The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN DOE # 1, an individual; JOHN DOE # 2, an individual; and PROTECT MARRIAGE WASHINGTON, Plaintiffs, v. SAM REED, in his official capacity as Secretary of State of Washington; and BRENDA GALARZA, in her official capacity as Public Records Officer for the Secretary of State of Washington, Defendants.	NO. 09-5456BHS DECLARATION OF NICK HANDY IN OPPOSITION TO PRELIMINARY INJUNCTION

I, Nick Handy, declare as follows:

1. I am over eighteen years of age and competent to testify. I serve as Director of Elections in the Office of the Secretary of State for the state of Washington. I was appointed to this position in May 2004 by Secretary of State Sam Reed, and have served in this position for over five years.

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 753-6200

2. I supervise all of the operations of the Elections Division of the Secretary of State's Office, and oversee administration of state and federal elections, including the state primary and general elections. I am familiar with the following information in that capacity.

3. The Secretary of State is charged by statute with administering the filing of initiative and referendum measures and for certifying such measures to the ballot. The Elections Division carries out the Secretary's responsibilities regarding initiatives and referenda. To qualify a measure for the ballot, initiative and referendum measure proponents must collect and submit a minimum number of valid signatures of registered voters in the state. The Elections Division verifies the validity of the signatures submitted on the petition forms and certifies measures to the general election ballot that meet these signature requirements.

4. Referendum Measure 71 was filed with the Office of the Secretary of State as a proposed ballot measure on May 4, 2009. Referendum Measure 71 asks voters to either accept or reject Engrossed Second Substitute Senate Bill 5688, passed by the 2009 Legislature, relating to the rights, responsibilities, and obligations accorded state-registered same-sex and senior domestic partners.

5. Referendum petition sheets must include a place for each signer to sign and print his or her name, and the address, city, and county at which he or she is registered to vote (Wash. Rev. Code § 29A.72.130).

6. On the afternoon of Saturday, July 25, 2009, the proponents of Referendum 71 submitted 9,359 petition sheets with signatures to the Secretary of State. The petition sheets were delivered in an open, public forum. Referendum supporters and opponents were in attendance, as were several members of the news media. The petition sheets were counted by

ATTORNEY GENERAL OF WASHINGTON
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Elections Division staff under observation by representatives from organizations supporting and opposing the referendum.

7. After counting the petition sheets, the state Elections Division issued a letter to the sponsor stating the official count of petitions sheets accepted by the office. The petition sheets were transferred to the Washington State Archives to be secured in a vault for the remainder of the weekend. The state Archives are a division of the Office of the Secretary of State.

8. On Monday, July 27, 2009, the petition sheets were transferred from the vault to the Imaging Services division of the state Archives. Imaging services made a digital (electronic) copy of each petition sheet. After imaging, the original petition sheets were returned to the Elections division. Since July 27, my office has been counting and verifying the individual signatures on the petitions to determine whether a sufficient number of signatures have been filed to qualify Referendum Measure 71 for the November 2009 election ballot.

9. On Tuesday, July 28, 2009, Mr. Brian Murphy submitted a public records request to Brenda Galarza, the agency's Public Records Officer. Mr. Murphy requested digital images of all petition sheets. He asked that these images be provided on DVDs. On Friday, July 31, Mr. Toby Nixon submitted a public records request to Ms. Galarza for the same records, asking for scanned images on a CD-ROM. On August 4 Mr. Arthur West submitted a public records request to Ms. Galarza for the same records. On August 6, Mr. Brian Spencer submitted a public records request to Ms. Galarza for the same records.

10. The Secretary of State's office considers initiative and referendum petition sheets filed with our office to be public records under the state public records laws. State law generally makes all public records available for public inspection and copying, and contains no

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exemption covering petitions or petition signatures. Our office routinely fulfills these requests and provides the requested records, at cost, to the requester. In recent years, we have received public records requests for petitions supporting the following initiative measures, and we produced copies of the petitions bearing the names and addressers of signers in response to each one:

a. Initiative 917 (concerning limiting motor vehicle charges) (2 requests) (2006);

b. Initiative 933 (concerning government regulation of private property) (2006);

c. Initiative 937 (concerning energy resource use by certain electric utilities) (2006);

d. Initiative 1029 (concerning long-term care services for the elderly and persons with disabilities) (2008); and

e. Initiative 1033 (concerning state, county and city revenue) (2009). Our office is currently processing this request.

11. Four referendum measures have qualified to the ballot in Washington through the petition process in the past 20 years. Those measures were:

a. Referendum Measure 48 (concerning land use regulation) (1995);

b. Referendum Measure 53 (concerning unemployment insurance) (2002);

c. Referendum Measure 55 (concerning charter public schools) (2004); and

d. Referendum Measure 67 (concerning insurance coverage and benefits) (2007).

We did not receive public records requests for the petitions supporting any of these measures.

12. Absent court order, our office intends to honor any public records requests for petition sheets for Referendum 71.

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
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13. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Olympia, Washington, in the County of Thurston, this 12th day of August, 2009.

Nick Handy

ATTORNEY GENERAL OF WASHINGTON
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