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Independent Ethics Commission
101 West Colfax Avenue, Ste 500
Denver, Colorado 80203

RE: Secretary Gessler's request for advisory opinion on legal defense funds

Dear Independent Ethics Commission:

Colorado Secretary of State Scott Gessler has asked the Colorado Independent Ethics Commission (IEC) whether Amendment 41 prohibits him from establishing a legal defense fund to be financed by private donations. The Attorney General submits the following statement in support of Secretary Gessler's request.

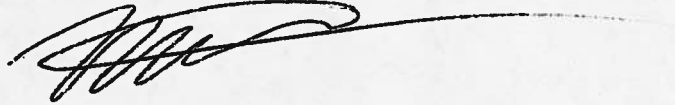
In the Attorney General's view, the propriety of a legal defense fund is governed by conflict of interest principles established by the General Assembly shortly after the passage of Amendment 41. *See* §24-18.5-101(5), C.R.S. (2012). The statute clarifies several terms that are undefined in the text of Article XXVIII. In particular, the statute defines "private gain" or "personal financial gain" as money or a thing of value "given or offered by a person seeking to influence an official act that is performed in the course and scope of the public duties of a [covered individual]." §24-18.5-101(5)(b)(II). Thus, to fall within the scope of Amendment 41, contributions to a public official's legal defense fund must seek to influence an official act that is performed by the public official in the course and scope of his public duties. §24-18.5-101(5)(b)(II).

Contributions to a legal defense fund would not *per se* amount to an attempt to influence an official act. *Id.* Moreover, the risk or perception of undue influence associated with a contribution to a legal defense fund may be mitigated by eliminating the possibility of *quid pro quo* contributions. The Attorney General submits that an arrangement that: (1) places appropriate limits on the public official's solicitation of contributions, and (2) either ensures

transparency or establishes a blind trust would be consistent with the concerns that Amendment 41 identifies.

Sincerely,

FOR THE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'M. Grove', with a long horizontal flourish extending to the right.

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