

§ 1-45-101. Short title.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-101. Short title

This article shall be known and may be cited as the "Fair Campaign Practices Act".

Cite as C.R.S. § 1-45-101

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

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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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, establishing campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Cite as C.R.S. § 1-45-102

History. Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. Initiated 2012: Entire section amended, effective upon proclamation of the Governor.

Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. Initiated 2012, (Amendment 65): Entire section amended, L. 2013, p. 3301, §29 effective upon proclamation of the Governor, January 1, 2013.

Editor's Note:

(1) This section is similar to former § 1-45-102 as it existed prior to 1996.

(2) This section was amended by initiative in 2012. The vote count on the measure at the general election held November 6, 2012, was as follows:

FOR: 1,276,432

AGAINST: 988,542

§ 1-45-103. Definitions - repeal.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-103. Definitions - repeal

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:
 - (I) 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.
 - (d) "Contribution" does not include the payment of legal fees to advise a candidate on compliance with campaign laws or regulations or to represent a candidate or candidate committee in any action in which the candidate or committee has been named as a defendant. Such legal services are not

undertaken "for the benefit of any candidate committee" or "for the purpose of promoting the candidate's nomination, retention, recall, or election" as those phrases are used in section 2 (5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution.

- (e) "Contribution" does not include an intervention by the secretary of state, as authorized by section 1-45-111.5 (1.5)(g), in any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.
- (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) (a) "Expenditure" has the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.
- (b) "Expenditure" does not include legal services paid to defend a candidate or candidate committee against any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.
- (10. "Foreign corporation" means:
- 5) (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. "Independent expenditure committee" means one or more persons that make an
- 5) 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.

- (15. 3) "Regular biennial school election" means the election that is described in section 22-31-104(1), C.R.S.
- (15. 5) "Regular biennial school electioneering communication" has the same meaning as "electioneering communication" as defined in section 2 (7) of article XXVIII of the state constitution; except that, for purpose of the definition of regular biennial school electioneering communication only, "candidate" as referenced in section 2 (7)(a)(I) of said article means a candidate in a regular biennial school election and the requirements specified in section 2 (7)(a)(II) mean a communication that is broadcast, printed, mailed, delivered, or distributed within sixty days before a regular biennial school election. Except as otherwise specified in this subsection (15.5), the definition of "regular biennial school electioneering communication" is the same as that of "electioneering communication".
- (16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.
- (16. 3) (a) "Small-scale issue committee" means an issue committee that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.
- (b) The following are treated as a single small-scale issue committee:
- (I) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single corporation or its subsidiaries;
 - (II) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single labor organization or the affiliated local units it directs; or
 - (III) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by substantially the same person, group of persons, or other organizations.
- (c) This subsection (16.3) is repealed, effective June 30, 2019.
- (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.

Cite as C.R.S. § 1-45-103

History. Amended by 2018 Ch. 155, §1, eff. 4/23/2018.

Amended by 2016 Ch. 269, §1, eff. 6/10/2016.

Amended by 2016 Ch. 267, §1, eff. 8/10/2016.

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, (HB09-1153), 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, (SB10-203), ch. 269, p. 1229, §2, effective May 25; (12) amended, (HB10-1370), ch. 270, p. 1241, §4, effective January 1, 2011. L. 2011: (12)(c) amended, (HB11-1303), 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.*

Case Notes:

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.

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).

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 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).

The phrase "given, directly or indirectly, to a candidate for the purpose of promoting the candidate's . . . election" as the phrase is used the definition of "contribution" in § 2(5)(a)(IV) of article XXVIII of the state constitution and as incorporated by reference in subsection (6)(a) of this section requires that (1) a thing of value (2) be put into the possession of or provided to a candidate or someone acting on the candidate's behalf (3) with the intention that the candidate receive or make use of the thing of value provided (4) in order to promote the candidate's election. Keim v. Douglas County Sch. Dist., 2015 COA 61, ___ P.3d ___.

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" for purposes of the definition of expenditure in subsection (10) is limited to speech that explicitly exhorts the viewer or reader to vote for or against a candidate in an upcoming election using either the "magic words" described in Buckley v. Valeo, 424 U.S. 1, 44 n.52 (1976), or substantially similar words. The court declined to adopt a functional equivalence test for "express advocacy" that would be difficult to apply and unconstitutionally chill political speech. None of the 17 ads at issue contained any of the magic words or substantially similar synonyms. Accordingly, because none of the ads constituted "expenditures", neither of the two political organizations that distributed the ads were subject to regulation as "political committees". Colo. Ethics v. Senate Majority Fund, LLC, 2012 CO 12, 269 P.3d 1248.

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).

County school district's dissemination of a report on education policy issued by a national public policy organization is not a "contribution" in violation of § 1-45-117(1)(a)(I). *Keim v. Douglas County Sch. Dist.*, 2015 COA 61, ___ P.3d ___.

There is no evidence that report was given, directly or indirectly, to a candidate for the purpose of promoting that candidate's election. Nor is there any evidence that the district made the distribution with the intention that a particular candidate would eventually receive or make use of the report. *Keim v. Douglas County Sch. Dist.*, 2015 COA 61, ___ P.3d ___.

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).

A judicial officer seeking retention is a candidate for purposes of the definition of "candidate" in subsection (2). Further, a judicial retention vote is an election for purposes of the definition of "political committee" in subsection (14). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

An organization that supports or opposes the retention of a judicial officer is a political committee because it supports or opposes the election of a candidate and because it is recognized as such by § 1-45-109(1)(a)(I). Organization accepted contributions and made expenditures of over \$200 to oppose the retention of three justices of the Colorado supreme court. It is, therefore, a political committee. Organization cannot be both a political committee and issue committee because the two are defined under subsections (10) and (12) of art. XXVIII of the state constitution to be mutually exclusive. Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

The language in § 25 of art. VI of the state constitution stating that "a question shall be placed on the . . . ballot" does not render judicial retention a "ballot question" for purposes of this article. A judicial retention vote is not a "ballot question" because it does not involve a citizen petition or referred measure. Because a judicial retention vote does not meet the definition of a "ballot issue" or "ballot question" contained in subsections (1.3) and (1.5), organization opposing retention of three justices is not an issue committee under subsection (12)(a). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

Secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 1.12, intended to fill a gap in subsection (12)(b) of this section by defining "major purpose" in the definition of issue committee, is arbitrary and capricious. The rule imposed a requirement that, in order to determine whether an issue committee has a "major purpose" under the constitutional and statutory definitions, a demonstrated pattern of conduct is established where the organization's annual expenditures in support of or in opposition to ballot issues or ballot questions exceed 30% of the organization's total spending during the same period. The rule is arbitrary and capricious because the 30% threshold is unsupported by competent evidence in the record. Even if there was competent evidence in the record to support a 30% threshold, this threshold would not resolve the ambiguity as to how a "pattern of conduct" must be demonstrated. Thus, the rule's

30% threshold is manifestly contrary to subsection (12)(b)'s use of the phrase "pattern of conduct" in its definition of major purpose. *Colo. Ethics Watch v. Gessler*, 2013 COA 172M, 363 P.3d 727.

Secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 1.18.2, designed to fill a gap in the constitutional definition of "political committee" in subsection (14) of this section by explaining precisely how the judicially created "major purpose" test limits what groups qualify as political committees, is invalid because the constitutional definition is clear and unambiguous: Political committees are defined by their contributions or expenditures, not by an additional major purpose test. Because the provisions are clear, there is no gap for the secretary to fill, and he does not have the authority to add a "major purpose" requirement, even in an attempt to codify judicial precedent. *Colo. Ethics Watch v. Gessler*, 2013 COA 172M, 363 P.3d 727.

District court correctly invalidated secretary of state's proposed rules, 8 Colo. Code Regs. 1505-6, §§ 7.2 and 1.10, designed to fill a gap in subsection (14.5) of this section by narrowing the definition of the phrase "political organization" to conform to federal judicial precedent. The secretary's addition in § 7.2 of the rules of a requirement that a section 527 entity must have a major purpose of influencing state elections contradicts the clear and unambiguous language of subsection (14.5) of this section. This section does not look to the purpose of the entity but to the actual activities of the entity. The secretary's addition in § 1.10 of the rules of an "express advocacy" requirement also contradicts the clear and unambiguous language of this section. These rules thus contradict the clear and unambiguous language of this section by improperly eliminating the statutory distinction between a political organization and a political committee. *Colo. Ethics Watch v. Gessler*, 2013 COA 172M, 363 P.3d 727.

Money that political organization spent on legal fees did not constitute reportable spending within the meaning of subsection (16.5). The money was not "expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office". *Camp. Int. Watchdog v. Colo. Better Future*, 2016 COA 51, ___ P.3d ___.

Legal services donated to a political organization constituted in-kind contributions that must be reported. Subsection (6)(b) or (6)(c)(I) applies. The legal services were either a gift of services for which less than equivalent value was received (if the services were billed but not paid) or they were pro bono services. Therefore, the political organization received a contribution that it was required to report. *Camp. Int. Watchdog v. Colo. Better Future*, 2016 COA 51, ___ P.3d ___.

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.

§ 1-45-103.7. Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - voter instructions on spending limits - definitions.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-103.7. Contribution limits - treatment of independent expenditure committees - contributions from limited liability companies - voter instructions on spending limits - 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)
 - (a) An independent expenditure committee differs from a political committee in that an independent expenditure committee does not coordinate its activities with a candidate or political party.
 - (b) An independent expenditure committee shall not be treated as a political committee and, therefore, is not subject to the requirements of section 3 (5) of article XXVIII of the state constitution.
- (3) A candidate committee established in the name of a candidate affiliated with either a major political party or a minor political party who is running in a primary election 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 established in the name of a candidate affiliated with either a major political party or a minor political party running in a primary election 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 affiliated with a major political party or a minor political party running in a primary election who wins the primary election may expend contributions received and accepted for a primary election in the general election.

- (4.5) (a) A candidate committee established in the name of a candidate who is a write-in candidate, an unaffiliated candidate, or the candidate of a minor political party who is not running in a primary election may accept from any one person the aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution applicable to the office he or she is seeking at any point during the election cycle in which the candidate in whose name the candidate committee is accepting contributions is on the general election ballot.

- (b) A candidate committee established in the name of a candidate who is a write-in candidate, an unaffiliated candidate, or the candidate of a minor political party who is not running in a primary election may expend contributions received and accepted in accordance with paragraph (a) of this subsection (4.5) at any point during the election cycle in which the candidate in whose name the candidate committee is accepting contributions is on the general election ballot.

- (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" has the same meaning as "domestic limited liability company" as defined in section 7-90-102 (15) or "foreign limited liability company" as defined in section 7-90-102 (24).

- (9) (a) The voters instruct the Colorado congressional delegation to propose and support, and the Colorado state legislature to ratify, an amendment to the United States Constitution that allows Congress and the states to limit campaign contributions and spending, to ensure that all citizens, regardless of wealth, can express their views to one another and their government on a level playing field.
- (b) The provisions of this subsection shall take effect on January 1, 2013, and be applicable thereafter.
- (10) For purposes of this section, the terms "unaffiliated", "major political party", and "minor political party" have the same meanings as specified in the "Uniform Election Code of 1992", articles 1 to 13 of this title.

Cite as C.R.S. § 1-45-103.7

History. Amended by 2018 Ch. 155, §2, eff. 4/23/2018.

Amended by 2014 Ch. 145, §2, eff. 5/2/2014.

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, (SB10-203), ch. 269, p. 1230, §3, effective May 25. Initiated 2012, (Amendment 65): (9) added, L. 2013, p. 3301, §3 effective upon proclamation of the Governor, January 1, 2013. L. 2014: IP(3) and (4) amended and (4.5) and (10) added, (HB14-1335), ch. 145, p. 494, §2, effective May 2.

Editor's Note:

Subsection (9) was added by initiative in 2012. The vote count on the measure at the general election held November 6, 2012, was as follows:

FOR:1,276,432

AGAINST: 988,542

Case Notes:

ANNOTATION

The classification in former subsections (3) and (4) (now subsections (3), (4), and (4.5)) violates the right to equal protection for individuals wishing to contribute to write-ins, unaffiliated candidates, and minor-party candidates when each candidate runs unopposed for the nomination. This statute does not set contribution limits based on who has a primary and who does not. It creates different contribution limits for individuals running against one another. It allows Republican and Democratic candidates to collect and spend \$400 after the primary. Thus, a Republican or Democratic candidate can obtain \$400 from a single contributor and spend all of the money in the general election. For the same general election, a write-in candidate can obtain only \$200 from a single contributor.

Riddle v. Hickenlooper, 742 F.3d 922 (10th Cir. 2014) (decided prior to 2014 amendment).

Under § 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 § 3 of article XXVIII and the time limit in § 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 § 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).

An independent expenditure committee operating without the control or coordination of a political party is able to collect contributions or make independent expenditures - expenditures not controlled by or coordinated with any candidate - that are not subject to the source and contribution limits that restrict political parties under § 3(3) of article XXVIII of the state constitution and under this act. Colo. Republican Party v. Williams, 2016 COA 26, 370 P.3d 650.

Cross References:

(1) 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.

(2) For the legislative declaration in HB 14-1335, see section 1 of chapter 145, Session Laws of Colorado 2014.

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

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

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

Cite as C.R.S. § 1-45-104

History. 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).

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Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

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

Cite as C.R.S. § 1-45-105

History. 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).

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Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

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

Cite as C.R.S. § 1-45-105.3

History. 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.*

§ 1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-105.5

History. 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, (HB12-1070), 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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 ct; 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.

Cite as C.R.S. § 1-45-106

History. 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, (SB10-041), 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.

Case Notes:

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*, 11 3 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*, 11 3 P.3d 1255 (Colo. App. 2005).

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

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

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

Cite as C.R.S. § 1-45-107

History. 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)).

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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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) must 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, general, or regular biennial school 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, general, or regular biennial school election, the notice required by this subsection (6) must 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) [Repealed by 2018 amendment.]
- (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 website 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.

Cite as C.R.S. § 1-45-107.5

History. Amended by 2018 Ch. 155, §3, eff. 4/23/2018.

Amended by 2016 Ch. 267, §2, eff. 8/10/2016.

L. 2010: Entire section added, (SB10-203), ch. 269, p. 1231, §4, effective May 25.

Editor's Note:

Section 5 of chapter 267 (HB 16-1282), Session Laws of Colorado 2016, provides that changes to this section by the act apply to the portion of any election cycle or for the portion of the calendar year remaining after August 10, 2016, and for any election cycle or calendar year commencing after August 10, 2016, whichever is applicable.

Case Notes:

ANNOTATION

An independent expenditure committee operating without the control or coordination of a political party is able to collect contributions or make independent expenditures - expenditures not controlled by or coordinated with any candidate - that are not subject to the source and contribution limits that restrict political parties under § 3(3) of article XXVIII of the state constitution and under this act. *Colo. Republican Party v. Williams*, 2016 COA 26, 370 P.3d 650.

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 - repeal.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-108. Disclosure - definition - repeal

- (1) (a) (I) Subject to subsection (1.5) of this section, 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) Subject to subsection (1.5) of this section, 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 or regular biennial school 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 must also include the person's occupation and employer. Electioneering communication reports must

include the name of the candidate or candidates unambiguously referred to in the electioneering communication or regular biennial school electioneering communication.

- (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.
- (V) Any disbursement not otherwise defined as an expenditure may be reported to the appropriate officer.

(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.

(1.5) Notwithstanding any other provision of law, in light of the opinion of the United States court of appeals for the tenth circuit in the case of *Coalition for Secular Government v. Williams*, No. 14-1469 (10th circuit March 2, 2016), that affirmed the order of the federal district court in the case of *Coalition for Secular Gov't v. Gessler*, Case No. 12 CV 1708, the disclosure requirements specified in subparagraph (I) or (II) of paragraph (a) of subsection (1) of this section and the reporting requirements specified in subsection (3.3) or (6) of this section shall not apply to a small-scale issue committee. Any small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

- (a) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that does not exceed two hundred dollars is not required to disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures.

- (b)
 - (I) Any small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle of between two hundred dollars and five thousand dollars shall register with the appropriate officer within ten business days of the date on which the aggregate amount of contributions or expenditures exceeds two hundred dollars. The registration required by this subparagraph (I) must include a statement listing:
 - (A) The committee's full name, spelling out any acronyms used in the name;
 - (B) The name of a natural person authorized to act as a registered agent of the committee;
 - (C) A street address for the principal place of business of the committee;
 - (D) The purpose or nature of interest of the committee; and
 - (E) The name of the financial institution in which, in a separate account bearing the name of the committee, all contributions received by the committee are deposited.

 - (II) Any small-scale issue committee described in subparagraph (I) of this paragraph (b) is not required to make any disclosure about any contributions or expenditures it has made or received.

- (c)
 - (I) At such time as any issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars, the committee shall report to the appropriate officer, for each particular contribution or expenditure accepted or made, the name and address of each person who has made such contribution and the amount of each specific contribution and expenditure accepted or made by the committee.

 - (II) At such time as any issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate

amount during any applicable election cycle that exceeds five thousand dollars, the committee shall make disclosure of any contributions or expenditures it accepts or makes on or after the date on which such aggregate amount exceeds five thousand dollars in compliance with all applicable requirements under this article pertaining to the disclosure by an issue committee of its contributions or expenditures accepted or made.

(III) Within fifteen days of a small-scale issue committee becoming subject to the applicable requirements governing an issue committee under this article, the committee through its registered agent, shall report this change in the committee's status to the secretary of state.

(d) This subsection (1.5) is repealed, effective June 30, 2019.

- (2) (a) (I) Except as provided in subparagraph (V) of this paragraph (a) and subsections (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state must 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, including a regular biennial school election; and "major election" means the election that decides an issue committee's issue, the election that elects a person to the public office sought by the candidate committee's candidate, and a regular biennial school election.

(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.

(V) Any political committee, small donor committee, independent expenditure committee, or political organization that is participating in a regular biennial school election shall file its disclosure reports in accordance with the filing schedule specified in sub-subparagraphs (C) to (E) of subparagraph (I) of this paragraph (a) as of the date the committee or organization, as applicable, makes an expenditure or undertakes spending in connection with that election.

(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) (a) Except as provided in subsection (2.5)(b) of this section, and in addition to any report required to be filed with the secretary of state or municipal clerk under this section, all candidate committees, issue committees, and political parties must 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, general election, or regular biennial school election. This report shall be filed with

the secretary of state no later than twenty-four hours after receipt of said contribution.

(b) Notwithstanding the provisions of subsection (2.5)(a) of this section, the following committees need not file the reports described in subsection (2.5)(a) of this section in the following instances:

- (I) An issue committee need not report a contribution of one thousand dollars or more preceding a primary election;
- (II) A committee for a candidate not on the ballot need not report a contribution of one thousand dollars or more during the off-election year; and
- (III) A candidate or candidate committee for school board need not report a contribution of one thousand dollars or more during the off-election year.

(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 subsections (1.5) and (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 must 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) Subject to subsection (1.5) of this section, 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 subsection (7)(b) of this section, a matter is considered a ballot issue or a 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 45 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 and any motion for rehearing has been heard;
 - (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.

Cite as C.R.S. § 1-45-108

History. Amended by 2018 Ch. 155, §4, eff. 4/23/2018.

Amended by 2016 Ch. 269, §2, eff. 6/10/2016.

Amended by 2016 Ch. 267, §3, eff. 8/10/2016.

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, (HB09-1357), ch. 361, p. 1871, §1, effective July 1; IP(3) and (3)(f) amended and (3.3) and (7) added, (HB09-1153), ch. 174, p. 774, §2, effective September 1. L. 2010: (1)(a)(III), (3)(f), (3.3), (4), and (6) amended, (SB10-041), ch. 151, p. 522, §2, effective July 1; (3.3) amended, (HB10-1370), ch. 270, p. 1241, §5, effective January 1, 2011. L. 2012: (2)(a)(I)(B) amended, (SB12-014), ch. 1, p. 1, §1, effective January 30; (1)(c) amended, (HB12-1269), 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.

Case Notes:

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, 558 U.S. 1024, 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); *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267 (10th Cir. 2016).

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); *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267 (10th Cir. 2016).

The \$200 contribution and expenditure threshold for issue committees under § 2(10)(a)(II) of article XXVIII and the retrospective reporting requirements for issue committees under subsection (1)(a)(I) of this section were not facially invalidated by the tenth circuit's holding in Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010). The secretary of state promulgated 8 Colo. Code Regs. 1505-6, § 4.1 (rule 4.1), in response to Sampson. Because rule 4.1's \$5,000 threshold and its retrospective reporting exemption clearly conflict with the still-valid constitutional and statutory provisions, rule 4.1 is unlawful and set aside. The secretary of state exceeded his authority in promulgating the rule. *Gessler v. CO Common Cause & Ethics Watch*, 2014 CO 44, 327 P.3d 232.

Although in promulgating rule 4.27 (later codified as rule 4.1), the secretary was attempting to clarify the registration and reporting requirements in light of Sampson, Sampson did not facially invalidate any provision of the campaign finance law, and, to the extent Sampson impacts the future application of campaign finance laws on issue committees in a similar factual context, rule 4.27 exceeds the scope of Sampson. *Colo. Common Cause v. Gessler*, 2012 COA 147, ___ P.3d ___, aff'd, 2014 CO 44, 327 P.3d 232.

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*, 11 3 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 8 Colo. Code Regs, 1505-6, § 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).

District court properly invalidated secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 18.1.8, that attempted to fill a gap in subsection (2.5) of this section by creating a uniform way to assess "good cause" and levy fines. The rule merely eliminates penalties after a contribution is first disclosed and after election day regardless of a showing of good cause. The rule applies equally to those who intentionally avoid reporting obligations as well as those who do not report due to inadvertence. So, because the rule does not fill a gap, but applies irrespective of whether there is actually good cause to reduce or eliminate penalties, the rule is manifestly contrary to § 10(2)(c) of art. XXVIII of the state constitution, which requires the secretary to set aside or reduce a penalty only upon a showing of good cause. *Colo. Ethics Watch v. Gessler*, 2013 COA 172M, 363 P.3d 727.

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.

§ 1-45-108.3. Issue committees - disclaimer.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-108.3

History. L. 2010: Entire section added, (HB10-1370), 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-108.5

History. L. 2007: Entire section added, p. 1225, § 3, effective July 1.

Case Notes:

ANNOTATION

Political organization required to report legal services donated to it as an in-kind contribution. The definition of "contribution" in § 1-45-103(6)(b) or (6)(c)(I) applies. The legal services were either a gift of services for which less than equivalent value was received (if the services were billed but not paid) or they were pro bono services. Therefore, the political organization received a contribution that it was required to report. *Camp. Int. Watchdog v. Colo. Better Future*, 2016 COA 51, ___ P.3d ___.

Payment by political organization of court costs did not meet the statutory definition of spending and, therefore, the political organization did not need to report it as such. The funds were not 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 under the definition of "spending" in § 1-45-103 (16.5). *Camp. Int. Watchdog v. Colo. Better Future*, 2016 COA 56M, 378 P.3d 852.

§ 1-45-109. Filing - where to file - timeliness - definition.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-109. Filing - where to file - timeliness - definition

- (1) For the purpose of meeting the filing and reporting requirements of this article 45:
 - (a) The following shall file with the secretary of state:
 - (I) Candidates for statewide office, the general assembly, district attorney, district court judge, school district director, 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 45 are timely if received by the appropriate officer not later than the close of business on 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 45 are public records and are open to inspection by the public during regular business hours. A copy of the report must be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection. When the secretary of state is the appropriate officer, the secretary shall make reports viewable on the secretary of state's official website.
 - (b) Any report that is deemed incomplete by the appropriate officer must be accepted and the committee must be notified of the deficiency. If an e-mail address is on file with the secretary of state, the secretary of state may provide such notification by e-mail. The committee has thirty calendar days from the date such notice is sent,

whether electronically or by United States mail, to file an addendum that cures the deficiencies.

- (c) (I) Upon receipt of a complaint brought under section 9 (2)(a) of article XXVIII of the state constitution alleging a failure to file other information required to be filed or disclosed pursuant to article XXVIII of the state constitution or this article 45, the secretary of state shall give notice to the committee by e-mail, or by regular mail if an e-mail address is not known, of the deficiencies alleged in the complaint. Service of the notice does not toll or otherwise affect the three-day period during which the secretary of state is required to refer a complaint to an administrative law judge pursuant to section 9 (2)(a) of article XXVIII of the state constitution. Upon receipt of the notice from the secretary of state, the committee may request from the appropriate officer a postponement of the hearing brought under section 9 (2)(a) of article XXVIII of the state constitution and, if such request is timely submitted, has fifteen business days from the date of the notice to file an addendum to the relevant report that cures any such deficiencies in the disclosure specified in the notice. The committee shall also provide the complainant notice of the entity's intent to cure and a copy of the addendum on the same day that the addendum is filed with the secretary of state. Where the committee files an addendum that cures all deficiencies alleged in the complaint before the expiration of the fifteen-day period specified in this subsection (4)(c)(I), the appropriate officer shall not assess a penalty against the committee that otherwise would have been assessed for the deficiencies for the period from the first date of the alleged violation through the expiration of the cure period.
- (II) Upon filing an addendum to the relevant report by the committee that cures all such deficiencies in accordance with subsection (4)(c)(I) of this section, the appropriate officer shall set a hearing within thirty days of the notice to determine whether all issues raised by the complaint have been resolved. If the committee fails to cure any such deficiency, any penalty imposed for the deficiency continues to accrue until further resolution of the matter. Notwithstanding any other provision of law, subsection (4)(c)(I) of this section only applies in the case of a good faith effort by a committee to make a timely disclosure in accordance with article XXVIII of the state constitution or this article 45 or where the disclosure made by the committee is in substantial compliance with such legal requirements. The committee has the burden of demonstrating good faith or substantial compliance under this subsection (4)(c)(II) by a preponderance of the evidence in the hearing held by the appropriate officer under section 9 (2)(a) of article XXVIII of the state constitution. Where the committee fails to satisfy its burden of

demonstrating either good faith or substantial compliance, the administrative law judge shall enter or impose a civil penalty in accordance with the following:

- (A) If the amount of the penalty that has accrued to that point in time is less than five thousand dollars, the administrative law judge shall impose a penalty in the amount of the penalty that has accrued to that point in time.
- (B) If the amount of the civil penalty that has accrued to that point in time is five thousand or more dollars, the administrative law judge shall impose a penalty, in his or her discretion, in an amount that is not less than five thousand dollars.

- (5)
 - (a) The secretary of state shall operate and maintain a website 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 website.
 - (c) The website 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 website'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) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, §2, and effective July 1, 2009.)
 - (III)
 - (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.
- (12) For purposes of subsection (4)(c) of this section, "appropriate officer" means a hearing officer or an administrative law judge.

Cite as C.R.S. § 1-45-109

History. Amended by 2018 Ch. 155, §5, eff. 4/23/2018.

Amended by 2017 Ch. 236, §1, eff. 8/9/2017.

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, (HB09-1357), ch. 361, p. 1872, §2, effective July 1. L. 2010: (11) added, (SB10-203), ch. 269, p. 1235, §5, effective May 25; (4)(b) and (6) amended, (SB10-041), 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.)*

(3) *Section 2 of chapter 236 (HB 17-1155), Session Laws of Colorado 2017, provides that the act changing this section applies to the disclosure of campaign finance information made on or after August 9, 2017.*

Case Notes:

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)(I) 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).

An organization that supports or opposes the retention of a judicial officer is a political committee because it supports or opposes the election of a candidate and because it is recognized as such by subsection (1)(a)(I). Organization accepted contributions and made expenditures of over \$200 to oppose the retention of three justices of the Colorado supreme court. It is, therefore, a political committee. Organization cannot be both a political committee and issue committee because the two are defined under subsections (10) and (12) of art. XXVIII of the state constitution to be mutually exclusive. *Colo. Ethics Watch v. Clear the Bench*, 2012 COA 42, 277 P.3d 931.

Cross References:

For the legislative declaration in the 2010 act adding subsection (11), see section 1 of chapter 269, Session Laws of Colorado 2010.

§ 1-45-110. Candidate affidavit - disclosure statement.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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 1-13.5-303, 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) If any person fails to file the affidavit or the disclosure statement required by subsection (2) of this section, the designated election official certifying the ballot in accordance with section 1-5-203 (3)(a) shall send a notice to the person by certified mail, return receipt requested, to the person's mailing address. The notice must state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of the receipt of the notice. If the person fails to file the appropriate document within that time frame, the designated election official shall disqualify the

candidate.

- (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.

Cite as C.R.S. § 1-45-110

History. Amended by 2018 Ch. 155, §6, eff. 4/23/2018.

Amended by 2014 Ch. 2, §44, eff. 2/18/2014.

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, (SB10-041), ch. 151, p. 524, §4, effective July 1. L. 2014: (1) amended, (HB14-1164), ch. 2, p. 74, §44, effective February 18.

Editor's Note:

This section is similar to former § 1-45-105 as it existed prior to 1996.

Cross References:

For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

§ 1-45-111. Duties of the secretary of state - enforcement. (Repealed).

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Cite as C.R.S. § 1-45-111

History. 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 - definition.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-111.5. Duties of the secretary of state - enforcement - sanctions - definition

- (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 45 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 is subject to all applicable procedures specified in section 9 (2) of article XXVIII of the state constitution. The person filing the complaint must serve the complaint on the respondent by certified mail, return receipt requested, on the same day the person files the complaint with the secretary of state. The person filing the complaint must

state factual allegations of a violation. For purposes of this section and section 9 (2) of article XXVIII of the state constitution, "complaint" means a signed document that alleges a violation of article XXVIII of the state constitution or of this article 45.

- (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 website in a prominent manner for not less than one hundred eighty days after the final adjudication. A copy of this notice, with the website address used, shall be filed

with the secretary of state and shall be a public record.

(g) The secretary of state has, as a matter of right, the right to intervene in any action pending before the office of administrative courts or the court of appeals that is brought to enforce the provisions of article XXVIII of the state constitution or this article.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article 45 is 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 commenced for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including 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 and issued written findings regarding the provisions of section 13-17-102(5) and (6). Either party in an action in which the office of administrative courts awarded attorney fees and costs may apply to a district court to convert an award of attorney fees and costs into a district court judgment. Promptly upon the conversion of the award of attorney fees and costs into a district court judgment, the clerk of the district court shall mail notice of the filing of the judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. 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.
- (5) Not later than December 1, 2016, the secretary of state shall create and post on the secretary's official website a campaign finance training course that offers sufficient content to satisfy the training requirements for administrative law judges that is required by section 24-30-1003(6), C.R.S.

History. Amended by 2018 Ch. 155, §7, eff. 4/23/2018.

Amended by 2016 Ch. 290, §1, eff. 8/10/2016.

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, (SB10-203), ch. 269, p. 1236, §6, effective May 25; (3) added, (HB10-1370), ch. 270, p. 1242, §7, effective January 1, 2011. L. 2011: (4) added, (HB11-1117), ch. 35, p. 97, §1, effective March 21.

Case Notes:

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 Major. Fund, 275 P.3d 674 (Colo. App. 2010), aff'd on other grounds, 2012 CO 12, 269 P.3d 1248.

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 Major. Fund, 275 P.3d 674 (Colo. App. 2010), aff'd on other grounds, 2012 CO 12, 269 P.3d 1248.

Subsection (2) of this section and § 9(2)(a) of article XXVIII of the state constitution do not permit a respondent who has been awarded attorney fees in an action under the Fair Campaign Practices Act (FCPA) to enforce the action in the district court. The plain language of subsection (2) and subsection 9(2)(a) of article XXVIII read together creates a nonreciprocal right to enforce an ALJ's award ordered in a campaign finance violation action and leaves a respondent without a remedy under either article XXVIII or the FCPA to enforce that award. While this may create an unintended result, the legislature or the people must determine the remedy and the court is not a board of editors with power to rewrite statutes or the constitution to improve them. Because respondent was not authorized by subsection 9(2)(a) of article XXVIII to seek enforcement of the ALJ's attorney fees order in the district court, the district court did not err when it dismissed her petition for lack of subject matter jurisdiction. McGihon v. Cave, 2016 COA 78, ___ P.3d ___.

Subsection (2) does not apply to costs on appeal. Camp. Int. Watchdog v. Colo. Better Future, 2016 COA 51, ___ P.3d ___; Camp. Int. Watchdog v. Colo. Better Future, 2016 COA 56M, 378 P.3d 852.

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

§ 1-45-112. Duties of municipal clerk.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-112

History. 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, (HB09-1357), 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-112.5

History. L. 2003: Entire section added, p. 2160, § 6, effective June 3. L. 2010: (3) and (4) added, (SB10-203), 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).

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 1-45-113. Sanctions. (Repealed)

Cite as C.R.S. § 1-45-113

History. 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-114

History. 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-115

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

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-116

History. 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.

Case Notes:

ANNOTATION

Because Colorado Springs, as a home rule municipality, enacted a campaign practices ordinance, this section expressly provides that neither the campaign finance provisions of the state constitution nor this article applies to a complaint submitted to the secretary of state (secretary) alleging that certain candidates for city council had violated the ordinance. Accordingly, an administrative law judge to whom the complaint had been forwarded by the secretary lacks subject matter jurisdiction over campaign practices arising out of the city's elections and properly dismissed the complaint. The attempted referral of the complaint to the secretary conflicts with the clear intent of the general assembly to exclude home rule municipality elections from state disclosure requirements when the home rule municipality has adopted its own ordinances regulating campaign practices. In re

§ 1-45-117. State and political subdivisions - limitations on contributions.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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)
- (a) 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.
 - (b) If a board, commission, or council is found to have made a contribution or expenditure in violation of this section, an individual member of the board, commission, or council who voted in favor of or otherwise authorized the contribution or expenditure may be ordered to reimburse an amount pursuant to subsection (4)(a) of this section as long as the amount does not exceed the amount ordered to be reimbursed by any other individual of the board, commission, or council who voted in favor or otherwise authorized the contribution or expenditure.

Cite as C.R.S. § 1-45-117

History. Amended by 2018 Ch. 155, §8, eff. 4/23/2018.

Amended by 2015 Ch. 89, §1, eff. 8/5/2015.

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, (SB10-203), ch. 269, p. 1237, §8, effective May 25. L. 2015: (4) amended, (HB15-1074), ch. 89, p. 256, §1, effective August 5.

Editor's Note:

This section is similar to former § 1-45-116 as it existed prior to 1996.

Case Notes:

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).

The phrase "given, directly or indirectly, to a candidate for the purpose of promoting the candidate's . . . election" as used in the definition of "contribution" in § 2(5)(a)(IV) of article XXVIII of the state constitution and as incorporated by reference in § 1-45-103(6)(a) requires that (1) a thing of value (2) be put into the possession of or provided to a candidate or someone acting on the candidate's behalf (3) with the intention that the candidate receive or make use of the thing of value provided (4) in order to promote the candidate's election. *Keim v. Douglas County Sch. Dist.*, 2015 COA 61, ___ P.3d ___.

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).

County school district's dissemination of a report on education policy issued by a national public policy organization is not a "contribution" in violation of subsection (1)(a)(I). *Keim v. Douglas County Sch. Dist.*, 2015 COA 61, ___ P.3d ___.

There is no evidence that the report was given, directly or indirectly, to a candidate for the purpose of promoting that candidate's election. Nor is there any evidence that the district distributed the report with the intention that a particular candidate would eventually receive or make use of it. *Keim v. Douglas County Sch. Dist.*, 2015 COA 61, ___ P.3d ___.

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.

§ 1-45-117.5. Media outlets - political records.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-117.5

History. L. 2010: Entire section added, (SB10-203), 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.

Colorado Statutes

Title 1. ELECTIONS

ELECTION CAMPAIGN REGULATIONS

Article 45. Fair Campaign Practices Act

Current through Chapter 424 of the 2018 Legislative Session (with the exception of Ch. 371, which is not available)

§ 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.

Cite as C.R.S. § 1-45-118

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

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