

INDEPENDENT ETHICS COMMISSION - Formal Complaint Form

BEFORE THE INDEPENDENT ETHICS COMMISSION CASE NO. _____
OF THE STATE OF COLORADO (IEC use only)

COMPLAINT

The Complainant(s) is (are): Colorado Ethics Watch

Address (Include City and Zip Code) Daytime Phone No.

**1630 Welton St. #415
Denver CO 80202
303-626-2100**

The Respondent(s) is (are): Scott Eric Gessler, Colorado Secretary of State

Address (Include City and Zip Code) Daytime Phone No.

**1700 Broadway, Suite 200
Denver, CO 80290
303-894-2200**


The specific act or things complained of, with the facts to give a full understanding of the situation, is (are):

See attached letter to Denver District Attorney and Denver Chief of Police and exhibits.

The remedy we would like is:

A fine in the amount of double the amount of financial benefits obtained through the use of public funds for private/political purposes, pursuant to Colo. Const. art. XXIX, § 6.

We hereby acknowledge that we will cooperate in this Complaint.

Signature: 

Colorado Ethics Watch

By: Luis Toro, #22093



October 15, 2012

Hon. Mitchell R. Morrissey
Denver District Attorney
201 W. Colfax Avenue
Denver, Colorado 80202

Chief Robert C. White
Denver Police Department
Police Administration Building
1331 Cherokee Street
Denver, CO 80204-4507

RE: Request for Investigation into Conduct of Secretary of State Scott Gessler

Dear Mr. Morrissey and Chief White:

Colorado Ethics Watch ("Ethics Watch"), a project of Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Office of the District Attorney for the Second Judicial District and the Denver Police Department commence an immediate investigation into whether Secretary of State Scott Gessler made false statements on travel expense reimbursement requests submitted to the State of Colorado, and whether Secretary Gessler misappropriated state funds for personal or political uses. This request arises from evidence that Secretary Gessler attended a Republican election law training event and the Republican National Convention in Tampa, submitted reimbursement forms to the state, and misrepresented the nature of his visit on those official forms.

Secretary Gessler attended the Republican National Lawyers Association ("RNLA") election law training in Sarasota, Florida on August 24 and 25. He then traveled to the Tampa, Florida area on August 26 to spend the week there during the Republican National Convention, although our understanding is that he was not a delegate to that convention. Those facts have been widely known for some time. What has just come to light, however, is that the Secretary of State requested reimbursement for his attendance at these events, certifying that they were not "personal or political."

The RNLA is a private organization of lawyers dedicated, among other things, to "advancing Republican ideals" through "a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates."¹

Documents obtained through the Colorado Open Records Act show that Secretary Gessler spoke at a panel on "The Department of Justice, the Role of the States and Voter

¹ "About the RNLA," www.rnla.org/about/default.asp, accessed on October 9, 2012, copy attached as Exhibit 1.



ID” at the RNLA’s election law conference in Sarasota on August 23. On Monday, August 27 he attended an “RNLA Reception Honoring the Romney Legal Team at the RNC,” then spent the rest of the week at the Republican National Convention.²

Secretary Gessler’s official calendar for the week of August 27-31, 2012³ does not show that he conducted any official business while attending the Republican National Convention in Tampa. The only entries are for staff meetings in his Denver office which presumably he did not attend.

On September 6, 2012, Secretary Gessler requested reimbursement for the remainder of the expenses of his RNC-RNLA trip in a letter to Heather Lizotte, the Chief Financial Officer of the Department of State. In that letter, he represented to Ms. Lizotte that the expenses were incurred “in pursuance of state business . . . while meeting with constituents, county clerks, lobbyists, staff and legislators to discuss state business.”⁴

Although Secretary Gessler originally was scheduled to return to Denver on Saturday, September 1, he decided to cut his trip short and return on the morning of Friday, August 31 to attend to “needs of the department.”⁵ He submitted a Travel Expense reimbursement form for the costs of the airfare change and hotel cancellation fees in which he certified that “travel performed for which reimbursement is claimed was performed by me on state business and that no claims are made for expenses of a personal or political nature or for any other expenses not authorized by the Fiscal Rules.”⁶ The Colorado Fiscal Rules, 1 C.C.R. § 1-101 specifically provide (in Rule 2-1.01) that state funds must be used “for official state business purposes only.”

This conduct may implicate several laws against public corruption.

C.R.S. § 18-8-104 provides that a public servant is guilty of first degree official misconduct if, “with intent to obtain a benefit for the public servant or another or maliciously to cause harm to another, he or she knowingly . . . Commits an act relating to his office but constituting an unauthorized exercise of his official function; or . . . (c) Violates any statute or lawfully adopted rule or regulation relating to his office.” In this case, the regulation would be 1 C.C.R. 1-101, Rule 2-1.01, which prohibits the use of any public funds for political purposes.

C.R.S. § 18-8-407 provides that any public servant “who knowingly converts any of such public moneys or property to his own use or to any use other than the public use authorized by law” is guilty of embezzlement of public funds, a Class 5 felony, and “shall be forever thereafter ineligible and disqualified from being a member of the general assembly of this state or from holding any office of trust or profit in this state.”

² Itinerary, “RNLA/RNC Trip, Sarasota and Tampa Bay, FL, Thursday August 23 – Saturday, September 1,” copy attached as Exhibit 2.

³ Copy attached as Exhibit 3.

⁴ Letter from Scott Gessler to Heather Lizotte, September 9, 2012, attached as Exhibit 4.

⁵ E-mail from Gary Zimmerman to Heather Lizotte, August 30, 2012, attached as Exhibit 5.

⁶ State of Colorado Travel Expense, signed by Scott Gessler, September 6, 2012, attached as Exhibit 6.

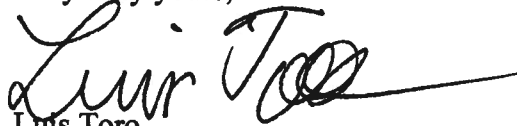
Finally, C.R.S. § 18-8-114 provides that any person who “knowingly makes a false entry in or falsely alters any public record” is guilty of a Class 1 misdemeanor. This would seem to apply to the reimbursement requests in which the Secretary certified that he conducted public business on his RNLA-RNC trip.

The fact that some of the funds (though not the charge for the airfare change and hotel cancellation fee) were apparently paid for out of the Secretary of State’s discretionary fund does not alter the analysis. By statute, and subject to appropriation, the Secretary has a fund of \$5000 annually which must be spent only “in pursuance of official business.” The Secretary’s Florida trip was manifestly personal and political, in which he participated only in partisan events, not in pursuit of state business. Coloradans are entitled to expect that public funds will not be spent for officials to participate in events for organizations that “directly support . . . candidates” of any party.

The Secretary of State’s office is located at 1700 Broadway in the City and County of Denver. We urge the Office of the District Attorney for the Second Judicial District and the Denver Police Department to thoroughly investigate this important public corruption case.

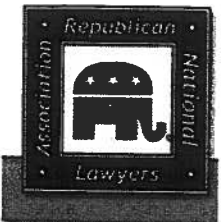
Thank you for your prompt attention to this important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Luis Toro", with a long horizontal flourish extending to the right.

Luis Toro
Director
Colorado Ethics Watch

EXHIBIT 1



RNLA

Republican National Lawyers Association

Advancing Open, Fair & Honest Elections

www.RNLA.org

- ABOUT US
- EVENTS
- NEWS
- FIND A LAWYER
- JOIN US
- BLOG
- SUPPORT US
- MEMBERS ONLY

About the RNLA

Missions of the Republican National Lawyers Association

As the principal national organization of Republican lawyers, the Association has a targeted set of missions - all complementary, and none of which duplicate missions accomplished elsewhere. Each member of the Association and every local chapter must ascribe to the accomplishment of these missions, which include:

- **Advancing Professionalism.** The RNLA is comprised of lawyers and law students who advance the professionalism of lawyers generally. It gathers Republican lawyers for legal education related to law in political, government, legislative and private firm settings. It provides a nationwide network of fellow professionals by practice area who share expertise.
- **Advancing Open, Fair and Honest Elections.** The RNLA seeks to promote open, fair and honest elections at all levels of American society in a non-discriminatory manner and to provide access to the polls to all qualified and eligible voters. It provides election law training from preeminent election law professionals. It responds to requests for assistance from the Republican Party and its candidates by communicating the requests to its members.
- **Advancing Career Opportunity.** The RNLA networks lawyers committed to lives of significant career accomplishment. Its national events allow interaction with lawyers of professional, political and governmental acclaim. It provides an advanced web service allowing members to share professional qualifications with other members and persons seeking professional assistance. It organizes local chapters within which members can seek career advancement assistance.
- **Advancing Republican Ideals.** The RNLA further builds the Republican Party goals and ideals through a nationwide network of supportive lawyers who understand and directly support Republican policy, agendas and candidates.

~ Help Our Mission ~

[DONATE NOW](#)

[JOIN US](#)

[VOTE FRAUD NEWS](#)

~ Stay Connected With RNLA ~



~ How to Contact RNLA ~

Republican National Lawyers Association
PO Box 18965
Washington, DC 20036
Email: info@RepublicanLawyer.net

- About Us**
About the RNLA
Leadership
Local Contacts
- Events**
- News**
Press Releases
Vote Fraud News
Newsletter
- Find a Lawyer**
By Name or State
By Practice Area
- Join Us**
Become a Member
Member Benefits
- Blog**
- Support Us**
Donate
Sponsor
- Members Only**

EXHIBIT 2

**RNLA/RNC Trip
Sarasota and Tampa Bay, FL
Thursday, August 23 – Saturday, September 1**

Denver to Sarasota, FL Thursday, August 23

Inbound Flight:

Frontier Flight 360

Departing Denver at 4:40 p.m.

Arriving Tampa, Florida at 10:04 p.m.

Tampa to Sarasota, Ritz Carlton

SupperShuttle.

Confirmation Number: 6693585

Paid \$75.00 on Personal Credit Card – Tip not included

Upon arrival proceed to baggage claim on level one in the main terminal. Exit to either end of the terminal to the courtesy vehicle waiting area. Check in with the agent at the SupperShuttle kiosk.

Hotel Information:

Confirmation #80545355

Check-in: Thursday, August 23

Check-out: Saturday, August 26

Room rate 8/23 to 8/25: \$145.00/night

Room rate 8/26: \$269.00/night

*All charges on Personal Credit Card

The Ritz-Carlton, Sarasota

1111 Ritz-Carlton Drive

Sarasota, FL 34236

(941) 309-2000

Friday, August 24

RNLA Conference

1:15 p.m. Panel Presentation

The Department of Justice, the Role of the States and Voter ID

Saturday, August 25

RNLA Conference

Sunday, August 26

Hotel Information:

Confirmation #65805434

Check-in: Sunday, August 26

Check-out: Saturday, September 1

Room reserved on Personal Credit Card

Holiday Inn

3535 Ulmerton Road

Clearwater, FL 33767

Lindsay Middleton (727) 577-9100 ext. 603

or (727) 447-6461

Monday, August 27

5:00 p.m. RNLA Reception Honoring the Romney Legal Team at the RNC
American Action Network Pavilion at Liberty Plaza
S. Morgan and E. Whiting Street
Tampa, FL

Tuesday, August 28

RNC Tampa Bay Times Forum
401 Channelside Drive, Tampa, FL 33602

Wednesday, August 29

RNC Tampa Bay Times Forum
401 Channelside Drive, Tampa, FL 33602

Thursday, August 30

RNC Tampa Bay Times Forum
401 Channelside Drive, Tampa, FL 33602

Friday, August 31

RNC Tampa Bay Times Forum
401 Channelside Drive, Tampa, FL 33602

Saturday, September 1

Outbound Flight:

United Airlines Flight 1236
Departing Tampa, FL at 4:11 p.m.
Arriving Chicago, IL at 6:03 p.m.

United Airlines Flight 435
Departing Chicago, IL at 6:52 p.m.
Arriving DIA at 8:23 p.m.

EXHIBIT 3

August 26, 2012 - September 01, 2012

August 2012

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September 2012

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

	26 Sun	27 Mon	28 Tue	29 Wed	30 Thu	31 Fri	1 Sat		
	From Aug 24 Out of office - Florida Holiday Inn Room Arrangements - 65805434; 3535 Ulmerton Road, Clearwater, FL								
7 am									
8:00									
9:00								Senior Staff Meeting (Columbine Room)	
10:00									
11:00									
12:00 pm									
1:00								Weekly Policy Meeting SOS Office Scott Gessler	SOS/OAC Month Rotating Scott Gessler
2:00									
3:00			Weekly Meeting Secretary's Office Scott Gessler						
4:00									
5:00			Election Law Course - DU Sturm College of Law, Room 45	Election Law Course - DU Sturm College of Law, Room 45			United Airlines Flight 1236 Tampa to Chicago		
6:00									

EXHIBIT 4

STATE OF COLORADO
Department of State

1700 Broadway
Suite 250
Denver, CO 80290



Scott Gessler
Secretary of State

Gary Zimmerman
Chief of Staff

COPY

410


September 6, 2012

Dear Ms. Lizotte:

I respectfully request reimbursement in the amount of \$1,452.52 from the Secretary of State Discretionary Fund for office related expenses. Enclosed is supporting documentation for expenses incurred in pursuance of state business. These expenses were incurred while meeting with constituents, county clerks, lobbyists, staff and legislators to discuss state business.

Feel free to see me if you have any questions or need additional information.

Thank you


Scott Gessler
Secretary of State

7/3/12	3.19 Coffee Meeting	Justice
7/5/12	3.56 Coffee Meeting	Justice
7/12/12	6.65 Lunch	Justice
7/12/12	3.73 Coffee Meeting	Justice
7/27/12	9.64 Lunch	Justice
7/30/12	3.94 Coffee Meeting	Justice
8/3/12	13.38 Breakfast Meeting	Chase
8/6/12	33.08 Lunch	Chase
8/13/12	3.79 Coffee Meeting	Chase
8/14/12	498.78 Airfare to RNLA, travel 8/23-8/25	Chase
8/15/12	3.29 Coffee Meeting	Chase
8/15/12	12.87 Lunch	Chase
8/20/12	4.63 Coffee Meeting	Chase
8/21/12	28.05 Breakfast Meeting	Chase
8/21/12	4.09 Dinner	Chase
8/21/12	37.3 Lunch	Chase
8/22/12	2.43 Coffee Meeting	Chase
8/22/12	20 Luggage check, travel to RNLA	Chase
8/23/12	8.43 Dinner	Chase
8/24/12	37.5 Dinner	Chase
8/26/12	694.07 Lodging, RNLA conference	Chase
8/26/12	20.12 Lunch	Chase
	1452.52	

EXHIBIT 5

Dana Williams

From: Gary Zimmerman
Sent: Thursday, August 30, 2012 9:00 AM
To: Heather Lizotte
Cc: Suzanne Staiert; Dana Williams
Subject: SoS Travel 8.31.12

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: DoI

Heather,
Due to the needs of the Department, the Secretary is returning early from his travels this week. While his trip this week is being paid out of his personal and discretionary funds, the need for his early return is Department related. Hence, I am approving reimbursement of airfare change and hotel cancellation fees. Thank you.

Gary Zimmerman
Chief of Staff
Department of State/Office of the Secretary of State
1700 Broadway, Suite 200
Denver CO 80290
303.860.6900
Gary.zimmerman@sos.state.co.us

EXHIBIT 6

