

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

WASHINGTON FAMILIES STANDING)
TOGETHER, and ANNE LEVINSON,)
Plaintiffs,)

vs.)

SUPERIOR COURT NO. 09-2-02145-4

WASHINGTON STATE SECRETARY)
of STATE SAM REED, in his)
official capacity, and)
PROTECT MARRIAGE WASHINGTON,)

Defendants.)

THE HONORABLE WM. THOMAS MCPHEE PRESIDING, DEPARTMENT 2

Motions hearing
September 8, 2009
2000 Lakeridge Drive SW
Olympia, Washington

Court Reporter
Ralph H. Beswick, CCR
Certificate No. 2023
1603 Evergreen Pk Ln SW
Olympia, Washington

A P P E A R A N C E S

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For the Secretary of State: Jeffrey T. Even, AAG
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1
2 THE COURT: Please be seated.

3 Welcome back, ladies and gentlemen. I'm about to
4 give my decision in this case. I must say that this job
5 of being a judge is always a pleasure. It exposes me
6 daily to really interesting issues, and just as
7 importantly, exposes me daily to people who are very
8 bright, very dedicated to their work and very competent,
9 and that certainly has been the case in this case. I
10 appreciate the work of counsel in providing to me on
11 very short notice a great deal of information that was
12 well organized, very well written, understandable and a
13 great aid to me in deciding these issues.

14 The plaintiffs here are seeking an injunction against
15 the Secretary of State preventing the referendum, which
16 I'll refer to as R-71 throughout, from being placed on
17 the ballot for the general election in November. This
18 matter is extremely time sensitive. This action is
19 permitted by RCW 29A.72.240 and requires that the action
20 be filed in Thurston County Superior Court within five
21 days of certification of a referendum measure by the
22 Secretary of State. I am charged with hearing and
23 determining the matter speedily, their word, not mine.
24 Thereafter, review may be heard by the Supreme Court
25 within five days.

1 This matter will be heard and determined speedily.
2 The matter was filed Wednesday, late on Wednesday. Most
3 documents were submitted to me on Friday afternoon and
4 we're now in the process of hearing and determining this
5 matter on the next business day. Thank goodness for
6 Labor Day weekend I guess I would have to say.

7 In many cases when I approach arguments on legal
8 questions such as this, I come out on the bench without
9 a clear idea of how the case will be decided. I depend
10 very much upon the oral arguments of counsel, and when
11 that occurs, I then usually take matters under
12 advisement to reflect on what I've heard, compare it to
13 what I have read and prepare a decision.

14 Other times I come to the bench pretty well
15 determined how the ruling should go in the case, and the
16 argument of counsel serves as a check against
17 conclusions that I have already drawn and causes me to
18 re-examine those decisions, but in the end, unless I am
19 convinced that my initial impression was a mistake, I'm
20 usually ready to render my decision shortly after the
21 arguments have concluded. That's the case here, in part
22 required by the time pressure that affects us all.
23 Accordingly, much of what I have to say here is material
24 that I have written out over the weekend and this
25 morning, including changes prompted by the consideration

1 of the reply brief filed by the plaintiffs this morning.

2 The remedy sought by plaintiffs, injunction, requires
3 that they establish three elements called the *Tyler Pipe*
4 elements. The first of those elements is that the
5 plaintiffs have a clear legal or equitable right to the
6 injunction. Here the element involves a clear legal
7 right, not an equitable one. Analysis of a clear legal
8 right requires a court to examine the strength of the
9 claim for the final remedy sought by the plaintiffs. Is
10 there a strong case for the factual contentions made by
11 the plaintiffs, and if so, does the law support the
12 remedy they seek on the facts they allege. Where, as
13 here, the injunction to be issued is both a preliminary
14 and in a sense a final injunction, the analysis is of
15 the case that the plaintiffs are able to present to the
16 court where they have the burden of proof.

17 The second and third elements of *Tyler Pipe* must be
18 shown, but they are not much disputed here. The focus
19 of both parties and the court is on the first element.
20 It will decide this motion.

21 R-71 seeks a vote in the general election on the
22 measure passed by the last legislature that expanded the
23 rights of partners under existing domestic partnership
24 law. The subject matter of the law has and will
25 continue to engender passionate and committed advocates

1 on both sides of the issue. But here, as the Supreme
2 Court declared in *Schrempp versus Munro* in 1991, the
3 merits of the referendum are not at issue here.

4 The case involving these parties was filed by
5 plaintiffs earlier in King County Superior Court.
6 Plaintiffs' motion for a temporary restraining order was
7 denied and the case apparently dismissed. In the course
8 of that denial, Judge Spector, an experienced and
9 respected judge, entered a number of findings that
10 plaintiff has urged me to consider and even rely upon in
11 deciding this case. I conclude that to do so would be
12 clearly improper under the law. This is a separate
13 case, not a follow-on case from the King County action.
14 It is brought here in Thurston County because the law
15 requires such challenges to be brought here. The matter
16 must be decided by me based upon the record before me
17 and not on the record or the decisions made in another
18 forum.

19 Before addressing the issues contested here, I make
20 the following findings. The numbers I find here are not
21 agreed numbers, but neither are they materially
22 contested. I have used the Secretary 's numbers. The
23 plaintiffs' numbers differ slightly, but that apparently
24 is because plaintiffs have used preliminary numbers from
25 the King County hearing before actual certification by

1 the Secretary.

2 I find that the referendum sponsors submitted a large
3 number of petitions to the Secretary of State. The
4 petitions contained 137,881 signatures. I find that
5 120,577 valid signatures are required to qualify R-71
6 for the ballot. I find that the Secretary has
7 determined that the petitions contain the valid
8 signatures of 122,007 registered voters. I find that
9 all the petitions submitted contain the statements
10 required by RCW 29A.72.130 on the back of the petition.
11 I find that of the petitions submitted, some petitions
12 did not bear the signature of the signature gatherer.
13 The record establishes that there were 2,680 petitions
14 bearing 36,154 signatures of petition signers that did
15 not include the signature of the signature gatherer on
16 the back.

17 Of the 2,680 petitions unsigned by the signature
18 gatherer, 2,508 were stamped with Mr. Stickney's
19 facsimile signature and 172 were not. I conclude that
20 the presence of Mr. Stickney's facsimile signature is
21 not material to any issue decided here because the
22 presence or absence of the facsimile signature was not
23 the basis for the Secretary's decision to accept the
24 petition and declare valid the signatures of the
25 registered voters they bear.

1 The record shows that the Secretary accepted those
2 petitions because he concluded they complied with RCW
3 29A.72.130. He concluded that Section 130 did not
4 require the signature of the signature gatherer. The
5 validity of that conclusion is an issue in this case,
6 but it is not affected by the Stickney stamp.

7 The basis for plaintiffs' injunction application is
8 that the referendum sponsor failed to submit the
9 requisite 120,577 valid signatures of petition signers
10 when a number of those signatures, a very large number
11 of them, are disqualified for various reasons urged by
12 the plaintiffs. The first reason, a reason affecting
13 over 36,000 petition signers, is that the Secretary
14 illegally counted them. Plaintiffs contend that the
15 Secretary should never have accepted the petitions that
16 did not bear the signature of the signature gatherer
17 somewhere on the back of each petition placed in some
18 proximity to the statement on the back that was required
19 by Section 130.

20 It is important to note in this regard that not one
21 of the 36,000 petition signers declared valid by the
22 Secretary has been shown to have signed in violation of
23 the law or signed at the time of violation of the law by
24 the signature gatherer or signed after a violation of
25 the law by the signature gatherer. All of the

1 invalidity alleged here occurred at the time the
2 petitions were submitted to the Secretary of State,
3 after the petition signers had signed the documents.

4 Plaintiffs contend that Section 130 is not ambiguous.
5 Plaintiffs contend that Section 130 unambiguously
6 directs that the statement required on the back of the
7 petition be signed by the signature gatherer. Second,
8 plaintiffs contend that the Secretary wrongfully
9 accepted the petitions that did not bear the signature
10 of the signature gatherer. To be granted an injunction
11 on this argument, plaintiffs must prevail on both of
12 these contentions.

13 As secondary arguments on this main issue, plaintiffs
14 argue that if Section 130 is ambiguous, then the
15 legislative history of the statute requires that it be
16 construed to include a requirement that the mandated
17 statement be signed by the signature gatherer. Next,
18 plaintiffs argue that if Section 130 is ambiguous, and
19 if the legislative history supports a construction of
20 the statute that does not require the signature
21 gatherer's signature, then at least it requires the
22 signature gatherer be identified by placement of the
23 signature gatherer's name in the space provided for in
24 the mandated statement.

25 In deciding the plaintiffs' foregoing contentions and

1 arguments, I begin with the constitution where the right
2 of referendum to vote on a measure enacted by the
3 legislature is reserved to the registered voters of the
4 state in Article II, Section 1 of the constitution. My
5 consideration of these issues does not occur in a
6 vacuum. There is a significant body of Supreme Court
7 jurisprudence to guide me. It is well to review some of
8 the principles that guide a court in this undertaking.
9 In *Schrempp versus Munro*, a 1991 Supreme Court decision,
10 the court began with a quote that is applicable here:
11 "Before discussing the issues, it is well to remember
12 that, first, exercise of the initiative process is a
13 constitutional right." Quoting from the constitution
14 the court continued, 'The first power reserved by the
15 people is the initiative.' Note, in *Schrempp*, the court
16 was deciding an initiative. Here the court would say,
17 "The referendum process is a constitutional right. The
18 second power reserved by the people is the referendum."
19 The Supreme Court in *Schrempp* then went on to say,
20 "Second, legislation concerning the initiative or
21 referendum process may be enacted only to facilitate its
22 operation," citing Constitution Article II, Section
23 1(d). "Third," the court stated, "the authority of the
24 judiciary over the process is limited. 'We are dealing
25 with a political and not a judicial question, except

1 only insofar as there may be express statutory or
2 written constitutional law making the question
3 judicial.'" "

4 In another case, *Sudduth versus Chapman*, decided in
5 1977, the Supreme Court declared, "Those provisions of
6 the constitution which reserve the right of initiative
7 and referendum are to be liberally construed to the end
8 that this right may be facilitated, and not hampered by
9 either technical statutory provisions or technical
10 construction thereof, further than is necessary to
11 fairly guard against fraud and mistake in the exercise
12 by the people of this constitutional right."

13 In an earlier case, *Edwards versus Hutchinson*,
14 decided in 1934, the Supreme Court declared, citing
15 earlier cases, "This court laid down the rule that the
16 sponsor of such a petition," there an initiative
17 petition, "was not the agent of any of the signers to
18 the extent that his offenses would bind the signers or
19 invalidate their signatures." This principle was
20 repeated in the *Sudduth* case in 1977 where the Supreme
21 Court declared, "When a legal voter has signed a
22 referendum petition, his signature must be counted even
23 though the person soliciting his signature has violated
24 the law."

25 The principles I've laid down here do not compel a

1 result in this case. They dealt with issues related,
2 but distinct from this case, but they do clearly define
3 the caution a court should exercise when asked to
4 disenfranchise a large number of citizens from a
5 constitutional right through no fault of the signers of
6 the petitions themselves.

7 I address first plaintiffs' contention that Section
8 130 requires the signature of a signature gatherer
9 somewhere on the back of each petition. Plaintiffs
10 contend that the statute is not ambiguous, that it
11 unambiguously on its face requires a signature so no
12 consideration of the intent of the legislature is
13 necessary. In support of this argument, plaintiff
14 argues that 20 other states whose constitutions permit
15 referendums all require the signature of the signature
16 gatherer. Accordingly, plaintiffs argue, Washington's
17 requirements should be read the same way.

18 It is true that the 20 other states require the
19 signature gatherer to sign the petitions, but it is also
20 the case that the language of each of those 20 state
21 statutes specifically requires that the petition be
22 signed. Eleven of those states require that the
23 signature be by affidavit, in other words signed and
24 notarized by a notary public after the signature
25 gatherer has signed in that person's presence.

1 Section 130 stands in sharp contrast to these
2 statutes. In the declaratory language of Section 130,
3 rather than declaring, "The signature gatherer shall
4 sign the following declaration on the back of the
5 petition," language that is representative of the other
6 20 statutes, our legislature declared, "The following
7 declaration must be printed on the reverse side of the
8 petition." The argument that Section 130 must include
9 the same requirements as the other 20 state statutes is
10 not persuasive.

11 In oral argument plaintiffs have argued, with some
12 degree of persuasion, that others, seeing the statute at
13 first blush, would conclude that the statute
14 unambiguously requires the signature of the signature
15 gatherer because of the placement of the declaration in
16 the form of a declaration in the statute rather than the
17 warning that is part of the same statute enacted earlier.

18 As human beings, we are permitted to draw inferences
19 in our day-to-day living, and when one reads the
20 language of the statute, one reasonably draws an
21 inference that although it doesn't say so, the language
22 of the statute strongly infers that the declaration is
23 to be signed. Mr. Even may have drawn a similar
24 inference. Certainly Mr. Hamilton did. Perhaps this
25 court did at first reading of that statute. But courts

1 are not always permitted to draw inferences in assessing
2 the intention of the legislature.

3 In interpreting or construing a statute, the duty of
4 a court is to ascertain the intention of the legislature
5 and give meaning to that intention. We are not
6 permitted by way of inference to conclude on our own
7 what we believe the legislature intended by its
8 language. Rather, our charge is specific and is clear;
9 we are to apply the meaning suggested in the plain
10 meaning of the language of the statute, and that
11 includes the common and ordinary meaning found in a
12 dictionary, and consideration of the balance of the
13 language in the section in which the challenged language
14 occurs, and in consideration of the language in its
15 context of the entire act. That's the plain meaning
16 test.

17 If the court is not able to determine what the plain
18 meaning of the statute is, then we are directed to rules
19 and tools of construction, and when construing a
20 statute, the primary tool is to ascertain the intention
21 of the legislature. That task, however, is not
22 available to the court unless the statute is ambiguous.
23 If a statute is not ambiguous, as I indicated, the plain
24 meaning must be adduced from the ordinary meanings of
25 the words in question, the obvious meaning within the

1 section and the act in which the words appear.

2 Words requiring a signature gatherer to sign a
3 petition do not appear anywhere in Section 130 and do
4 not appear in any other section of Chapter 29A.72.

5 I conclude that Section 130 cannot be construed in
6 the manner urged by plaintiffs based only on the
7 language of the statute. I conclude that Section 130 is
8 ambiguous. Neither the directory language of the
9 statute nor the "declaration" created in the statute
10 itself requires the signature of the signature gatherer.
11 Still, to quote from the Attorney General's opinion 2006
12 number 13, "It seems anomalous that the legislature
13 would require each petition to include a declaration but
14 did not intend that the declaration actually be filled
15 out."

16 This statute is subject to more than one reasonable
17 interpretation. As such, it is ambiguous and resort may
18 be had to the tools of construction to ascertain its
19 meaning. For statutory construction, the paramount tool
20 is the legislative history because the goal here is to
21 determine the intent of the legislature.

22 This law has a fascinating legislative history, both
23 before and after enactment. The history that is part of
24 the record before me shows the following: The bill was
25 introduced and passed the House of Representatives in

1 two sessions preceding the 2005 session when it was
2 enacted by both chambers. Throughout, the issue of
3 whether signature gatherers would be required to sign
4 the petition seems to be at the forefront of the debate.
5 In its first iteration in the 2004 session, the bill
6 required a notarized signature. Later, that requirement
7 was removed and a declaration inserted that included a
8 signature line and detailed identification information.
9 As ultimately passed in 2005, the bill contained none of
10 these features, except the possibility of insertion of
11 the signature gatherer's name in the blank provided in
12 the language of the declaration that the legislature
13 required be affixed to the back of the petition.

14 During the floor debate in the house, the two
15 committee sponsors spoke on the floor urging support.
16 Mr. Even quoted to me sections of that debate, which I
17 had earlier highlighted for my own use in considering
18 these issues. He didn't exactly quote all of the
19 statements that I felt were most important and most
20 enlightening here. Representative McDermott, speaking
21 for his side of the aisle on this matter and urging
22 support of this legislation included in his statement to
23 the assembled body on the floor, "This bill would
24 require the signature gatherer to sign each page of the
25 petition that they have gathered those signatures and

1 are aware of penalties for each of those acts." He goes
2 on to say, perhaps hinting at the issue, "It in no way
3 inhibits the gathering of signatures."

4 At the same time, the other committee sponsor,
5 Mr. Nixon, speaking again for support of the bill,
6 addressed the house in the following manner: "This
7 bill, its primary purpose is to make sure that people
8 who are gathering signatures on initiative and
9 referendum opinions are aware of the penalties
10 associated with forging signatures or paying anyone to
11 sign a petition. It does not create any new penalty.
12 It does not penalize those who fail to sign the
13 statement, but the statement does have to be printed on
14 the initiative petitions." And this next statement I
15 think is particularly important. He stated, "It also
16 does not invalidate the petition forms if the signature
17 is not provided of the circulator."

18 After the law was enacted, Representative Nixon
19 requested an opinion from the Attorney General on
20 whether Section 130 required the signature of the
21 signature gatherer. This was in early 2006, and as we
22 discussed in oral argument, it seems to correspond
23 nearly exactly with the published declaration of the
24 Secretary of State that he was going to require that the
25 declaration on the back be signed by the signature

1 gatherer and would refuse to accept petitions that did
2 not bear that signature. Representative Nixon requested
3 of the Attorney General's office an opinion on that
4 precise issue. The opinion, AGO 2006 number 13, was
5 issued on May 31st, 2006. In relevant part it concluded
6 that Section 130 was ambiguous, and after reviewing the
7 legislative history, concluded that the law did not
8 require a signature gatherer's signature on the petition.

9 An AGO's opinion is a formal process. When requested
10 by an eligible person, and a member of the House of
11 Representatives is an eligible person, the solicitor
12 general section of the Attorney General's office
13 undertakes to answer the question following research and
14 consideration of all issues encompassed by the question.
15 The court is not bound by an attorney general's opinion.
16 I will draw my own conclusions about the law.
17 Nevertheless, the court may accord considerable weight
18 to an Attorney General opinion. Here, I have relied
19 upon the opinion for facts, particularly history, but
20 the conclusions here are my own. I have not relied upon
21 the conclusions of the Attorney General, but my
22 conclusions are consistent with the conclusions drawn by
23 the Attorney General in opinion number 13.

24 I conclude that the law is ambiguous, so resort to
25 legislative history is permitted. After consideration

1 of that history, I conclude that Section 130 requires
2 that the language of the declaration appear on the back
3 of each petition, but does not require that the
4 declaration be completed or signed by a signature
5 gatherer. The language of the statute does not require a
6 signature and the legislative history does not establish
7 that a signature requirement was intended.

8 The AGO's opinion is more exhaustive than my
9 explanation here. Time constraints dictate that I
10 mostly deal with conclusions here. The opinion in my
11 estimation is a fair, measured and thorough examination
12 of the legislative history and the conclusions that can
13 be drawn from the language of the act, the statute
14 itself, the language of the entire chapter, the
15 legislative history of the section.

16 Plaintiffs objected to consideration of the law's
17 legislative history in the session preceding 2005 by
18 both the Attorney General in the opinion and by this
19 court in my determination here. That objection is not
20 persuasive. Of course it is proper to consider the full
21 history of the act when it is so closely tied from one
22 legislative session to another.

23 After the AGO's opinion was completed in mid 2006,
24 the Secretary of State implemented its conclusion and
25 did so with notice to the public in the 2006 election

1 cycle and up to the present. During that time the
2 legislature has met in 2007, 2008 and 2009 sessions.
3 The law as construed by the Attorney General and as
4 implemented by the Secretary of State following that
5 opinion has not been amended by the legislature.

6 I have answered all but one of the contentions made
7 by plaintiffs on this first issue, the major issue in
8 the case. The unanswered contention is that the
9 Secretary of State wrongfully accepted the unsigned
10 petitions and counted the valid signatures of the
11 petition signers thereon. The Secretary argues that
12 even if Section 130 were construed to require the
13 signatures of the signature gatherers on the back of the
14 petitions, the Secretary of State may still accept and
15 count the valid signatures of the petition signers. The
16 Secretary of State's argument is based upon, first, the
17 language of the statute, RCW 29A.72.170, which states in
18 relevant part that the Secretary may refuse to file any
19 referendum petition that does not contain the
20 information required in Section 130. The verb "may" is
21 permissive, not compulsory. Second, the Secretary
22 relies upon the rule of law announced in *Edwards versus*
23 *Hutchinson* and repeated in *Sudduth versus Chapman* to the
24 effect that, "When the legal voter has signed a
25 referendum petition, his signature must be counted even

1 though the person soliciting his signature has violated
2 the law."

3 The plaintiffs have impeached those contentions with
4 arguments in their reply brief and on oral argument
5 today, and in some respects I find that those oral
6 arguments are entitled to some considerable weight. The
7 distinctions drawn there are valid distinctions in many
8 respects. My decision today that the signature
9 gatherers' signatures are not required by the statute
10 removes the need to decide this argument and I decline
11 to do so.

12 If my decision on all of the contentions urged by
13 plaintiffs in this first issue did not clearly encompass
14 the fourth contention that I identified, and that is
15 whether if a signature is not required, must the
16 signature gatherer's name be inserted on the document,
17 and in listening to my opinion here, I concluded that I
18 had not been as clear as I intended in that regard, I
19 readdress it here. I apply the same analysis to that
20 aspect of the argument as I do to the argument that a
21 signature must appear there and decline to adopt the
22 position urged by the plaintiffs for that same reason.

23 I now address the voter registration issue.
24 Plaintiffs contend that all petition signers must be
25 registered before they sign a petition and that the

1 Secretary of State wrongfully accepted signers who
2 registered at the time of signing the petition or at
3 some time later, but before the Secretary of State
4 checked those signatures. I begin my analysis of those
5 contentions with the review of the law. Beginning with
6 the statute, the form of a petition for referendum is
7 set forth in RCW 29A.72.130. The required elements are
8 set forth there, and the law provides that all
9 referendum petitions be in substantially the form set
10 out in the statute. The statute requires the name of
11 the voter who signs the petition, the petition signer.
12 It requires the signature as well as the printed name
13 appear. It requires the person's address, his or her
14 city, and his or her county. Nowhere in that law is the
15 date of signature required, and referendums must comply
16 substantially with the law as enacted by the legislature.

17 Second, the law as announced by the Supreme Court in
18 *Sudduth versus Chapman*, and generally, the Supreme Court
19 has declared that provisions of the constitution which
20 reserve the right of initiative and referendum are to be
21 liberally construed to the end that this right be
22 facilitated. Finally, under our law, again enunciated
23 in *Sudduth versus Chapman*, there is a presumption that
24 signatures are valid and the burden of proof is on the
25 plaintiffs to show their invalidity.

1 For decades, the Secretary of State has used the date
2 of checking as the date for determining whether a voter
3 is registered. Realistically there is no other way.
4 The Secretary of State has the ability to determine in
5 nearly every case the date when a registered voter
6 registered. That can be known. What cannot be known is
7 the date when the voter, whether registered or not,
8 signed the petition. And because that information is
9 omitted from the statutory requirements of a referendum
10 petition, this is not a case of the Secretary of State
11 declining to gather information that would otherwise be
12 available to the Secretary. Rather, it is simply a
13 following, in my estimation, of the forms required here.

14 The history of this process, explained in the
15 declarations of the elections supervisors of the
16 Secretary of State's office, shows that this has been
17 the manner in which the Secretary of State has
18 administered the law for many decades. The plaintiffs
19 respond that the constitution requires that a petition
20 signer be a registered voter at the time of signing, and
21 they point out that the process of the Secretary of
22 State's office does not ensure that that law is complied
23 with. However, by signing a petition, a petition signer
24 essentially acknowledges he or she is informed of the
25 responsibility and is cautioned to act only if the

1 petition signer accepts the responsibility that he or
2 she be a registered voter at the time of the signing.

3 After the petitions are completed and submitted to
4 the Secretary of State, the Secretary of State is
5 charged with determining if they are registered voters.
6 In this case they began with a database that was dated
7 June 19. That did not require the Secretary of State to
8 search a live database to determine all registered
9 voters up to the date of checking. Once that had been
10 completed, apparently the length of time between the
11 date of the database and the date of checking was
12 brought to the Secretary of State's attention, checking
13 either began against the live and current up-to-date
14 database or it began only for those who were discovered
15 not to have been registered on the date when the first
16 database was captured and placed into the Secretary of
17 State's network for checking registered voters.

18 In any event, at the end of the process, the
19 Secretary of State had checked every petition signer
20 against registration to determine that he or she had
21 been registered at the time the check was concluded. Of
22 all of those, 43 showed that they had registered to vote
23 after the deadline for submission of the petitions on
24 July 25th. Those 43 do not on their face show violation
25 of the responsibility that they had to be registered

1 voters at the time that they signed the petition because
2 there is a time lag between the time a person signs a
3 voter registration card, oftentimes out in the field at
4 the same time as signing a petition, and the time that
5 that voter registration card is received by the
6 Secretary of State and the appropriate entries are made
7 at both the state and local level. That date is based
8 upon the postmark that the Secretary of State receives
9 when the voter registration card is submitted to the
10 Secretary of State. It may be within a couple of days
11 if the mail is timely; it may be longer than that if the
12 voter registration card is not immediately submitted in
13 the mail by the person who gathered the card, presumably
14 in many cases the petition gatherer. There can be some
15 delay in that regard.

16 So for those 43 people it is possible to say that all
17 43 were registered at least 24 hours before they signed
18 the petition. That's possible. It's also very
19 unlikely. It's also possible to say that all filled out
20 the registration card after they signed the petition.
21 That's also possible. It's also in my estimation quite
22 unlikely. What is more probably the case is that most
23 of these voters, the 43, signed the petition near the
24 end of the petition gathering cycle and concurrently
25 signed the voter registration card and that the voter

1 registration card was then mailed to the Secretary of
2 State at some point in time after the deadline for
3 submitting the petitions.

4 All this does is illustrate the uncertainty by which
5 our present system tracks the date of the petition
6 signing compared to the date of registration. It is
7 very difficult to make any firm conclusions about those
8 particular signatures and it becomes more difficult to
9 make conclusions about voter registrations that were
10 submitted prior to the time of submitting the referendum
11 petitions to the Secretary of State.

12 It is my conclusion that the Secretary of State is
13 not acting in violation of the constitution in accepting
14 the signatures of petition signers who are registered
15 voters at the time that the check is done by the
16 Secretary of State. This interpretation is a liberal
17 interpretation of the constitutional provision. It is
18 also an interpretation that I conclude is consistent
19 with the purpose of the constitutional provision, and
20 that is to make certain that people who sign initiatives
21 or referendums are people who have a stake in the
22 outcome, who will vote on the issue if the initiative or
23 referendum process is successful and the issue is
24 submitted to the voters for their determination. By
25 showing at the time of checking that these are

1 registered voters, these persons have declared their
2 willingness, perhaps their intention, to participate in
3 this process, and that in my estimation is the purpose
4 of the restriction contained in that constitutional
5 provision.

6 Those are the issues presented to me in this
7 injunction. For the reasons that I have explained, I
8 deny the injunction and direct that an order denying the
9 injunctions be entered, which will permit the Secretary
10 of State to proceed with his statutory obligations under
11 that. Of course, this issue may be appealed.

12 And having announced my decision, Mr. Hamilton, may I
13 inquire of you, do you anticipate an appeal will occur?

14 MR. HAMILTON: Your Honor, I have no response
15 for you. I'm afraid it's an issue I need to discuss
16 with my client in consideration of Your Honor's ruling
17 so I don't have an answer for you right now.

18 THE COURT: All right. I appreciate and respect
19 that answer. I will tell you why I asked the question.
20 As counsel know, that's a pretty unusual question to
21 ask. There is out there remaining the additional
22 remedies that you've requested in your complaint. To
23 say that I have been able in these last four days to
24 devote much energy to those matters that are not
25 implicated by the injunction I think would be a

1 misstatement. I mean I certainly haven't done that.
2 But I am generally aware of what is there. I've read
3 through the complaint, and I anticipate an appeal. My
4 belief is that most of these cases are appealed. And my
5 consideration here of what to do about those other
6 claims is this: Since you have not given me the
7 assurance that the issue would not be appealed and the
8 Supreme Court would not address it, I'm going to assume
9 that they would. And so based upon my understanding of
10 the law and the discretion that is permitted the
11 Secretary of State in judging the validity or invalidity
12 of a signature on a petition, but without the type of
13 rigorous examination of that issue that I would
14 ordinarily be able to give where time permitted, I am
15 nevertheless going to dismiss those claims and --

16 MR. HAMILTON: May I be heard, Your Honor?

17 THE COURT: Yes. And the reason I would do that
18 is so that I get guidance from the Supreme Court in this
19 respect because I think that guidance would be extremely
20 helpful. I have not encountered a case that goes on
21 like this that has come to any court in this posture.

22 Mr. Hamilton, I'd be glad to hear your views in that
23 regard.

24 MR. HAMILTON: Well, and I don't -- you know, in
25 light of the Court's decision, I don't -- and I am a

1 little bit hampered what I can say here other than that
2 as a practical matter I've got a very -- at least I
3 consider it to be a fairly close working relationship
4 with the office of the Secretary of State. And I
5 appreciate that it would be helpful to this court to get
6 guidance from the Supreme Court, but in the interest of
7 time, it might perhaps be more efficient to allow the
8 plaintiffs to informally confer with the Secretary of
9 State. Depending on whether they can make certain
10 information available to us, we may be able to review it
11 on an expedited basis and then either proceed or not
12 with the claims, and if we are not able to accomplish
13 that over the next 48 hours, then the Court can always
14 dismiss the remaining claims. That might actually
15 expedite things rather than to dismiss the whole thing,
16 go up to the Supreme Court, if that's the path that's
17 chosen.

18 THE COURT: I think your plan makes more sense
19 than mine.

20 MR. HAMILTON: Well then --

21 THE COURT: I'll wait for a while and see.

22 MR. HAMILTON: But why don't I do this. I'll
23 confer with Mr. Even and officials in his office and
24 then we'll jointly inform the Court at some point over
25 the next 48 hours.

1 THE COURT: Mr. Even, do you wish to be heard?

2 MR. EVEN: No, Your Honor. I don't think I need
3 to add anything on that.

4 THE COURT: At this point then I do not make a
5 ruling on the remaining claims, but the effect of my
6 ruling to date denying the injunction is to permit the
7 Secretary of State to proceed with the duties that he
8 believes he has under the statute unhampered by any
9 court order here.

10 MR. EVEN: Your Honor, I have a proposed order,
11 but I think it might be helpful if counsel conferred as
12 to how we may modify it in light of the Court's oral
13 ruling.

14 THE COURT: All right.

15 Ladies and gentlemen, we'll stand in recess. Thank
16 you.

17 And counsel, just contact the clerk if you've got an
18 agreed order to present to me. Then it will be brought
19 back and I'll sign it. If we need further hearings,
20 we'll be standing by this afternoon to accomplish that.

21 (A recess was taken.)

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CERTIFICATE OF REPORTER.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, RALPH H. BESWICK, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter as designated by Counsel to be included in the transcript and that the transcript is a record of the court's oral ruling.

Dated this 9th day of September, 2009.

RALPH H. BESWICK, CCR
Official Court Reporter
Certificate No. 2023