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Wayne Williams
Colorado Secretary of State
1600 Broadway Suite 200
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Re: *Notice of Proposed Permanent Rulemaking Written Public Comment*

To Whom it May Concern:

Please accept this public comment concerning the Proposed Permanent Rulemaking regarding the Rules Concerning Campaign and Political Finance, specifically new Rule 18.2 concerning complaints.

As a threshold matter, the Secretary lacks authority to promulgate rules that are contrary to clear constitutional and statutory provisions. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside").

The Secretary's usurpation of authority to "review" campaign finance complaints for sufficiency is predicated on a federal court ruling (1:16-CV-00138 Holland v. Williams) which the Secretary not only failed to adequately defend (by and through counsel from the Office of Attorney General) but then subsequently failed to appeal as required by the duties of his office, ceding the constitutional rights of Colorado citizens in a grossly negligent (and possibly criminal) dereliction of duty.

In short, the Secretary's usurpation of the process for enforcing violations of campaign finance law constitutionally reserved to the citizens of the State of Colorado is predicated upon his willful failure to defend the state constitution and protect the constitutional rights of citizens to petition for redress of grievances (in relation to campaign finance violations, Colo. Const. Art. XXVIII §9(2)(a) as well as the First Amendment, United States Constitution).

Specific comments on individual sections of the proposed "rules" follows. **All comment are in bold**.

Rule 18. Penalties, Violations, Complaints

As noted supra, the Colorado Constitution reserves the enforcement of campaign finance violations to "any person" who brings a complaint pursuant to Colo. Const. Art. XXVIII §9(2)(a) and pursuant to C.R.S. 1-45-111.5 et seq (Fair Campaign Practices Act, Art. XXVIII's statutory enactment).

Not only does the Secretary lack any authority to conduct review of complaints filed, decide on which cases to forward for adjudication, and/or conduct prosecution and enforcement of violations – the citizens of the State of Colorado affirmatively removed any such authority that the Secretary had previously enjoyed (under C.R.S. 1-45-111) with passage of Amendment 27, codified as Art. XXVIII.

The Secretary's usurpation of the enforcement role with the proposed Rule 18.2 is therefore not only contrary to and unsupported by constitutional or statutory authority, but expressly rejected by the vote of the populace, and should thus be *void ab initio*.

18.2 Complaints

18.2.1 Any person who believes that a violation of Article XXVIII of the Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance has occurred may file a complaint with the Secretary of State.
[Comment: this language reflects constitutional language and is unobjectionable]

18.2.1 Complaints must be filed no later than **90 days** after the complainant knew or 10 should have known by the exercise of reasonable diligence of the alleged 11 violation.
[Comment: this language, specifically the imposition of a shortened-by-half 90 day deadline for filing complaints, is contrary to clear constitutional language specifying a 180-day deadline for filing complaints, and is therefore unconstitutional and exceeds the Secretary's authority, as the Secretary lacks authority to promulgate rules that are contrary to clear constitutional and statutory provisions. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside").

18.2.3 Complaints must be filed in writing and signed by the complainant on the form provided by the Secretary of State. The complaint must identify the respondent or respondents and the complainant must provide the information required on the form.
[Comment: as previously noted, the requirement for complainants to provide a signed hardcopy of the complaint and form unnecessarily prejudice those persons not residing within close proximity to the Secretary's offices in downtown Denver. The Secretary must adopt rules to facilitate exercise of constitutional rights by ALL citizens of the state, not just those in or near the Denver Metro area. Electronic submission (Email, FAX) of complaints, complemented as necessary by a signed cover sheet, should be the norm not the exception (notably, the Secretary accepts electronic filing of all other documents, including candidate affidavits and other signed, sworn documents related to campaigns and elections).

18.2.4 UPON RECEIPT OF A COMPLAINT, THE SECRETARY OF STATE'S ELECTIONS DIVISION MUST NOTIFY THE RESPONDENT OF THE COMPLAINT BY EMAIL, OR BY MAIL IF EMAIL IS UNAVAILABLE.
[Comment: electronic notification of respondents is eminently reasonable, and reinforces the argument for allowing electronic filing of complaints as well).

18.2.5 COMPLAINTS MADE AGAINST ANY CANDIDATE FOR SECRETARY OF STATE WILL BE FORWARDED TO THE ATTORNEY GENERAL'S OFFICE FOR REVIEW IN ACCORDANCE WITH THIS RULE 18.2.

[Comment: although superficially reflecting existing constitutional language, this provision as applied to the "review" of complaints creates an insurmountable ethical conflict of interest, since the Attorney General's Office serves as counsel for the Secretary of State in legal proceedings (civil or criminal) against the Secretary in his official capacity. Consequently, charging the Secretary's *counsel* (Attorney General's Office) with "review" of complaints against the Secretary for (factual or legal) "sufficiency" is unethical and poses a substantial conflict of interest, and must be disallowed].

18.2.6 Initial Review

[Comment: the Secretary can cite to no constitutional or statutory authority for usurping the power to conduct an "initial review" of complaints filed for factual or legal sufficiency. Such review is necessarily a judicial function, and not within the purview of the Secretary, which is an executive office. Consequently, any "initial review" and subsequent rejection, dismissal, amendment, or modification of any complaint filed pursuant to constitutional and statutory procedures exceeds the Secretary's authority, is unconstitutional and *void ab initio*. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside"].

(a) THE ELECTIONS DIVISION will review THE COMPLAINT TO 12 DETERMINE

[Comment: the Elections Division is nowhere granted authority, under any constitutional or statutory provision, to make any determinations on campaign finance complaints filed. Consequently, this rule exceeds the Secretary's authority, is unconstitutional and *void ab initio*. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside"]

(1) WHETHER THE COMPLAINT WAS TIMELY FILED UNDER RULE 18.2.2

[Comment: see above. Also, the Secretary unconstitutionally shortened the deadline for filing complaints, rendering this rule and any application of the 90-day limit void ab initio.

(2) Whether the complainant has specifically identified one or more violations of Colorado Constitution Article XXVIII, the Fair Campaign Practices Act, or the Secretary of State's rules concerning campaign and political finance, and

[Comment: again, review of whether a complainant has specifically identified violations is a judicial function, not an executive one, for which the Secretary lacks authority].

(3) Whether the complainant has alleged sufficient facts to support a legal and factual basis for the complaint.

[Comment: again, review of whether a complainant has alleged sufficient facts to support a legal and factual basis for the complaint is a judicial function, not an executive one, for which the Secretary lacks authority].

(b) Within 10 business days of receiving the complaint, the elections division must take one OR MORE of the following actions:

[Comment: the Secretary lacks constitutional or statutory authorization to conduct ANY of the other "actions" listed in this section. The ONLY action authorized (indeed, mandated) in constitutional and/or statutory language is for the Secretary to log the complaint and forward it to the Office of Administrative Courts for adjudication. Any other action is contrary to express constitutional and statutory language, exceeds the Secretary's authority, and is consequently void ab initio. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside")]

(1) If the elections division determines that the complaint WAS NOT TIMELY FILED, has not specifically identified one or more violations, or that the complainant did not assert facts sufficient to support the alleged violations, the elections division will dismiss the complaint and notify the complainant and respondent of the reasons for dismissal. The dismissal is a final agency action, and subject to review under section 24-4-106, C.R.S.

[Comment: since the Secretary lacks authority to exercise the judicial function of determining whether a complaint was timely filed, specifically identifies violations, and/or alleges sufficient facts, this rule exceeds the Secretary's authority, and is consequently void ab initio. *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232 (where an SOS rule "conflicts with either" the Constitution or campaign finance statute, "the rule must be set aside")]

(2) If the elections division determines that the complaint alleges one or more curable violations as described in Rule 18.2.7, the elections division will notify the respondent and provide an opportunity to cure.

[Comment: in addition to the fact that the Secretary lacks authority to exercise the judicial function of determining whether a complaint "alleges one or more curable violations" per Rule 18.2.7, the statutory basis for that rule is unconstitutional, as alleged and currently the subject of adjudication in case 2018CA136, *Campaign Integrity Watchdog v. Kevin Leung for Douglas County Schools*. Since the rule and the statute both conflict with express constitutional language, "the rule must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(3) If the elections division determines that the complaint alleges one or more violations that require a factual finding or legal interpretation, the elections division will conduct additional review under Rule ~~18.2.6~~ 18.2.8 to determine whether to file a complaint with a hearing officer.

[Comment: this rule introduces additional delay to the constitutionally mandated process/timelines directing that the "secretary of state shall refer the complaint to an administrative law judge within three days of the filing of the complaint" – Colo. Const. Art. XXVIII §9(2)(a). Consequently, in addition to usurping the judicial function of determining the merits of a civil complaint, the Secretary's proposed rule conflicts with the clear letter of the Constitution and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

18.2.7 Curing Violations

[Comment: As noted *supra*, the "notice and cure" statute (C.R.S. 1-45-109(4) *et seq*) is unconstitutional and thus cannot serve as the basis for any rule dependent thereupon. All rules based on the unconstitutional "notice and cure" statute therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]
Comment specific to each sub-subsection follows.

(a) Upon the election division's determination that a complaint alleges a failure to file or otherwise disclose required information, or other curable violation, the elections division will notify the respondent by email, or by mail if email is unavailable, of the curable deficiencies alleged in the complaint.
[Comment: notification of the respondent by email or mail is unobjectionable, even commendable. However, the Constitution does not recognize "curable deficiencies" and post-hoc "do-overs" of violations after a complaint is filed are unconstitutional]. See 2018CA136 *Opening Brief* at 19-28, *Reply Brief* at 14-20

(b) The respondent has 10 business days from the date the notice is mailed 6 to file an amendment to the relevant report or reports that cures any 7 deficiencies specified in the notice.
[Comment: the Secretary's interposition of delay and deviation from the constitutional mandate that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" is prima facie unconstitutional; since the rule directly conflicts with constitutional text, it therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(c) THE ELECTIONS DIVISION MAY ASK THE RESPONDENT TO PROVIDE ADDITIONAL INFORMATION, AND MAY GRANT AN EXTENSION OF THE TIME FOR FILING TO FILE A NOTICE OF INTENT IN ORDER TO RESPOND TO SUCH A REQUEST.
[Comment: the Secretary's interposition of delay and deviation from the constitutional mandate that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" is prima facie unconstitutional; since the rule directly conflicts with constitutional text, it therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(d) The respondent must provide the elections division with notice of its intent to cure on the form provided by the Secretary of State and include a copy of any amendments.
[Comment: **the Secretary's interposition of additional delay and diversion of the required notice of intent to cure to the elections division rather than to the Complainant, as set forth in statute (C.R.S. 1-45-109(4) et seq) and deviation from the constitutional mandate that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" conflicts with BOTH constitutional and statutory text, and therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

(e) After the period for cure, the elections division will determine whether the respondent cured the violations, and if so, whether the respondent substantially complied or acted in good faith under Rules 18.2.8 18.2.7(F) 17 and 18.2.9 18.2.7(G).
[Comment: the "elections division" is not authorized by constitutional or statutory

language to exercise the judicial function of determining whether the respondent "cured" violations (even setting aside the constitutional deficiencies of the "cure" statute) nor to determine "substantial compliance" or "good faith" (again, a judicial function, irrespective of the lack of any constitutional basis for applying substantial compliance or "good faith" exemption. Contrariwise, the Constitution expressly reserves such factual and legal determination to the administrative law judge. Consequently, the rule conflicts with BOTH constitutional and statutory text, and therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232[

(1) IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE ELECTIONS DIVISION WILL DISMISS THE COMPLAINT.
[Comment: the elections division is not authorized to exercise the judicial function of determining whether Respondent "substantially complied" or was in "good faith" – since , the Constitution expressly reserves such factual and legal determination to the administrative law judge. Consequently, the rule conflicts with BOTH constitutional and statutory text, and therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(2) IF THE ELECTIONS DIVISION DETERMINES THAT THE RESPONDENT NEITHER SUBSTANTIALLY COMPLIED OR ACTED IN GOOD FAITH, THE ELECTIONS DIVISION WILL CONDUCT ADDITIONAL REVIEW UNDER RULE 18.2.6 TO DETERMINE WHETHER TO FILE THE COMPLAINT WITH A HEARING OFFICER.
[Comment: in addition to the jurisdictional issues noted supra, the Secretary's interposition of yet FURTHER delay to the constitutional mandate that the secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" and therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(3) The election division's determination under this subsection is a final agency action, subject to review under section 24-4-106, 28 C.R.S.
[Comment: since the elections division lacks constitutional authority to make any determination on violations, and indeed expressly contradicts clear constitutional language reserving authority to the administrative law judge, the rule conflicts with BOTH constitutional and statutory text, and therefore "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(f) IN DETERMINING WHETHER AN ENTITY SUBSTANTIALLY COMPLIED AS THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS DIVISION MUST CONSIDER:
[Comment: the elections division lacks authority to exercise the judicial function, reserved to the administrative law judge by express constitutional language, of determining whether an entity complied with the law; additionally, Colorado courts have already ruled that the "substantial compliance" standard does not apply to adjudication of campaign finance violaitons.[1] Consequently, the rule conflicts with constitutional text, and thus "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

[1] See *Campaign Integrity Watchdog v. Thurlow*, Case No. 201CA1110, (Colo. App. Oct 20, 2016) at 17 ¶34

(g) IN DETERMINING WHETHER AN ENTITY REGISTERED OR DISCLOSED IN "GOOD FAITH" AS THAT TERM IS USED IN RULE 18.2.7, THE ELECTIONS DIVISION MAY CONSIDER WHETHER TEN PERCENT OR LESS OF EITHER THE ENTITY'S DISCLOSURES OR, ALTERNATIVELY, THE REPORTED DOLLAR AMOUNTS REQUIRED ON THE REPORT OR APPEARING ON THE FILED REPORTS AT ISSUE IN THE COMPLAINT ARE OUT OF COMPLIANCE.
[**Comment: the elections division lacks authority to exercise the judicial function, reserved to the administrative law judge by express constitutional language, of determining whether an entity complied with the law. Additionally, the Secretary's invention of a percentage threshold for disclosures constitutionally mandated for EACH instance poses a direct conflict with constitutional text (see Art. XXVIII Sections 3, 6, 7, 8 cited in CIW's Opening and Reply Briefs in case 2018CA136) and thus the rule "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

(h) If the respondent fails to cure any alleged deficiency, the elections division will conduct additional review under Rule 18.2.6 18.2.8 to determine whether to file the complaint with a hearing officer.
[**Comment: in addition to the jurisdictional issues noted *supra*, the Secretary's interposition of yet FURTHER delay conflicts with the constitutional mandate that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" and therefore the rule "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

18.2.8 Investigation and Enforcement

(a) The elections division must investigate each unresolved or uncured complaint to determine whether to file a complaint with the hearing officer described in Rule 18.2.7(b) 18.2.9(B).
[Comment: the elections division is not authorized by constitutional or statutory language to conduct investigation of complaints, nor to exercise the judicial function of determining whether a complaint is meritorious. Additionally, the Secretary's interposition of delay is directly counter to the constitutional mandate that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" and therefore the rule "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(1) If the elections division determines that it will not file a complaint with a hearing officer because there is not sufficient information to support the allegations or for any other reason, it must dismiss the complaint within 30 days of the election division's initial determination under ~~Rule 18.2.4(b)~~ 18.2.6(B).
[Comment: the elections division is not constitutionally authorized to exercise the judicial function of determining whether a complaint is meritorious; indeed, such authority is reserved to the administrative law judge by express constitutional language. Consequently, since the rule directly conflicts with constitutional text, it "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

(2) If the elections division files a complaint with a hearing officer, it must send notice, including a copy of the filing, by certified mail, return receipt requested, to the complainant, and the respondent within one business day of referral.
[**Comment: providing notice to both parties is commendable; *referral* is mandated**].

(b) If the elections division files a complaint with a hearing officer under this rule, it is responsible for conducting such discovery as may be necessary for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternate allegations as may be justified by the evidence, amending the complaint to strike allegations that are not justified by the evidence, and in all other respects, prosecuting the complaint. **[Comment: the Colorado Constitution *mandates* that the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" – but not only lacks constitutional or statutory authority (or, arguably competence) to prosecute complaints and enforce violations, but was specifically divested of such authority by the passage of Amendment 27, codified as Article XXVIII, which *repealed* the Secretary's previous authority and responsibility for prosecution per C.R.S. 1-45-111.**

(c) The complainant or any other non-respondent is not a party to the review, except that a complainant may seek permission from the hearing officer to file written legal arguments or factual documentation, or both, as a friend-of-the-court. A person's status as a complainant is not sufficient to establish that he or she may be affected or aggrieved by the Secretary's action on the complaint. A complainant may also seek review of a final agency action under Rules 18.2.4(b)(1) 18.2.6(B)(1) and 18.2.7(d) 36 18.2.9(C) under section 24-4-106, C.R.S. **[Comment: this rule unconstitutionally divests the real party in interest (Complainant] of standing not only to prosecute the complaint and enforce violations, but of real "party" status for any appellate review of the Secretary's actions (or inaction). Since the rule is not only directly contrary to constitutional text, but deprives the real party in interest of fundamental constitutional rights and standing, the rule is void and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

(d) If the election division fails to file a complaint with the hearing officer within 30 days as outlined in ~~18.2.6(a)(1)~~ RULE 18.2.8(A)(1), the complaint is deemed dismissed under Rule ~~18.2.4(b)(1)~~ 18.2.6(B)(1).
[Comment: since the Colorado Constitution mandates that **the "secretary of state *shall* refer the complaint to an administrative law judge within three days of the filing of the complaint" the rule clearly conflicts with constitutional text and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232. Additionally, failure of the Secretary to exercise a constitutionally mandated duty may be a criminal offense as well (C.R.S. 18-8-404, First Degree Official Misconduct) if done "for the benefit of" another.**

18.2.9 Hearings

(a) The hearing officer must be an individual authorized under section 24-4-1 105(3), C.R.S. **[Comment: the Colorado Constitution expressly mandates that adjudication of campaign finance violations shall be conducted by an administrative law judge. The Secretary's addition of other hearing officers, including the "agency" or "member of the body which comprises the agency" thus conflicts with express constitutional language and text and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

(b) Hearings conducted by a hearing officer under Rule 18.2 must be in accordance with the provisions of section 24-4-105, C.R.S., except that A hearing officer must hold a hearing

within 15 business days of the filing of the complaint, and must make a determination within 15 days of the hearing. The respondent must be granted an extension of up to 30 days upon respondent's motion, or longer upon a showing of good cause.
[Comment: the timelines set forth in this rule mirror constitutional requirements; however, the "hearing officer" referenced includes unconstitutional deviations from express language designating an "administrative law judge" as the only "hearing officer" authorized for adjudication of campaign finance complaints].

(c) Determinations made by the hearing officer must be made under section 9 24-4-105, C.R.S., and are subject to review under section 24-4-106, 10 C.R.S.
[Comment: again, only an administrative law judge, and not the agency or members of the agency, is constitutionally authorized to adjudicate campaign finance complaints. Further, judicial review of agency actions would be effectively nullified if the real party in interest (Complainant) is deprived of standing by the Secretary's exclusion of the party from the enforcement proceedings, supra].

18.2.10 Any person seeking guidance on the application of Article XXVIII of the 16 Colorado Constitution, the Fair Campaign Practices Act, or the Secretary of 17 State's rules concerning campaign and political finance may request that the Secretary of State issue an advisory opinion regarding their specific activities.
[Comment: the Secretary is expressly proscribed by law from offering legal advice to anyone – see Campaign Finance Manual, Part Four: "The Secretary of State's office cannot offer legal advice or interpret the law, although our office will provide assistance related to the procedures for filing a complaint." Consequently, the Secretary's "advisory opinion" has no dispositive legal value; it is simply one (more or less well informed – based on the record, more likely the latter) opinion among others].

(A) THE SECRETARY OF STATE WILL DETERMINE, AT HIS OR HER DISCRETION, WHETHER TO ISSUE AN ADVISORY OPINION. IN MAKING THE DETERMINATION, THE SECRETARY WILL CONSIDER:
[Comment: since the Secretary lacks any constitutional or statutory authority to offer legal advice or issue binding legal opinions, the factors the Secretary "may consider" are moot and irrelevant].

(B) A person may rely on the Secretary of State's advisory opinion as an affirmative defense to any complaint filed under this Rule.
[Comment: since the Secretary lacks any constitutional or statutory authority to offer legal advice or issue binding legal opinions, no party may rely upon the Secretary's opinions as an affirmative defense in any adjudicative proceeding. Since this rule not only exceeds the Secretary's authority but is contrary to constitutional language, it "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

18.2.11 THE ELECTIONS DIVISION WILL MAKE DOCUMENTS RELATED TO A COMPLAINT PUBLICLY AVAILABLE AS FOLLOWS:

(A) THE ORIGINAL COMPLAINT, NOTICE OF INITIAL REVIEW, FINAL AGENCY DECISION, AND ANY COMPLAINT FILED BY THE ELECTIONS DIVISION WITH A HEARING OFFICER WILL BE PUBLICLY AVAILABLE AT THE TIME THE ELECTIONS DIVISION PROVIDES THE DOCUMENT TO THE RESPONDENT.
[Comment: since these filings are a matter of public record, they should be available to the public online as a matter of course]

(B) ANY ADDITIONAL DOCUMENTATION RELATED TO THE COMPLAINT, INCLUDING A NOTICE OF INTENT TO CURE AND SUPPORTING EVIDENCE, OR DOCUMENTS RELATED TO THE ELECTIONS DIVISION'S INVESTIGATION, WILL BE PUBLICLY AVAILABLE AT THE TIME THE ELECTIONS DIVISION ISSUES A FINAL AGENCY DECISION OR FILES A COMPLAINT WITH A HEARING OFFICER.
[Comment: since these filings are a matter of public record, they should be available to the public online. Additionally, to the extent that the Secretary usurps both the investigative and judiciary functions, ALL documents related to adjudication of campaign finance complaints and enforcement of violations are a matter of public interest as well, in order to ensure that complaints are properly investigated and adjudicated using taxpayer funds. However, the Secretary's lack of transparency in conducting recent campaign finance law proceedings (see *OS 2018-0010 Kirkmeyer v. 5767 TF et. al*.), reaching a settlement with the (adjudicated) violator rather than conducting a full, thorough, and transparent inquiry into the merits of the case, cast doubt on the integrity of the process].

(C) THE ELECTIONS DIVISION MAY REDACT ANY DOCUMENT RELATED TO A COMPLAINT IF IT IS NECESSARY TO PROTECT ANY PERSON'S PRIVATE OR CONFIDENTIAL INFORMATION.
[Comment: the intent to protect a person's private or confidential information related to a complaint is commendable; however, the Secretary lacks the constitutional or statutory authority to exercise this judicial function, which is more properly the purview of a court's order. Consequently, the rule exceeds the Secretary's authority and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]

18.2.12 The Office of Administrative Courts must remand back to the Secretary of State all pending complaints that were filed with the Secretary of State before June 19, 2018. Those complaints may be re-filed under this Rule 18.2 WITHIN 180 DAYS OF REMAND, even if the alleged violations fall outside the 12 period for filing set forth in Rule 18.2.2.
[Comment: the Secretary lacks any constitutional or statutory authority to direct remand of complaints already properly referred, pursuant to express constitutional language, to the Office of Administrative Courts – particularly for those cases already deeply into the process of adjudication according to constitutional mandates. **Consequently, the rule is contrary to express constitutional language and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232]**

Conclusion

The Secretary's new rules governing adjudication of campaign finance complaints are unmoored from (and in multiple instances as enumerated above contrary to) constitutional language and authority. Where the rules are contrary to express constitutional and/or statutory language, they are void *ab initio* and "must be set aside." *Gessler v. Colo. Common Cause*, 2014 CO 44, ¶9, 327 P.3d 232.

Additionally, the Secretary's usurpation of the constitutional enforcement process must be placed in the context of the Secretary's apparently intentional failure to defend the Colorado Constitution in order to effectively reverse the well-considered decision of Colorado voters to repeal the Secretary's role and authority in enforcement of campaign finance violations with the passage of Amendment 27 in 2002 (enactment of which as Article XXVIII repealed the previous enforcement authority in C.R.S. 1-45-111). The Secretary's role in overturning the express intent and will of the voters should not be overlooked, and must weigh in any judicial consideration of constitutional challenges to the Secretary's rules.

Regards,

/signed/ Matt Arnold

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