

<p>DISTRICT COURT CITY AND COUNTY OF DENVER, COLORADO City and County Building 1437 Bannock Street, Rm. 256 Denver, CO 80202</p> <hr/> <p>SCOTT E. GESSLER, in his official capacity as Secretary of State for the State of Colorado, and SUZANNE STAIERT, in her official capacity as Deputy Secretary of State for the State of Colorado,</p> <p>Plaintiffs,</p> <p>v.</p> <p>DAN GROSSMAN, SALLY H. HOPPER, BILL PINKHAM, MATT SMITH, and ROSEMARY MARSHALL, in their official capacities as members of the Independent Ethics Commission, and the INDEPENDENT ETHICS COMMISSION, an inferior tribunal of the State of Colorado,</p> <p>Defendants.</p>	<p>DATE FILED: April 19, 2013 7:28 PM FILING ID: 252C5F88</p> <p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p>
<p>JOHN W. SUTHERS, Attorney General LEEANN MORRILL, First Assistant Attorney General* 1300 Broadway, 6th Floor Denver, CO 80203 Telephone: (720) 508-6159 FAX: (720) 508-6041 E-Mail: leeann.morrill@state.co.us Registration Number: 38742 *Counsel of Record</p>	<p>Case No.: 2013CV031590</p> <p>Ctrm.: 409</p>
<p><b>FIRST AMENDED C.R.C.P. 106(a)(2) COMPLAINT</b></p>	

Plaintiffs Scott E. Gessler, in his official capacity as Secretary of State for the State of Colorado (“the Secretary”), and Suzanne Staiert, in her official capacity as Deputy Secretary of State for the State of Colorado (“the Deputy Secretary”), by and through undersigned counsel and in accordance with C.R.C.P. (“Rule”) 15(a), hereby submit the following First Amended Rule 106(a)(2) Complaint.

### INTRODUCTION

1. Under Colorado law, the Colorado Independent Ethics Commission (“the Commission” or “IEC”) must prepare and render advisory opinions “as soon as practicable” after

receipt of a request by a public official or government employee. C.R.S. § 24-18.5-101(4)(b)(II). Collectively, plaintiffs have requested three advisory opinions to date, but the Commission has failed and willfully refused to respond to all or part of each request despite the feasibility of doing so. Accordingly, the Secretary and the Deputy Secretary bring this mandamus action to compel the Commission to fulfill its legal duty to prepare and render advisory opinions.

## **PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff Scott E. Gessler is a resident of the State of Colorado and currently holds the elected office of Secretary of State for the State of Colorado.

3. Plaintiff Suzanne Staiert is a resident of the State of Colorado and currently holds the appointed office of Deputy Secretary of State for the State of Colorado.

4. Defendants Dan Grossman, Sally H. Hopper, Bill Pinkham, Matt Smith, and Rosemary Marshall are residents of the State of Colorado and are members of the Commission. This action is brought against these Defendants in their official capacity as members of the Commission.

5. The Commission is an inferior tribunal and government body of limited jurisdiction arising under Colo. Const. Art. XXIX, §5(1) and C.R.S. § 24-18.5-101.

6. This Court has jurisdiction over this action under Colo. Const. Art. VI, §9(1) and Rule 106(a)(2).

7. Venue is proper in this Court under Rule 98(b)(2) and Rule 106(a)(2).

## **FACTUAL ALLEGATIONS**

### **The Commission's Advisory Opinion Process**

8. Under Colo. Const. Art. XXIX, §5(1), one of the express purposes of the Commission is to “issue advisory opinions...on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law.”

9. With respect to the submission of advisory opinion requests and the rendering of such opinions, Colo. Const. Art. XXIX, §5(5) states:

Any public officer...or government employee may submit a written request to the [IEC] for an advisory opinion on whether any conduct by that person would constitute a violation of this article, or any other standards of conduct or reporting requirements as provided by the law. The commission shall render an advisory opinion pursuant to written rules adopted by the commission.

10. Article 18.5 of Title 24 of the Colorado Revised Statutes contains the enabling statute for the Commission. The statutory provision that governs the issuance of advisory opinions mandates that the Commission “prepare a response to a request for an advisory opinion from a public officer...or government employee as to whether particular action by such officer...or employee satisfies the requirements of article XXIX *as soon as practicable after the request is made to the commission.*” § 24-18.5-101(4)(b)(II), C.R.S. (2012) (emphasis added).

11. The Commission promulgated rules to govern its duty to respond to requests for advisory opinions, one of which requires the Commission to respond “as soon as practicable after receipt of a completed request for advisory opinion[.]” 8 C.C.R. 1510-1, §5(J).

12. The Commission’s rules also provide that “[a]ll requests for [an] advisory opinion ...should be filed with the IEC at least 10 days prior to the next scheduled meeting of the IEC.” 8 C.C.R. 1510-1, §5(C)(2).

13. The Commission’s rules further provide that “[a] request for an advisory opinion...is complete when the IEC has determined that no additional information is necessary to issue the advisory opinion[.]” 8 C.C.R. 1510-1, §5(E).

14. Upon information and belief, during the past five years the Commission has consistently prepared and rendered an advisory opinion no more than thirty (30) to forty-five (45) days after receiving a request.

15. As explained on the Commission’s own website, an advisory opinion “may provide the requestor a ‘safe haven’ should the conduct be questioned at a later time[.]” *See* Exhibit 1.

### **The Secretary’s Defense Fund Request**

16. On January 2, 2013, acting through the Deputy Secretary, the Secretary submitted a request for an advisory opinion to the Commission regarding the propriety of establishing a legal defense fund for public officials (“the Defense Fund Request”). *See* Exhibit 2.

17. Under C.R.S. 24-21-105, the Secretary “may appoint a deputy to act for him if he deems it necessary, who shall have full authority to act in all things relating to the office. The secretary shall be responsible for all acts of such deputy.”

18. Since the Defense Fund Request was submitted, a quorum of the Commission has met six times on the following dates: January 7, 2013, January 23, 2013, February 4, 2013, February 15, 2013, March 4, 2013, and April 8, 2013.

19. The Commission listed the Defense Fund Request on its agenda for five of the last six meetings. *See* Exhibit 3.

20. Despite the fact that a quorum of the Commission's members met on April 8, 2013, the Defense Fund Request was not listed on the agenda for that meeting. *See* Exhibit 3.

21. Despite the fact that a quorum of the Commission's members was able to consider, decide, and issue three other advisory opinions at the April 8, 2013 meeting, the Commission did not consider, decide, or issue an advisory opinion in response to the Secretary's Defense Fund Request. *See* Exhibit 4.

22. Upon information and belief, all three of the other requests for advisory opinions that the Commission considered and decided at the April 8, 2013 meeting, and in response to which the Commission issued advisory opinions on that same date, had been submitted during the preceding forty-four (44) days. *Compare* Exhibit 3 and Exhibit 4.

23. Despite the feasibility of acting on the Defense Fund Request at least six times since its submission, and at least five times since the requirement of 8 C.C.R. 1510-1, §5(C)(2) was satisfied, the Commission has failed to prepare and render an advisory opinion in response to the Defense Fund Request.

24. The Commission has not informed the Secretary or the Deputy Secretary that any additional information is necessary to prepare and render an advisory opinion in response to the Defense Fund Request.

25. In accordance with 8 C.C.R. 1510-1, §5(E), the Defense Fund Request is "complete."

26. As of the date of this First Amended Complaint, the Secretary's Defense Fund Request has been pending for one hundred and eight (108) days without a response from the Commission.

27. By failing to prepare and render an advisory opinion "as soon as practicable," the Commission has violated the Secretary's constitutional and statutory rights, as a public officer, to obtain an advisory opinion in response to the Defense Fund Request.

28. By failing to prepare and render an advisory opinion in response to the Defense Fund Request "as soon as practicable," the Commission has created and perpetuated uncertainty for the Secretary. If he proceeds to establish a legal defense fund without first obtaining the Commission's guidance, then he will subject himself to the likelihood of an ethics complaint for which he may be held personally liable. Therefore, the uncertainty has caused the Secretary to forego establishing a legal defense fund and to personally incur costs for the same type of legal services contemplated by the Defense Fund Request.

29. The Commission's failure to act has deprived the Secretary of the "safe haven"

afforded by Colo. Const. Art. XXIX and C.R.S. § 24-18.5-101, and subjected him to the dilemma of having to either wait indefinitely for an advisory opinion, or proceed with establishing a legal defense fund without the benefit of the Commission's guidance – an action for which he later may be held personally liable if an ethics complaint is filed.

30. The Secretary has been further damaged by the Commission's failure to prepare and render an advisory opinion in response to the Defense Fund Request "as soon as practicable" by having to incur costs and attorney fees to bring this mandamus action under Rule 106(a)(2).

### **The Deputy Secretary's Travel Request**

31. On January 22, 2013, the Deputy Secretary submitted a request to the Commission for an advisory opinion regarding the receipt of reimbursement from State funds, as well as payment by a third party, for travel and educational seminars anticipated by covered members of the Colorado Department of State ("the Travel Request"). *See* Exhibit 5.

32. In response to the Commission's request for additional information, the Deputy Secretary submitted supplemental materials related to the Travel Request on February 26, 2013.

33. On April 8, 2013, the Commission issued an advisory opinion in response to the Deputy Secretary's Travel Request. *See* Exhibit 6.

34. In footnote 1 to the Travel Request Advisory Opinion, the Commission stated: "The Secretary submitted a request listing numerous trips. Because of the similarities between several of these trips and the issues in Complaint 12-07 currently pending before the Commission, the Commission agreed to respond to those trips in which travel expenses were to be paid by a third party. One of those trips was withdrawn, leaving this as the only remaining request." *See* Exhibit 6.

35. Contrary to what was suggested by footnote 1 to the Travel Request Advisory Opinion, the Commission does not have the discretion to "agree" to prepare and render advisory opinions in response to only those requests of its choosing.

36. Rather, Colorado law requires the Commission, without exception, to prepare and render an advisory opinion "as soon as practicable after the request is made to the commission." § 24-18.5-101(4)(b)(II), C.R.S. (2012).

37. Indeed, nothing in the Colorado Constitution, Article 18.5 of Title 24 of the Colorado Revised Statutes, or the Commission's own rules vests the Commission with the discretion to prepare and render an advisory opinion in response to only select portions of a request.

38. The Commission listed the Travel Request on its agenda for the first of the two February meetings, as well as for the March and April meetings. *See* Exhibit 3.

39. Since the supplemental materials related to the Travel Request were submitted, a quorum of the Commission has met twice on March 4, 2013 and April 8, 2013.

40. Despite the feasibility of acting on the entirety of the Travel Request at least twice since February 26, 2013, and at least once since the requirement of 8 C.C.R. 1510-1, §5(C)(2) was satisfied, the Commission has failed to prepare and render an advisory opinion that completely responds to the entire Travel Request.

41. The Commission has not informed the Deputy Secretary that any additional information is necessary to prepare and render an advisory opinion in response to the unanswered portions of the Travel Request.

42. In accordance with 8 C.C.R. 1510-1, §5(E), the unanswered portion of the Travel Request is “complete.”

43. As of the date of this First Amended Complaint, the Deputy Secretary’s Travel Request has been pending for fifty-three (53) days without a complete response from the Commission.

44. By failing to prepare and render an advisory opinion that completely responds to the Travel Request “as soon as practicable,” the Commission has violated the Deputy Secretary’s constitutional and statutory rights, as a government employee, to obtain an advisory opinion in response to the entire Travel Request.

45. By failing to prepare and render an advisory opinion that completely responds to the Travel Request “as soon as practicable,” the Commission has created and perpetuated uncertainty for the Deputy Secretary. If she proceeds to authorize Colorado Department of State employees to travel to and attend certain educational seminars without first obtaining the Commission’s guidance, then she will subject herself and the Department’s employees to the likelihood of ethics complaints for which they may be held personally liable. Therefore, the uncertainty has caused the Deputy Secretary to forego authorizing employee travel to and attendance at certain educational seminars.

46. The Commission’s failure to act has deprived the Deputy Secretary of the “safe haven” afforded by Colo. Const. Art. XXIX and C.R.S. § 24-18.5-101, and subjected her to the dilemma of having to either wait indefinitely for an advisory opinion that completely responds to the entire Travel Request, or proceed with authorizing employee travel to and attendance at certain educational seminars without the benefit of the Commission’s guidance – an action for which she may later be held personally liable if an ethics complaint is filed.

47. The Deputy Secretary has been further damaged by the Commission's failure to prepare and render an advisory opinion that completely responds to the entire Travel Request "as soon as practicable" by having to incur costs and attorney fees to bring this mandamus action under Rule 106(a)(2).

### **The Deputy Secretary's Mileage Request**

48. On February 15, 2013, the Deputy Secretary submitted a request to the Commission for an advisory opinion regarding the receipt of reimbursement from State funds for travel and related expenses incurred by her in the performance of her official duties ("the Mileage Request"). *See* Exhibit 7.

49. On April 8, 2013, the Commission issued an advisory opinion in response to the Deputy Secretary's Mileage Request. *See* Exhibit 8.

50. After stating that it had jurisdiction over the Deputy Secretary, the Commission's Mileage Advisory Opinion set forth the following "Applicable Law":

Article XXIX section 1 and CRS §24-18-101 *et seq.* provide general guidance on standards of conduct for public employees and officials. These guidelines include a statement that "A public officer, member of the general assembly [sic] local government employee shall carry out his duties for the benefit of the people of the state." Other sections of the law set out requirements for the reimbursement of state employees for expenses, and other issues relating to state employment. *See*, C.R.S. § 24-30-201 *et seq.* *See also*, State Fiscal Rules. 1 CCR 101-5, Chapter 5 (Travel) ("Fiscal Rules").

*See* Exhibit 8.

51. The "Discussion" section of the Commission's Mileage Advisory Opinion contained a single sentence, as follows: "Reimbursement of state employees for mileage and meals is governed by section 24-30-201 *et seq.* C.R.S., and the Fiscal Rules." *See* Exhibit 8.

52. The Mileage Advisory Opinion's "Conclusion" section stated: "The Commission offers this guidance to the Deputy Secretary of State regarding the permissibility of submitting requests for reimbursement. The Commission suggests that she review the State Fiscal Rules and accompanying guidance with the Chief Financial Officer of the Department of State and/or ask the State Controller for additional guidance." *See* Exhibit 8.

53. Although styled as an "advisory opinion," the Mileage Advisory Opinion was not, in fact, an advisory opinion because the Commission failed to actually opine about whether the conduct described by the Mileage Request would constitute a violation of Colo. Const. Art. XXIX, or any other standards of conduct or reporting requirements as provided by the law. *Compare* Exhibit 7 and Exhibit 8.

54. Moreover, the “Conclusion” set forth by the Mileage Advisory Opinion was contradicted by the following exchange that occurred during the Commission’s April 8, 2013 meeting:

CHAIRMAN GROSSMAN: So two things: I totally agree, [Commissioner Smith], with everything you say, with the additional caveat that fiscal rules are standards of conduct, the violation of which may constitute a breach for which this Commission would have jurisdiction. And that is one of the issues that is pending currently.

So we need to be very careful about what we say here, because we don’t want to imply that the Commission doesn’t have jurisdiction over violations of fiscal rules and statutes surrounding such.

....

MS. STAIERT: Mr. Chairman, I don’t think I have heard the Commission say that before. Is it the Commission’s position that you have authority over the fiscal rules of other standards of conduct provided by law, that the fiscal rules are law?

....

EXECUTIVE DIRECTOR FELDMAN: Yes.

MS. STAIERT: I have never heard that position actually taken by the Commission.

EXECUTIVE DIRECTOR FELDMAN: We have taken it previously, that the [fiscal] rules were a standard of conduct.

*See Exhibit 9, at p. 64-65: 4-25, 1-11.*

55. The Commission listed the Mileage Request on its agenda for the March and April meetings. *See Exhibit 3.*

56. Since the Mileage Request was submitted, a quorum of the Commission has met twice on March 4, 2013 and April 8, 2013.

57. Despite the feasibility of acting on the Mileage Request at least twice since its submission and the requirement of 8 C.C.R. 1510-1, §5(C)(2) was satisfied, the Commission has failed to prepare and render an advisory opinion that actually responds to the Mileage Request.

58. The Commission has not informed the Deputy Secretary that any additional information is necessary to prepare and render an advisory opinion that actually responds to the Mileage Request.

59. In accordance with 8 C.C.R. 1510-1, §5(E), the Mileage Request is “complete.”

60. As of the date of this First Amended Complaint, the Deputy Secretary's Mileage Request has been pending for sixty-four (64) days without an actual response from the Commission.

61. By failing to prepare and render an advisory opinion that actually responds to the Mileage Request "as soon as practicable," the Commission has created and perpetuated uncertainty for the Deputy Secretary. If she proceeds to authorize the Colorado Department of State to reimburse her for travel and related expenses without first obtaining the Commission's guidance, then she will subject herself to the likelihood of an ethics complaint for which she may be held personally liable. Therefore, the uncertainty has caused the Deputy Secretary to forego authorizing reimbursement and to personally bear the costs for travel and related expenses incurred by her in the performance of her official duties.

62. By failing to prepare and render an advisory opinion that actually responds to the Mileage Request "as soon as practicable," the Commission has foreclosed the Deputy Secretary's ability to obtain reimbursement for certain travel costs and related expenses incurred by her in the performance of her official duties.

63. The Commission's failure to act has deprived the Deputy Secretary of the "safe haven" afforded by Colo. Const. Art. XXIX and C.R.S. § 24-18.5-101, and subjected her to the dilemma of having to either wait indefinitely for an advisory opinion that actually responds to the Mileage Request, or proceed to accept reimbursement for travel and mileage expenses without the benefit of the Commission's guidance – an action for which she may later be held personally liable if an ethics complaint is filed.

64. The Deputy Secretary has been further damaged by the Commission's failure to prepare and render an advisory opinion that actually responds to the Mileage Request "as soon as practicable" by having to incur costs and attorney fees to bring this mandamus action under Rule 106(a)(2).

### **The Commission's Willful Refusal to Issue Advisory Opinions**

65. On November 5, 2012, the Commission undertook review of a Complaint filed by Citizens for Responsibility and Ethics in Washington (d/b/a Colorado Ethics Watch) ("CREW"), in which CREW alleged that the Secretary "may" have committed a felony and two misdemeanors related to state expenditures. The Commission designated CREW's ethics complaint as "Complaint 12-07."

66. On January 30, 2013, the Secretary filed a Rule 106(a)(4) complaint against the Commission for exceeding the jurisdiction granted to it under Colo. Const. Art. XXIX and C.R.S. § 24-18.5-101 by asserting broad jurisdiction over an ethics complaint against the Secretary that cites potential violations of three criminal statutes, and does not relate to Amendment 41's gift ban, lobbying ban, or prohibition of influence peddling. *See Gessler v.*

*Grossman, et al.*, Denver District Court Case No. 13CV030421, (Stern, J., presiding) (“*Gessler I*”).

67. At the Commission’s March 4, 2013 meeting, the Commission considered the Defense Fund, Travel, and Mileage Requests. *See* Exhibit 3.

68. During the March 4, 2013 meeting, the Commission also entered executive session to receive legal advice on matters related to *Gessler I*. *See* Exhibit 3.

69. After the executive session concluded, the Commission discussed the outstanding advisory opinion requests and a Commissioner stated: “So Ms. Staiert, you have convinced me now, but this is so inextricably linked with any litigation, I don’t see a way to answer all of your questions without impacting the pending litigation. And so I would be reluctant to support any effort by the commission to address all of the issues.” *See* Exhibit 10, at p. 20: 18-23.

70. Consistent with the Commissioner’s statement at the March meeting, the Commission has not prepared and rendered an advisory opinion in response to the Secretary’s Defense Fund Request to date.

71. The Commission has willfully refused, and will continue to refuse, to prepare and render an advisory opinion in response to the Defense Fund Request until it has resolved Complaint 12-07 and the pending litigation in *Gessler I* has concluded.

72. At the Commission’s most recent meeting on April 8, 2013, the Commission again considered the Deputy Secretary’s Travel and Mileage Requests. *See* Exhibit 3.

73. While considering the Travel Request, Commission Chair Grossman stated: “So the reason, as I recall from our last meeting, that we were not going to look at ones requesting guidance on expenditure of State funds is because of how close it was to the issues that are to be addressed through litigation.” *See* Exhibit 9, at p. 22: 1-5.

74. Consistent with Commission Chair Grossman's statements at the April meeting, the Commission has not prepared and rendered an advisory opinion that completely responds to the entire Travel Request to date.

75. The Commission has willfully refused, and will continue to refuse, to prepare and render an advisory opinion that completely responds to the entire Travel Request until it has resolved Complaint 12-07 and the pending litigation in *Gessler I* has concluded.

76. While considering the Mileage Request at the April meeting, the Commission’s Executive Director, Jane Feldman, stated: “You may recall at the last meeting, initially, you said that you were not going to answer it because it was too close to the complaint. And then I heard from a commissioner that he wanted the Commission to issue some sort of statement. I spoke to

the Chair. I spoke to Lisa [Freimann, the Commission's legal counsel]. And so I prepared this very general advisory [opinion]." *See* Exhibit 9, at p. 57: 13-19.

77. While further considering the Mileage Request, Commission Chair Grossman also stated: "...I guess my inclination would be to not respond to the various things that are at issue in the complaint. I feel like we are being, again, pinned into a corner as far as where our jurisdiction and authority goes. If we are moving forward, I would want to see this [advisory opinion] simply referring to the department, the State statutes, the fiscal rules that apply." *See* Exhibit 9, at p. 70-71: 19-25, 1.

78. While considering the Mileage Request, Commission Chair Grossman further stated: "I think in the draft [advisory opinion], we have a lot of stuff in here about what our jurisdiction is, whether it's an ethical violation, fiscal rules or not. I think that is ground we don't want to get into right now." *See* Exhibit 9, at p. 71: 9-13.

79. Consistent with Executive Director Feldman and Commission Chair Grossman's statements at the April meeting, the Commission has not prepared and rendered an advisory opinion that actually is responsive to the Mileage Request.

80. Notwithstanding the Mileage Advisory Opinion that was issued on April 8, 2013, the Commission has willfully refused, and will continue to refuse, to prepare and render an advisory opinion that actually is responsive to the Mileage Request.

81. The Commission's willful refusal to act has deprived the Secretary and the Deputy Secretary of the "safe haven" afforded by Colo. Const. Art. XXIX and C.R.S. § 24-18.5-101, and subjected them to the dilemma of having to either wait indefinitely for complete and responsive advisory opinions, or proceed with establishing a legal defense fund, authorizing employee travel to and attendance at certain educational seminars, and authorizing the use of State funds for reimbursement of travel and mileage expenses without the benefit of the Commission's guidance – actions for which they may later be held personally liable if ethics complaints are filed.

82. There is no other remedy available to the Secretary and the Deputy Secretary to compel the Commission's performance of the acts required of it by law.

**CLAIM FOR RELIEF**  
**[Mandamus under C.R.C.P. 106(a)(2)]**

83. The Secretary and the Deputy Secretary hereby incorporate the allegations contained in paragraphs 1 through 82 above as if recited herein.

84. Rule 106(a)(2) authorizes this Court to grant mandamus relief when a governmental body charged with performing an official duty fails or refuses to act.

85. The Secretary has constitutional and statutory rights, as a public officer, to obtain an advisory opinion on whether his conduct would constitute a violation of Colo. Const. Art. XXIX, or any other standards of conduct or reporting requirements as provided by the law.

86. The Deputy Secretary has constitutional and statutory rights, as a government employee, to obtain an advisory opinion on whether her conduct would constitute a violation of Colo. Const. Art. XXIX, or any other standards of conduct or reporting requirements as provided by the law.

87. Colorado law imposes a clear duty on the Commission and its members to prepare and render an advisory opinion “as soon as practicable” after a request is submitted.

88. The Secretary requested an advisory opinion from the Commission on January 2, 2013, and the Deputy Secretary requested advisory opinions from the Commission on January 22, 2013 (that was supplemented on February 26, 2012) and February 15, 2013.

89. To date, the Commission and its members have failed and willfully refused to act on the Secretary’s Defense Fund Request despite the feasibility of doing so.

90. To date, the Commission and its members have failed and willfully refused to act completely on the entirety of the Deputy Secretary’s Travel Request despite the feasibility of doing so.

91. To date, the Commission and its members have failed and willfully refused to act in a manner consistent with their legal duty to act on the Deputy Secretary’s Mileage Request despite the feasibility of doing so.

92. There is no other remedy available to the Secretary and the Deputy Secretary.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Scott E. Gessler and Suzanne Staiert respectfully request that this Court grant the following relief:

- A. Enter an Order, in accordance with Rule 106(a)(2), compelling the Commission and its members to prepare and render an advisory opinion in response to the Defense Fund Request without further delay;
- B. Enter an Order, in accordance with Rule 106(a)(2), compelling the Commission and its members to prepare and render an advisory opinion that completely responds to the entire Travel Request without further delay;
- C. Enter an Order, in accordance with Rule 106(a)(2), compelling the Commission

and its members to prepare and render an advisory opinion that actually responds to the Mileage Request without further delay; and

D. Grant such other and further relief as this Court deems just and proper.

DATED: April 19, 2013.

JOHN W. SUTHERS  
Attorney General

s/ LeeAnn Morrill  
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*Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1300 Broadway, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on April 19, 2013, she duly filed the foregoing **FIRST AMENDED C.R.C.P. 106(a)(2) COMPLAINT** with the District Court for the City and County of Denver, Colorado via the Integrated Colorado Courts E-Filing System, and served a true and correct copy of same upon counsel for Defendants via delivery to counsel's office at the address listed below:

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*s/ LeeAnn Morrill* \_\_\_\_\_

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