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Federal District Court to Rule on Release of Signatures

Lawsuit challenging State's Public Records Act stemmed from Referendum 71

SEATTLE, Wash.

Today, Judge Settle of the Western District of Washington will hear oral argument in Doe v. Reed, which stemmed from the 2009 Referendum 71 campaign. Protect Marriage Washington (PMW), an affiliate of the national anti-gay National Organization for Marriage (NOM), had promoted R-71 in an effort to repeal the state's recently enacted domestic partnership law. Washington Families Standing Together (WAFST) led the effort to keep the law. In November 2009, 53.15% of voters approved retaining the domestic partnership law, making Washington the first state in the country to vote affirmatively in support of comprehensive relationship recognition for LGBT families.

From the moment PMW began collecting signatures, they also began a well-choreographed effort to circumvent the State's public disclosure laws. They argued to the public disclosure commission while their allies argued to federal district court that they should not be required to report who was contributing to their campaign and in what amounts. As they turned in their petition signatures to qualify for the ballot, they also filed suit in yet another courtroom seeking a temporary restraining order blocking the Secretary of State from releasing the referendum petitions pursuant to the State's Public Records Act (PRA), as has been the routine practice of the State. The district court blocked the release of the petitions. The Ninth Circuit Court of Appeals overturned that decision.

The Ninth Circuit Court of Appeals said in its ruling, "A [s]tate indisputably has a compelling interest in preserving the integrity of the election process... In Washington, the PRA plays a key role in preserving the integrity of the referendum process by serving a government accountability and transparency function not sufficiently served by the statutory scheme governing the referendum process. Without the PRA, the public is effectively deprived of the opportunity independently to examine whether the State properly determined that a referendum qualified, or did not qualify, for the general election."

The U.S. Supreme Court agreed. In an 8-1 decision, authored by Chief Justice Roberts, the Court upheld the State's disclosure laws. Justice Roberts wrote that disclosing the names of signers can prevent fraud and promote open government, "Public disclosure thus helps ensure that the only signatures counted are those that should be, and that the only referenda placed on the ballot are those that garner enough valid signatures," Roberts wrote. "Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot."

PMW then went back to federal court where WAFST, the State and the Washington Coalition for Open Government continued to oppose its argument that the Referendum 71 petitions warranted an exception. After more than a year of proceedings, the judge decided in September, as WAFST had argued, that a trial was not warranted and he will instead rule based on the law after tomorrow's hearing.

WAFST's position is that there are no facts to support PMW's repeated assertions of threatened harassment and intimidation that warrant non-disclosure. It has become routine for groups like PMW and NOM to complain that public disclosure will make them vulnerable to threats and harassment. The evidence in state after state shows otherwise. Depositions and briefings in this case have only served to highlight that the allegations made here are no more valid than they have been in any other state where they have tried the same argument.

Twenty-three states use ballot initiatives and referenda to enact or retain legislation and also require the petitions be public records. Between 1997 and 2009, there were eighteen separate statewide initiatives and referenda to deny or repeal legal protections for gay and lesbian persons. There are presumably hundreds of thousands if not millions of people who signed petitions in the past decade supporting the inclusion of such measures on the ballot. And yet with the full force of numerous advocacy groups opposed to civil marriage rights for gay and lesbian couples devoted to this litigation, the anti-gay organizations have been unable to come up with even a single example of a voter who suffered retaliation or who was 'chilled' from signing a petition as a result. The anti-gay organizations, for all of their heated rhetoric, have simply failed to produce any such evidence. In fact, the identities of *financial contributors*, not just petitions signers, to Referendum 71 have been public on the State's and other websites for two years. Nonetheless, there is no evidence that anyone who made a financial contribution to support PMW or R-71 have faced any threats, reprisals, or harassment.

"LGBT individuals continue to face significant violence, discrimination, and harassment, above and beyond anything these groups have alleged, let alone experienced. The irony should not go unnoticed that these groups foster heated debate by promoting divisive measures and then complain about the debate that follows when people's basic legal rights are at stake. These same groups and individuals demanding secrecy have fought for years against laws that would protect LGBT individuals from very real harm – from bullying in school to hate crimes. Their creative narrative of victimization is not supported by the record before the Court**.** Exaggerated tales of victimization are used in an effort to take away one of the few defenses the gay and lesbian community has at its disposal to defend against hostile ballot initiatives: the use of public petition records to protect itself against the fraudulent qualification of such measures in the first place. When a party attempts to fill the record with frivolous and irrelevant material, it is because they have neither the facts nor the law on their side," said Anne Levinson, Chair of WAFST and a former judge.

WAFST sought to keep all records open, so that the public could know as much as possible when deciding how to vote. When it appeared that petitions used to qualify the measure for the ballot might be in violation of various statutory requirements, and the measure might be put on the ballot without the required number of registered voters having signed petitions, WAFST then made a public disclosure request for the petitions so that it could determine whether the Secretary of State had made any errors in concluding that certain signatures and petitions were valid.

"If the court were to rule that these petitions could be kept secret, it would take away an important tool that helps ensure accountable and legitimate elections in our state and set a terrible precedent for future campaigns, particularly those that engender robust debate. Washington's Public Records Act and campaign disclosure laws help to ensure that elections, especially elections addressing fundamental constitutional rights, are conducted transparently and fairly," Levinson said.

"As Washington State continues to use the initiative process with great frequency, ability to access petition records as a means to ensure fair and honest elections remains important for the electoral process. Regardless of the issue, full disclosure ensures that voters have the best available information and that elections are conducted with legitimacy and accountability. The history of fraud and mistake in the ballot process should teach us that electoral processes need to be more, not less, transparent," she added.

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