

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	
Plaintiff: COLORADO ETHICS WATCH v. Defendant: SCOTT GESSLER, in his capacity as Colorado Secretary of State	▲ COURT USE ONLY ▲ Case Number:2011CV_____
Attorneys for Plaintiff: Luis Toro, #22093 Colorado Ethics Watch 1630 Welton Street, Suite 415 Denver, Colorado 80202 Telephone: (303) 626-2100 Fax: (303) 626-2101 E-mail: ltoro@coloradoforethics.org	Division: Courtroom:
COMPLAINT	

Colorado Ethics Watch (õEthics Watchö) for its complaint against Scott E. Gessler, in his capacity as Colorado Secretary of State, alleges 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. Defendant Gessler is Secretary of State of Colorado.
3. This Court has jurisdiction over the Defendant and venue is proper in the City and County of Denver.

GENERAL ALLEGATIONS

4. This is an action for judicial review and declaratory judgment regarding a rulemaking by the Colorado Secretary of State.
5. Ethics Watch is a õpersonö for purposes of Colo. Const. art. XXVIII, § 9, which authorizes õany personö to file complaints for violations of Colorado's campaign finance laws. Ethics Watch has exercised this right on several occasions. Ethics Watch is likely to be harmed by the rule that is the subject of this action because the rule conflicts with Colorado statute and

would make Ethics Watch's efforts to enforce campaign finance laws in issue committee elections more difficult.

6. Through the enactment of Senate Bill 11-189, the date of Colorado's primary election was moved from August to the last Tuesday in June.

7. During the 2011 Regular Session, a bill (Senate Bill 11-252) was introduced, which among other things would have adjusted the disclosure schedule for primary elections and reduced the frequency of reports before the primary election. Senate Bill 11-252 was not enacted.

8. C.R.S. § 1-45-108(2)(a)(I)(B) provides, subject to certain exceptions, that candidate committees shall file contribution and expenditure reports "o[o]n the first Monday in July and on each Monday every two weeks thereafter before the primary election."

9. On May 13, 2011, Defendant issued a Notice of Proposed Rulemaking with a proposed Campaign and Political Finance Rule 5.13, purporting to eliminate the requirement that candidate committees file biweekly contribution and expenditure reports before the primary election.

10. On June 8, 2011, Defendant issued a Revised Proposed Statement of Basis, Purpose and Specific Statutory Authority and a revised draft of proposed Campaign and Political Finance Rule 5.13.

11. Ethics Watch and others submitted written comments on the proposed rule, and a public hearing was held on June 14, 2011.

12. On June 29, 2011, Defendant issued a Notice of Temporary and Permanent Adoption of Campaign and Political Finance Rule 5.13.

FIRST CLAIM FOR RELIEF
(Judicial Review of Agency Action ó Declaratory Judgment)

13. Plaintiff repeats Paragraphs 1 ó 12 above.

14. The Secretary's enactment of Campaign and Political Finance Rule 5.13 is contrary to Article XXVIII, §14 of the Colorado Constitution, and Colorado case law, and 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 effectively repeal statutes.

15. 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). Campaign and Political Finance Rule 5.13 must be set aside.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment declaring Campaign and Political Finance Rule 5.13 unlawful, permanently enjoining Defendant Scott Gessler from enforcing that Rule, and granting such further relief as the Court deems proper.

DATED: July 29, 2011.

COLORADO ETHICS WATCH

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

Address of Plaintiff:
1630 Welton Street, Suite 415
Denver, CO 80202