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September 25, 2009

Clerk of the Court  
United States Court of Appeals for the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

**Re: Letter of Amicus Curiae ACLU-WA Supporting the  
consolidated Appellants Reed et. al. in DOE v. REED, Case  
No. 09-35818**

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Dear Honorable Judges:

In accordance with Rule 29 of the Federal Rules of Appellate Procedure and the Circuit Advisory Committee Note to Rule 29-1, the American Civil Liberties Union of Washington (ACLU-WA) respectfully submits this amicus curiae letter in support of defendant/appellants the Secretary of State of Washington (Reed) and the Public Records Officer for the Secretary of State of Washington, in the above-referenced case. The ACLU-WA limits its support of defendant/appellants to the conclusion that the Washington State Public Records Act ("PRA") does not compel the disclosure of anonymous political speech. Therefore the ACLU-WA agrees with appellant Secretary of State that the district court's grant of a preliminary injunction barring disclosure of signed referendum petitions submitted to the State should be reversed.

### **Applicant's Interest**

The ACLU-WA is a state-wide, nonpartisan, nonprofit organization of over 25,000 members, dedicated to protecting and advancing civil rights and civil liberties throughout Washington State. The ACLU-WA strongly supports the First Amendment rights to free speech and to petition the government, including the right to engage in anonymous political speech, and frequently litigates and advocates in favor of those rights. The ACLU-WA also supports the public's right to inspect public documents pursuant to the PRA. The ACLU-WA frequently litigates PRA issues in state court. It supports the right of any member of the public to promote government transparency and accountability through public records requests. The ACLU-WA has expertise in and recognizes the competing civil liberties interests—free speech, right to petition, privacy and public oversight of government—involved in access to public records cases.

### **Relevant Facts**

The following facts are taken from the Statement of the Case section of appellant Reed's opening brief. In 2009, the Washington Legislature enacted a comprehensive domestic partnership law. Plaintiff/appellee Protect Marriage Washington began a campaign to gather signatures to submit the domestic partnership law to a vote of the people by putting a referendum on the ballot in November 2009 (R-71). On July 25, 2009, the proponents of R-71 submitted their signed petitions to the Secretary of State's office, seeking verification that they had obtained a sufficient number of valid signatures of registered voters required by Washington law to permit the referendum to be placed on the ballot. The signed petitions were submitted in an open public forum with the media in attendance. The Secretary of State subsequently concluded that sufficient valid signatures had been obtained and certified R-71 for placement on the November election ballot.

Several individuals have submitted public records requests to the Secretary of State's office seeking disclosure of the signed petitions pursuant to Washington's PRA. Plaintiff/appellees filed this suit seeking to enjoin the disclosure, arguing that the PRA violates their First Amendment rights. The district court granted a preliminary injunction on the grounds that the petition signers' First Amendment right to "anonymous speech" was violated by the PRA. Secretary of State Reed has appealed seeking a stay of the injunction. Secretary Reed's opening brief was filed on September 18, 2009, since expedited review is involved.

### **Issue**

The issue before this Court is whether the PRA, which makes referendum petitions available for public inspection, violates the petition signers' First Amendment right to anonymous speech by compelling the disclosure of anonymous political speech.

### **Position of Amicus**

The ACLU-WA agrees with defendant/appellants that the PRA does not compel the disclosure of anonymous political speech because in the context presented by this case, signatures on the petitions are not anonymous in the first place and because no provision of the PRA—the only Washington statute challenged by plaintiff/appellants as unconstitutional under the First Amendment—requires Washington voters to sign a referendum petition. Thus the PRA does not constitute governmental compulsion that petition signers disclose their names and addresses to the government and the public. The ACLU-WA strongly supports the right to engage in anonymous political speech in general; this is a crucial component of the First Amendment's free speech and right to petition protections. But we agree with the defendant/appellants that the anonymous speech cases relied on by the district court are distinguishable from the context presented in this case. For these reasons, the ACLU-WA agrees that the PRA cannot be said to compel the disclosure of anonymous political speech and, therefore, should not be held to violate the petition signers' First Amendment right to anonymous speech.

September 25, 2009

Page 3

### **Conclusion**

The ACLU-WA respectfully requests that this Court find in favor of defendant/appellants and reverse the district court's grant of injunctive relief to the plaintiff/appellees.

Respectfully yours,

**ACLU OF WASHINGTON FOUNDATION**

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