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**United States District Court  
Western District of Washington  
Tacoma Division**

<b>John Doe #1</b> , et al.,  Plaintiffs,  v.  <b>Sam Reed</b> , et al.,  Defendants.	No. 3:09-CV-05456-BHS  The Honorable Benjamin H. Settle  <b>Plaintiffs' Response to Defendants' Motion for Summary Judgment</b>
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1 Come now Plaintiffs in response to State Defendants' Motion for Summary Judgment, and make  
2 the following rebuttal.<sup>1</sup>

### 3 **Argument**

#### 4 **I. The Evidence Here Is Much More Than Just "Minor Harassment."**

5 The State's main argument is that Plaintiffs' evidence does not demonstrate "the probability and  
6 seriousness of harm" needed to grant an exemption. (Defs.' Mot. for Summ. J. (hereinafter "State's  
7 MSJ") 2).<sup>2</sup> After a cursory discussion of a hand-picked number of incidents, the State concludes,  
8 "there is [but] scant evidence of minor harassment" (State's MSJ 24), adding that most of the  
9 evidence amounts to nothing more than "rude gestures or language" that "have become an ordinary  
10 part of the public discourse" (State's MSJ 20).

11 Plaintiffs are content to let the evidence speak for itself.<sup>3</sup>

#### 12 **A. Death Threats**

##### 13 **1. Death Threat #1: "I will kill you and your family."**

14 A Washington woman received two death threats, one of which was aimed at her and her entire  
15 family including her children. The woman was a candidate for the Washington House of  
16 Representatives in the 2010 general election. (Ex. 1-3, at 6:7-9; Ex. 4-175.) She launched her  
17 campaign with a kickoff event on the evening of Monday, August 24, 2009. (Ex. 1-3, at 12:3-4.)  
18 Days before this kickoff event, she was interviewed by Jerry Cornfield, a reporter with the *Everett*  
19 *Herald*. (Ex. 1-3, at 7:17-8:7.) In the course of the interview, the reporter repeatedly pressured her

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20 <sup>1</sup> In rebuttal to the State's motion for summary judgment, Plaintiffs rely on all the evidence Plaintiffs relied on  
21 in support of their own motion for summary judgment. In this brief, all direct citations to Exhibits 1 through 6 (i.e.,  
22 "Ex. 4-191") are to those exhibits Plaintiffs filed together with their own motion for summary judgment. In addition,  
23 Plaintiffs note, for clarity's sake, that they have submitted seven new exhibits (Exhibits 7 through 13) together with  
24 this brief.

25 <sup>2</sup> The State portrays its own interest "in eliminating fraud" as sufficiently strong to justify the exposure of R-71  
26 petition signers. (State's MSJ 14.) In doing so, however, the State seems to conflate this as-applied challenge with  
27 the previously litigated facial challenge. For example, the State references the "typical" case where the Secretary of  
28 State is able to check "just 3 to 5% of the signatures" (State's MSJ 14), but here the Secretary checked every single  
signature (Ex. 6). Moreover, the State's interest in "eliminating fraud" is now dormant. The election has come and  
gone, and the Supreme Court explained that the whole point of the State's fraud-detecting interest is to ensure that  
only petitions with enough valid signatures are certified for the ballot. *See Doe*, 130 S. Ct. at 2820. Indeed, at this  
point in the litigation, it is difficult to pinpoint exactly what the State's interest is.

<sup>3</sup> Some of the incidents documented in this brief have been set forth in a report previously published by The  
Heritage Foundation. (*See* Ex. 4-1.) Restatements of parts of that report in this document are used with permission of  
Thomas M. Messner.

1 to indicate whether she had signed the R-71 petition. (Ex. 1-3, at 7:23–8:7.) When asked the first  
2 time, she said “no comment.” When asked again later in the interview, she responded, “I’d rather not  
3 say.” The reporter then asked in a mocking tone of voice, “What, are you afraid of what might  
4 happen[?]” At that point, she decided to answer the question in the affirmative, because, she  
5 reasoned, “if I don’t stand up, who will?” (Ex. 1-3, at 7:25–8:7.)

6 On Sunday, August 23, 2009, the day before the kickoff event, the *Everett Herald* ran an article  
7 on the front page of the morning paper entitled “Tea Party Activist Runs for Seat in Legislature.”  
8 (Ex. 4-175.) The article characterized the candidate as a “tea partyer” and went on to report that she  
9 “signed a petition for Referendum 71 that aims to repeal the new law giving gay domestic  
10 partnerships the same rights as married couples.” (Ex. 4-175.) Later that day, she and her family  
11 received an anonymous death threat. (Ex. 1-3, at 8:18–19.)

12 At approximately 6:00 that evening, the telephone rang and the candidate’s 13-year-old son  
13 answered it. (Ex. 1-3, at 18:2–5.) A male voice said, “[I]s [the first and last name of the candidate]  
14 there?” (Ex. 1-3, at 21:12–13.) The boy said, “[Y]es, just a moment, please,” and called to his  
15 mother, “Mom, it’s for you.” (Ex. 1-3, at 18:4–5.) Before she could reach the phone, and as she was  
16 walking toward her son, the boy’s face “went white,” and he said, “Mom, you just got a death threat.  
17 [The man] said, ‘I will kill you and your family.’” (Ex. 1-3, at 18:9–10.) The man hung up before  
18 the woman could reach the phone. (Ex. 1-3, at 18:13–14.)

19 She immediately called 911, and an Edmonds City police officer was dispatched to their home.  
20 (Ex. 1-3, at 19:13–20:17.) In Washington, it is it is a felony, punishable by up to five years’  
21 imprisonment, to make a death threat over the telephone. Wash. Rev. Code §§ 9.61.230, 9A.20.021.  
22 The same act is also a felony under federal law. 18 U.S.C. § 875(c); see *United States v. Li*, 537 F.  
23 Supp. 2d 431, 434–35 (N.D.N.Y. 2008) (threats made in telephone calls and emails, such as “I will  
24 kill you” and “you are on the death list” were sufficient to support charges under 18 U.S.C. § 875(c)).

25 The State glosses over this incident by pointing out that a police officer responded to the 911  
26 call, and further, that the woman “never experienced any actual harm.” (State’s MSJ 20.) But of  
27 course she (and her family) experienced “actual harm”—albeit not physical harm. It is beyond  
28 serious dispute that being on the receiving end of a death threat is itself intensely harmful (hence,

1 Washington's law making it a felony punishable by up to five years in prison). The police can (and  
2 should) offer what reassurance is in their power, but after the threat has been made, the damage has  
3 been done insofar as the threat itself is concerned.

4 **2. Death Threat #2: "Oh my God, this woman is so fucking stupid. Someone please shoot her  
5 in the head, again and again. And again."**

6 A little more than a year later, as Election Day approached, the same woman received a second  
7 death threat (this one, however, was not directed at her family). She had posted to her YouTube  
8 campaign channel a video entitled "[Her name]: Gay Marriage Stance." (Ex. 4-188.) The video was  
9 a short excerpt of an August 2010 candidate forum in which she was a participant. During the forum,  
10 the panel of candidates was asked about their views on same-sex marriage. (Ex. 1-3, at 53:1-24.)  
11 After the forum was over, she decided to post a video of her participation on the panel (where she  
12 explained her opposition to same-sex marriage) because she thought it "was a good clip of how [she  
13 could] handle a stressful situation and a difficult question" (Ex. 1-3, at 54:1-3), and because several  
14 people had already commented to her that based on her answer to that question they were going to  
15 vote for her (Ex. 1-3, at 53:18-24). On September 22, 2010, someone identified as "islander255"  
16 posted a comment on her video that said, "Oh my God, this woman is so fucking stupid. Someone  
17 please shoot her in the head, again and again. And again." (Ex. 1-3, at 54:1-7; Ex. 4-188.)

18 The woman clicked on the name "islander255" to see what she could learn about this person.  
19 When she did that, she "could see other videos that this person liked or talked about or posted, and  
20 it does appear to be someone who is gay." (Ex. 1-3, at 54:8-12.) She reported the threat to the police.  
21 (Ex. 1-3, at 56:18.) In Washington, it is it is a felony, punishable by up to five years' imprisonment,  
22 to make a death threat over the Internet. Wash. Rev. Code §§ 9.61.260, 9A.20.021. The same act is  
23 also a felony under federal law. 18 U.S.C. § 875(c).

24 The woman perceived the YouTube comment as "advocacy that [she] should be shot." (Ex. 1-3,  
25 at 113:1-2.) "I think he's saying, can't someone shoot her? I think he is making it easier for someone  
26 who lives near me to say, yeah, I think she needs to be done away with. . . . He wants me not only  
27 dead, but mutilated beyond recognition. He wants me shot at least three times in the head, judging  
28 by this comment." (Ex. 1-3, at 113:2-10.) The YouTube threat was but further evidence to her of

1 “the level of intensity on this issue.” (Ex. 1-3, at 95:24–25.)

2 **3. Death Threat #3: I’m going to kill the pastor.**

3 In approximately June 2009, a death threat was directed at the pastor of a Washington church.  
4 The death threat came the day after *The Seattle Times* ran an article about the pastor’s (and the  
5 church’s) opposition to R-71. (Ex. 1-13, at 26:18–19.) The church received a phone call from a  
6 person who left a voice message “saying they were going to kill [the pastor].” (Ex. 1-13, at  
7 24:24–25:6, 26:8–11.) The pastor’s assistant reported the phone call to the police who listened to the  
8 phone message and took a report. (Ex. 1-13, at 25:2–6.)

9 **4. Death Threat #4: “If I had a gun I would have gunned you down along with each and every other supporter.”**

10 In California, the mayor of Fresno and a local pastor received death threats for opposing same-  
11 sex marriage. The threat against the mayor stated, “Hey Bubba, you really acted like a real idiot at  
12 the Yes of [sic] Prop 8 Rally this past weekend. Consider yourself lucky. If I had a gun I would have  
13 gunned you down along with each and every other supporter.” (Exs. 4-2, 4-3, 4-4.)

14 **5. Death Threat #5: “Keep letting him preach hate and he’ll be sorry. He will be meeting his maker sooner than expected.”**

15 The same perpetrator also mentioned a “little surprise” for a local pastor (who voiced support  
16 for traditional marriage) and “his congregation of lowlifes.” “Keep letting him preach hate and he’ll  
17 be sorry,” the perpetrator threatened. “He will be meeting his maker sooner than expected.” (Exs.  
18 4-2, 4-3, 4-4.) The death threat against the pastor came “just days after someone egged [his] home  
19 and church.” (Ex. 4-5.) The threat also stated that anyone in Fresno displaying a Yes on Prop 8 yard  
20 sign or bumper sticker was “in danger of being shot or firebombed.” (Exs. 4-2, 4-3, 4-4.) Police took  
21 the threats seriously, launched a criminal investigation, and took extra steps to protect the mayor and  
22 pastor. (Exs. 4-5, 4-6.)

23 **6. (Group) Death Threat #6: “We’re going to kill you.”**

24 In 2008, a small group of Christians entered the “Castro District”—a predominantly homosexual  
25 neighborhood in San Francisco—to sing hymns and pray on the public sidewalks, something they  
26 had been doing on a regular basis for years. (Exs. 4-7, 4-8, 4-9, 5-1.) On this occasion, however, their  
27 ordinarily peaceful gathering quickly escalated into a menacing situation. A large crowd of  
28



1 homosexuals surrounded the group, and one of the homosexuals hit one of the Christian women in  
 2 the head with a book, knocked her to the ground, and then kicked her while she was lying on the  
 3 ground. (Exs. 4-7, 4-8, 5-1.) The angry crowd shouted words like “haters” and “bigots” and then  
 4 “started throwing hot coffee, soda and alcohol on [them] and spitting (and maybe even peeing) on  
 5 [them].” (Ex. 4-8.) Several in the crowd started taking pictures of the Christians, threatening, “We’re  
 6 going to kill you. We know who you are.” (Ex. 5-2.)

7 The group was surrounded by several guys with whistles, who “blasted them inches away from  
 8 [their] ears continually.” (Ex. 4-8.) The mob then became violent, shoving and kicking some  
 9 members of the group. Some shouted death threats at the group’s leader. A man in the Christian  
 10 group reported that someone in the throng “repeatedly tried to pull his pants down.” (Ex. 4-7.) Video  
 11 footage posted on the Internet shows a band of police officers dressed in riot gear fending off the  
 12 angry crowd and escorting the Christians to safety.<sup>4</sup> (Exs. 5-3, 5-4.)

### 13 **7. Death Threat #7: Against a New York State Senator**

14 New York’s Democrat State Senator Ruben Diaz Sr. has publicly defended traditional marriage.  
 15 Among other things, he organized a “Rally to Protect Marriage” on May 15, 2011. His position on  
 16 marriage has resulted in “death threats and a barrage of hate calls.” Diaz reported the death threats  
 17 to the FBI and the New York and Albany police departments. And one homosexual activist posted  
 18 on Twitter that he wanted to sexually assault Diaz’s daughter. (Ex. 4-10.)

19 Meanwhile, The New Gay, an online forum for homosexuals, announced a “Fuck Ruben Diaz  
 20 Festival.” The “festival” took place June 11, 2011, in Brooklyn, and featured a “gay erotica” contest  
 21 where participants were urged to write pornographic stories featuring Mr. Diaz, who the group  
 22 identified as “NYC’s Number One Bigot.” (Ex. 4-11; *see also* Ex. 4-10.)

### 23 **8. Death Threat #8: “You’re dead. Maybe not today, maybe not tomorrow, but soon... you’re 24 dead.”**

25 Following the passage of Question 1 in Maine in November 2009 (defining marriage as between  
 26 a man and a woman), traditional marriage supporters received death threats. The Stand for Marriage  
 27 Maine headquarters received a threatening voice mail that said: “You’re dead. Maybe not today,

28 <sup>4</sup> A local news source reported that “San Francisco Police officers in riot gear formed a line and escorted the religious group into a van to safely get them out of the area.” Ex. 4-9.

1 maybe not tomorrow, but soon... you're dead." The threat was reported to the police. (Ex. 4-12.)

2 **9. Death Threat #9: "I'm a gay guy who owns guns, and he's my next target."**

3 The Christian Civic League of Maine, which also backed Question 1 in Maine in 2009, received  
4 a phone call which threatened the life of its former director: "I am calling about Mr. Mike Heath, the  
5 Executive of your Christian Civic League of Maine. He thinks that gay people should have our rights  
6 revoked that we already have. Well I can tell him this—I'm a gay guy who owns guns, and he's my  
7 next target." This threat was also reported to the police. (Ex. 4-12.)

8 **10. Death Threat #10: Against the Director of Alliance for Marriage**

9 The tactic of using death threats to silence or punish those who stand up for traditional marriage  
10 goes back to the early chapters in this debate. Matt Daniels, the director of Alliance for Marriage,  
11 which was the driving force behind a proposed national constitutional amendment to ban same-sex  
12 marriage in 2004, received multiple death threats. Those threats "made Daniels fear for [his family's]  
13 safety." Consequently, he is "inordinately protective of his wife and children," and "refuses to have  
14 them identified or photographed." (Ex. 4-13.)

15 **B. Violence and Threats of Violence**

16 The State argues that there was plenty of "rude language vented" during the R-71 campaign, but  
17 that it "*never* escalated into physical action." (State's MSJ 21.) Plaintiffs ask the Court whether it  
18 can concur with that assessment after perusing the accounts in this section.

19 **1. Threats of Violence Against Larry Stickney and His Family**

20 After touching on two or three select incidents, the State argues "[t]here were no other incidents  
21 involving [Larry Stickney's] home or family." (State's MSJ 12.) Plaintiffs counter with the following  
22 statements.

23 Larry and his family were made the targets of threatening and vile behavior that can be  
24 categorized only as attempts to intimidate or punish. Larry received an untold number of threatening  
25 and harassing emails and phone calls.<sup>5</sup> There were so many calls and emails that Larry described  
26 them as "coming in through every crack in the house." (Ex. 1-11, at 59:16.) Some emails were

27  
28 <sup>5</sup> True and correct copies of scores of these emails are found in Exhibit 3. True and correct copies of several  
audio recordings of phone calls are attached to Exhibit 12.

1 respectful. But countless others were threatening or harassing.<sup>6</sup> One email from “no one who is your  
2 friend” read, “You better stay off the olympic peninsula. . . it’s a very dangerous place filled with  
3 people who hate racists, gay bashers and anyone who doesn’t believe in equality. fair is fair.” (Ex.  
4 8-2, at 25.) Another one said, “Dear God fearing hate mongerers - . . . Maybe you just want to feel  
5 a cock in your ass and hate yourself for it. Whatever. Praise Jeebus you retarded fuckholes!” (Ex. 8-  
6 2, at 35). Some emails directly threatened Larry’s family. One individual stated that he hoped that  
7 Larry and his wife would have to watch their daughters being molested and raped. (Ex. 13 ¶ 4.)

8 When a comment posted to a local homosexual blog threatened violence to Larry and his family,  
9 Larry filed a complaint with his county sheriff. (Ex. 1-11, at 131:3–7; Ex. 3-1, at 258–61.) The  
10 comment read, “If Larry Stickney can do ‘legal’ things that harm OUR family, why can’t we go to  
11 Arlington, WA to harm his family?”<sup>7</sup> (Ex. 4-189.) The comment came on the heels of a bullying  
12 Twitter comment<sup>8</sup> and a disturbing email, addressed to Larry, that read:

13 Why do you favor laws that harm us? We cause you NO harm. You cause our  
14 FAMILY and CHILDREN incredible suffering. Until government STOPS allowing YOU  
15 to vote against US: I am asking everyone I know this question, straight or gay, as a  
16 DEVIL’S ADVOCATE - Should We Begin Harming Those Whom Harm Us?

17 (Ex. 3, at 260.)

18 In a posting on another web site, the same man wrote:

19 Queers have been persecuted by religion enough in society, including within our own  
20 families; why must we ALSO allow government to support and encourage the  
21 HATE-H8-HATE that repeatedly slices our throats, bashes our heads open, or shoots  
22 bullets into our heart or brain.

23 Is it wrong to stab the person who is gay-bashing you?

24 Would it be “fighting hate with more hate” or would it just be Self-Defense?

25 Where do WE draw the line when government hates us?

26 Did I say government?

27 I meant religion .....no...

28 I mean govereligion, I mean...<sup>9</sup>

29 <sup>6</sup> In Washington, it is a crime to make an “electronic communication” with intent to harass, intimidate, torment,  
30 or embarrass any other person, if the communication (1) uses any lewd, lascivious, indecent, or obscene words,  
31 images, or language, or suggests the commission of any lewd or lascivious act; (2) occurs anonymously or  
32 repeatedly; or (3) threatens to inflict injury on the person or property of the person contacted or on any member of  
33 his or her family or household. Wash. Rev. Code § 9.61.260(1).

34 <sup>7</sup> As of June 23, 2011, the comment had not been removed and was still posted online.

35 <sup>8</sup> The Twitter comment read, “Larry Stickney, from Arlington, WA - wants to hurt other WA state families who  
36 already lack EQUAL PROTECTION. Does he REALLY want this war?” The Tweet was included in Larry’s email  
37 to the sheriff. Ex. 3-1, at 258–61.

38 <sup>9</sup> Larry referenced this comment in his email to the sheriff. (Ex. 3-1, at 258–61 (email from Larry Stickney to  
39 Sheriff John Lovick (May 10, 2009, 23:18:42)); *see also* Ex. 8-3, at 47.)

1 Another message titled “It Is Time For Violence Against Property” was posted July 28, 2009,  
 2 just three days after Protect Marriage Washington filed the petition signatures with the Secretary of  
 3 State. In it, the same blogger again named Larry Stickney by name and identified Larry and another  
 4 man (also named by name) as “the ‘leaders’ of this crime [i.e., the effort to reject SB 5688],”  
 5 followed by the words, “NO MORE.” (Ex. 4-195.)

6 The blogger went on to justify violence and defiance of the law:

7 I won’t be fighting those who are LEGALLY ATTACKING my family with signatures  
 8 or money. Since THEY are the bullies, I have a right to self-defend myself and my family  
 9 with any means possible. I advocate using violence against the property of ALL of those  
 10 who are working tirelessly to HURT my family; starting with churches and government  
 11 property. Government is enabling a vote on whether or not I “should be allowed” to see my  
 12 husband while he is dying in the hospital—any NORMAL man would be driven to get a  
 13 gun and kill those who tried such evil cruelty against his loved ones.<sup>10</sup>

14 In August 2009, the same man posted, “Personally, I will find it EXTREMELY difficult to NOT  
 15 resort to violence if Referendum 71 makes it to the ballot in WA state.” (Ex. 4-14.)

16 In September 2009, *Newsweek* magazine ran a story entitled “Threats, Legal Action in  
 17 Washington’s Gay-Marriage Debate” that quoted the threatening comments—“I advocate using  
 18 violence against the property of ALL of those who are working tirelessly to HURT my family”—and,  
 19 “any NORMAL man would be driven to get a gun and kill those who tried such evil cruelty against  
 20 his loved ones.” (Ex. 4-15.)

21 And then there were the phone calls.<sup>11</sup> One caller warned, “[Y]ou’d better stay off the Olympic  
 22 Peninsula,” and “I wanna fight you. I wanna fight you right now.” (Ex. 1-11, at 58:19–59:5.) On  
 23 occasions too numerous to recall, callers called his home, often in the middle of the night, screaming  
 24 obscenity-laced verbal assaults, most often of a sexual nature. (Ex. 8-1 ¶ 30; Ex. 12 ¶¶ 3–5.) One  
 25 caller left a message on his home phone, “This message is for Larry Stickney. You’re a bigoted,  
 26 intolerant, self-righteous piece of garbage who probably fantasizes daily about giving fellatio to all  
 27 your male friends. You piece of shit! How could you be so intolerant? What does it matter to you  
 28

<sup>10</sup> This post was repeated, almost verbatim, in two separate postings, the first on July 28, 2009 (Ex. 4-195), and the second on August 3, 2009 (Ex. 4-14). The quoted text is taken from the latter posting.

<sup>11</sup> In Washington, it is a crime to make a telephone call with intent to harass, intimidate, torment, or embarrass any other person, if the call (1) uses any lewd, lascivious, profane, indecent, or obscene words or language, or suggests the commission of any lewd or lascivious act; (2) is made anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or (3) threatens to inflict injury on the person or property of the person called or any member of his or her family or household. Wash. Rev. Code § 9.61.230(1).

1 if people have fucking health care and fucking rights to be with each other? Isn't that just more girls  
2 for you? What an ignorant piece of shit you are." (Ex. 12-1) Another one said, "This message is for  
3 Larry Stickney and his family. You buncha fuckin' haters. Jimminy Cricket. What the fuck is wrong  
4 with you people?" (Ex. 12-2) Larry's son reported that "every single night [his family] got some sort  
5 of threat over the phone." (Ex. 1-12, at 15:5-7.)

6 A transsexual named Krystal Mountaine sent Larry harassing and threatening emails and called  
7 Larry on his cell phone and his home phone "at all hours," day and night. (Ex. 1-11, at 86:10-17,  
8 88:3-9.) The calls and emails involved "a lot of sexual innuendo" along with other verbal attacks.  
9 (Ex. 1-11, at 86:18-21.) Once, Krystal Mountaine threatened Larry saying that Krystal wanted to  
10 fight him, and that Krystal would "get off on that sexually." (Ex. 1-11, at 86:21-87:1, 90:7-14,  
11 91:2-3.) Krystal threatened, "I warn you, I know how to kill, I'm an ex-special forces person." (Ex..  
12 1-11, at 86:21-87:1, 90:10-11.)

13 Sometime in May 2009, Larry's eight-year-old daughter observed a man taking pictures of her  
14 family's home while she was playing outside. (Ex. 1-11, at 59:9-23; 60:14-17.) His daughter "came  
15 running into the house," and said, "Daddy, there's a man in our front yard taking pictures." (Ex. 1-  
16 11, at 59:16-17.) Larry "charged into the yard" just in time to see the car disappear out of sight. He  
17 tried to follow the car, but to no avail. (Ex. 1-11, at 59:15-23.) The incident really "shook up" his  
18 daughter. (Ex. 1-12, at 18:20-21.) After this incident, Larry's wife became increasingly worried  
19 about their children and even contemplated not sending them back to school in the fall. (Ex. 13 ¶ 5.)

20 All of the threats, harassment, and intimidation took its toll on the Stickney family. What  
21 developed was an "atmosphere of fear" at the Stickney home that was so tangible it "could be cut  
22 with a knife." (Ex. 1-11, at 62:15-21.) Larry explained, "[We went] from a nice little family raising  
23 their kids in the country to all of a sudden" (Ex. 1-11, at 62:17-19) living in an "atmosphere of chill"  
24 (Ex. 1-11, at 64:11). The level of "fear and intimidation [was something he had] . . . never felt before  
25 in [his] life." (Ex. 1-11, at 65:12-13.) In fact, it continues to haunt them to this day. (Ex. 13 ¶ 4.)

26 Larry "developed a very deep fear of the vulnerability of [his] family." (Ex. 1-11, at 65:23-24.)  
27 As a result, he had his children sleep in the living room every night for a "couple months" out of  
28

1 concerns for their safety.<sup>12</sup> (Ex. 1-11, at 65:14–20, 116:4–25.) In addition, he and his sons kept guns  
 2 loaded and ready (that was not their common practice) in case any trouble arose during the night.  
 3 (Ex. 1-11, at 64:12–19.) Larry was particularly worried that during the night there would be “a  
 4 firebomb or a Molotov cocktail [thrown] through the kids’ window, because [their bedrooms] were  
 5 so close to the road.” (Ex. 1-11, at 66:5–9.)

6 The level of apprehension for his family’s safety was so great that, for his family’s safety’s sake,  
 7 Larry decided to remove the Reject R-71 sign from his yard to avoid giving any would-be assailants  
 8 “any help” in identifying his home. (Ex. 1-11, at 72:8–11.) Thus, Larry Stickney—the leader of the  
 9 effort to repeal SB 5688—refused to so much as put up a yard sign at his own home, so real and  
 10 tangible was his fear for the safety of his family.

11 The “anxiety and atmosphere of fright” also took a toll on Larry’s health, and he became  
 12 “physically sick towards the end of the campaign.” (Ex. 1-11, at 96:21–97:4.) He “developed  
 13 tremendous soreness through [his] whole body,” and “was tired and [ran] a low-level fever.” (Ex.  
 14 1-11, at 97:20–24.) And after the election was over, he was diagnosed with “a severe form of  
 15 systemic arthritis that was brought on by the stress.” (Ex. 1-11, at 98:12–14.)

## 16 **2. Threats of Violence Against a Washington Pastor**

17 One Washington citizen, a pastor, is “classified as one of the number-one homophobes definitely  
 18 in the Northwest, probably in the nation.” (Ex. 1-14, at 87:21–23.) He is, to some, “the great  
 19 homophobe.” (Ex. 1-14, at 70:21–22.)

20 The prominence of the pastor’s views on homosexuality date back at least to 2004 when he  
 21 published an op-ed piece in *The Seattle Times*. The pastor, who is a Black man, wrote, “It has been  
 22 said loudly and proudly that gay marriage is a civil rights issue. If that’s the case, then gays would  
 23 be the new African Americans. I’m here to tell you now, and hopefully for the last time, that the gay  
 24 community is not the new African-American community.” Rather, he wrote, “[a]s Christians, we  
 25 believe that homosexuality is simply an issue of sin, and that God does not condone it and neither  
 26 will we.” (Ex. 4-16.) Also in 2004, the pastor was a key organizer for two rallies for traditional  
 27

28 <sup>12</sup> The children’s oldest brother slept in the living room “[a]pproximately 10 to 20” times in order to watch over  
 the younger children. Ex. 1-12, at 21:4–13, 23:4–6.



1 marriage, the “Mayday for Marriage” events. The first was at Safeco Field in Seattle and attracted  
2 approximately 20,000 attendees. (Ex. 4-17.) The second was staged on the national mall in  
3 Washington, D.C., and attracted between 140,000 to 170,000 supporters. (Ex. 4-18.) In 2005, *The*  
4 *Seattle Times* ran an article about the pastor entitled “Outspoken Pastor a Spiritual Bulldozer?” The  
5 article reported that the pastor was “outraged by those who equate the racial civil-rights struggle with  
6 the fight for gay rights” because “one is immutable, while the other is a choice.” Though the pastor  
7 knew “several ex-gays” who attended his church, he said he had never met “an ex-black.” (Ex. 4-19.)

8 In response to the pastor’s public stance on this issue, he received “hundreds and hundreds of  
9 threats.” (Ex. 1-14, at . 68:4–5.) Many of the threats indicated, in essence, “this guy should be taken  
10 out, this guy isn’t worth living.” (Ex. 1-14, at 65:12–17.) In his own words, “anytime my name is  
11 mentioned in the paper, anytime there is an issue that is concerning the homosexual issue that my  
12 name is mentioned, anytime I’m on the TV, anytime I am interviewed and . . . go public, I am gonna  
13 get threats and I’m gonna get calls. It’s automatic. It’s just gonna happen. I’m gonna be threatened.”  
14 (Ex. 1-14, at 62:19–63:6.) His experience is that regardless of who you are, “if you stand against  
15 homosexuality, you will be harassed.” (Ex. 1-14, at 72:7–8.)

16 In April 2008, the pastor organized a protest outside the school his children attended, in  
17 opposition to the so-called day of silence. (Ex. 1-13, at 19:15–22.) The “day of silence” is a  
18 designated day where schoolchildren, and teachers, demonstrate support for the homosexual  
19 movement by taking a vow of silence for the day. (Ex. 4-20.) About 150 people from the pastor’s  
20 church attended the protest, and an equal number gathered outside the school in support of the day  
21 of silence. (Ex. 1-13, at 20:1, 20:21–21:1.) The group supporting the day of silence shouted at the  
22 church members (Ex. 1-13, at 21:2–7), and some activists tried to start fights with the pastor (Ex.  
23 1-14, at 27:1–3). One man held a sign next to the head of the pastor that read “Throw Rocks Here”  
24 with an arrow pointing at the pastor’s head. (Ex. 4-21; Ex. 1-13, at 21:7–12; Ex. 1-14, at 27:7–8.)  
25 *The Seattle Times* published a picture of the man holding the sign. (Ex. 4-21.)

26 During the demonstration, the man holding the “Throw Rocks Here” sign came within “four or  
27 five inches” of the pastor (Ex. 1-14, at 29:16), and “many” other people who were supporting the day  
28 of silence also came very close to the pastor (Ex. 1-14, at 33:24–34:1). The pastor was concerned

1 by these advances because he had previously received so many threats that he felt that if the opposing  
2 protesters were permitted to get too close to him, one of them could easily have “cut” or “shot” him.  
3 To help prevent such a thing from happening, the pastor surrounded himself at the rally with “four  
4 or five” private “bodyguard[s].” (Ex. 1-14, at 27:14–17, 30:1–3.) Police officers were also on the  
5 scene to keep the opposing groups separated. (Ex. 1-14, at 27:11–14, 34:8–9.) When the pastor  
6 attempted to leave the rally, those supporting the day of silence blocked him from reaching his car  
7 “so badly that [he] had to get [police] officers down there so [he] could make it to the car.” (Ex. 1-  
8 14, at 32:20–24.) At the rally, the pastor’s wife was called a “nigger lover” by one of the people  
9 supporting the day of silence. (Ex. 1-14, at 28:7–8.) And following the day of silence protest, the  
10 pastor’s church received “three to five” phone calls where callers referred to the pastor as a “nigger.”  
11 (Ex. 1-13, at 49:7–14.) One of the callers referred to the pastor as a “nigger” and threatened, “[I]f  
12 the N word doesn’t shut [him] up, we will shut him down.” (Ex. 1-13, at 22:10–21, 49:7–11.)

13 On another occasion, the pastor received a “threatening letter” that was “very derogatory” and  
14 “very profane” in laying out what they thought of the pastor, how they wanted to physically “hurt”  
15 him, and what they “wanted to do to [him].” (Ex. 1-14, at 48:17–21, 90:14–18.) Somehow, whoever  
16 wrote the letter was able to enter the church office and leave the letter inside the building. (Ex. 1-14,  
17 at 90:8–13.) The letter indicated that the threats of harm were in direct response to the pastor’s stance  
18 on homosexuality. (Ex. 1-14, at 90:23–25.)

19 “[B]ecause of all the threats” he received, the pastor installed security gates at his home for the  
20 protection of his own family. (Ex. 1-14, at 41:22–23.) And the principal impetus for installing the  
21 gates was all the threats he received from the homosexual community. (Ex. 1-14, at 97:21–98:3.)

22 In 2008, the pastor’s daughter invited a friend (to the pastor’s home) for a sleepover. When the  
23 friend arrived, the security gates were closed, and rather than ringing the bell, “she just parked next  
24 to the gates outside.” (Ex. 1-14, at 41:21–25.) She never went back to park the car inside the gates,  
25 and the next morning they found that during the night vandals had smashed every window in the car,  
26 including the front and rear windshields. (Ex. 1-14, at 42:6–12.) Nothing had been stolen from the  
27 car. It simply had been vandalized having been parked overnight in front of the pastor’s home. (Ex.  
28 1-14, at 42:6–12.) The police were notified of this incident. (Ex. 1-14, at 44:21–23.)



1 The pastor was also forced to purchase a secure mailbox after a 2008 incident where someone  
 2 stole several days' worth of the pastor's mail and threw it in a nearby ditch. (Ex. 1-14, at 43:15–24.)  
 3 There are eleven or twelve mailboxes at the bottom of the pastor's street, and another seven or eight  
 4 on the top of the hill where he lives, and the only mailbox that had mail stolen from it, or that was  
 5 tampered with in any way, was the pastor's mailbox. (Ex. 1-14, at 44:10–15.) The police were also  
 6 notified of this incident. (Ex. 1-14, at 45:13–15.)

7 As a result of the pastor's (and the church's) public support for repealing SB 5688, the church  
 8 received many phone calls, and the tenor of those calls was that “[the pastor] needs to shut up. Your  
 9 church needs to shut up or we're going to take you down. We'll come to your church and we'll come  
 10 to your church office, . . . and we will shut you down.” (Ex. 1-13, at 15:24–16:22; 40:17–41:12.) The  
 11 church received the same types of phone calls whenever the pastor spoke publicly against the  
 12 homosexual movement. (Ex. 1-13, at 16:7–17:11.)

13 Though the pastor has taken public positions against abortion, alcoholism, drug abuse, and  
 14 divorce, he has never received death threats, or other threats of violence, from opposing groups on  
 15 those issues. (Ex. 1-14, at 93:17–95:11.) Nor has any of those groups tried to intimidate the pastor.  
 16 (Ex. 1-14, at 93:17–95:11.) Rather, “100 percent” of the threats he has received have come from the  
 17 homosexual community. (Ex. 1-14, at 95:8–11.) In addition, the media has run stories on his stance  
 18 on homosexuality “20, 30, 40 percent more” than on any other issue on which he has taken a public  
 19 stance. (Ex. 1-14, at 116:4–17.)

20 The pastor believes he is being stalked by the homosexual community. (Ex. 1-14, at 96:6–9.)  
 21 He has been told, from several sources across the country, that some group or individual in the  
 22 homosexual community has offered a “bounty” of up to one million dollars available to anyone who  
 23 can find anything improper in the pastor's life sufficient in scope to scandalize him as a pastor. (Ex.  
 24 1-13, at 51:6–20; Ex. 1-14, at 98:7–13; 99:6–10.)

### 25 **3. Aggressor (During a Physical Assault): “You guys deserve to die.”**

26 In 2009, at approximately 11:00 in the evening, a man and two other supporters were cleaning  
 27 up after having participated in an R-71 “sign holding” rally at the intersection of Mill Plain and  
 28 Chkalov in Vancouver, Washington. (Ex. 1-8, at 16:18–17:6, 17:21–18:8.) While they were cleaning

1 up, a car pulled into the gas station across the street (Ex. 1-8, at 17:14–18), and a young man exited  
2 the car, ran across the street straight toward the man who was cleaning up, and “launched at [him]”  
3 (Ex. 1-8, at 18:19–24). The aggressor became “very physical” and shoved the supporter several  
4 times. (Ex. 1-8, at 18:24, 19:19–24, 20:10–16.) Amidst profanity-laced epithets and continued  
5 pushing and shoving, the aggressor told the man who was cleaning up that “[e]verybody deserves  
6 the right to live,” that opposition to R-71 was “wrong,” and that “[y]ou guys deserve to die.” (Ex.  
7 1-8, at 19:5–6, 19:19–24.) Fortunately, the man then noticed a police officer nearby and ran back to  
8 his car and drove away. (Ex. 1-8, at 21:1–11.)

#### 9 **4. Sixteen Stitches Below the Eye: “What do you have against gays?”**

10 In another case, a traditional marriage supporter in Modesto, California, was reportedly punched  
11 in the face by someone who had stolen several Yes on 8 signs. A Hispanic man, who only months  
12 earlier had become a U.S. citizen, was waiting to distribute signs outside his Catholic church when  
13 a man grabbed about seventy-five Yes on 8 signs and fled. (Exs. 4-22, 4-23.) The man followed the  
14 thief and eventually caught up with him. But when he tried to recover the signs, the thief reportedly  
15 yelled “What do you have against gays?” and punched him in the face. (Ex. 4-23.) The man suffered  
16 a bloody eye and wounds to his face and was taken by ambulance to a local hospital “where he  
17 received 16 stitches under his eye.” (Exs. 4-24, 4-25.)

#### 18 **5. After Physical Assault, 13-Year-Old Boy Asks Mother If He Can Carry Firearm for 19 Protection**

20 In January 2010, a candidate for Washington state office attended a Republican conference at  
21 the Shilo Inn Hotel, an upscale hotel in Ocean Shores. (Ex. 1-3, at 41:23–25; 49:14–16.) She brought  
22 her 13-year-old son with her. (Ex. 1-3, at 41:23–25; 51:17–25.) The mother’s position on traditional  
23 marriage, and R-71 in particular, was “extremely public” because, among other things, a newspaper  
24 article revealed that she signed the R-71 petition. (Ex. 1-3, at 103:21.) In fact, she and her family  
25 received an anonymous death threat over the telephone on the very day the newspaper revealed her  
26 as an R-71 petition signer—and that death threat had been communicated directly to her 13-year-old  
27 son who accompanied her to the conference in Ocean Shores. (*See supra*, “Death Threat #1.”)

28 Furthermore, less than three months before the conference at Ocean Shores, the candidate and

1 her family attended an election-night party (held on the evening of the day Washingtonians voted  
2 on R-71). At the party, there were a number of people with “expensive, large cameras” who were  
3 taking pictures of her children. (Ex. 1-3, at 104:10, 104:15–21.) She could tell they were focusing  
4 on the children because her family was “a little bit spread out as we were walking down and they  
5 were focused on the children.” (Ex. 1-3, at 104:18–21.) Complete strangers photographing her  
6 children “made [her] nervous” (Ex. 1-3, at 14:8) because, having already received a death threat  
7 (verbalized directly to one of her children), she believed that someone might want photographs of  
8 her children to hurt them (Ex. 1-3, at 104:22–25, 105:1–3).

9 The Ocean Shores conference concluded on a Sunday. On Sunday morning, the candidate and  
10 her son checked out of the hotel and walked to their car. They were separated just a little, and the son  
11 was just a minute behind his mother. While the mother was loading the luggage in the car (in the  
12 outdoor parking lot), unbeknownst to her, her son was physically assaulted by two strangers acting  
13 in tandem. As the boy exited the hotel and entered the portico, a car with a passenger sped through  
14 the portico area and the passenger in the car “made an ugly face” and then “threw applesauce all  
15 over” the boy. (Ex. 1-3, at 41:25–42:1, 43:14–19.) He was “covered head to toe in applesauce.” (Ex.  
16 1-3, at 42:7–8.) The police were called in reference to the incident. (Ex. 1-3, at 58:6–8.)

17 The perpetrators of this crime could have recognized the boy (as the candidate’s son) in any  
18 number of ways. At the time of the incident, the boy was wearing a hat that said “[his mother’s  
19 name] for State Representative” with an identifiable campaign logo. (Ex. 1-3, at 43:5–8.) And less  
20 than three months before the incident, strangers had photographed him at an election-night rally. (*See*  
21 *supra*.) Moreover, the candidate’s face had been on the Internet and she was a “recognizable  
22 individual to those . . . opposed to [her] viewpoint”—and she had walked into the parking lot before  
23 her son (Ex. 1-3, at 47:24–48:7), so the perpetrators could have identified her first, and then targeted  
24 her son when he followed her into the parking lot.

25 Though it is true that anyone could have driven through the parking lot that day, the hotel was  
26 located on the beach at the end of the road, and there was nothing beyond the hotel except the ocean.  
27 (Ex. 1-3, at 49:14–16.) “In other words, you would have to intentionally be going to that hotel . . .  
28 in order to end up in that parking lot.” (Ex. 1-3, at 49:16–19.)

1           Whatever the odds that the assault was nothing more than an extremely random and unlikely  
 2           attack on a young boy at a fancy hotel at the edge of the beach on a Sunday morning, the boy did not  
 3           see it that way. The boy was so shaken by the incident that he asked his mother if he could carry a  
 4           gun for his own personal safety. He said, “Mom, first it was in my ear [i.e., the death threat over the  
 5           phone] and now this time it was on my body, it was a physical threat, and I’m afraid that next time  
 6           it might be sexual. . . . [D]o you think they would allow me to carry a gun?” (Ex. 1-3, at 51:18–22.)  
 7           His mother inquired on behalf of her son and learned that it is not legal for someone his age to carry  
 8           a gun in Washington. But had it been legal, his mother would have supported her son’s ability to  
 9           carry a firearm for his safety. (Ex. 1-3, at 51:25–52:8.)

10           **6. To Petition Gatherer: “I’ll bust your cap.”**

11           In another case, a young man gathering R-71 signatures in front of a church was approached by  
 12           a woman who became “very upset” and said “we’ll do everything to stop what you’re doing.” (Ex.  
 13           1-8, at 30:9–24.) The woman threatened, “one day we’ll have your kids,” implying that the children  
 14           of those opposed to same-sex marriage would one day be indoctrinated into the homosexual lifestyle.  
 15           (Ex. 1-8, at 31:14–25.) During the same encounter, a man—apparently the angry woman’s husband  
 16           or boyfriend—also approached the petition gatherer. He too became “very upset”; told the petition  
 17           gatherer, “you’re making my girl mad”; and threatened, “I’ll bust your cap.” (Ex. 1-8, at 31:6–15.)  
 18           To “bust a cap” is slang for firing a gun.<sup>13</sup>

19           **7. “When the bodies of straight men start to pile up . . . future gay-bashers may pause . . .”**

20           One Washington man was on the receiving end of what he perceived to be threats of violence,  
 21           and even death threats. (Ex. 7-3, at 134:6–19.) This man’s name was posted on the Internet together  
 22           with a list of names of other people “whose mere existence is a serious threat to our [i.e., the GLBT’s  
 23           community’s] safety.” (Ex. 8 to Ex. 7-3.) One post justified “slitting . . . throat[s] with a hunting  
 24           knife” for “caus[ing] severe psychological distress” (i.e., for advocating against the homosexual  
 25           lifestyle), adding that “when the dead bodies of straight men start to pile up and gay men start  
 26           walking away from attempted gay bashings, wiping off their knives and putting away their guns used  
 27           for justified self-defense, future gay-bashers may pause and think before acting out their evil hatred

28           <sup>13</sup> Urban Dictionary, <http://www.urbandictionary.com/define.php?term=bust+a+cap> (last visited July 18, 2011).

1 on gays.” (*Id.*)

2 **8. 69-year-old Woman Heckled, Spat Upon.**

3 In Palm Springs, California, an elderly woman was besieged by an angry mob protesting Prop  
4 8. Video footage posted on the Internet shows several men shouting at the woman as a television  
5 reporter tries to interview her.<sup>14</sup> “Get out of here,” one man shouts in the elderly woman’s face.<sup>15</sup>  
6 Later the video shows the woman, who is carrying a large cross at this point, surrounded by several  
7 men, including at least one who knocks the cross out of the woman’s hands and stomps on it.<sup>16</sup>  
8 Someone also reportedly spit on the 69-year-old lady. (Ex. 4-7.)

9 **9. Battered with Soda, Salsa, Eggs—and Pepper Spray.**

10 In Warwick, Rhode Island, police were involved after four men who had gathered in support of  
11 traditional marriage were assaulted by a group of women. One woman threw a soda bottle at the men  
12 and vowed to return. About fifteen minutes later, the women returned and hurled food and drinks  
13 at the men while shouting profanities. Some of the items thrown included soda, salsa, and eggs. And  
14 one of the women sprayed one of the men with pepper spray. (Ex. 4-99.)

15 **10. Hostility Directed at Traditional Marriage Group “TFP Student Action”**

16 TFP Student Action is a volunteer organization whose mission is to defend traditional moral  
17 values on college campuses. In furtherance of its mission, TFP Student Action has conducted  
18 peaceful demonstrations in support of traditional marriage on college campuses and in other public  
19 venues. (Ex. 4-26.) During these demonstrations, TFP volunteers have been subjected to threats,  
20 harassment, intimidation, and physical violence, and has had their property destroyed by pro-  
21 homosexual individuals who vehemently oppose TFP’s speech in support of traditional marriage.  
22 TFP has video documentation of many of these incidents. (*E.g.*, Ex. 5-9.)

23 In June 2011, TFP Student Action members were assaulted while peacefully demonstrating for  
24 traditional marriage in Fairport, New York. The group’s thirteen-foot-long banner inscribed with  
25 “God’s Marriage = 1 Man & 1 Woman” was knocked down and violently torn to pieces by a  
26 traditional marriage opponent. The same man approached another TFP volunteer who was holding

27 <sup>14</sup> Ex. 4-7; Ex. 5-20 (see the footage from 0:00 to 2:29 of the video).

<sup>15</sup> Ex. 5-20 (see the footage from 0:11-0:16 in the same video).

28 <sup>16</sup> Ex. 5-20 (see the footage from 2:29 to the end of the same video).

1 a sign that read “Honk for Traditional Marriage,” and said “Are you going to give me your sign, or  
2 do I need to rip it up too!?” Police are investigating the incident. (Ex. 5-6.) In a separate incident at  
3 the same demonstration, another same-sex marriage supporter threw a glass beer bottle from a  
4 moving vehicle at TFP volunteer Michael Shibler. The bottle hit Shibler on the forehead, causing  
5 it to swell and bleed. Police are also investigating this assault. (Ex. 5-6.)

6 TFP Student Action held a demonstration in support of traditional marriage on the campus of  
7 Brown University in March 2011. Eventually, nearly 250 protesters gathered to oppose TFP’s  
8 peaceful demonstration. Many screamed taunts and insults at the TFP demonstrators, and one person  
9 spit in the face of a 17-year-old TFP volunteer. Another demonstrator ran up from behind the group  
10 of demonstrators, jumped, and attempted to tear down and destroy TFP’s large banner, which read  
11 “God’s Marriage = 1 Man & 1 Woman.” (Ex. 5-7; Ex. 4-202.) Recognizing the intensity and  
12 expressions of animosity of those protesting TFP’s demonstration, the police thought it would be  
13 best to escort the TFP volunteers to their vans. As they drove away, several traditional marriage  
14 opponents pounded the vans with their palms or fists. (Ex. 4-202.)

15 In March 2011, TFP Student Action held a demonstration in support of traditional marriage in  
16 Newport, Rhode Island. Passers-by screamed obscene language and vulgar insults at the  
17 demonstrators, including statements such as “You conservative Christians are fucking poison”;  
18 “You are fucking scumbags”; and “You should really be ashamed of yourselves; get the fuck out of  
19 our town.” One of them physically pushed a demonstrator, another attempted to rip their traditional  
20 marriage sign, and a third spat at them. One homosexual man threatened the demonstrators with  
21 physical violence: “You’re on my block now, bro,” he began. “[If] you guys don’t leave within 20  
22 minutes, there’s gonna be some problems. . . . I’m telling you right now, 20 minutes.” He even  
23 alluded to killing the group. “See you in my trunk,” he said. As he walked away, he indicated the  
24 demonstrators would face repercussions—“Karma’s a bitch.” (Ex. 5-9.)

25 TFP Student Action volunteers demonstrated in support for traditional marriage at the New  
26 Jersey Statehouse on January 7, 2011. During the demonstration a TFP member was assaulted by a  
27 large woman wearing a blue “equality” t-shirt who tried to physically wrestle his pro-family sign  
28 away from him. When she was unable to tear the sign from his grip, she physically grabbed him in



1 a “bear hug” and began to pull him back and forth in an effort to take the sign. After a few seconds,  
2 she gave up and walked away. (Ex. 5-10.)

### 3 **11. Hostile and Violent Acts Against Sign-Wavers in Washington**

4 TFP’s almost indescribable experiences at public sign-holding rallies on the East Coast were  
5 surpassed in intensity and violence in Washington State. The Pastor of a Baptist Church in Spokane  
6 recounted that when his youth group participated in a sign-waving rally in favor of traditional  
7 marriage (i.e., against SB 5688), they were “sworn at, spat at, [and given the] middle finger[ several  
8 times].” (Ex. 7-1, at 31:5–6.)

9 In another incident in the Fall of 2009, as a group of four or five church members were standing  
10 at an intersection with Reject R-71 signs, a young man approached them and “started screaming and  
11 yelling like crazy,” calling them vulgar names and indicating his intense disagreement with their  
12 position on SB 5688. Then he ripped one of the signs from the hands of one of the church members  
13 and dashed into the middle of the intersection and tried to hit passing cars with the sign. After  
14 continuing with his tirade in the street for about “a minute or so,” he turned his attention back to the  
15 church members and flung further insults at them. He finally left after “crush[ing the sign] over the  
16 sidewalk.” An eyewitness to the event interpreted the man’s wild behavior as an attempt to create  
17 the impression in the public’s mind that he (the wild man) was one of them (the traditional marriage  
18 supporters), so others would think, “these . . . people are crazy.” (Ex. 7-2, at 79:12–81:19.)

19 At another rally on a Saturday afternoon in October 2009, a church group at a sign-waving event  
20 was approached by a woman who began to forcibly remove the signs from the hands of the  
21 demonstrators. When a young man asked the woman why she was doing that, the woman turned  
22 around and, without further discussion, hit him with one of the signs right in the head. The sharp  
23 edge of the sign sliced his head just above the forehead. The young man was rushed to the hospital  
24 where he received six stitches. (Ex. 7-1, at 31:15–22; Exhibit 3 to Ex. 7-2.) After that incident, the  
25 church adopted a policy to participate in public sign-waving events only in groups of about six or  
26 eight (or more) people, for their own protection. (Ex. 7-1, at 32:5–8.)

27 At a sign-holding rally in Vancouver, Washington, several individuals stopped their cars and  
28 “tried to tear away the placards from young women, girls, who were holding the placards that said

1 reject [R-71].” (Ex. 1-9, at 14:9–21.)

2 In another ominous case, a man exited a church building carrying a traditional marriage sign,  
3 and a car with four men stopped in front of him. The four men yelled at him and demanded that he  
4 stop and talk to them. When the church member ignored them, one of the men exited the vehicle and  
5 ran after him, while the other three drove around and stopped the car in front of him so he could not  
6 escape. They all started cursing at him and threatening him. Fortunately, he managed to escape from  
7 the situation without any physical harm. (Ex. 7-2, at 90:25–91:25.)

8 In another incident, as a mother and her children held a pro-traditional-marriage sign in front  
9 of a church, a passing car stopped and someone in the car gave them the middle finger and shouted,  
10 “All Christians shall die.” Her children were terrified knowing that someone “wanted [them] to die.”  
11 (Ex. 7-2, at 92:17–94:8.) As another woman stood at a street corner with a Reject R-71 sign,  
12 someone in a passing car yelled at her and threw a bottle filled with Pepsi striking her in the chest.<sup>17</sup>  
13 (Ex. 7-2, at 94:9–25.) In another case, a church youth group holding signs in front of their church  
14 had bananas and fruit jelly thrown all over their bodies and clothes. (Ex. 7-2, at 98:22–25, 99:1–4.)  
15 The people who did it also took pictures of them, telling them they were taking their pictures. They  
16 even returned to take their pictures again. (Ex. 7-2, at 99:5–8.)

17 As another group of youths were standing with signs next to a Taco Bell, they were approached  
18 by a group of people who, after verbally insulting them, added, “We hope you all die. You need to  
19 be destroyed.” (Ex. 7-2, at 103:21–24.)

20 In another bizarre case, an unknown man tried to hit a youth with the front of his car while the  
21 youth was standing “on the edge of the sidewalk” with a pro-marriage sign. The driver spotted the  
22 youth holding the sign, started yelling profusely, and then drove right towards the youth. The driver  
23 pulled forward aggressively so that the nose of the vehicle would have hit the boy had he not jumped

24  
25 <sup>17</sup> Another woman reported a similar incident in California as she stood on a street corner for four hours with a  
26 Yes on 8 sign. A car with several men stopped, and a man in the back seat opened the door and threw an unidentified  
27 object at her. Fortunately, he missed and the car drove away. Before that happened, another man had stopped his car  
28 and shouted at her, “You despicable filthy bag of shit.” Other drivers circled the block and yelled things like “You  
bitch” each time they drove by. Another driver stopped her car and yelled, “Get the hell out of here. Who do you  
think you are, bringing that hate into my neighborhood?” She tried to tell the woman who was yelling at her that she  
owned a house four blocks from where she was standing and that her family had lived in that area for four  
generations, but “the woman kept screaming and drowning [her] out.” (Ex. 9-14 (John Doe 16).)



1 out of the way. (Ex. 7-2, at 103:11–105:3.)

## 2 **12. Lewd Demonstrations**

3 Still other incidents exhibited a further breakdown in civility, crossing the line into lewdness  
4 and indecency. In at least one instance, homosexual activists publicly propositioned minor boys to  
5 engage in homosexual acts. Sometime during the “May, June [or] July months” of the R-71  
6 campaign (Ex. 1-8, at 27:21–23), about fifty people gathered at a busy intersection in Vancouver,  
7 Washington (Ex. 1-8, at 35:4–9), to hold signs urging people to reject R-71 (Ex. 1-8, at  
8 22:24–23:10). During this rally, a large van approached the crowd and three men exited, dressed only  
9 in thong underwear. (Ex. 1-8, at 23:11–24:14.) The men walked amongst the crowd, which was  
10 composed of many young girls and boys, “offering their services” in “sexual ways.” (Ex. 1-8, at  
11 24:10–14.) The men propositioned only “young men, not women.” (Ex. 1-8, at 26:8–14.) When two  
12 leaders of the R-71 rally approached the men and politely asked them to leave, they became “very  
13 upset,” boarded their van, and began to drive around throwing garbage at the crowd. (Ex. 1-8, at  
14 24:15–23, 26:19–27:4.) While they were doing this, some men in the van got “completely naked”  
15 and “[stuck] their rear ends out of the windows.” (Ex. 1-8, at 25:9–11.)

16 Similar behavior was exhibited elsewhere. After R-71 qualified for the ballot (Ex. 1-1, at  
17 34:19–35:1), about sixty to seventy traditional marriage supporters attended two R-71 “sign-waving  
18 events” at the Longview-Kelso Bridge in southwestern Washington (Ex. 1-1, at 13:17–23,  
19 15:17–19). During these events, people drove by in cars, screaming profanity and giving the middle  
20 finger to those holding R-71 signs. (Ex. 1-1, at 21:7–20.) A passenger in one car pulled off his pants  
21 and, through the window of his vehicle, “moonied” the group. (Ex. 1-1, at 21:16–24.) A church pastor  
22 in the group felt “disgusted” and “verbally harassed” by these incidents. (Ex. 1-1, at 47:20–25.)

23 Days after the Prop 8 election, one California woman who displayed a pro-traditional-marriage  
24 sign on her property reported finding that her staircase leading downstairs had been covered in urine.  
25 (Ex. 9-14 (John Doe 12).) And in 2004, a Washington man helped organize an event at Safeco Field  
26 in Seattle to support traditional marriage. (Ex. 1-14, at 10:12–11:1.) Thousands of traditional  
27 marriage supporters attended the event. Homosexual activists also attend the rally but many of them  
28 were unable or unwilling to do so civilly. Several activists waved and displayed “sexual toys,” even

1 though many children were present at the event, and others screamed profanity at the speakers. (Ex.  
2 1-14, at 67:4–10.) In addition, three to four hundred protestors rallied outside the stadium and  
3 attempted to block traditional marriage supporters from getting inside. (Ex. 1-14, at 68:17–19.)

### 4 **13. Other Acts of Harassment and Intimidation in Public Places**

5 As one supporter passed out pro-traditional-marriage brochures to passengers on a public ferry,  
6 a man responded with profanity, and by “screaming and shrieking” (Ex. 1-4, at 26:6) at the supporter,  
7 wadding up the brochure, and throwing it back at him (Ex. 1-4, at 22:5–20). The disgruntled  
8 passenger then began to follow the supporter in a “menacing” way until ferry workers intervened.  
9 (Ex. 1-4, at 23:21–24:17.) The supporter was worried that the man who was following him around  
10 the ferry might become violent and “smack[ him] in the back.” (Ex. 1-4, at 25:7–15.)

11 While another man was gathering R-71 petition signatures at a park during a 4th of July event,  
12 an angry man approached to within one foot of his face, and “screamed profanity.” (Ex. 1-1, at  
13 28:18–29:14.) On another occasion, while the same man and his wife were gathering signatures in  
14 the parking lot of a business establishment, a young man approached them and began to “shout  
15 profanity” and called the man a “Christian fascist.” (Ex. 1-1, at 26:18–27:4.) The young man then  
16 demanded, “Take your fat butts out of this place” (Ex. 1-1, at 27:14–16), and proceeded to follow  
17 them wherever they went for “about 20, 25 minutes” (Ex. 1-1, at 27:1–4).

## 18 **II. The State’s Financial Donor Exposure Argument Fails.**

19 The State attempts to undermine Plaintiffs’ case by arguing that Plaintiffs should lose because  
20 they cannot link any of their countless accounts of threats, harassment, and reprisals specifically to  
21 the State’s publication of named financial donors to Protect Marriage Washington. (State’s MSJ 6.)  
22 The problem with the State’s argument is, the Supreme Court has already confronted it—and the  
23 Court unanimously rejected it. Thus, there is no “strict requirement that chill and harassment be  
24 directly attributable to the specific disclosure from which the exemption is sought.” *Buckley v. Valeo*,  
25 424 U.S. 1, 74 (1976). The Supreme Court expressly re-affirmed that view in *Brown v. Socialist*  
26 *Workers ’74 Campaign Committee*, 459 U.S. 87 (1982), where the Court granted an exposure  
27 exemption despite the absence of such evidence. In *Brown*, the government argued that an exposure  
28 exemption was improper because of the “lack of direct evidence linking the Ohio statute’s disclosure

1 requirements to the harassment of campaign contributors,” *Brown*, 459 U.S. at 101 n.20, the precise  
2 argument raised by the State here. The Court flatly rejected the argument:

3 [The government] point[s] to the lack of direct evidence linking the Ohio statute’s  
4 disclosure requirements to the harassment of campaign contributors or recipients of  
5 disbursements. In *Buckley*, however, we rejected such “unduly strict requirements of proof”  
6 in favor of “flexibility in the proof of injury.” We thus rejected requiring a minor party to  
7 “come forward with witnesses who are too fearful to contribute but not too fearful to testify  
8 about their fears” or prove that “chill and harassment [are] directly attributable to the  
9 specific disclosures from which the exemption is sought.” We think that these  
10 considerations are equally applicable to the proof required to establish a reasonable  
11 probability that recipients will be subjected to threats and harassment if their names are  
12 disclosed.<sup>18</sup>

### 13 **III. The State’s Out-of-Context Statement from the Supreme Court’s *Doe v. Reed* Decision 14 Is Misleading.**

15 The State misstates the import of language from the Supreme Court’s *Doe v. Reed* decision, and  
16 in so doing, conveys the impression that the Supreme Court has already dismissed Plaintiffs’  
17 evidence. It quotes the Court as saying, “‘what little [evidence of threats, harassment, and reprisals]  
18 plaintiffs do offer’ hurts rather than helps their cause.” (State’s MSJ 19 (*quoting Doe v. Reed*, 130  
19 S. Ct. 2811, 2821 (2010)).) No doubt, the Court said as much. But that was written in the context  
20 of Plaintiffs’ broad challenge to releasing the names of petition signers *in general*. And what the  
21 Court meant was that to prevail on their *facial* challenge, Plaintiffs needed to present evidence of  
22 reprisals stemming from other, less-contentious ballot measures. Because most if not all of Plaintiffs’  
23 evidence related to reprisals involving contentious ballot measures like R-71, the Court ruled that  
24 such evidence actually hurt their *facial* challenge. Of course, the Court’s assessment, made  
25 specifically in the context of Plaintiffs’ facial challenge, has no bearing on the strength of the  
26 evidence presented in support of this as-applied challenge.

### 27 **IV. The State’s “Unnamed Witnesses” Argument Fails.**

28 In two sentences near the end of its brief, the State alleges that approximately sixty declarations  
from “John Does” previously submitted to this Court—and considered by this Court at the

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<sup>18</sup> *Brown*, 459 U.S. at 101 n.20. Incidentally, *Brown* was unanimous in its decision to grant an exposure exemption as the opinion related to the identities of contributors (as opposed to vendors). *Compare id.* at 95 n.11 (granting exposure exemption to both contributors and vendors), *with id.* at 107 (O’Connor, J., concurring in part and dissenting in part) (disagreeing only as to whether an exposure exemption should issue in favor of vendors). All the justices agreed that “direct proof of harm *from disclosure* is not required” to grant an exemption. *Id.* at 112 n.7 (O’Connor, J., concurring in part and dissenting in part) (emphasis added).

1 preliminary injunction stage of this litigation (*see* Exs. 9-13, 9-14 (previously filed as Dkts. 4-13,  
2 4-14))—can no longer be considered by the Court. (*See* State’s MSJ 21–22.) In support of its claim,  
3 the State relies on language from a Joint Scheduling Order (Dkt. 128) dated September 15, 2010, that  
4 stated, in effect, that witnesses not disclosed by a certain date would not be permitted to testify in  
5 this case. Plaintiffs simply respond that the identities of those “John Doe” declarants (most but not  
6 all of whom are from California) are protected by court order (not this Court’s order);<sup>19</sup> Plaintiffs are  
7 not privy to their identities; and Plaintiffs were not then, and are not now, able to reveal their  
8 identities. Moreover, Plaintiffs revealed the names of nearly a score of Washington residents who  
9 Defendants were able to depose, and it is upon the testimony of those Washingtonians that Plaintiffs  
10 principally rely to show that it is indeed reasonable to conclude that the kinds of reprisals occurring  
11 around the country are also occurring in Washington.

#### 12 **V. Why *Citizens United* and *McConnell* Strongly Support Plaintiffs’ Case**

13 The State also points out near the end of its brief that the Supreme Court rejected exposure  
14 exemptions in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), and *McConnell v. FEC*, 540 U.S. 93  
15 (2003)—the State urges this Court to follow suit. (State’s MSJ 22.) The hole in the State’s argument  
16 is that in both *Citizens United* and *McConnell*, the Court was presented with “no evidence” whatever  
17 of threats, harassment, or reprisals. *Citizens United*, 130 S. Ct. at 916; *McConnell*, 540 U.S. at 199;  
18 *McConnell v. FEC*, 251 F. Supp. 2d 176, 246 (D.D.C. 2003). The as-applied claims in those cases  
19 were brought based on allegations of feared reprisals—but with no supporting evidence to  
20 substantiate those fears, those challenges necessarily failed. The State tries to tie this case to those  
21 cases, claiming the evidence here is “similarly slim and speculative.” (State’s MSJ 22.) The problem  
22 is, this is not a “no evidence” case. To the contrary, the Supreme Court has *never* rejected an  
23 application for an exposure exemption that has as much evidence as this case does.

#### 24 **Conclusion**

25 The State has not made the showing necessary to warrant granting its motion for summary  
26 judgment, and accordingly Plaintiffs pray the Court to deny its motion.

27 <sup>19</sup> *See* Order Granting Pls.’ Mot. for a Protective Order (Dkt. 29), *ProtectMarriage.com v. Bowen*, No. 2:09-cv-  
28 0058 (E.D. Cal. Jan. 14, 2009); Order Denying Pls.’ Mot. for Prelim. Inj. & Extending Protective Order (Dkt. 88) at  
1–2, 61, *Protect Marriage.com v. Bowen*, No. 2:09-cv-0058 (E.D. Cal. Jan. 30, 2009).

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Dated this 18th day of July, 2011.

Respectfully submitted,

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Pls.' Response to Defs.' Motion for  
Summary Judgment  
(No. 3:09-CV-05456-BHS)

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## Certificate of Service

I, Jared Haynie, am over the age of eighteen years and not a party to the above-captioned action. My business address is 1 South Sixth Street, Terre Haute, Indiana 47807.

On July 18, 2011, I electronically filed the foregoing document, described as Plaintiffs' Response to Defendants' Motion for Summary Judgment, together with Exhibits 7 through 13 attached thereto, with the Clerk of Court using the CM/ECF system which will send notification of such filing (except as to Exhibit 7 and the attachments to Exhibit 12) to:

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On July 18, 2011, a copy of Exhibit 7 (deposition excerpts filed under seal) was emailed to all counsel at the email addresses listed above. A paper courtesy copy of Exhibit 7 (and all Exhibits, 7 through 13) will also be served by FedEx overnight delivery on counsel at their physical addresses listed below. Also, on July 18, 2011, and in accord with ECF Filing Procedure "III-J," four attachments to Exhibit 12, which consist of non-paper evidence (i.e., audio files), were filed conventionally and served on counsel (at the addresses listed below) by FedEx overnight delivery. A separate notice of such filing (i.e., the audio files) was also filed and served on all counsel.

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6 I declare under the penalty of perjury under the laws of the State of Indiana that the above is true  
7 and correct.

8  
9 Executed this 18th day of July, 2011.

10  
11 /s/ Jared Haynie  
12 Jared Haynie  
13 *Counsel for All Plaintiffs*