § 7, effective January 1, 2011. L. 2011: (4) added, (HB 11-1117), ch. 35, p. 97, § 1, effective March 21.

Cross references: (1) For the legislative declaration in the 2010 act adding subsections (1.5)(c), (1.5)(d), (1.5)(e), and (1.5)(f), see section 1 of chapter 269, Session Laws of Colorado 2010.

(2) For the legislative declaration in the 2010 act adding subsection (3), see section 1 of chapter 270, Session Laws of Colorado 2010.

ANNOTATION

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's

authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal of achieving transparency of

political contributions. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them.

Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few. Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006).

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report, was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and subsection (1) of this section.

Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a \$1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has

occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under § 10(2)(a) of article XXVIII of the state constitution, sanctions can be imposed for violations of § 1-45-109. *Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream*, 187 P.3d 1207 (Colo. App. 2008).

ALJ did not err in determining that membership contribution claim was groundless and in awarding attorney fees against litigant. ALJ did not misinterpret subsection (2) by rejecting litigant's defense based on voluntary dismissal of its membership contributions claim under § 13-17-102 (5). Although § 1-45-111.5 (2) contains the same operative language and definitions as § 13-17-102 (4), at the time of the action, the FCPA did not incorporate § 13-17-102 (5) and contained no exception for dismissal of a groundless claim prior to hearing. Moreover, although § 13-17-102 applies to any civil action commenced or appealed in any court of record, "court of record" does not include administrative courts. Finally, the record showed that the ALJ considered litigant's arguments about the efforts it made after the filing of the action to reduce or dismiss claims it found to be invalid. *Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream*, 187 P.3d 1207 (Colo. App. 2008).

Given that identical terms "substantially frivolous, substantially groundless, or substantially vexatious" are found in this section and in § 13-17-102, case law construing that section may be examined for guidance in construing terms used in this section. *Colo. Ethics Watch v. Senate Majority Fund, LLC*, ___ P.3d ___ (Colo. App. 2010).

A claim is frivolous if its proponents can present no rational argument based on the evidence or the law to support it. A claim is vexatious if it is brought or maintained in bad faith to annoy or harass another. *Colo. Ethics Watch v. Senate Majority Fund, LLC*, ___ P.3d ___ (Colo. App. 2010).

1-45-112. Duties of municipal clerk. (1) The municipal clerk shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

- (b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;
 - (c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.
 - (d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;
 - (e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article.
 - (f) Repealed.
- (2) The secretary of state shall reimburse the municipal clerk of each municipality at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2008:** (1)(f) repealed, p. 350, § 2, effective April 10. **L. 2009:** IP(1) and (2) amended, (HB 09-1357), ch. 361, p. 1874, § 3, effective July 1.

Editor's note: This section is similar to former § 1-45-115 as it existed prior to 1996.

1-45-112.5. Immunity from liability. (1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

- (a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and
 - (b) The violation was not caused by willful and intentional misconduct by such volunteer.
- (2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.
- (3) Any media outlet shall be immune from civil liability in any court where the media outlet:
- (a) Withdraws advertising time reserved by an independent expenditure committee that fails to register in accordance with the requirements of section 1-45-107.5 (3) (a); or
 - (b) Elects to void an advertising contract and the advertisement:
 - (I) Is paid for by an independent expenditure committee that fails to register under section 1-45-107.5 (3) (a);
 - (II) Is paid for by an independent expenditure committee that is registered under section 1-45-107.5 (3) (a) but the committee fails to file a disclosure report under section 1-45-108 (2) through the date of the most recent required report; or
 - (III) Fails to satisfy the requirements of section 1-45-107.5 (5) (a).
- (4) An affected media outlet may void a contract that implicates paragraph (b) of subsection (3) of this section in the sole discretion of the media outlet.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2010:** (3) and (4) added, (SB 10-203), ch. 269, p. 1237, § 7, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding subsections (3) and (4), see section 1 of chapter 269, Session Laws of Colorado 2010.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former § 1-45-121 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges. (1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section is similar to former § 1-45-118 as it existed prior to 1996.

1-45-115. Encouraging withdrawal from campaign prohibited. No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section is similar to former § 1-45-119 as it existed prior to 1996.

1-45-116. Home rule counties and municipalities. Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section is similar to former § 1-45-120 (1) as it existed prior to 1996.

1-45-117. State and political subdivisions - limitations on contributions. (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision of the state shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity make any donation to any other person for the purpose of making an independent expenditure, nor shall any such entity expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) Statewide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the provisions of sections 9 (2) and 10 (1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7. **L. 2008:** (4) amended, p. 350, § 3, effective April 10. **L. 2010:** IP(1)(a)(I) amended, (SB 10-203), ch. 269, p. 1237, § 8, effective May 25.

Editor's note: This section is similar to former § 1-45-116 as it existed prior to 1996.

Cross references: For the legislative declaration in the 2010 act amending the introductory portion to subsection (1)(a)(I), see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases

construing that provision have been included in the annotations to this section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), *aff'd*, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds." The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the

use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit by the enactment of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

Subsection (4), and not § 10(1) of article XXVIII of state constitution, provides basis for sanctions against special district that allegedly violated subsection (1)(b)(i) by urging voters to support ballot issue. Plaintiff's sole argument to ALJ was that special district violated subsection (1)(b)(i) by urging voters to support ballot issue. Plaintiff made no argument that expenditure violated a contribution or spending limit nor did plaintiff make any other argument concerning the amount district spent. *Sherritt v. Rocky Mtn. Fire Dist.*, 205 P.3d 544 (Colo. App. 2009).

No abuse of discretion by administrative law judge (ALJ) in refusing to sanction special district at higher amount requested by plaintiff. Under subsection (4), ALJ had discretion to determine "any appropriate order or relief". In sanctioning district, ALJ cited district's attempt to comply with the law and the absence of prior violations. ALJ found that public funds would be used to satisfy the penalty and, therefore, a large fine would compound the problem. In exercising his or her discretion, ALJ properly considered needs of the public. Additionally, ALJ's findings have record support and were neither arbitrary, capricious, unsupported by the evidence, nor contrary to law. *Sherritt v. Rocky Mtn. Fire Dist.*, 205 P.3d 544 (Colo. App. 2009).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the officials for an official decision. *Campbell v. Joint Dist.* 28-J, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. *Campbell v. Joint Dist.* 28-J, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. *Mountain States Legal Found. v. Denver Sch. Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the \$50 limit in expressing an opinion about a pending ballot issue. *Regents of the Univ. of Colo. v. Meyer*, 899 P.2d 316 (Colo. App. 1995).

Paid staff time is a contribution in kind for purposes of this section. Time spent by the state treasurer's staff during work hours on a non-volunteer basis preparing and disseminating press releases expressing the state treasurer's opposition to a statewide ballot issue therefore violated this section to the extent that the value of that time exceeded \$50. *Coffman v. Colo. Common Cause*, 102 P.3d 999 (Colo. 2004).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were

not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than \$50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. *Colo. Common Cause v. Coffman*, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that the district made the payroll deductions. *Mountain States v. Secretary of State*, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

Brochure mailed by metropolitan districts explaining proposed improvements violated this section. The brochure, when read in its entirety, did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary arguments, and expressly advocated the passage of the bond initiative that was titled only days after the mailing of the brochure. Thus, it urged voters to vote for the initiative. *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

Although brochure did not mention ballot initiative by name, administrative law judge appropriately concluded that the language of this section does not require that level of specificity. The section prohibits "the urging of electors to vote a certain way." *Skruch v. Highlands Ranch Metro. Dists.*, 107 P.3d 1140 (Colo. App. 2004).

1-45-117.5. Media outlets - political records. Any media outlet that is subject to the provisions of 47 U.S.C. sec. 315 (e) shall maintain and make available for public inspection such records as the outlet is required to maintain to comply with federal law or rules.

Source: L. 2010: Entire section added, (SB 10-203), ch. 269, p. 1231, § 4, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 269, Session Laws of Colorado 2010.

1-45-118. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Colorado Secretary of State
ADMINISTRATIVE VERSION Amended 10.10.2012
Rules Concerning Campaign and Political Finance
[8 CCR 1505-6]

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SECRETARY OF STATE
Rules Concerning Campaign and Political Finance
[8 ccr 1505-6]

Rule 1. Definitions

1.1 “Business Activities”. For the purposes of Article XXVIII:

1.1.1 “Business activities” means any provision of goods or services that results in income or any other revenue-generating activity not expressly for political purposes.

1.1.2 “Cannot engage in business activities,” means that the articles of incorporation and bylaws, either expressly or implicitly, prohibit the corporation from engaging in any business activities.

[*McConnell v. Federal Elections Commission*, 540 U.S. 93 (2003)]

1.2 “Committee”. Unless otherwise specified, the term “committee” as used in these rules includes candidate committees, political committees, small donor committees, issue committees, independent expenditure committees, political parties, Federal PACs, and political organizations.

1.3 “Contribution”.

1.3.1 “Contribution” does not include an endorsement of a candidate or an issue by any person.

1.3.2 “Contribution does not include interest earned in an interest-bearing bank account, dividend income from invested committee funds, earned income from commercially reasonable transactions, or transfers of money within a political party.

1.3.3 The exception stated in Article XXVIII, Section 2(5)(b) that “‘Contribution’ does not include services provided without compensation by individuals volunteering their time”, includes time-based services volunteered by an individual as a member of any firm, association, or other business entity, including a corporation, if the individual receives no direct or indirect compensation for the time volunteered. Any unpaid services that create a thing of value are exempted. If volunteer services yield a thing of value, “contribution” only includes the reasonable value of the materials involved, unless the value is de minimis.

1.3.4 “Contribution in support of the candidacy” includes all contributions given directly to, or coordinated with, a candidate for a specific public office, including those to a person who maintains a candidate committee after an election cycle. [Article XXVIII, Section 2(2)]

1.4 “Coordination”. Expenditures or spending are coordinated with a candidate committee or political party if:

1.4.1 A person makes an expenditure or engages in spending at the request, suggestion, or direction of, in consultation with, or under the control of that candidate committee or political party; or

1.4.2 An independent expenditure or electioneering communication is created, produced, or distributed:

(a) After one or more substantial discussion(s) between the candidate or political committee and the person making the expenditure or engaging in the spending,

- (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
 - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication; or
- (b) By a common consultant who provides, or has provided during the election cycle, professional services to the candidate committee or political party as well as to the person making the expenditure or engaging in the spending; and
- (1) In which the person making the expenditure or engaging in the spending received non-public information about the candidate or political party's plans, projects, activities, or needs; and
 - (2) The information is material to the creation, production, or dissemination of an independent expenditure or electioneering communication.

1.4.3 This rule does not apply to an attorney, accountant, bookkeeper, or registered agent who provides services within the scope of his or her profession.

1.4.4 If candidate committee or political party and the person making the expenditure or engaging in spending use a common consultant, an independent expenditure or electioneering communication is not coordinated if the consultant places effective barriers (i.e., "firewalls") to the transmission of non-public information between:

- (a) The candidate committee or political party; and
- (b) The person making an independent expenditure or engaging in spending.

Such firewalls shall be physical or technological, or both, include appropriate security measures, and be set forth in a written policy that is distributed to all affected agents, employees, board members, directors, officers, and consultants. A firewall is not effective if non-public material information is nonetheless directly or indirectly transmitted to the person making an expenditure or engaging in spending.

1.4.5 For the purposes of this Rule:

- (a) Candidate committee or political party includes any agent, employee, board member, director, or officer of that candidate committee or political party.
- (b) The person making the expenditure or engaging in the spending includes any agent, employee, board member, director, or officer of the person making the expenditure or engaging in the spending.

1.5 "Corporation", as used in Article XXVIII, has the same meaning as in section 1-45-103(7), C.R.S.

1.6 "Designated filing agent", for purposes of these rules, means any person appointed by a committee who is responsible for timely filing campaign finance reports.

- 1.7 “Electioneering communication” is any communication that (1) meets the definition of electioneering communication in Article XXVIII, Section 2(7), and (2) is the functional equivalent of express advocacy. When determining whether a communication is the functional equivalent of express advocacy:
- 1.7.1 A communication is the functional equivalent of express advocacy only if it is subject to no reasonable interpretation other than an appeal to vote for or against a specific candidate.
- 1.7.2 In determining whether a communication is the functional equivalent of express advocacy, it shall be judged by its plain language, not by an “intent and effect” test, or other contextual factors.
- 1.7.3 A communication is not the functional equivalent of express advocacy if it:
- (a) Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public,
 - (b) Does not take a position on any candidate's or officeholder's character, qualifications, or fitness for office, and
 - (c) Merely urges a candidate to take a position with respect to an issue or urges the public to adopt a position and contact a candidate with respect to an issue.
- [*Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007)]
- 1.8 “Foreign corporation”, as used in Article XXVIII, Section 3(12)(c), means a corporation organized under the laws of another country. The term does not apply to a corporation organized under the laws of another state. “Foreign Corporation,” as used in Article 45 of Title 1, C.R.S., has the same meaning as set forth in section 1-45-103(10.5), C.R.S.
- 1.9 “Frequent” and “Infrequent” filing schedules.
- 1.9.1 Unless otherwise specified, the term “frequent” filing schedule as used in these rules means:
- (a) For state candidates and committees, the filing schedule outlined in section 1-45-108 (2)(a)(I)(B), (2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E), C.R.S.; and
 - (b) For county and municipal candidates and committees, the filing schedule outlined in section 1-45-108 (2)(a)(II), C.R.S.
- 1.9.2 Unless otherwise specified, the term “infrequent filing schedule” as used in these rules means:
- (a) For state candidates and committees, the quarterly filing schedule outlined in section 1-45-108(2)(a)(I)(A), C.R.S.; and
 - (b) For county and municipal candidates and committees, the annual filing schedule outlined in section 1-45-108(2)(a)(II), C.R.S.
- 1.10 ~~“Influencing or attempting to influence”, for purposes of political organizations as defined in section 1-45-103(14.5), C.R.S., means making expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate or candidates. [Buckley v. Valeo, 424 U.S. 1 (1976)]~~

The Denver District Court issued a ruling on August 10, 2012 in *Colorado Ethics Watch; Colorado Common Cause; David Paladino, et al., v. Scott Gessler*, 2012 CV 2133, invalidating this rule. Secretary Gessler has appealed the decision and accordingly will not enforce this rule unless or until the Colorado appellate courts reverse the District Court’s decision.

1.11 “Infrequent filing schedule”. See Rule 1.9.

1.12 “Issue committee”.

- 1.12.1 ~~“Issue committee” does not include a married couple.~~
- 1.12.2 ~~A person or group of persons is an issue committee only if it meets both of the conditions in Article XXVIII, Section 2(10)(a)(I) and 2(10)(a)(II).~~
- 1.12.3 ~~For purposes of determining whether an issue committee has “a major purpose” under Article XXVIII, Section 2(10)(a)(I) and section 1-45-103(12)(b)(II)(A), C.R.S., a demonstrated pattern of conduct is established by:~~
- ~~(a) Annual expenditures in support of or opposition to ballot issues or ballot questions that exceed 30% of the organization’s total spending during the same period; or~~
 - ~~(b) Production or funding of written or broadcast communications in support of or opposition to a ballot issue or ballot question, where the production or funding comprises more than 30% of the organization’s total spending during a calendar year.~~

The Denver District Court issued a ruling on August 10, 2012 in *Colorado Ethics Watch; Colorado Common Cause; David Paladino, et al., v. Scott Gessler*, 2012 CV 2133, invalidating this rule. Secretary Gessler has appealed the decision and accordingly will not enforce this rule unless or until the Colorado appellate courts reverse the District Court’s decision.

- 1.13 “Member”, as used in Article XXVIII, Sections 2(5)(b), 2(8)(b)(IV), and 2(14)(a) only, means a person who pays membership dues.
- 1.14 “Non-public information” means confidential material in any form that is not available to the general public, including a non-public campaign plan, communications plan, campaign budget, specification of unmet and potentially unmet campaign needs, proposed or actual media buy, list or description of households or voters who will receive or have received materials under a mailing or other distribution program, polling or focus group results, or other proprietary material.
- 1.14.1 “Non-public information,” however, does not include communications dealing solely with candidate positions on legislative or policy issues.
- 1.15 “Person”.
- 1.15.1 For the purpose of Article XXVIII, Section 7, “person” means any natural person.
- 1.15.2 A “natural person” is a human being.
- 1.16 “Per day” means “per calendar day” unless otherwise indicated.
- 1.17 “Per year” means “per calendar year” unless otherwise indicated.
- 1.18 “Political committee”.
- 1.18.1 “Political committee” does not include a married couple.

1.18.2 ~~“Political committee” includes only a person or group of persons that support or oppose the nomination or election of one or more candidates as its major purpose. For purposes of this Rule, major purpose means:~~

~~(a) The organization specifically identifies supporting or opposing the nomination of one or more candidates for state or local public office as a primary objective in its organizing documents; or~~

~~(b) Annual expenditures made to support or oppose the nomination or election of one or more candidates for state or local public office are a majority of the organization’s total spending during the same period.~~

~~{*Alliance for Colorado’s Families v. Gilbert*, 172 P.3d 964, 970 (Colo. App. 2007)}~~

The Denver District Court issued a ruling on August 10, 2012 in *Colorado Ethics Watch; Colorado Common Cause; David Paladino, et al., v. Scott Gessler*, 2012 CV 2133, invalidating this rule. Secretary Gessler has appealed the decision and accordingly will not enforce this rule unless or until the Colorado appellate courts reverse the District Court’s decision.

1.19 “Public office” means any office voted for in this state at any election. “Public office” does not include the office of president or vice president of the United States, the office of senator or representative in the Congress of the United States, or any office in a political party.

1.20 “Publicly announced an intention to seek election to public office or retention of a judicial office” means:

1.20.1 A person has made a statement signifying an interest in the office;

1.20.2 The statement is made by means of a speech, advertisement, or other communication reported or appearing in public media or in any place accessible to the public;

1.20.3 A reasonable person would expect the statement to become public; and

1.20.4 The statement includes a stated intention to explore the possibility of seeking an office.

The registration of a candidate committee also constitutes a public announcement of an intention to seek election or retention.

[Article XXVIII, Section 2(2)]

1.21 “Registered agent” For the purposes of Article 45 of Title 1, C.R.S., a registered agent or a committee treasurer, is an individual or candidate designated to receive mailings and to address concerns and questions regarding the committee. [Sections 1-45-108(3)(b) and 1-45-109(4)(b), C.R.S.]

1.22 “Signature”. For purposes of any report filed electronically with the Secretary of State, “signature” means the designated representative has electronically submitted the report through the online filing system.

1.23 “Unexpended campaign contributions”. For purposes of section 1-45-106(1), C.R.S., contributions to a candidate committee become unexpended campaign contributions at the earliest of the following:

1.23.1 The end of the election cycle; or

1.23.2 When the candidate withdraws from the political race and intends to terminate his or her candidate committee.

1.24 “Unexpended contributions”.

1.24.1 For purposes of section 1-45-106(3), C.R.S., contributions to an issue committee become unexpended contributions at the end of the election cycle in which the committee supported or opposed an issue on the ballot, or one that attempted access to the ballot. Funds do not become unexpended contributions if the issue committee supports or opposes, or intends to support or oppose, another issue or issues.

1.24.2 Funds held by political committees, small donor committees, independent expenditure committees, and political parties at the end of the election cycle are not addressed by statute. [Section 1-45-106, C.R.S.]

Rule 2. Candidates and Candidate Committees

2.1 Candidates without committees (standalone candidates)

2.1.1 A candidate who does not accept contributions but who expends money for campaign purposes shall not be required to form a candidate committee.

2.1.2 A candidate without a committee shall file disclosure reports for all reporting periods during which expenditures are made. [Sections 1-45-108 and 1-45-109, C.R.S.]

2.2 Candidate committees

2.2.1 A candidate may serve as the candidate committee’s registered agent or appoint another person to be the registered agent. The candidate and the registered agent shall sign the candidate committee registration form. Only the registered agent, the designated filing agent, or the candidate may sign the contribution and expenditure report. [Section 1-45-108(3)(b), C.R.S.]

2.2.2 Once a candidate has been assigned a frequent filing schedule, the candidate shall follow the frequent filing schedule for the remainder of the year.

2.2.3 If a primary election is cancelled in accordance with section 1-4-104.5(1), C.R.S., a candidate committee may accept the contribution limit specified in Article XXVIII, Section 3(1) for the primary election as long as the candidate was eligible to be on the primary election ballot. In accordance with section 1-45-103.7(3), C.R.S., these contributions may be accepted at any time before or after the primary election was cancelled.

2.2.4 Managing unexpended campaign contributions

(a) The unexpended balance shall be reported as the ending balance throughout the election cycle. Unexpended balances from the final report filed 30 days after the applicable election shall be reported as the beginning balance in the next election cycle.

(b) Candidates seeking re-election to the same office

(1) Campaign contributions may be retained by the candidate committee for use in a subsequent election cycle for the same public office, in an amount not to exceed the limit in Article XXVIII Section 3(3) (as adjusted by Rule 10.14).

- (2) A candidate committee shall not list unexpended campaign contributions retained for use in a subsequent election cycle expressly on disclosure reports as “contributions from a political party” or as contributions from any specific political party. [Article XXVIII, Section 3(3)(e)]
 - (3) The amount retained by a candidate for use in a subsequent election for the same office counts toward the limit on contributions from a political party. If the amount retained plus any political party contributions to the candidate committee during the subsequent election cycle exceeds the limit on political party contributions, any amount in excess of the limit accepted by the candidate committee shall constitute a violation of Article XXVIII, Section 3(3)(d), unless returned to the contributor within 30 days.
- (c) Candidates seeking election to a new office
- (1) Campaign contributions to a candidate committee may be transferred to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in Article XXVIII, Section 3(3)(e) for political party contributions, only if the new office to be sought has contribution limits that are equal to or greater than the current office, or the new office sought has no contribution limits. [Article XXVIII, Section 3]
 - (2) If a candidate committee transfers money to a new candidate committee for a new office, the existing candidate committee shall be affirmatively closed by the candidate within ten days of registering the new candidate committee.
- (d) Candidates not seeking re-election or election to a new office
- (1) Campaign contributions held by a candidate committee that wishes to terminate and will not transfer funds to a new candidate committee may be:
 - (A) Contributed to a political party, in an amount not to exceed the limit in Article XXVIII Section 3(3) (as adjusted by Rule 10.14);
 - (B) Donated to a charitable organization recognized by the I.R.S.;
 - (C) Returned to contributors; or
 - (D) For candidates elected to office, funds may be used for voter registration, political issue education, postsecondary educational scholarships, to communicate with constituents, or for expenses directly related to the officeholder’s official duties.

[Section 1-45-106(1)(a)(I) and (b), C.R.S.]

2.2.5 Disposition of debt in anticipation of committee termination

- (a) All contributions received by a candidate committee in the current election cycle shall be subject to the limits on contributions for the current election cycle and shall be reported as contributions for the current election cycle, regardless of any debt carried over from a prior

election cycle. a candidate committee may not count contributions that are earmarked for debt retirement against contribution limits for the past election cycle.

- (b) Any financial obligations incurred by a candidate committee in an election cycle that are not paid within a commercially reasonable period of time, not to exceed six months after the close of that election cycle, shall be treated as “contributions” from the service provider or vendor extending credit.

2.3 Candidate affidavits

2.3.1 An affidavit that must be filed with the Secretary of State shall be filed electronically using the Secretary of State’s online campaign finance filing system. [Sections 1-45-110(1) and 24-21-111, C.R.S.]

2.3.2 Candidates running for a Junior College Board of Trustees are not required to file a candidate affidavit. [Article XXVIII, Section 2(2) and section 23-71-110, C.R.S. See also Rule 14.]

2.4 Personal financial disclosures [Article XXVIII, Section 10(2); Sections 1-45-110 and 24-6-202, C.R.S.]

2.4.1 A candidate shall not be required to file a disclosure statement if the candidate filed either a complete or amended disclosure statement less than 90 days before filing a candidate affidavit. [Section 1-45-110(2)(a) and (b), C.R.S.]

2.4.2 Personal financial disclosure update forms (amended statements). An amended disclosure statement will satisfy the disclosure requirement if:

- (a) A candidate files an affidavit 90 days or more after filing a disclosure;
- (b) An individual files a candidate affidavit for a new office sought, if all necessary amended statements have been filed since the filing of the original disclosure statement; or
- (c) An incumbent has maintained current updates on file since filing an original, complete personal financial disclosure.

2.4.3 If a candidate withdraws from his or her candidacy by submitting appropriate documentation before filing the disclosure statement required in section 1-45-110(2)(a), C.R.S., the candidate is not required to file a disclosure statement, but any fines that the candidate accrued for failure to file a disclosure statement prior to withdrawing shall remain in effect.

Rule 3. Political Committees and Small Donor Committees

3.1 Political committees and small donor committees shall not make contributions to issue committees, except to the extent that a contribution is for the purchase of event tickets, merchandise, or services. [Article XXVIII, Section 2(12)(a)]

3.2 A political committee may change status to a small donor committee without terminating the political committee if it has never accepted contributions of more than \$50 per natural person per year.

3.3 A committee that raises money solely for the purpose of making independent expenditures, and which does not make contributions to candidates for any office, shall be an independent expenditure committee and shall not be considered a political committee. An independent expenditure committee is not subject to the restrictions in Article XXVIII, Section 3(5). [Section 1-45-103.7(2.5)]

Rule 4. Issue Committees

4.1 ~~An issue committee shall not be subject to any of the requirements of Article XXVIII or Article 45 of Title 1, C.R.S., until the issue committee has accepted \$5,000 or more in contributions or made expenditures of \$5,000 or more during an election cycle. An issue committee that accepts \$5,000 or more in contributions or makes expenditures of \$5,000 or more during an election cycle shall register with the appropriate officer within ten calendar days of accepting or making such contributions and expenditures.~~

~~4.1.1 Contributions received and expenditures made before reaching the \$5,000 threshold are not required to be reported. Contributions received and expenditures made after reaching the \$5,000 threshold shall be reported in accordance with the reporting schedule specified in section 1-45-108(2)(a), C.R.S.~~

4.1.2 An issue committee shall provide the committee's balance on the date of committee registration as a "beginning balance" on the committee's initial Report of Contributions and Expenditures.

4.1.3 For purposes of this Rule, an election cycle is the two-year house of representatives election cycle.

[*Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010)]

~~The Denver District Court declared Rule 4.27, the predecessor to Rule 4.1, invalid in *Common Cause et. al v. Gessler*, 2011 CV 4164. The Secretary has appealed the decision, and accordingly will not enforce Rule 4.1 unless or until the Colorado appellate courts reverse the District Court's decision. The Secretary will revive Rule 4.1 if the appellate courts reverse the decision.~~

We lost this rule on appeal. We will no longer enforce it.

4.2 An issue committee may support or oppose more than one issue if the following conditions are met:

4.2.1 The specific issues are included on the committee registration form when each issue meets the requirements of section 1-45-108(7), C.R.S.;

4.2.2 Each issue is described on the committee registration form; and

4.2.3 The registration form states whether the committee will be supporting or opposing those issues.

[Article XXVIII, Section 2(10)(a)(I) and (2)(10)(a)(II)]

4.3 An issue committee must file on a frequent filing schedule once it has spent money to support or oppose ballot issues or ballot questions, or potential ballot issues or ballot questions on an upcoming ballot. See Rule 17.2.3.

4.4 Disclosure.

4.4.1 An issue committee is only required to report those contributions accepted, expenditures made, and obligations entered into for the purpose of supporting or opposing ballot issues or ballot questions.

4.4.2 Contributions accepted for the purpose of supporting or opposing ballot issues or ballot questions shall be deposited in an account separate from other funds of the issue committee in accordance with Article XXVIII, Section 3(9).

- 4.5 Termination. An issue committee may terminate by filing a termination report with the appropriate filing officer. In accordance with Rule 12.3, a termination report may be filed at any time if the following conditions are met:
- 4.5.1 The committee no longer has a major purpose of supporting or opposing any ballot issue or ballot question and no longer intends to accept or make contributions or expenditures to support or oppose a ballot issue or ballot question; and
 - 4.5.2 The committee's separate account maintained in accordance with Article XXVIII, Section 3(9) has no cash on hand and no outstanding debts or obligations.

Rule 5. Independent Expenditures and Independent Expenditure Committees

- 5.1 Disclaimer requirement for nonbroadcast independent expenditure communications.
- 5.1.1 Any nonbroadcast communication that constitutes an independent expenditure and is subject to the requirements of section 1-45-107.5(5), C.R.S., shall contain a clear and conspicuous disclaimer including:
 - (a) The name of the person that paid for the communication; and
 - (b) The specific statement that the communication is not authorized by any candidate.
- The disclaimer shall be clearly readable, and shall be printed in text that is no less than fifteen percent of the size of the largest font used in the communication, or at least eight-point font.
- 5.1.2 These requirements do not apply to bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be reasonably printed.
- 5.2 A committee that raises money solely for the purpose of making independent expenditures, and which does not make contributions to candidates, shall be an independent expenditure committee and shall not be considered a political committee. An independent expenditure committee is not subject to the political committee restrictions in Article XXVIII, Section 3(5). [Section 1-45-103.7(2.5), C.R.S.]

Rule 6. Political Parties

- 6.1 The appropriate filing officer for a state or county political party is the Secretary of State. Therefore, state and county political parties are subject to the requirements of section 1-45-109(1)(c), C.R.S., and must file reports with the Secretary of State. [Article XXVIII Section 2(1); section 1-45-109(1)(c), C.R.S.]
- 6.1.1 Repealed.
- 6.2 Transfers of money within a party
- 6.2.1 A party may transfer money from one level of the organization to another without limit.
 - 6.2.2 Transfers of money within a party must be disclosed as "other income" in accordance with Rule 10.12.
- 6.3 Home rule jurisdictions

- 6.3.1 A political party in a home rule jurisdiction that maintains a separate account in accordance with Rule 14.4 may not include contributions to, or expenditures, from that separate account in reports filed with the Secretary of State.
- 6.3.2 If a political party receives contributions into a separate account in accordance with Rule 14.4, the party may not transfer funds from that account to other county parties or to a state party.

Rule 7. Federal PACs and 527 Political Organizations

7.1 Federal PACs

7.1.1 A political committee that is subject to reporting under both section 1-45-108, C.R.S., and the “Federal Election Commission Act of 1971” (a “Federal PAC”) shall register with the Secretary of State’s office as a “Federal PAC.” A Federal PAC shall file disclosure reports electronically with the Secretary of State. In accordance with the requirement of section 1-45-108 (3.5), C.R.S., that Federal PACs are subject to “all other legal requirements”, a Federal PAC must:

- (a) Identify the contributions the Federal PAC received that were used to support or oppose candidates in Colorado and disclose all such contributions on reports filed with the Secretary of State.
- (b) Itemize on the Colorado report all contributions of \$20 or more identified by the Federal PAC as making up the funds used to support or oppose candidates in Colorado, and list the occupation and employer of any person who has made a contribution of \$100 or more.
- (c) Use only contributions received by the Federal PAC that are within source and contribution limits established by Colorado law to support or oppose state or local candidates. Contributions received by the PAC that the organization has not designated for use to support or oppose candidates in Colorado do not have to be disclosed on reports filed in Colorado and are not subject to the Colorado source and amount limits and prohibitions.
- (d) Itemize all expenditures in the state of \$20 or more, and list any expenditures of less than \$20 made in Colorado as non-itemized expenditures.
- (e) Deposit Federal PAC funds into a separate account that is used for the Federal PAC exclusively, in accordance with Article XXVIII, Section 3(9) and Rule 10.11. The Federal PAC may, but is not required to, segregate funds intended to support or oppose state or local candidates in Colorado.

7.1.2 Federal PACs shall file reports in every reporting period as long as the Federal PAC remains in “active” status with the Secretary of State’s office. Reports filed by a Federal PAC are filed on the schedule outlined for political committees in section 1-45-108(2)(a)(I), C.R.S.

7.1.3 If the Federal PAC is registered as a Colorado political committee rather than as a Federal PAC, the committee must follow the requirements applicable to state political committees, and not those outlined in this Rule.

7.1.4 Any Federal PAC registered with the Secretary of State may terminate its active status by filing a termination report.

7.2 Political organizations. In the case of political organizations as defined in section 1-45-103(14.5), C.R.S.:

- 7.2.1 ~~For purposes of section 1-45-108.5, C.R.S., an entity is considered a political organization only if:~~
- ~~(a) Has as its major purpose influencing or attempting to influence elections as defined in Rule 1.10; and~~
 - ~~(b) Is exempt, or intends to seek exemption, from taxation by the Internal Revenue Service.~~

~~{I.R.C. § 527(i)(5)(B) (2010)}~~

The Denver District Court issued a ruling on August 10, 2012 in *Colorado Ethics Watch; Colorado Common Cause; David Paladino, et al., v. Scott Gessler, 2012 CV 2133*, invalidating this rule. Secretary Gessler has appealed the decision and accordingly will not enforce this rule unless or until the Colorado appellate courts reverse the District Court's decision.

- 7.2.2 Political organizations shall file on the frequent filing schedule for a political committee in an even-numbered year, and on the infrequent filing schedule in an odd-numbered year, according to the filing schedules set forth in section 1-45-108(2), C.R.S.
- (a) For the purposes of this Rule, "off-election year" for a political organization shall mean every odd-numbered year.
 - (b) For the purposes of this Rule, "major election" shall mean an election held in November of an even-numbered year.
- 7.2.3 Political organizations are not required to file disclosure reports for reporting periods when no contributions were received and spending was less than \$20. [Section 1-45-108.5(1)(b), C.R.S.]
- 7.2.4 Political organizations shall file all applicable disclosure reports required by section 1-45-108.5, C.R.S., with the appropriate filing officer. For the purposes of this rule, the appropriate filing officer shall be the same for political organizations as for political committees as outlined in section 1-45-109, C.R.S.

Rule 8. Registering a Committee

- 8.1 The purpose or nature of interest of the committee or party shall be included in the committee registration.
- 8.1.1 A candidate committee shall identify the name of the candidate and the specific office sought.
 - 8.1.2 A political committee, independent expenditure committee, small donor committee, Federal PAC, or political organization shall identify the types of candidates being supported or opposed, including party affiliation and office(s) sought or public policy position(s).
 - 8.1.3 An issue committee must identify the ballot measures to be supported or opposed, if known. If particular ballot measures are not known, an issue committee must identify policy positions to be supported or opposed.
- 8.2 When a committee registration form is received and deemed complete by the appropriate filing officer, an identification number will be assigned and a letter or email of acknowledgement will be sent by the appropriate filing officer to the registered agent on file.

Rule 9. Registered Agents

- 9.1 The registered agent or a designated filing agent for any committee shall sign the committee's registration form and all disclosure reports. For registration forms and reports filed by a candidate or candidate committee, the candidate may sign. [Sections 1-45-108(3), (5), and (6), C.R.S.]
- 9.2 For a candidate committee, the candidate may serve as the registered agent, or the candidate may appoint another person.
- 9.3 Resignation of registered agent
- 9.3.1 A committee may assign a new registered agent by filing an amended committee registration using the online campaign finance filing system. The Secretary of State's office will maintain a registered agent's name on file until the committee assigns a new registered agent.
- 9.3.2 In accordance with Rule 12.1, the committee or party shall file an amended committee registration form within five days after the resignation of a registered agent or the appointment of a new registered agent. The committee or party must have an active registered agent at all times. [Section 1-45-108(3)(b), C.R.S.]

Rule 10. Managing Contributions and Expenditures

- 10.1 Contributions – how reported
- 10.1.1 All contributions received of \$20 or more during a reporting period shall be listed individually on the contribution and expenditure report, including names and addresses of the contributors. If a contributor gives \$20 or more in the aggregate during the reporting period, the contributor must be listed individually on the report, regardless of the amount of each contribution. [Section 1-45-108(1), C.R.S.]
- 10.1.2 All other receipts and contributions less than \$20 may be reported in total as non-itemized contributions for the reporting period, except for contributions from an LLC.
- 10.1.3 Contributions from an LLC must be itemized regardless of amount. [Section 1-45-103.7(5)(d), C.R.S.]
- 10.1.4 Disclosure of occupation and employer
- (a) The requirement to disclose the occupation and employer of a contributor in Article XXVIII, Section 7 and section 1-45-108, C.R.S., applies to any one-time contribution of \$100 or more, and not to aggregate contributions totaling \$100 or more.
- (b) If occupation and employer information is not provided for contributions of \$100 or more, and the committee is unable to gather the information within 30 days after receipt from the contribution, the contribution shall be returned to the contributor no later than the 31st day after receipt. [Article XXVIII, Section 7]
- 10.2 Expenditures – how reported
- 10.2.1 All expenditures made by a committee of \$20 or more during a reporting period shall be listed individually on the contribution and expenditure report, including names and addresses of payees.

10.2.2 Individual expenditures in amounts less than \$20 that aggregate to total \$20 or more to the same payee during the reporting period shall be listed individually on the contribution and expenditure report.

10.2.3 All other expenditures less than \$20 during a reporting period may be reported in total as non-itemized expenditures.

[Section 1-45-108(1), C.R.S.]

10.3 Contributions and donations – when counted.

10.3.1 A contribution or donation is considered made or received as of the date that it is accepted by the committee or party.

(a) A contribution or donation by check is considered accepted, at the latest, on the date that the contribution or donation is deposited by the committee into its account. Any contribution or donation in the form of a check received by a committee at least five business days before the end of a reporting period must be deposited or returned to the contributor by the close of that reporting period.

(b) A cash contribution or donation is received as of the date the cash is transferred to the committee's possession.

(c) A contribution or donation made by credit card, PayPal, or other payment intermediary service is received as of the date the contributor or donor authorizes the payment to be made.

(d) A non-monetary (in-kind) contribution or donation is received as of the date on which the committee takes possession of the item, or has the right to possess or use the item.

10.3.2 For purposes of section 1-45-105.5, C.R.S., concerning contributions by lobbyists to certain state officers and candidates when legislation is under consideration, a contribution is considered made or promised when the pledge is made or possession of the check is transferred to any person not under the control of the issuer, whichever is sooner.

10.4 All committees shall maintain all financial records for 180 days after any general election in which the committee received contributions. If a complaint is filed against the committee, the committee shall maintain financial records until final disposition of the complaint and any consequent litigation. LLC affirmations must be maintained for one year after the end of the election cycle. [Article XXVIII, Section 3(9)]

10.5 For any contribution received in excess of contribution limits, neither the contributor nor the receiving committee shall be liable for exceeding the contribution limit if the excess amount is returned to the contributor within ten days of receipt or within three days after receiving notification from the Secretary of State that the contribution violates the limits, whichever is sooner.

10.6 Contributions where the identity of the contributor is unknown (anonymous contributions or donations)

10.6.1 Committees cannot keep anonymous contributions or donations of \$20 or more. An anonymous contribution or donation is one where the identity of the contributor or donor is unknown. Anonymous contributions or donations of \$20 or more must be donated to any charitable organization recognized by the Internal Revenue Service, or transmitted to the State Treasurer for

deposit into the unclaimed property fund or such other fund as the State Treasurer may direct, within 30 days after receipt. [Section 1-45-108(1)(a), C.R.S.]

10.7 Contributions by candidate – voluntary spending limits – loans.

10.7.1 If a candidate does not accept voluntary spending limits, the candidate may make unlimited contributions from his or her personal funds to his or her candidate committee.

10.7.2 Contributions to a candidate’s own committee by a candidate who does accept voluntary spending limits shall be counted toward the limit on political party contributions in Article XXVIII, Section 3(3)(d), and Section 4(2).

10.7.3 A candidate who accepts voluntary spending limits may make a loan to his or her candidate committee in any amount, so long as the unpaid balance of any loan does not exceed the contribution limit in Article XXVIII, Sections 3 and 4(2) at any time.

10.8 Cost-sharing by candidates

10.8.1 Candidate committees may share the cost of brochures, offices, office equipment, etc. that are produced or used jointly if each candidate committee pays for its proportionate share of the expense.

10.8.2 Any reimbursement by one candidate committee to another for shared costs must be made within 30 days of the original expenditure. Reimbursement is not a “contribution” from one committee to the other; it shall be reported as an expenditure by the reimbursing committee and as a returned expenditure by the reimbursed committee. If sharing expenditures results in a price discount based on volume or quantity, the discount is not considered a “contribution” from the vendor.

10.9 Reimbursement of expenditures – payments by credit card or payment intermediary service

10.9.1 When reporting a reimbursement to a candidate or to any other person, the committee or party shall separately disclose each expenditure of \$20 or more, including the purpose, payee, and amount of each expenditure as of the date of the expenditure, regardless of the date of reimbursement.

10.9.2 For the purpose of reporting an expenditure, simply disclosing that a payment was made to a credit card company or a payment intermediary service such as PayPal is not adequate. All expenditures of \$20 or more made by credit card or payment intermediary service must be itemized, including the name and address of the original payee, amount, original date of expenditure, and purpose of the expenditure.

10.9.3 Nothing in this Rule permits contributions or reimbursements of contributions prohibited by Article XXVIII, Section 3(11).

10.9.4 A reimbursement not considered a contribution to the person being reimbursed for purposes of Article XXVIII, Section 2(5).

[Section 1-45-108(1)(e), C.R.S.]

10.10 Loans received by a candidate committee

10.10.1 All loans received by a candidate committee must be reported continuously until repaid. [Article XXVIII, Section 3(8)]

10.10.2 Loans made from a financial institution to a candidate committee under Article XXVIII, Section 3(8) shall not be forgiven.

10.10.3 Loans made by a candidate to his or her committee

(a) A candidate may make an interest-free loan to his or her candidate committee. Any foregone interest is not a contribution to the committee.

(b) Any repayment of a loan shall be considered a loan payment, except that interest repaid for a loan made under Article XXVIII, Section 3(8) shall be reported as an expenditure by the committee.

(c) A loan made by a candidate to the candidate's own committee may be forgiven by the candidate. The amount of unpaid debt forgiven by the candidate remains a contribution and is not considered a returned contribution.

10.11 The requirement that committee funds be deposited into "a financial institution" does not require that all committee funds must be deposited in one single bank, credit union, or other commercial financial institution. [Article XXVIII, Section 3(9)]

10.12 Other income

10.12.1 A committee's funds may be invested in any type of account or instrument of a government regulated financial institution.

10.12.2 Any interest or dividends earned on a committee's account, earned income from a commercially reasonable transaction, or transfers of money within a political party shall be disclosed as other income on the committee's reports. This "other income" is not subject to contribution limits.

10.13 Disclosure of contributions by limited liability companies (LLCs) [Section 1-45-103.7(5), (6), (7), and (8), C.R.S.]

10.13.1 The written affirmation provided by an LLC in accordance with section 1-45-103.7, C.R.S., shall include the names and addresses of all LLC members and describe how the contribution is to be attributed to the LLC members.

10.13.2 The affirmation shall include the occupation and employer of any member to whom a contribution of \$100 or more is attributed.

10.13.3 A committee that receives a contribution from an LLC shall report the contribution as having been received from contributor type "LLC," and shall then list each LLC member and the amount attributed to each member (as determined by the pro-rata ownership held by each). Disclosure shall include the name and address of the LLC and the name and address of each member. [Section 1-45-108(1)(a)(IV), C.R.S.]

10.13.4 Any contribution received by a committee from an LLC that does not comply with the affirmation requirements in section 1-45-103.7, C.R.S., and this Rule shall be returned to the contributor within 30 days.

10.13.5 Each contribution received from an LLC shall be itemized on disclosure reports, regardless of the dollar amount.

10.13.6 Any contribution from an LLC is counted against contribution limits for both the individual member(s) to whom the contribution is attributed and the LLC itself. [Article XXVIII, Section 3(9)]

- (a) No LLC shall be permitted to make a contribution that exceeds the limit for a “person” established in Article XXVIII, Section 3, as adjusted by Rule 10, regardless of the amount attributed to each individual member.

10.14 Inflationary adjustments to contribution and voluntary spending limits

10.14.1 Calculation of adjustments

- (a) In accordance with Article XXVIII, Sections 3(13) and 4(7), limits on contributions in Section 2(14) and Section 3, subsections (1), (2), (3), and (5) and the voluntary limits on spending in Section 4(1), are adjusted every four years based on the percentage change in the consumer price index for the Denver-Boulder-Greeley area, over the four year period immediately preceding the adjustment.
- (b) In determining the adjusted amount, the percentage change in the consumer price index is rounded to the nearest whole percentage point. In accordance with Article XXVIII, Sections 3(13) and 4(7), the adjusted limits are rounded to the nearest, lowest \$25.

10.14.2 Adjusted limits made in the first quarter of 2011 and effective until the next adjustment is made in 2015:

- (a) There is no adjustment to the contribution limits on individual donations to small donor committees outlined in Article XXVIII, Section 2(14).
- (b) The aggregate limits on contributions from any person for a primary or a general election, described in Article XXVIII, Section 3(1), are adjusted as follows:
 - (1) \$550 to any one:
 - (A) Governor candidate committee for the primary election, and Governor and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General candidate committee.
 - (2) There is no adjustment to the limits on contributions to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (c) The aggregate limits on contributions from a small donor committee for a primary or a general election, described in Article XXVIII, Section 3(2), are adjusted as follows:
 - (1) \$5,675 to any one:

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- (A) Governor candidate committee for the primary election, and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General candidate committee; and
- (2) \$2,250 to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (d) The aggregate limits on contributions from any person to a political party, described in Article XXVIII, Section 3(3)(a), are adjusted as follows:
- (1) \$3,400 per year at the state, county, district, and local level combined; and
 - (2) Of such, no more than \$2,825 at the state level.
- (e) The aggregate limits on contributions from a small donor committee to a political party, described in Article XXVIII, Section 3(3)(b), are adjusted as follows:
- (1) \$17,075 per year at the state, county, district, and local level combined; and
 - (2) Of such, no more than \$14,225 at the state level.
- (f) The aggregate limits on pro-rata contributions or dues made to political committees, described in Article XXVIII, Section 3(5), are adjusted to \$550 per house of representatives election cycle.
- (g) This table contains the contribution limits listed in subsections i-vi.

Contributor:

Recipient	Natural Person	Person, other than a natural person	Political committee	Small donor committee	Political party
Political committee	\$550 per election cycle	\$550 per election cycle	\$550 per election cycle	\$550 per election cycle	\$550 per election cycle
Small donor committee	\$50 per year	Prohibited	Prohibited	Prohibited	Prohibited
Governor (governor & lt. governor)	\$550 per election cycle*	\$550 per election cycle*	\$550 per election cycle*	\$5,675 per election cycle*	\$569,530 per election cycle
Secretary of state, state treasurer, attorney general	\$550 per election cycle*	\$550 per election cycle*	\$550 per election cycle*	\$5,675 per election cycle*	\$113,905 per election cycle
State senate	\$200 per election cycle*	\$200 per election cycle*	\$200 per election cycle*	\$2,250 per election cycle*	\$20,500 per election cycle

References: Rules Concerning Campaign and Political Finance

State house of representatives, state board of education, regent of the University of Colorado, district attorney	\$200 per election cycle*	\$200 per election cycle*	\$200 per election cycle*	\$2,250 per election cycle*	\$14,805 per election cycle
Political party	\$3,400 (\$2,825 at the state level) per year	\$3,400 (\$2,825 at the state level) per year	\$3,400 (\$2,825 at the state level) per year	\$17,075 (\$14,225 at the state level) per year	Transfers within a party may be made without limitation.

* All major party candidates may accept the contribution limit for the primary election and the general election. Minor party candidates who appear on a primary election ballot may accept contributions for the primary and general elections. Unaffiliated and minor party candidates who do not appear on a primary election ballot may accept contributions only for the general election.

- (h) The voluntary spending limits for a candidate described in Article XXVIII, Section 4(1), are adjusted as follows:
- (1) The spending limit for Governor, and Governor and Lieutenant Governor as joint candidates under section 1-1-104, C.R.S., or any successor section shall be adjusted to \$2,847,650.
 - (2) The spending limit for a candidate for Secretary of State, Attorney General, or Treasurer shall be adjusted to \$569,525.
 - (3) The spending limit for a candidate for State Senate shall be adjusted to \$102,500.
 - (4) The spending limit for a candidate for State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney shall be adjusted to \$74,025.

Candidate	Voluntary Spending Limit
Governor, and Governor and Lieutenant Governor as joint candidates	\$2,847,650
Secretary of State, Attorney General, or State Treasurer	\$569,525
State Senate	\$102,500
State House of Representatives, State Board of Education, Regent of the University of Colorado, or District Attorney	\$74,025

10.14.3 Adjusted limits made in the first quarter of 2007 and effective through the first quarter of 2011:

- (a) There is no adjustment to the contribution limit on individual donations to small donor committees outlined in Article XXVIII, Section 2(14).
- (b) The aggregate limits on contributions from any person for a primary or a general election, described in Article XXVIII, Section 3(1), are adjusted as follows:
 - (1) \$525 to any one:
 - (A) Governor candidate committee for the primary election, and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General, candidate committee.
 - (2) There is no adjustment to the limits on contributions to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (c) The aggregate limits on contributions from a small donor committee for a primary or a general election, described in Article XXVIII, Section 3(2), are adjusted as follows:
 - (1) \$5,300 to any one:
 - (A) Governor candidate committee for the primary election, and Governor and Lieutenant Governor candidate committee, as joint candidates under section 1-1-104, C.R.S., or any successor section, for the general election;
 - (B) Secretary of State, State Treasurer, or Attorney General, candidate committee; and
 - (2) \$2,125 to any one State Senate, State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney candidate committee.
- (d) The aggregate limits on contributions from any person to a political party, described in Article XXVIII, Section 3(3)(a), are adjusted as follows:
 - (1) \$3,175 per year at the state, county, district, and local level combined; and
 - (2) Of such, no more than \$2,650 at the state level.
- (e) The aggregate limits on contributions from a small donor committee to a political party, described in Article XXVIII, Section 3(3)(b), are adjusted as follows:
 - (1) \$15,900 per year at the state, county, district, and local level combined; and
 - (2) Of such, no more than \$13,250 at the state level.
- (f) The aggregate limits on pro-rata contributions or dues made to political committees, described in Section 3(5), Article XXVIII of the Colorado Constitution, are adjusted to \$525 per house of representatives election cycle.

- (g) The voluntary spending limits for a candidate described in Article XXVIII, Section 4(1), are adjusted as follows:
- (1) The spending limit for Governor, and Governor and Lieutenant Governor as joint candidates under section 1-1-104, C.R.S., or any successor section shall be adjusted to \$2,650,000.
 - (2) The spending limit for a candidate for Secretary of State, Attorney General, or Treasurer shall be adjusted to \$530,000.
 - (3) The spending limit for a candidate for State Senate shall be adjusted to \$95,400.
 - (4) The spending limit for a candidate for State House of Representatives, State Board of Education, Regent of the University of Colorado, or any District Attorney shall be adjusted to \$68,900.

Rule 11. Electioneering Communications

- 11.1 If a person spending money for electioneering communications is a corporation or labor organization, disclosure of the names and addresses of persons contributing \$250 or more used to make electioneering communications shall only be required if the money is specifically earmarked for electioneering communications. [Section 1-45-108(1)(a)(III), C.R.S.]
- 11.2 All contributions of \$250 or more received for electioneering communications during a reporting period, including non-monetary contributions, shall be listed individually on the electioneering report. [Article XXVIII, Section 6(1)]
- 11.3 All spending of \$1,000 or more per calendar year shall be listed individually on the electioneering report, including name, address, and method of communication. [Article XXVIII, Section 6(1)]
- 11.4 Entities making electioneering communications shall maintain all financial records for 180 days after any general election in which the entity received contributions. If a complaint is filed against the entity making electioneering communications, the entity shall maintain financial records until final disposition of the complaint and any consequent litigation.
- 11.5 The name of the candidate(s) unambiguously referred to in the electioneering communication shall be included in the electioneering report. [Article XXVIII, Section 2(7)(I)]
- 11.6 Submission of electioneering communication disclosure reports
- 11.6.1 Committees are not required to file electioneering communication reports separate from regularly filed independent expenditure disclosure reports so long as any expenditure or spending subject to Article XXVIII, Section 6 and Rule 11.5 is identified as an electioneering communication. The disclosure of electioneering expenditures or spending on a regularly filed report shall include the name of the candidate referred to in the electioneering communication.

Rule 12. Changing or Closing a Committee

- 12.1 Changes to any information disclosed on the committee registration statement must be reported to the appropriate filing officer within ten days. [Section 1-45-108(3), C.R.S.]

- 12.2 A candidate that changes office sought shall terminate his or her existing candidate committee and register a new candidate committee within ten days of the change. See Rule 2.2.
- 12.3 A committee may terminate if the following conditions are met:
- 12.3.1 The committee no longer intends to receive contributions or make expenditures;
 - 12.3.2 The committee has a zero balance because it has no cash or assets on hand and no outstanding debts or obligations; and
 - 12.3.3 The candidate or committee files a termination report of contributions and expenditures.
- A committee may dispose of assets remaining in its possession before termination in the same manner as allowed for unexpended contributions. A termination report may be filed at any time. [Article XXVIII, Section 2(3) and section 1-45-106, C.R.S.]
- 12.4 Unexpended contributions
- 12.4.1 Unexpended campaign contributions held by a candidate committee. See Rule 2.2.
 - 12.4.2 An issue committee may donate unexpended contributions to a charitable organization recognized by the I.R.S. or return unexpended contributions to the contributor. [Section 1-45-106(3), C.R.S.]
 - 12.4.3 Political committees, small donor committees, independent expenditure committees, political parties, Federal PACs, and political organizations are not covered by statute. [Section 1-45-106, C.R.S.]
- 12.5 Administrative committee terminations
- 12.5.1 In accordance with the procedures set out in the “State Administrative Procedure Act” (Article 4 of Title 24, C.R.S.), the Secretary of State may close an inactive committee after six missed reports or 18 months of non-reporting, whichever happens first.
 - 12.5.2 A committee shall be deemed inactive for the purpose of this rule after failing to file any reports with the appropriate filing officer for six consecutive reporting periods or 18 months, whichever is shorter. [Article XXVIII, Section 2(3), and section 24-4-105, C.R.S.]

Rule 13. Corporations and Membership Organizations

- 13.1 A corporation or labor organization may establish a political committee, an independent expenditure committee, and a small donor committee. Each committee is subject to the applicable individual contribution and expenditure limits for that committee. A corporation or labor organization may pay for the costs of establishing, administering, and soliciting funds from its own employees or members for a political committee, a small donor committee, or an independent expenditure committee. [Article XXVIII, Sections 2(5)(b) and 2(14)(b)]
- 13.2 Membership dues transferred to small donor committees, independent expenditure committees, and political committees.
- 13.2.1 Membership organizations transferring a portion of a member’s dues to a small donor committee, independent expenditure committee, or political committee shall provide the respective committee with the member’s name, address, amount of dues transferred, and the date of the dues transfer.

- 13.2.2 Each small donor committee, independent expenditure committee, and political committee shall keep records of all contributions or donations received in the form of membership dues transferred by a membership organization to the committee. The records shall include each contributing or donating member's name, address, and amount of the dues transferred. [Section 1-45-108(1)(a)(I), C.R.S.]
- 13.2.3 Each small donor committee and political committee shall itemize and report the name and address of each person who has contributed \$20 or more in a reporting period, including but not limited to contributions received in the form of membership dues transferred by a membership organization to the committee. [Article XXVIII, Section 2(14)(a); section 1-45-108(1)(a), C.R.S.]
- 13.2.4 On each disclosure report, the candidate or registered agent of a committee shall certify and declare, under penalty of perjury, that to the best of his or her knowledge or belief all contributions or donations received in a reporting period, including contributions or donations received in the form of membership dues transferred by a membership organization, are from permissible sources. [Article XXVIII, Section 3]

Rule 14. Local Offices and Home Rule

- 14.1 The requirements of Article XXVIII and of Article 45 of Title 1, C.R.S., do not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Article 45 of Title 1.
- 14.2 The provisions of Article XXVIII, Section 3(4) relating to contributions of corporations and labor unions apply to elections to every state and local public office, except local public offices in home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45.
- 14.3 The provisions of section 1-45-105.5, C.R.S., relating to a prohibition on lobbyist contributions to members of the General Assembly during legislative sessions, apply to members of the General Assembly who are candidates for any state or local office, including any office in home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Article 45 of Title 1.
- 14.4 A political party, as defined in Article XXVIII, Section 2(13) at the level of a home rule county or home rule municipality that has adopted a charter, ordinance, or resolution that addresses any of the matters covered by Article XXVIII or Article 45 of Title 1, may establish a separate account that is used solely for contributions made to the party, and expenditures made by the party, for the purpose of supporting the party's county or municipal candidates for offices within the county or municipality. Contributions to and expenditures from such account shall not be included for purposes of any limitations or reporting contained in Article XXVIII or Article 45 of Title 1, C.R.S.
- 14.5 The provisions of section 1-45-117, C.R.S., relating to the use of public funds for political purposes, apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address any of the matters covered by Article XXVIII or Title 1, Article 45.
- 14.6 Junior College Boards of Trustees. A person seeking election to a junior college board of trustees is not subject to the provisions of Article XXVIII or Article 45 of Title 1, C.R.S. [Article XXVIII, Section 2(2); section 23-71-110, C.R.S.]

Rule 15. Recall Elections

- 15.1 The election cycle for a recall election shall be from the date the recall petition is approved for circulation by the designated election official through 30 days following the date of the recall election.
- 15.1.1 In the event that no recall election is held because the petition is determined to be insufficient, the recall election cycle ends 30 days after the final determination of insufficiency, including passage of the time for protest and final disposition of any protest or appeal of such determination.
- 15.1.2 In the event that no recall election is held for any other reason, the recall election cycle ends 30 days after the deadline for filing the recall election petition.
- 15.2 Committees participating in a recall election shall file reports on the fifth day of every month until disclosure as set forth in section 1-45-108(2.7), C.R.S., begins.
- 15.2.1 The initial reporting period for committees participating in the recall election shall begin on the date the committee registers with the appropriate filing office.
- 15.2.2 Subsequent reporting periods shall begin on the first day of each month, and end on the last day of that month.
- 15.3 The incumbent in a recall election is not a candidate for the successor election according to section 1-12-117, C.R.S.; therefore, the incumbent may open an issue committee to oppose the recall.
- 15.4 The aggregate contribution limits specified for a general election in Article XXVIII, Section 3, shall apply to the recall election with respect to each successor candidate.
- 15.5 Any political committee supporting or opposing any candidate in a recall election shall file disclosure reports:
- 15.5.1 14 days before the recall election;
- 15.5.2 Seven days before the recall election; and
- 15.5.3 30 days after the recall election

[Section 1-45-108 (2.7), C.R.S.]

- 15.6 ~~An issue committee supporting or opposing a recall election is not required to register with the appropriate officer until the committee has accepted \$5,000 or more in contributions or made expenditures of \$5,000 or more in support of or opposition to the recall.~~

~~[*Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010)]~~

~~The Denver District Court declared Rule 4.27, the predecessor to Rule 4.1, invalid in *Common Cause et. al v. Gessler*, 2011 CV 4164. The Secretary has appealed the decision, and accordingly will not enforce the related Rule 15.6 unless or until the Colorado appellate courts reverse the District Court's decision. The Secretary will revive Rule 15.6 if the appellate courts reverse the decision.~~

We lost this rule on appeal. We will no longer enforce it.

Rule 16. Special Districts

- 16.1 See Rule 17.4 for reporting periods and report due dates for special district elections.
- 16.2 A special district designated election official or director candidate shall file a copy of the self-nomination and acceptance form described in Rule 16.3 with the Secretary of State no later than 60 days before the special district election. This rule does not apply if the special district cancels the election.
- 16.3 Self-nomination and acceptance forms and affidavits of intent to be a write-in candidate.
- 16.3.1 The self-nomination and acceptance forms and letters, and affidavits of intent to be a write-in candidate must include the following information:
- (a) The candidate's full name;
 - (b) The name of the special district in which the candidate is seeking to be elected to the board;
 - (c) The year in which the election will occur;
 - (d) The county in which the district court that authorized the creation of the special district is located;
 - (e) The candidate's physical and mailing addresses;
 - (f) A telephone number for the candidate;
 - (g) The candidate's email address;
 - (h) The date on which the form, letter, or affidavit was filed by the candidate;
 - (i) The candidate's signature; and
 - (j) The signature of a registered elector acting as a witness.
- [Sections 1-45-110, 32-1-804.3(1), C.R.S.]
- 16.4 If a candidate for a special district office fails to file a candidate affidavit, or the filed self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate does not contain the statement required by section 1-45-110(1), C.R.S., the Secretary of State will mail the special district a copy of the notification to the candidate regarding pending disqualification sent according to section 1-45-110(3), C.R.S.
- 16.5 A document filed according to Rule 16.3 is considered to be filed when received by the Secretary of State. This Rule does not relieve any candidate of any obligation to file any document required by the fair campaign practices act, article XXVIII, or other law, nor does it impose a requirement on a designated election official, presiding officer, or the Secretary to file any document on behalf of any candidate.
- 16.6 A special district candidate is not required to file disclosure reports if:
- 16.6.1 The special district candidate affidavit, the filed self-nomination and acceptance form or letter, or the affidavit of intent to be a write-in candidate contains a statement substantially stating, "I will not, in my campaign for this office, receive contributions or make expenditures exceeding \$200 in

the aggregate during the election cycle, however, if I do so, I will thereafter file all disclosure reports required under the fair campaign practices act;" and

16.6.2 The candidate does not accept contributions or make expenditures exceeding \$200 in the aggregate during the election cycle.

[Article XXVIII, Section 2(2) and section 1-45-108(1), C.R.S.]

Rule 17. Filing Calendars and Reporting periods

17.1 Until terminated in accordance with these rules, a committee other than a political organization shall file a disclosure report for every reporting period, even if the committee has no activity (contributions, donations, or expenditures) to report during the reporting period.

17.2 Filing schedules.

17.2.1 A candidate committee shall file on:

- (a) A frequent filing schedule during the year in which the office to which candidate seeks to be elected is up for election.
- (b) An infrequent filing schedule during any year in which the office to which candidate seeks to be elected is not up for election.

For purposes of this rule, the office to which the candidate seeks to be elected is the office named in the candidate's most recent candidate affidavit.

17.2.2 A political committee, small donor committee, political party, independent expenditure committee, Federal PAC, or political organization shall file on:

- (a) A frequent filing schedule during any year in which a general election occurs.
- (b) An infrequent filing schedule during any year in which no general election occurs, notwithstanding any activity by the committee to support or oppose candidates.

17.2.3 An issue committee shall file on:

- (a) A frequent filing schedule during any year in which an issue that the committee supports or opposes appears on, or seeks access to, the ballot.
- (b) An infrequent filing schedule during any year in which the committee does not support or oppose any issues appearing on, or which seek access to, any ballot.

17.2.4 An issue committee must notify the Secretary of State within ten days after deciding that it will support or oppose ballot issues or ballot questions, or potential ballot issues or ballot questions on an upcoming ballot.

- (a) Once an issue committee notifies the Secretary of State of its active status under this Rule, the Secretary will place the committee on a frequent filing calendar.
- (b) Once an issue committee has declared its committee filing status as frequent or infrequent in a particular year, the committee must follow the appropriate filing schedule for the remainder of that election cycle, except that an inactive committee may change its status to active at any time.

17.3 Report periods

- 17.3.1 The reporting period for any report begins on the first day following the last day of the reporting period for the previous report filed with the appropriate officer. The reporting period for any report that is required to be filed under section 1-45-109(1)(a)(II) and (1)(c), C.R.S., closes five calendar days before the date that the report is due. [Section 1-45-108(2)(c), C.R.S.]
- 17.3.2 Quarterly reporting periods close on the last day of the month. The report is due on or before April 15th, July 15th, October 15th, and January 15th following each calendar quarter. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [Section 1-45-108(2)(a), C.R.S.]
- 17.3.3 Monthly reporting periods close five calendar days before the last day of the month. Monthly reports are due on or before the first calendar day of the following month. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. When the filing deadline for a monthly report approximates the filing deadline for a biweekly report, no separate monthly report shall be filed, and the biweekly report shall serve as the monthly report. [Section 1-45-108(2)(a) and (c), C.R.S.]
- 17.3.4 The reporting period for biweekly reports required by section 1-45-108(2)(a)(I)(B) and (D) closes on the Wednesday before the due date. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [Section 1-45-108(2)(a) C.R.S.]
- 17.3.5 The post-election reporting period closes on the last day of the calendar month in which the election was held. The report is due on or before the 30th day following the election. If the filing deadline falls on a Saturday, Sunday, or legal holiday, the filing deadline is the next business day. [Section 1-45-108(2)(a), C.R.S.]
- 17.3.6 Each year, the Secretary of State will publish a filing calendar for each committee type, and will make the calendars available on the Secretary of State website.

17.4 Special district reporting.

17.4.1 Reports relating to special district elections are due:

- (a) On the 21st day before;
- (b) On the Friday before; and
- (c) On the 30th day after the date of the regular election.

[Section 1-45-109(1)(a)(II) and (1)(c), C.R.S.]

17.5 Reports for former officeholders or persons not elected to office

17.5.1 Annual reporting

- (a) A candidate committee for a candidate not elected to office, or who was formerly in office, may elect to file only an annual report for each calendar year.
 - (1) State candidate committees shall file an annual report not later than January 15th of the following year.

(2) All other candidate committees shall file an annual report on the first day of the month in which the anniversary of the major election occurs, in accordance with section 1-45-108(2)(a)(II), C.R.S.

(b) A change in the balance of funds resulting solely from the accrual of interest or dividends to the account and/or the automatic deduction of periodic service fees does not subject a candidate committee to the reporting requirements of section 1-45-108, C.R.S. At a minimum, a candidate committee must file annual report as set forth in subsection (a) of this Rule.

[Sections 1-45-108(2)(c) and (2)(d), C.R.S.]

17.5.2 The reporting exemption in section 1-45-108(2)(d), C.R.S., applies only to reports for which the entire reporting period occurs after the election in which the candidate's name appeared on the ballot.

Rule 18. Penalties, Violations, and Complaints

18.1 Requests for waiver or reduction of campaign finance penalties

18.1.1 A request for waiver or reduction of campaign finance penalties imposed under Article XXVIII, Section 10(2) must state the reason for the delinquency. The filer should provide an explanation that includes all relevant factors relating to the delinquency and any mitigating circumstances, including measures taken to avoid future delinquencies. Before the Secretary of State will consider a request, the report must be filed, and a request including the information required by this paragraph must be submitted.

18.1.2 Requests for waiver or reduction of campaign finance penalties imposed under Article XXVIII, Sections 9(2) or 10(2) must be considered by the Secretary of State and Administrative Law Judges according to the following rules:

Scenario - applied in numerical order (i.e. if #1 doesn't apply, move to #2)	Result
#1	A waiver is requested and establishes good cause that made timely filing impracticable (For example, was in the hospital, got in a car accident, was stranded by a blizzard, etc.). The event or events that made timely filing impracticable must occur within a reasonable time of the date on which the report was filed.
#2	A waiver is requested but does not present circumstances that made timely filing impracticable (For example, forgot, was out of town, electronic calendar crashed), and:

	<p>(a) Filer had contributions and/or expenditures during the reporting period. The penalty imposed is \$100 or more.</p>	<p>First delinquency in 24 months: The penalty will be reduced to \$50.</p> <p>Second delinquency in 24 months: The penalty will be reduced by 50%.</p> <p>Third (or subsequent) delinquency in 24 months: A reduction in penalty will not be granted.</p> <p>Penalties imposed under this Section are capped at the higher of the contributions or expenditures made during the reporting period. If a delinquency is found to be willful, the penalty cap may be increased to two to five times the higher of the contributions or expenditures made during the reporting period.</p> <p>For purposes of this analysis, previous delinquencies exclude those for which a waiver under scenario #1 was granted.</p>
	<p>(b) Filer has no activity (contributions OR expenditures) during the reporting period and the committee balance is zero. The penalty imposed is \$100 or more.</p>	<p>The penalty will be reduced to \$50.</p>

	<p>(c) Filer has a fund balance greater than zero and filer has no activity (contributions OR expenditures) during the reporting period. The penalty imposed is \$100 or more.</p>	<p>First delinquency in 24 months: The penalty will be reduced to \$50.</p> <p>Second delinquency in 24 months: The penalty will be reduced by 50%, subject to a cap of 10% of the fund balance (but not less than \$100).</p> <p>Third (or subsequent) delinquency in 24 months: The penalty is capped at 10% of the fund balance, and a minimum penalty of \$100 will be imposed.</p> <p>If a delinquency is found to be willful, the penalty cap may be increased to 20% to 50% of the fund balance.</p> <p>For purposes of this analysis, previous delinquencies exclude those for which a waiver under scenario #1 was granted.</p>
	<p>(d) Filer seeks to terminate active status, has a fund balance of \$1,000 or less, and has no activity (contributions OR expenditures) during the reporting period(s) in question.</p>	<p>Penalties are subject to a cap equal to the total amount of the filer's fund balance as of the date on which the delinquent report was filed, if the committee is promptly terminated.</p>
#3	<p>A waiver is requested, but submitted more than 30 days after the date of penalty imposition. For purposes of this analysis, a filer has 30 days after the date on which the final notice of penalty imposition is issued following the filing of the delinquent report. Until an outstanding report is filed, penalties shall continue to accrue at a rate of \$50 per day and no request for waiver will be considered.</p>	<p>A request will not be considered unless good cause has been shown for failure to meet the 30-day waiver filing requirement.</p>

18.1.3 The Secretary of State or Administrative Law Judge may consider any additional factors that establish good cause or may otherwise be relevant to the request for waiver or reduction of campaign finance penalties. In considering a request, The Secretary of State or Administrative Law Judge may request additional information, including but not limited to financial or other records maintained by the filer.

- 18.1.4 For waiver requests that apply to more than one penalty, the guidelines will be applied separately to each penalty in chronological order using the single request as the basis for each.
- 18.1.5 Filers may request that the Secretary of State reconsider a request for waiver or reduction of campaign finance penalties. Any request for reconsideration must present additional material facts that are significantly different than those alleged in the original request for reduction or waiver, and must be submitted to the Secretary of State, in writing, within 30 days of the date on which the waiver decision was mailed.
- 18.1.6 The Secretary of State will respond to requests for waiver or reduction of campaign finance penalties within 60 days. Failure to respond within 60 days, however, will not constitute an approval of the request.
- 18.1.7 When reduced, penalties are rounded to the highest \$25. No penalty will be reduced to an amount less than \$25, unless a full waiver has been granted.

18.1.8 ~~Major Contributor Reports~~

- ~~(a) Penalties assessed for failure to timely file a Major Contributor Report under section 1-45-108(2.5), C.R.S., stop accruing on the date that the contribution is first disclosed, either on the Major Contributor Report or the regularly-scheduled Report of Contributions and Expenditures. Penalties will not accrue beyond the date of the general election. [Section 1-45-108(2.5) C.R.S.]~~

The Denver District Court issued a ruling on August 10, 2012 in *Colorado Ethics Watch; Colorado Common Cause; David Paladino, et al., v. Scott Gessler*, 2012 CV 2133, invalidating this rule. Secretary Gessler has appealed the decision and accordingly will not enforce this rule unless or until the Colorado appellate courts reverse the District Court's decision.

- (b) The date of deposit is considered the "received" date for contributions that require a major contributor report. [Section 1-45-108(2.5), C.R.S.]
- (c) For purposes of determining contributions and expenditures received during the reporting period, the contribution that was required to be disclosed on the major contributor report shall be the amount considered.

18.2 Cure period for violations discovered by the appropriate officer

- 18.2.1 If the appropriate officer, as defined in Article XXVIII, Section 2(1), discovers in the ordinary course of his or her duties in maintaining a campaign finance filing system a possible violation of Article XXVIII or Article 45 of Title 1, C.R.S., and no complaint alleging such violation has been filed with the Secretary of State under Article XXVIII, Section 9(2)(a), then the appropriate officer shall:
- (a) Provide the person believed to have committed the violation with written notice of the facts or conduct that constitute the possible violation, and
- (b) Allow 15 business days to correct the violation or to submit written statements explaining the reasons that support a conclusion that a violation was not committed.
- 18.2.2 No cure period under this rule applies to late filings of campaign finance reports subject to penalties under Article XXVIII, Section 10(2)(a).

- 18.3 If, within the time allotted under Rule 18.2, the person fails to correct the violation or to offer a satisfactory explanation, then the appropriate officer may file a complaint under Article XXVIII, Section 9(2)(a).
- 18.4 Written complaints.
- 18.4.1 A written complaint filed with the Secretary of State under Article XXVIII, Section 9(2)(a) shall include the Secretary of State's complaint cover sheet, which must include the following information:
- (a) The name, address, and signature of the complainant (if the complainant is represented by counsel, include the counsel's name, address, and signature along with the name, address, and signature of the complainant);
 - (b) The name and address of each person alleged to have committed a violation; and
 - (c) The particulars of the violation.
- 18.4.2 If an incomplete complaint is received, the date on which the originally filed complaint was received is considered the filed date for purposes of Article XXVIII, Section 9(2)(a), if a complete copy is received within ten days of notification from the Secretary of State that the complaint was incomplete.
- 18.4.3 A complaint may be submitted by fax or electronic mail if a signed original is received by the Secretary of State no later than five calendar days thereafter. If the complaint is complete, the Secretary of State will promptly transmit the complaint to the Office of Administrative Courts in the Department of Personnel and Administration for consideration by an administrative law judge, which will notify the respondents of the filing of the complaint and which will issue all other appropriate notices to the parties. [Article XXVIII, Section 9(2)(a)]
- 18.5 No report shall be subject to penalties of more than \$50 per day for any late filing or incomplete report violation(s).
- 18.6 Payments for penalties imposed by an Administrative Law Judge shall be remitted to the Secretary of State's office, to the attention of Campaign Finance.

Rule 19. Electronic Filing

- 19.1 All disclosure reports filed with the Secretary of State under Article XXVIII and Article 45 of Title 1 Statutes, C.R.S., shall be filed electronically, except as provided below. Reports required to be filed electronically with the Secretary of State under this rule that are presented for manual filing shall not be accepted. This Rule does not apply to personal financial disclosure reports required by section 1-45-110, C.R.S.
- 19.2 In accordance with section 24-21-111, C.R.S., reports are not required to be filed electronically in either of the following circumstances:
- 19.2.1 The Secretary of State has granted an exception to the electronic filing requirement after written application based on hardship or other good cause shown.
- (a) All applications for an exception shall include a brief statement of the hardship or good cause. Applications must be received by the Secretary of State at least 15 calendar days before the applicable filing deadline, unless the exception is based on emergency

circumstance. For applications made under emergency circumstances after the deadline, the nature of the emergency shall be described in the application.

- (b) The filing of an application for exception based on emergency circumstances does not delay any reporting deadlines. If a penalty is imposed for failure to file a report on the date due, the penalty may be set aside or reduced in accordance with Article XXVIII, Section 10(2).
- (c) The Secretary of State shall review and respond in writing to all applications for an exception within three business days.

19.2.2 The report is filed using the Secretary of State's Electronic Data Interface (EDI) upon approval of the Secretary of State.

19.3 For the purposes of this Rule 19, "electronic filing" is defined as the filing of reports required by Article XXVIII and Article 45 of Title 1, C.R.S., using the TRACER internet filing system created by the Secretary of State under section 1-45-109(6), C.R.S.

19.4 The Secretary of State's online campaign finance filing system will attempt to identify potential violations by displaying warning messages when contributions or expenditures appear to violate Article XXVIII or Article 45 of Title 1, C.R.S. Filers remain responsible for compliance with the law and these rules regardless of whether the system identifies or fails to identify a potential violation.

19.5 For the purpose of section 1-45-109(2)(a), C.R.S., "close of business" for electronic filing means 11:59 p.m.

19.6 If the electronic filing system is unavailable for a total of more than one hour on the due date for filing a report, the Secretary of State may extend the due date for an additional day for electronically filed reports. [Sections 1-45-108(2.3) and 1-45-109(6), C.R.S.]

Rule 20. Redaction of Sensitive Information

20.1 Any person who believes their safety or the safety of an immediate family member may be in jeopardy as a result of information disclosed on any campaign finance report filed with the Secretary of State under Article 45 of Title 1, C.R.S., may apply to the Secretary of State to redact sensitive personal information from the online versions of such report(s).

20.1.1 The Secretary of State, upon a finding of good cause, may redact the minimum amount of sensitive information necessary to protect the safety of such person or his or her immediate family.

20.1.2 If the Secretary of State redacts sensitive information disclosed on a campaign finance report, the original unredacted report shall remain a public record under Article 72 of Title 24 C.R.S.

20.2 Applications for redaction of sensitive information shall be submitted in writing and shall include the requestor's name, the identified entry(s) of concern, a justification for the application, and the committee to whom the contribution(s) was made or expenditure(s) received.

20.3 Applications for redaction of sensitive personal information are not subject to disclosure under the Colorado Open Records Act. [Section 24-72-201 et. seq., C.R.S.]