DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202 Plaintiffs: COLORADO ETHICS WATCH and COLORADO COMMON CAUSE, v. Defendant: SCOTT GESSLER, in his capacity as Colorado Secretary of State	
Attorneys for Plaintiffs: Luis Toro, #22093 Margaret Perl, #43106 Colorado Ethics Watch 1630 Welton Street, Suite 415 Denver, Colorado 80202 Telephone: (303) 626-2100 Fax: (303) 626-2101 E-mail: ltoro@coloradoforethics.org pperl@coloradoforethics.org Attorneys for Colorado Ethics Watch Jennifer H. Hunt, # 29964 Hill & Robbins, P.C. 1441 18th Street, Suite 100 Denver, CO 80202-1256 Telephone: (303) 296-8100 Fax: (303) 296-2388 E-mail: jhunt@hillandrobbins.com Attorneys for Colorado Common Cause	▲ **COURT USE ONLY** ▲ Case Number:2012CV_____ Division: Courtroom:
COMPLAINT	

Plaintiffs Colorado Ethics Watch ("Ethics Watch") and Colorado Common Cause ("CCC") for their complaint against Scott E. Gessler, in his capacity as Colorado Secretary of State (the "Secretary"), allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Ethics Watch is the registered trade name of Citizens for Responsibility and Ethics in Washington, a nonprofit corporation qualified to conduct business in Colorado.

2. CCC is a state chapter of Common Cause, a non-profit corporation qualified to conduct business in Colorado.

3. Defendant Gessler is Secretary of State of Colorado.

4. This Court has jurisdiction over the Defendant and venue is proper in the City and County of Denver pursuant to C.R.S. § 24-4-106(4).

GENERAL ALLEGATIONS

5. This is an action for judicial review under the Colorado Administrative Procedure Act, C.R.S. § 24-4-101, et seq., and declaratory judgment under Colorado Rule of Civil Procedure 57 regarding a rulemaking by the Colorado Secretary of State.

6. Ethics Watch is a "person" for purposes of Colo. Const. art. XXVIII, § 9, which authorizes "any person" to file complaints for violations of Colorado's campaign finance laws. Ethics Watch has exercised this right on multiple occasions over a course of several years, filing complaints to enforce a variety of Colorado campaign finance requirements. Ethics Watch is a nonprofit organization that uses legal tools to hold public officials, candidates, and organizations accountable for violations of government ethics and campaign finance laws pursuant to the citizen enforcement system created by the Colorado Constitution. Ethics Watch is adversely affected by the rules that are the subject of this action because the rules conflict with the Colorado Constitution and Colorado statutes, reduce transparency in campaign finance, and would make Ethics Watch's efforts to enforce campaign finance laws with regard to electioneering communications, political organizations, issue committees, and political committees more difficult by limiting the timely disclosure of campaign finance information during the 2012 election cycle. Ethics Watch is also a "person" eligible to seek declaratory judgment under C.R.C.P. 57 with a legitimate interest in compliance by the government with constitutional and statutory requirements.

7. CCC is a "person" for purposes of Colo. Const. art. XXVIII, § 9, which authorizes "any person" to file complaints for violations of Colorado's campaign finance laws. CCC is a citizens' advocacy group that works to ensure open, honest and accountable government at the national, state and local levels. CCC was a proponent of Amendment 27, the ballot measure which became Colo. Const. article XXVIII, and has worked toward campaign finance reforms in Colorado for 39 years. CCC's members are approximately 5,300 Colorado residents in 51 counties across the state. All of CCC's members are impacted by the recodification and amendments to Colorado's Rules Concerning Campaign and Political Finance which are the subject of this complaint. The interests CCC seeks to protect in this suit are germane to its purpose of strengthening public participation and public faith in government; promoting fair and honest elections; and protecting the civil rights of all Americans. CCC has a long history in Colorado of working to ensure transparent and open campaign financing, and to create a level playing field so that wealthy individuals, corporations and special interest groups do not exercise a disproportionate level of influence over the political process.

8. On November 15, 2011, the Secretary issued a Notice of Proposed Rulemaking, Proposed Statement of Basis, Purpose and Specific Statutory Authority and a Preliminary Draft of Proposed Rules which proposed a complete recodification of the Rules Concerning Campaign and Political Finance at 8 CCR 1505-6 ("Rules") and proposed substantive amendments to numerous Rules.

9. On December 9, 2011, the Secretary issued a Revised Proposed Statement of Basis, Purpose and Specific Statutory Authority and a Revised Draft of Proposed Rules.

10. Among the proposals in the Revised Draft were: (1) the proposed repeal of Rule 9.4 regarding electioneering communications and the addition of proposed Rule 1.7 containing a new definition for "electioneering communications;" (2) the proposed recodification of Rule 4.20 regarding political organizations as proposed Rule 7.2 with amendments; (3) a proposed new Rule 1.10 defining "influencing or attempting to influence" for purposes of political organizations; (4) the proposed recodification of Rule 1.7 regarding issue committees as proposed new Rule 1.12 with amendments; (5) the proposed recodification of Rule 1.10 regarding political committees as a proposed Rule 1.18 with amendments; (6) the proposed recodification of Rule 4.27 setting a monetary threshold on issue committee filing as proposed new Rule 4.1 with amendments; (7) a proposed new Rule 15.6 setting a monetary threshold on issue committees involved in a recall election; (8) a proposed new Rule 18.1.8 regarding penalties for failure to file a major contributor report; and (9) the proposed recodification of Rule 7 regarding "home rule" jurisdictions as proposed Rule 14 with amendments and new Rules 6.1.1 and 6.2 regarding political party contribution limits.

11. Ethics Watch and CCC submitted written comments on the proposed Rules, and a public hearing was held on December 15, 2011. Ethics Watch also provided in-person testimony at the hearing.

12. On February 22, 2012, the Secretary issued a Notice of Temporary and Permanent Adoption which re-codified the entire 8 CCR 1505-6 with the Rule Amendments included in the Notice. The Secretary also issued a Statement of Basis, Purpose and Specific Statutory Authority and a Statement of Justification and Reasons for Adoption of Temporary Rules.

13. The Rules adopted Rule 1.7 regarding electioneering communications, Rules 1.10 and 7.2 regarding political organizations, Rule 1.12 regarding issue committees, Rule 1.18 regarding political committees, Rules 4.1 and 15.6 regarding issue committees, Rule 18.1.8 regarding major contributor reports, and Rules 6.1.1, 6.2 and 14.4 regarding political party contribution limits.

14. Temporary adoption of the Rules was effective March 7, 2012 and the Rules will become permanently effective on April 12, 2012.

FIRST CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Electioneering Communications)

15. Plaintiffs repeat Paragraphs 1 – 14 above.

16. Under the Colorado Constitution, an "electioneering communication" is defined as a communication that "unambiguously refers to any candidate" and is broadcast, printed in a newspaper or billboard, direct mailed or distributed to members of the electorate for that candidate's office within 30 days before a primary election or 60 days before any general election. Colo. Const. art. XXVIII, § 2(12)(a); see also C.R.S. § 1-45-103(9) (defining "electioneering communication" as the same meaning as set forth in article XXVIII).

17. Any person spending more than $1,000 in a calendar year on electioneering communications is required to disclose the amounts expended on those communications, information regarding any persons contributing more than $250 towards the communications, and the candidate referred to in the communications. Colo. Const. art. XXVIII, § 6(1); C.R.S. § 1-45-108(1)(a)(III); Rule 11.5 (prior Rule 9.3).

18. The constitutional ban on direct spending by corporations and labor unions for electioneering communications in article XVIII § 6(2) was declared void and unenforceable by the Colorado Supreme Court in 2010. *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).

19. Rule 1.7 narrows the range of communications classified as "electioneering communications" by explicitly adding a requirement the communication be "the functional equivalent of express advocacy" in addition to meeting the definition in article XXVIII. Rule 1.7.3 further limits the scope of the constitutional definition by listing types of communications that would be categorically exempt from the definition of "functional equivalent of express advocacy."

20. Rule 1.7 violates the constitution and statute by adding a "functional equivalent of express advocacy" requirement to the definition of "electioneering communications" that is not contained in the constitution and by exempting whole categories of communications from this definition.

21. The Secretary's enactment of Rule 1.7 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const. art. XXVIII, § 9; see also C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify, or conflict with constitutional provisions. *Sanger v. Dennis,* 148 P.3d 404, 408 (Colo. App. 2006).

22. The Secretary's enactment of Rule 1.7 is arbitrary and capricious in that there is no rational basis in the record to exempt any communications meeting the constitutional definition of "electioneering communications" from the constitutional and statutory reporting requirements, dramatically decreasing the amount of disclosure mandated by Colorado voters.

23. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rule 1.7 must be set aside.

SECOND CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Political Organizations)

24. Plaintiffs repeat Paragraphs 1 – 14 above.

25. Under Colorado law, "political organization" is specifically defined as any organization defined in, and seeking or holding a tax exemption under, section 527 of the IRS code, "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." C.R.S. § 1-45-103(14.5).

26. Political organizations are subject to certain disclosure requirements but are not restrained by any contribution limitations or prohibitions. Specifically, political organizations must file a registration and report contributions received in any amount over $20, and must report "any spending by the political organization" that exceeds $20 in any reporting period. C.R.S. §1-45-108.5(1).

27. Rules 1.10 and 7.2 amend the definition of "political organization" to be narrower than these statutory provisions. New Rule 7.2.1 states that an entity will be considered a political organization for purposes of §1-45-108.5 "only if [it] has as its major purpose influencing or attempting to influence elections as defined in Rule 1.10" and it is exempt or seeks exemption under the IRS code. New Rule 1.10 further narrows the scope of these provisions by defining "influencing or attempting to influence" as "making expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate or candidates."

28. Rule 7.2 violates the statute by adding a "major purpose" requirement to the statutory definition of "political organization." Rule 1.10 also violates the statute by adding a requirement that such organizations make expenditures for express advocacy communications which is not contained in the statutory definition of "political organization."

29. The Secretary's enactment of Rules 1.10 and 7.2 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const. art. XXVIII, § 9; see also C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify, or conflict with statutory provisions.

30. The Secretary's enactment of Rules 1.10 and 7.2 is arbitrary and capricious in that there is no rational basis in the record to severely narrow the scope of entities required to register and report as political organizations under §1-45-108.5 and dramatically decrease the amount of disclosure under a statute that was specifically enacted to reach activity that was not already subject to disclosure under Article XXVIII.

31. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rules 1.10 and 7.2 must be set aside.

THIRD CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Issue Committees)

32. Plaintiffs repeat Paragraphs 1 – 14 above.

33. Under the Colorado Constitution, "issue committee" is defined as a person or group of persons that has "a major purpose of supporting or opposing any ballot issue or ballot question" or has accepted contributions or made expenditures in excess of $200 in support or opposition of any ballot issue. Colo. Const. art. XXVIII, § 2(10)(a).

34. Statutory provisions further define "major purpose" for purposes of this constitutional definition as support or opposition to a ballot issue as evidenced by specific objectives listed in the entity's organizational documents or a "demonstrated pattern of conduct" based on "annual expenditures in support of or opposition to a ballot issue or ballot question" or the production or funding of communications in support or opposition to a ballot issue. C.R.S. § 1-45-103(12)(b). These provisions were enacted to clarify the article XXVIII definition after the Colorado Court of Appeals decided *Independence Institute v. Coffman*, 209 P.3d 1130 (Colo. App. 2008).

35. Rule 1.12 defines "issue committee" by incorporating much of the statutory language from §1-45-103(12)(b), but adds a requirement in Rule 1.12.3(A) that annual expenditures supporting or opposing ballot issues must "exceed 30% of the organization's total spending during the same period" in order to meet the major purpose test.

36. Rule 1.12 violates the constitution by adding a 30% threshold to the constitutional definition of "issue committee" that is not found in the constitution or the statutory clarification of 1-45-103(12)(b). This numerical threshold has no basis in the constitution or statute. This Rule also violates the constitutional scheme by forcing organizations such as Ethics Watch to uncover information about an entity's total spending and figure out when or if the entity's spending related to ballot measures meet the 30% threshold in order to be able to ensure compliance with the registration and reporting requirements.

37. The Secretary's enactment of Rule 1.12 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const. art. XXVIII, § 9; see also C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify, or conflict with constitutional provisions. *Sanger v. Dennis*, 148 P.3d 404, 408 (Colo. App. 2006).

38. The Secretary's enactment of Rule 1.12 is arbitrary and capricious in that there is no rational basis in the record to exempt certain contributions to, and expenditures by, issue committees from disclosure unless and until the entity's expenditures exceed 30% of total spending by the entity. The Rule is also arbitrary and capricious in that it creates disparate treatment for different size entities based on the overall amounts of annual spending for the organization.

40. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rule 1.12 must be set aside.

FOURTH CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Political Committees)

41. Plaintiffs repeat Paragraphs 1 – 14 above.

42. Under the Colorado Constitution, "political committee" is defined as any person or group of persons "that have accepted or made contributions or expenditures in excess of $200 to support or oppose the nomination or election or one of more candidates." Colo. Const. art. XXVIII, § 2(12)(a); see also C.R.S. § 1-45-103(14) (defining "political committee" as the same meaning as set forth in article XXVIII).

43. Rule 1.18 amends the regulatory definition of "political committee" to be narrower than this constitutional definition. Rule 1.18.2 states that the term "political committee" only includes a person or group of persons that "support or oppose the nomination or election of one or more candidates as its major purpose." The Rule then defines "major purpose" as limited to: (1) that the organization "specifically identifies" supporting or opposing candidates as its "primary objective" in its organizing documents; or (2) that annual expenditures made to support or oppose candidates "are a majority of the organization's total spending during the same period."

44. Rule 1.18 violates the constitution by adding a "major purpose" test as a threshold for political committees to register and report where no such test is included in the constitutional definition of article XXVIII § 2(12). The Rule also narrowly defines how major purpose would be satisfied in a way that would make entities exempt from registering and reporting until its candidate-related spending became "a majority of" the entity's spending, regardless of whether the entity passed the constitutional threshold of $200 in expenditures or contributions. This Rule also violates the constitutional and statutory scheme by forcing organizations such as Ethics Watch to uncover information about an entity's total spending and figure out when or if the entity's spending related to candidates meets this "majority" threshold in order to be able to ensure compliance with the registration and reporting requirements.

45. The Secretary's enactment of Rule 1.18 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const. art.

XXVIII, § 9; see also C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify, or conflict with constitutional provisions. *Sanger v. Dennis,* 148 P.3d 404, 408 (Colo. App. 2006).

46. The Secretary's enactment of Rule 1.18 is arbitrary and capricious in that there is no rational basis in the record to narrow the scope of entities required to register and report as political committees under the constitution or to delay reporting of activity by such entities until such time as expenditures become a majority of the organization's annual spending. The Rule is also arbitrary and capricious in that it creates disparate treatment for different size entities based on the overall amounts of annual spending for the organization.

47. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rule 1.18 must be set aside.

FIFTH CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Issue Committee Thresholds)

48. Plaintiffs repeat Paragraphs 1 – 14 above.

49. Under the Colorado Constitution § 2(10) of the Colorado Constitution, any person or group supporting or opposing a ballot issue or ballot question becomes an "issue committee" subject to constitutional and statutory reporting requirements upon the receipt of $200 in contributions or the expenditure of $200. Colo. Const. art. XXVIII § 2(10)(a).

50. On November 17, 2011, the Denver District Court set aside prior Rule 4.27, which set a $5,000 threshold for contributions or expenditures before an issue committee was required to register and report and exempted the first $5,000 of contributions and/or expenditures from reporting, as an unauthorized exercise of the Secretary's rulemaking power. *Common Cause v. Gessler,* No. 2011CV4164 (November 17, 2011).

51. Rule 4.1 re-codifies prior Rule 4.27 with a disclaimer statement that the Rule has been declared invalid and will not be enforced unless and until the Court of Appeals reverses the District Court decision.

52. New Rule 15.6 states that issue committees supporting or opposing a recall election are not required to register or report until the committee has received or spent $5,000 in contributions or expenditures in the recall election. No statement regarding the holding in *Common Cause v. Gessler* is included in this Rule.

53. Rules 4.1 and 15.6 violate the constitution by replacing the constitutional threshold for issue committees by regulation.

54. The Secretary's enactment of Rules 4.1 and 15.6 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const.

art. XXVIII, § 9; *see also* C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify or conflict with constitutional provisions. *Sanger v. Dennis*, 148 P.3d 404, 408 (Colo. App. 2006).

55. The Secretary's enactment of Rules 4.1 and 15.6 is arbitrary and capricious in that there is no rational basis in the record for the $5,000 threshold generally or as applied to issue committees participating in recall elections. Enactment of these rules also disregards the Denver District Court's holding in *Common Cause v. Gessler*.

56. Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Therefore, Rules 4.1 and 15.6 must be set aside.

SIXTH CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Major Contributor Reports)

57. Plaintiffs repeat Paragraphs 1 – 14 above.

58. Under Colorado law, candidates, political committees, issue committees and political parties must file a separate report if they receive any contribution of $1,000 or more within the last 30 days before a primary or general election. C.R.S. § 1-45-108(2.5). The report is required to be filed within 24 hours of receipt of the contribution and is referred to as a "major contributor report" by the Secretary of State Rules. The statute specifically states that this reporting obligation is "in addition to any report" already required to be filed, such as monthly or biweekly reports. C.R.S. § 1-45-108(2.5). The statute authorizes a civil penalty of $50 per day for each day that a major contributor report is not filed. C.R.S. § 1-45-111.5(c).

59. Rule 18.1.8 limits the $50 per day fine for failure to file a major contributor reports by stopping the accrual of such fines on the date the contribution is disclosed on a regularly-scheduled report, even if no major contribution report is filed. In addition, the Rule caps the amount of fines by stating that "penalties will not accrue beyond the date of the general election."

60. Rule 18.1.8 violates the statute by excusing the failure to file a major contribution report in cases where the contribution is included on another filing in clear contravention of the statutory directive that the major contribution reporting obligation is "in addition to any report." C.R.S. § 1-45-108(2.5). The Rule also violates the statute by prohibiting the $50 per day civil penalty to accrue past the date of the election, even in cases where no major contribution report has been filed as of that date. The statutory penalty provision does not stop accrual of penalties on the date of the election. C.R.S. § 1-45-111.5(c).

61. The Secretary's enactment of Rule 18.1.8 exceeds the Secretary of State's authority to promulgate rules to "administer and enforce" campaign finance laws. Colo. Const. art. XXVIII, § 9; see also C.R.S. §§ 1-1-107(2)(a) and 1-45-111.5(1). The Secretary of State has no authority to promulgate rules that add, modify, or conflict with statutory provisions. *Sanger v. Dennis*, 148 P.3d 404, 408 (Colo. App. 2006).

62. The Secretary's enactment of Rule 18.1.8 is arbitrary and capricious in that there is no rational basis in the record to limit penalties when entities fail to file the time-sensitive disclosure of large contributions that the legislature decided were important for voters to see in the last few days before the election.

63. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rule 18.1.8 must be set aside.

SEVENTH CLAIM FOR RELIEF
(Judicial Review of Agency Action – Declaratory Judgment – Political Party Contribution Limits)

64. Plaintiffs repeat Paragraphs 1 - 14 above.

65. Colo. Const. art. XXVIII, § 3(3)(a) specifies contribution limits that bar political parties from accepting "aggregate contributions from any person, other than a small donor committee as described in paragraph (b) of this subsection (3), that exceed three thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twenty-five hundred dollars per year at the state level."

66. Colo. Const. art. XXVIII, § 3(3)(b) specifies contribution limits that bar political parties from accepting from contributions small donor committees "that exceed fifteen thousand dollars per year at the state, county, district, and local level combined, and of such amount no more than twelve thousand, five hundred dollars at the state level."

67. Pursuant to Colo. Const. art. XXVIII, § 3(13), the contribution limits in Sections 3(3)(a) of Article XXVIII have been adjusted for inflation to $3,400 per year at the state, county, district, and local level combined, and of such, no more than $2,825 at the state level.

68. Pursuant to Colo. Const. art. XXVIII, § 3(13), the contribution limits in Sections 3(3)(b) of Article XXVIII have been adjusted by rule for inflation to $17,025 per year at the state, county, district, and local level combined, and of such, no more than $14,225 at the state level.

69. The County of Pitkin ("Pitkin") and the City and County of Denver ("Denver") are home rule jurisdictions that have enacted regulations on some, but not all, matters covered by Article XXVIII of the Colorado Constitution and the Fair Campaign Practices Act.

70. On August 11, 2011, the Secretary issued an Advisory Opinion to Janice Vos Caudill, Pitkin County Clerk and Recorder, a copy of which is attached hereto as Exhibit A. In the Advisory Opinion, the Deputy Secretary of State advised the Pitkin Clerk and Recorder that

because Pitkin has enacted its own home rule campaign finance laws on other topics, political parties at the county level in Pitkin are not subject to regulation by the Secretary of State.

71. Nevertheless, Rule 14.4 purports to authorize county parties in Pitkin and Denver to raise funds "for the purpose of supporting the party's county or municipal candidates for offices within the county or municipality" without being subject to reporting requirements or contribution limits established in Article XXVIII or the FCPA.

72. Rule 14.4 is illegal and void because the Colorado Constitution clearly provides that a political party is a single entity subject to the contribution limits at its various levels specified in Colo. Const. art. XXVIII, § 3(3).

73. Any regulation that is inconsistent with or contrary to statute is void. C.R.S. § 24-4-103(8)(a). Any agency action that is arbitrary or capricious, contrary to a constitutional right, in excess of statutory authority, an abuse of discretion, unsupported by the record, or otherwise contrary to law shall be held unlawful and set aside. C.R.S. § 24-4-106(7). Rule 14.4 must be set aside.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment declaring Rules 1.7, 1.10, 1.12, 1.18, 4.1, 7.2, 15.6, 18.1.8, and 14.4 unlawful and void, permanently enjoining Defendant Scott Gessler from enforcing those Rules, and granting such further relief as the Court deems proper.

DATED: April 6, 2012.

COLORADO ETHICS WATCH

_____[Original Signature On File]_____
Luis Toro, #22093

COLORADO COMMON CAUSE

_____[Original Signature On File]_____
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