☐ EXPEDITE
☐ No hearing is set.
☐ Hearing is set:
Date: _____
Time: _____
Judge/Calendar: _____
_____

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

WASHINGTON FAMILIES STANDING TOGETHER and ANNE LEVINSON, Plaintiffs, v. SECRETARY OF STATE SAM REED, in his official capacity, and PROTECT MARRIAGE WASHINGTON, Defendants.	NO. ORDER GRANTING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF [PROPOSED]

THIS MATTER came before the Court for hearing on Plaintiffs' Motion for Injunctive Relief. The Court considered the Plaintiffs' Complaint; Plaintiffs' Motion for Injunctive Relief; the Declaration of Mona Smith (including all attachments and exhibits); the Declaration of Michael Snyder; and the Declaration of Amanda J. Beane, with attached Declarations of Kevin J. Hamilton (including all attachments and exhibits), Anne Levinson (including all attachments and exhibits), and Jonathan Macaranas; Defendants' opposition,

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if any, Plaintiffs' reply, if any, and the files and records in this matter. Being fully apprised, the Court GRANTS the Plaintiffs' motion as follows.

FINDINGS OF FACT

1. On July 25, 2009, defendant Protect Marriage Washington ("PMW") submitted approximately 137,689 signatures to the Secretary of State's office ("SOS") for proposed Referendum 71. Under RCW 29A.72.150, a referendum needs signatures of legal voters equating to 4% of the electors in the last gubernatorial election to be placed on the ballot. Therefore, the minimum number of signatures to qualify Referendum 71 was determined by the SOS to be 120,577.

2. On July 25, 2009, proponents of R-71 organized the boxes of petitions at the bottom of the Capitol stairs in Olympia. In doing so, they realized that many signature-gatherers had not filled out the required declaration on the back of the petition. To correct this error, PMW members obtained a signature stamp from Larry Stickney, the campaign manager for PMW, and stamped his name and signature to many of the petitions with blank declarations.

3. The Secretary of State accepted 33,966 signatures on 2,508 petitions where the declaration was stamped with Mr. Stickney's name after the fact. The Secretary of State also accepted 2,058 signatures on 162 petitions where the required signature-gatherer declaration was left entirely blank.

4. On August 21, 2009, Plaintiff Washington Families Standing Together ("Washington Families") requested that the SOS reject all signatures contained on petitions where the signature-gatherer declaration was either blank or where Mr. Stickney (or someone else stamping and attesting to Mr. Stickney's name) "signed" the declaration,

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attesting to personal knowledge, without having personally circulated the petition. On August 26, 2009, the Secretary refused to do so.

5. Because PMW submitted so few signatures above the minimum required, the SOS was not confident that a random statistical sample would accurately conclude that there were sufficient valid signatures to certify the measure for the ballot. Therefore, the SOS determined that a 100% check was appropriate.

6. On July 31, 2009, the SOS began determining how many valid signatures had been submitted. During the check, SOS staff ("checkers") compared signatures on petitions to signatures on file in the statewide voter registration database to determine if each signature was that of a registered voter, as required by State law.

7. During the verification process, the SOS realized that it had been using a copy of the statewide voter registration database that was current only through June 19, 2009. On August 17, concerned that voters who registered between June 19 and July 25 might be rejected in error, the SOS added a third group of checkers to review all signatures rejected by initial and master checkers against a "live" version of the database that included anyone who registered as of the date their name happened to be checked between July 27 and September 2.

8. The SOS instructed staff conducting the third review that they should not reject a signature based on the date the voter registered. As a result, Washington Families observers have witnessed SOS staff accepting signatures from voters who were not registered at the time they signed the petitions, and some that were registered even after the Referendum 71 petitions were filed.

9. As instructed by the SOS, Washington Families raised its concerns regarding unsigned declarations, declarations that were signed by someone other than the signature-

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gatherer, declarations that were signed by someone other than the declarant, and acceptance of signatures where the voter was not registered when he or she signed the petition . The SOS refused to change its practices in response.

10. The Secretary certified Referendum 71 for the ballot on September 2, 2009, using all of the above signatures to find that the measure had 1430 over the allowable minimum.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over Defendants and the subject matter of this action.

2. Plaintiffs successfully contacted Defendants on September 3, 2009 to provide notice of their intent to seek injunctive relief in this matter.

3. Under RCW 29A.72.240, Plaintiffs are entitled to apply for an injunction to prevent Referendum 71 from being placed on the ballot.

4. Under Washington law, to be granted an injunction, a plaintiff must establish (1) a clear legal or equitable right; (2) a well-grounded fear of an immediate invasion of that right by the defendant; and (3) that the acts constituting such an invasion are resulting, or will result, in actual and substantial injury to the plaintiff. Kucera v. Department of Transportation, 140 Wn.2d 200, 209, 995 P.2d 63 (2000); Tyler Pipe Industries, Inc. v. State, Dept. of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). These elements must be reviewed as part of a balancing of the relative interest of the parties, and where appropriate, the interest of the public. Kucera, 140 Wn.2d at 209.

5. Pursuant to RCW 29A.72.100, each referendum petition must be in substantially the form required by RCW 29A.72.130 and must include, among other things,

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"a readable, full, true, and correct copy of the proposed measure printed on the reverse side of the petition."

6. Pursuant to RCW 29A.72.130, each signature gatherer for a referendum petition must make "[t]he following declaration [that] must be printed on the reverse side of the petition:"

> I, _____ swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

7. Pursuant to RCW 29A.72.170, the SOS may refuse to file any referendum petition that does not contain the information required by RCW 29A.72.130 or which does not bear the number of signatures required under RCW 29A.27.150.

8. RCW 29A.72.130 is not ambiguous. See In re Estate of Jones, 152 Wn.2d 1, 11 (2004).

9. A written statement is made under oath if it was "made on or pursuant to instructions on an official form bearing notice, authorized by law, to the effect that false statements are punishable." RCW 9A.72.010(2)(a).

10. The declaration is an "oath," as that term is defined by RCW 9A.72.010(2).

11. A petition that contains a declaration that is not signed is not substantially in the form required by RCW 29A.72.130.

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12. A person who signs his or her own name, or another's name, to the declaration without personal knowledge of the facts stated therein has made a false oath.

13. A petition that contains a declaration that is signed by an individual who did not personally circulate the petition is not substantially in the form required by RCW 29A.72.130.

14. A petition that contains a declaration signed by an individual using someone else's name is not substantially in the form required by RCW 29A.72.130.

15. A petition that contains a declaration wherein the signature-gatherer who circulated the petition has not written his or her name in the space provided ("I, _____, swear or affirm") is not in substantially the form required by RCW 29A.72.130.

16. Referendum petitions that are not in substantially the form required by RCW 29A.72.130 must be rejected by the SOS.

17. The Secretary's action in accepting petitions bearing unsigned declarations or declarations signed by a person who did not personally circulate the petition was contrary to law, exceeded the Defendant's authority under Chapter 29A.72, and was arbitrary and capricious.

18. The Secretary's action in accepting petitions wherein the signature-gatherer who circulated the petition has not written his or her name in the space provided ("I, _____, swear or affirm") was contrary to law, exceeded the Secretary's authority under Chapter 29A.72, and was arbitrary and capricious.

19. Where an individual collects voter registration application forms during a petition drive, a new voter is not registered until the date of postmark or the date the form is received by the SOS or county auditor, whichever is earlier, but the collector must provide the application to the SOS or auditor within a week of collecting it. RCW 29A.08.115.

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20. Only signatures of individuals who are registered to vote at the time he or she signs the petition are valid. Wash. Const. Art. II § 1(b); RCW 29A.72.130. Each petition must include a place for each signer to list the address "at which he or she is registered to vote." RCW 29A.72.130. By signing a petition, a signer attests that "I am a legal voter . . . ," *Id.* And the petition must contain a warning that "[e]very person who . . . signs this petition when he or she is not a legal voter . . . may be punished by fine or imprisonment. . . . " RCW 29A.72.140. Signatures of individuals who were not registered at the time the petition was signed cannot be knowingly accepted by the Secretary.

21. The Secretary's action in instructing SOS staff to accept signatures from individuals who were not registered at the time the petition was signed was contrary to law, exceeded his authority under RCW 29A.72, and was arbitrary and capricious.

22. Based on the Findings set forth above, Plaintiffs are entitled to injunctive relief under RCW 29A.72.240. The Secretary has accepted over 2,500 petitions, with more than 35,000 signatures, that he was required to rejected under RCW 29A.72.130 and further accepted signatures of individuals who were not registered voters at the time the petition was signed in contravention of Wash. Const. Art. II § 1(b) and RCW 29A.72.130, which means that Defendant Secretary has erroneously certified Referendum 71 for the ballot and Plaintiffs will be harmed unless the Secretary is enjoined.

23. Plaintiffs therefore have established that they have a clear legal and equitable right and a well-grounded fear of an immediate invasion of that right by Defendant Secretary, and that such invasion threatens real and substantial injury to Plaintiffs.

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ORDER

Now, therefore, it is hereby ORDERED as follows:

1. The Secretary is hereby enjoined from placing Referendum 71 on the General Election ballot.

DATED this _____ day of _____, 2009.

_____
Washington Superior Court Judge

Presented by:

PERKINS COIE LLP

By: _____
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