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*McConnell v. FEC*,  
251 F. Supp. 2d 176 (D.D.C. 2003). . . . . 3

*NAACP ex rel. Patterson v. Alabama*,  
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**Statutes**

Senate Bill 5688.. . . . *passim*

1 Come now Plaintiffs in response to Intervenor-Defendant Washington Families Standing  
2 Together's ("WFST") Motion for Summary Judgment, and make the following rebuttal.<sup>1</sup>

### 3 **Argument**

#### 4 **I. In 2011, Plaintiffs' Views on Marriage Are Unquestionably "Controversial."**

5 WFST quotes a federal court case for the proposition that "opposition to same-sex marriage is  
6 'a historically non-controversial belief.'" (WFST's Mot. for Summ. J. (hereinafter "WFST's MSJ")  
7 20 (citation omitted).) The key word in that passage is, of course, "historically"—for in  
8 contemporary America there is no issue (not even abortion) that is more contentious than the debate  
9 over same-sex marriage. WFST dismisses the idea that Plaintiffs' views on marriage are "dissident  
10 views," saying the "very suggestion is absurd." (WFST's MSJ 20.) But that is precisely where we,  
11 as a society, are tending. (*See* Ex. 5-8.) And in many communities, in Washington and across the  
12 country, we are already there. In June 2011, the Associated Press published an article documenting  
13 several acts of intimidation and retribution catalogued in this case and noting the emerging power-  
14 position of the homosexual movement.<sup>2</sup>

15 And leaders of the homosexual movement are unapologetic about their (largely successful)  
16 efforts to force voices supporting traditional marriage into the closet. (*See, e.g.*, Ex. 5-8.) In April  
17 2011, after Atlanta-based law firm King & Spalding pulled out of an agreement with the U.S. House  
18 of Representatives to defend the federal Defense of Marriage Act after "coming under fire from  
19 gay-rights groups," Fred Sainz, vice president of communications for the Human Rights Campaign

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20 <sup>1</sup> In rebuttal to WFST's motion for summary judgment, Plaintiffs rely on all the evidence Plaintiffs relied on in  
21 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 their brief in opposition to the State's motion for summary judgment (filed concurrently with this brief). To avoid  
25 unnecessary and redundant filing of documents, Plaintiffs have not re-submitted those new exhibits with this briefing.  
26 WFST attorneys are ECF participants and are able to fully access the exhibits as filed. Moreover, Plaintiffs are  
27 sending courtesy (paper) copies of all exhibits to all parties, including the two intervenors.

28 Plaintiffs also note that 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.

<sup>2</sup> Ex. 4-186. *But see* Ex. 4-187 (downplaying the evidence in *Doe v. Reed* as consisting primarily of stolen or  
vandalized political signs, and urging the "mainstream media [to] . . . be aware of and pay especially close attention  
to marriage equality opponents' new strategy of advancing their views through this diversionary scare tactic"—i.e.,  
by "falsely portray[ing] marriage equality opponents as political and religious victims whose rights and well-being  
are being trampled upon").

1 (a homosexual advocacy group), boasted, “If we made it such that no law firm would defend the  
2 indefensible, then good for us.” Added Sainz, “When you have people talking about the fact that it’s  
3 no longer politically correct to be anti-equality, it’s a show of progress.” (Ex. 4-186.)

4 Evan Hurst of the homosexual advocacy group Truth Wins Out agreed: “Their beliefs on this  
5 issue are very quickly becoming socially disgraceful, much in the way white supremacy is socially  
6 disgraceful.” “They are certainly entitled to cling to backwoods, uneducated, reality-rejecting views,  
7 but their ‘religious freedom’ doesn’t call for the rest of us to somehow pretend their views aren’t  
8 disgusting and hateful.” (Ex. 4-186. *But see* Ex. 4-186 (quoting former ACLU board member Wendy  
9 Kaminer as saying, “To think it’s a good idea to attack lawyers defending unpopular clients; I don’t  
10 have words for how stupid and wrong that is.”).)

11 Likewise, *Time* magazine reported that the avowed purpose of Californians Against Hate was  
12 to “make it socially unacceptable” to participate in any significant way in the political process (i.e.,  
13 to give more than \$5,000), if your viewpoint is in opposition to same-sex marriage. (Ex. 4-142; *see*  
14 *also* Ex. 4-132 (reporting that the founder of Californians Against Hate said he hoped boycotts would  
15 “send a message” to other “potential contributors”).) And the man behind the “campaign [at the  
16 Daily Kos] to look into the lives of Mormon donors” said the goal there was to “embarrass the  
17 opposition.” (Ex. 4-60.)

## 18 **II. WFST’s “Minor Party” Argument Fails.**

19 WFST goes to great lengths to show that Plaintiffs “are not a minor party.” (WFST’s MSJ  
20 19–21.) WFST’s main argument on this front—that Plaintiffs are, as a matter of law, precluded  
21 from access to an exposure exemption because they are not an acute minority of the  
22 population—fails because the exposure exemption test is not something that is available  
23 exclusively to “minor parties.” *See, e.g., Doe v. Reed*, 130 S. Ct. 2811, 2820–21 (2010).

24 WFST throws in the added wrinkle that R-71 petition signers are ineligible for an exposure  
25 exemption because it is possible that some of them signed the petition ignorantly, or even with  
26 the altruistic motive of promoting public debate. (WFST’s MSJ 20.) This, despite the fact that  
27 WFST cannot point to single example of someone who signed the petition for the express  
28 purpose of promoting debate for the sake of debate.

1 As Plaintiffs were leading the drive to collect the petition signatures, groups opposing the  
 2 referendum (i.e., groups supporting SB 5688) were leading their own drive called “Decline to  
 3 Sign Referendum 71.”<sup>3</sup> (Exs. 4-198, 4-199, 4-200; Ex. 5-5; Ex. 9-3.) In fact, one video promoting  
 4 the “Decline to Sign” drive gives the impression that it was produced, or at least endorsed, by  
 5 WFST, as the opening scene of the video leads out with WFST’s logo. (Ex. 5-5.) But whether or  
 6 not WFST was officially involved in the drive, it is plain that those who were involved had no  
 7 ambivalence about what a signature meant. To them, a signature was a clear expression of  
 8 opposition to SB 5688. And that is exactly what the signatures continue to stand for.

### 9 III. WFST’s Version of the Exposure Exemption Test Is Unfounded.

10 WFST goes on to argue that the legal standard here is controlled not by established Supreme  
 11 Court precedent, such as *Buckley v. Valeo*, 424 U.S. 1 (1976), *Brown v. Socialist Workers ’74*  
 12 *Campaign Committee (Ohio)*, 459 U.S. 87 (1982), and *Doe v. Reed*, 130 S. Ct. 2811 (2010), but by  
 13 the significantly more stringent standards advocated by four members of the same Court that decided  
 14 *Doe v. Reed*. (WFST’s MSJ 17, 19.) WFST’s proposed standard completely destroys the designed  
 15 “flexibility” of the standard announced in *Buckley*, 424 U.S. at 74—a standard the Court has  
 16 repeatedly confirmed, *see Doe*, 130 S. Ct. at 2821; *Citizens United v. FEC*, 130 S. Ct. 876, 915  
 17 (2010); *McConnell v. FEC*, 540 U.S. 93, 198 (2003); *Brown*, 459 U.S. at 93.

18 Whereas the established legal standard requires Plaintiffs to show “only a reasonable  
 19 probability” that exposure will lead to threats, harassment, or reprisals, *e.g.*, *Buckley*, 424 U.S. at 74,  
 20 WFST’s preferred standard would require “Plaintiffs [to] bear the burden of adducing sufficient  
 21 evidence that a reasonable jury could find that (1) R-71 petition signers constitute a minor party and  
 22 disclosure of R-71 petitions poses (2) a reasonable probability of (3) serious and widespread  
 23 harassment against R-71 petition signers that (4) the State is unwilling or unable to control.”  
 24 (WFST’s MSJ 19.) This standard has no basis in controlling Supreme Court precedent.

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25 <sup>3</sup> Homosexual activist Dan Savage—the same man whose views were highlighted in Plaintiffs’ opening brief  
 26 (advocating, in effect, that there are “no two sides” to this issue)—made a special plea to Washingtonians in a letter  
 27 distributed on Facebook, asking “[e]veryone,” and “[e]specially straight people,” to sign a pledge not to sign the R-  
 28 71 petition. “Your pledge is powerful,” he encouraged. “Three years ago, these same folks tried to repeal a law that  
 banned discrimination based on sexual orientation. That effort came up 6,000 signatures short and they never made it  
 to the ballot. We can do it again.” (Ex. 4-200.)

#### IV. This Case Presents Substantial Direct Evidence of Chilled Speech.

Next, WFST draws much attention to the fact that, in this case, “[t]here are no allegations that any person who merely signed the R-71 petition—without taking a public stand—has been threatened or harassed.” (WFST’s MSJ 21.) Given, however, that the names of these petition signers are not publicly available, it is difficult to see how a would-be intimidator could identify (and threaten) someone who signed the petition unless the signer had in fact made it public.

In a similar vein, WFST alleges that Plaintiffs do not have “*any* evidence that individuals refused to sign the petitions out of concern that their identities would become known.” (WFST’s MSJ 3.) That simply is not true. The record in fact contains many concrete examples of chilled speech, including specific accounts of individuals who refused to sign for fear of being exposed. Indeed, the evidence of chilled speech stretches back to the very beginning of the facts giving rise to this case. When KnowThyNeighbor.org and WhoSigned.org announced they were going to post on the Internet, in searchable format, the names of those who signed the R-71 petition, many people who had been helping with the R-71 campaign decided they could no longer be active in the campaign “for fear of having their name posted on the Internet.” (Ex. 1-11, at 73:13–20, 74:20–24.)

During the signature gathering phase, several people told one signature-gatherer that they would not sign the petition, even though they supported the cause, because they “fe[lt] threatened.” (Ex. 1-1, at 48:5–9, 56:16–23.) He recalled that many people told him, “We support the issue, but at this time we don’t want to leave our name and address on this petition.” (Ex. 1-1, at 48:10–12, 54:23–55:7.) The same signature-gatherer was also aware that other signature-gatherers experienced similar encounters. (Ex. 1-1, at 56:21–23.)

The chill also extended to would-be financial donors. Protect Marriage Washington “had a very difficult time . . . raising the money [it] needed to fund the campaign” because people feared having their names revealed on contribution reports filed with the Public Disclosure Commission (“PDC”). (Ex. 1-11, at 75:4–25.) “[A]nybody who could give any substantial contribution was very fearful.” (Ex. 1-11, at 78:20–25.) Many bloggers were openly requesting that the names be released so they could boycott their businesses. (Ex. 1-11, at 134:7–11.) Consequently (in part at least), traditional marriage advocates were hugely out-funded in the R-71 campaign. The traditional marriage side was

1 able to raise about \$495,000 (including in-kind contributions), compared to the \$2.18 million  
2 opposition groups rounded up.<sup>4</sup> *See Brown*, 459 U.S. at 93 (recognizing that exposure laws can  
3 “deter contributions”).

4 Many others tempered their public expressions of support for traditional marriage. For example,  
5 Larry Stickney, campaign manager for Protect Marriage Washington, decided to remove the R-71  
6 yard sign in front of his own home out of concern for the safety of his family (he did not want to help  
7 any would-be assailants identify his home). (Ex. 1-11, at 72:8–11.) A California woman, though  
8 “ashamed to admit” it, refused to put a bumper sticker on her car in support of traditional marriage  
9 “because of the aggression directed towards [her] family and friends that resulted from their [public]  
10 support.” (Ex. 9-14 (John Doe 39).) Another woman decided to remove the traditional marriage  
11 bumper sticker from her car after someone keyed her car and let the air out of the tires while she was  
12 in the grocery store. (Ex. 9-14 (John Doe 12).)

13 A woman from Michigan who had “no idea that [her] name would be made public” for making  
14 a donation in support of traditional marriage, admitted that had she known, she “probably would not  
15 have donated” because it “had been [her] intention to remain anonymous.” (Ex. 9-14 (John Doe 27).)

16 Similarly, the pastor of a Washington church testified, “If we knew that [the Secretary of State  
17 was planning on releasing the names and addressees of the signers] we wouldn’t sign, because that  
18 puts dangers in all people. By reading those blogs on the Internet, I already know what will happen  
19 if they will do that.” (Ex. 7-2, at 159:23–160:1.) In somewhat broken English, the same pastor made  
20 a direct plea to the Judge in this case, “And I just ask Judge to not release personal information of  
21 petition signers, as it will bring chaos, pain and violence in our community.” (Ex. 7-2, at 165:22–24.)

22 Another Washington citizen testified that he was a very private person who was willing to  
23 support marriage by opposing SB 5688 but would be afraid to discover that by so doing, complete  
24 strangers would have facilitated access to his contact information. (Ex. 7-4, at 38:15–39:18).

25 Others admit that they have been cowed into silence, or at least that they will consider remaining  
26

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27 <sup>4</sup> All amounts reflect both cash contributions and in-kind contributions, as reported on the PDC’s web site. For  
28 reports detailing contributions to organizations opposing SB 5688, see Exhibits 4-181 and 4-182. For reports  
detailing contributions to organizations supporting SB 5688, see Exhibits 4-183 and 4-184.



1 silent in the future. One father, concerned about the safety of his children, determined that he will  
2 no longer speak out publicly in support of traditional marriage. (Ex. 9-14 (John Doe 30).) Another  
3 woman declared she would have to “seriously consider . . . the safety of [her] family in the future  
4 when deciding to support a cause similar to Proposition 8.” (Ex. 9-14 (John Doe 45).) Another  
5 supporter will “think twice” about supporting a similar cause in the future because she is “worr[ied]  
6 that someone could go after [her family.]” (Ex. 9-14 (John Doe 19).) One father with young children  
7 will consider donating “a lesser amount under the disclosure threshold” in the future, or possibly  
8 donating to an organization in such a way that would not require him to divulge his name. (Ex. 9-14  
9 (John Doe 23).) And another woman admitted that her support for a similar cause in the future was  
10 “negatively affect[ed]” by the fact that her yard sign was stolen while her neighbors’ signs supporting  
11 same-sex marriage were left untouched throughout the entire campaign. (Ex. 9-14 (John Doe 44).)

12 Still others expressed the fear they felt as they campaigned for traditional marriage. One  
13 Washington resident witnessed enough aggressive language and behavior during the R-71 campaign  
14 that he felt a risk of physical harm to himself due to “[s]eeing people’s reactions and understanding  
15 that some people were . . . becoming more violent and saying more violent and aggressive things in  
16 the media.” ( Ex. 1-10, at 36:22–37:8.) Like so many others, he felt the need to protect his wife and  
17 child. (Ex. 1-10, at 34:16–35:9.) He recalled seeing “online” “a big case of people saying that they’re  
18 going to kill people if anybody tries to stop their rights for basically gay marriage.” (Ex. 1-10, at  
19 37:17–22.)

20 Similarly, a mother in California who witnessed repeated vulgarities at sign-waving events said  
21 she felt nervous and scared, chose not to take her children with her, and worried about future  
22 violence to her family should she decide to support a similar cause in the future. (Ex. 9-14 (John Doe  
23 13).) Another woman concluded that in the future she would make sure that at least one man was  
24 with each group of sign wavers to help ensure the safety and protection of the group. (Ex. 9-14 (John  
25 Doe 20).) One man would not bring children to demonstrations in the future. (Ex. 9-14 (John Doe  
26 25).) One father, who was “blacklisted” on the Internet for his financial contribution in support of  
27 traditional marriage, became so concerned for the safety of his children that he contacted the  
28 children’s principal and made it explicit that only he or his wife were authorized to pick up the

1 children from school. (Ex. 9-14 (John Doe 23).)

2 A Washington man who lived in a relatively small community, went to the public school where  
3 his daughters were attending and talked with the principal to let him know about the threats that he  
4 and his family were experiencing because of his support for R-71. He asked the principal to tell  
5 his children's teachers to watch for strangers and to make sure his children never left the school with  
6 anyone but he or his wife. (Ex. 13 ¶ 6.)

7 In one community, speech was chilled so significantly that newspaper editors could not convince  
8 *anyone* to submit opinion pieces presenting countervailing views in the same-sex marriage debate,  
9 absent a solemn pledge to keep their names anonymous. In 2008, the student newspaper at the  
10 University of California, San Francisco decided to reverse its policy prohibiting anonymous opinion  
11 letters—but only in the case of the same-sex marriage debate. The newspaper was prompted to make  
12 this special exception because it had “printed many articles from those opposing Prop 8, but hadn’t  
13 received any from the other side.” After tracking down someone with a pro-traditional-marriage  
14 opinion, the newspaper endeavored “to get the writer to agree to use his name, but he refused, citing  
15 fear of harassment.” (Ex. 4-185.)

16 The editors of the paper treated seriously the decision to break from their standard policy. In a  
17 formal announcement explaining their rationale, the editors cited a newspaper article by the *San*  
18 *Francisco Chronicle*'s Editorial Page Editor John Diaz that revealed what happened to a gentleman  
19 who had written a letter to the editor pleading with readers to “[p]lease show respect for democracy.”  
20 (See discussion of Diaz's article in Plaintiffs' opening brief at pages 13–14.) The student editors  
21 concluded, “In this democracy, the way to rectify errors at the polls is to convince a majority at a  
22 future election of the rightness of your cause. No matter how passionately one feels about an issue,  
23 it is important to maintain a civil dialogue and a reasoned debate.” (Ex. 4-185.)

24 **V. The Evidence Here Amounts to Much More Than a Few “Unpleasantries.”**

25 The thrust of WFST's argument is that Plaintiffs' evidence amounts to mere “unpleasantries”  
26 of heated political discourse, sprinkled with a “few instances” where police were called to the scene  
27 to “mitigate any threat of harassment.” (WFST's MSJ 21, 24.) In addition to death threats (*e.g.*, Ex.  
28 1-3, at 18:9–10), threats of violence and destruction of property (*e.g.*, Exs. 4-84, 4-195), and actual

1 violence and destruction of property (*e.g.*, Ex. 7-1, at 31:15–22; Ex. 4-42), there are many examples  
 2 of what the Supreme Court called, in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462  
 3 (1958), “economic reprisal[s], [and] loss of employment.”

#### 4 **A. Job Firings and Discriminatory Hiring**

5 There are many documented examples of job firings and discriminatory employment practices  
 6 against those who adhere to traditional views on marriage and family life. From national corporations  
 7 to state agencies to public colleges and universities, the evidence plainly shows a “pattern” of  
 8 hostility against any viewpoints in the workplace deemed to be “anti-gay” in any way.

##### 9 **1. Hiring Manager to Applicant: Because of your “anti-gay stand,” many on our staff are “not comfortable” working with you.**

10 One Washington citizen who publicly opposed SB 5688 was denied employment because of her  
 11 views. In or around April 2010, she applied to serve as a volunteer worker at SafePlace in Olympia,  
 12 Washington. (Ex. 2 ¶ 36.) SafePlace is an organization dedicated to helping victims of domestic  
 13 violence and sexual assault. During a ninety-minute in-person interview, a SafePlace representative  
 14 was enthusiastic and “upbeat” about this woman’s desire to volunteer at SafePlace in large part  
 15 because she (the applicant) was a victim of domestic violence and sexual abuse, and with that kind  
 16 of background, the SafePlace representative was confident the applicant would be “an asset to their  
 17 organization.” (Ex. 2 ¶ 37.) The applicant was also told that volunteers are sometimes able to  
 18 become paid staff members, which she hoped to do.

19 The applicant left the interview with the understanding that SafePlace was excited to have her  
 20 as a volunteer, and that she needed to provide references and fill out a form for a background check  
 21 right away so that she could begin a mandatory (for all volunteers) two-week training in just four  
 22 days—the following Monday. (Ex. 2 ¶ 38.)

23 But it was not to be. Later that week, the SafePlace representative called and left a voice  
 24 message, asking the applicant to return her call. She indicated on the message that “something ha[d]  
 25 come up,” that some “concerns” had been raised in the office relative to her application to serve as  
 26 a volunteer. (Ex. 2 ¶ 39.)

27 When the applicant returned the call, the SafePlace representative told her that several staff  
 28

1 members and/or volunteers were upset when they heard her name as one of the applicants for a  
2 volunteer position. The applicant asked how this had come up. The SafePlace representative said,  
3 sarcastically, “Well, you were very vocal in your anti-gay stand in Olympia, weren’t you?” (Ex. 2  
4 ¶ 39.) She responded that her stand was not anti-gay, but rather was about preserving marriage  
5 between a man and a woman. In reply, the SafePlace representative said that “many” of the staff  
6 members and/or volunteers at SafePlace were lesbians and transgenders, and that because of her  
7 “very vocal” stand on homosexuality, a number of them were “not comfortable” with her working  
8 there. (Ex. 2 ¶ 39.) She added that Olympia has a strong homosexual community and that she was  
9 concerned about the working environment of the team cohesive should the applicant come on board.  
10 The applicant responded that she had a beloved brother that was a homosexual who died of AIDS  
11 and that she could help a self-described homosexual just as well as she could help anyone else. (Ex.  
12 2 ¶ 39.)

13 The applicant insisted that her involvement in R-71 and standing up for traditional marriage  
14 should not have had any bearing at all on SafePlace’s perception of her ability to help victims of  
15 domestic violence or sexual abuse. (Ex. 2 ¶ 41.) She perceived SafePlace’s “concerns” as a message  
16 of discrimination and animosity. She got the message that SafePlace would not be a positive and  
17 healthy work environment for someone with her views; that the other volunteers and staff members  
18 would make it difficult for her to volunteer there; and that they would, at best, grudgingly tolerate  
19 her efforts to volunteer, and would even try to undermine her work there. She expressed these  
20 thoughts to the SafePlace representative and told her that this felt like reverse discrimination, and  
21 specifically that SafePlace was being intolerant of fundamental Bible-believing Christians. (Ex. 2  
22 ¶ 42.)

23 Because she no longer felt that her volunteer efforts were welcomed by SafePlace, she felt  
24 compelled to withdraw her application to serve as a volunteer, and accordingly, she withdrew the  
25 application. (Ex. 2 ¶ 43.)

26 When this incident occurred, it had been nearly six months since Washingtonians had voted on  
27 R-71 (the election was November 3, 2009). The applicant found it “disconcerting” that so many  
28 months after the election was over, her name was still a recognized target in the minds of some

1 people, including, apparently, some who worked or volunteered at SafePlace. (Ex. 2 ¶ 44.) It seemed  
 2 apparent to her that those SafePlace workers or volunteers who disagreed with her political views  
 3 on R-71, and who voiced their “concerns” to the SafePlace representative regarding the same, saw  
 4 her application to SafePlace as an opportunity to retaliate against her, and that they did just that. (Ex.  
 5 2 ¶ 44.)

## 6 **2. University Fires Human Resources Manager for Writing Op-Ed that Homosexuality Is** 7 **a Choice**

8 Some merely feared that their political stance might cost them their job if their employer found  
 9 out where they stood.<sup>5</sup> For others, it did cost them their job. Crystal Dixon, an African American and  
 10 high-ranking administrator at the University of Toledo, was fired for writing an editorial that  
 11 respectfully expressed her Christian views against homosexuality and objected to the comparison  
 12 of so-called “gay rights” with the civil rights struggles of African Americans. (Ex. 4-107.)  
 13 Responding to an op-ed entitled “Gay Rights and Wrongs,” Ms. Dixon stated, “I take great umbrage  
 14 at the notion that those choosing the homosexual lifestyle are ‘civil rights victims.’ Here’s why. I  
 15 cannot wake up tomorrow and not be a Black woman. I am genetically and biologically a Black  
 16 woman and very pleased to be so as my Creator intended.” (Ex. 4-108.)

17 Ms. Dixon wrote her opinion piece on her own time and never insinuated that her opinion in any  
 18 way reflected the views of her employer. But even so, she was fired. Notably, another university  
 19 employee had written an opinion letter, using her official title and stating that any individual opposed  
 20 to domestic partnerships was a bigot, yet that employee went unpunished for her opinion. In an effort  
 21 to explain this discrepancy, the university insisted that Ms. Dixon, unlike the other higher-ranking  
 22 employee, was in a “position of special sensitivity” because she worked in the human resources  
 23 department. (Ex. 5-23.)

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24 <sup>5</sup> One individual, for example, reported that she is worried that she may lose her job as a result of her support  
 25 for Prop 8. She wrote two letters to the editor advocating against same-sex marriage. The day after one of the letters  
 26 was published, she heard her boss (who she suspects is a homosexual) conversing with an openly homosexual man in  
 27 “[un]complimentary” tones. And a few weeks later her boss called her in and told her “he could not guarantee [her]  
 28 job beyond the current year” and that she would be wise to “keep [her] options open.” She “suspect[s]” that her  
 support for Prop 8 put her job “in jeopardy.” (Ex. 9-14 (John Doe 16); *see also* Ex. 9-13 (John Doe 9) (received  
 several harassing and threatening phone messages and emails at work, some of which indicated that the senders knew  
 where he worked and that they were going to attempt to have him fired. His co-workers, in fact, received emails  
 informing them that he came “from a long line of bigots and racists”).)

1 **3. College Terminates Professor for Open-Ended Answer about the Causes of Homosexuality**

2 In California, a professor of biology at the San Jose-Evergreen Community College District was  
 3 terminated in February 2008 after she answered a student’s question about homosexuality. The  
 4 question was about how heredity affects homosexual behavior. The professor, who also taught a  
 5 human heredity course, answered the inquiry by briefly introducing positions on both sides of the  
 6 issue and explaining that the issue is complex and is still being debated by the scientific community.  
 7 She also recited research of “a well-known German scientist who had found a possible relationship  
 8 between prenatal stress and male homosexuality.” She concluded, “homosexual behavior may be  
 9 influenced by both genes and the environment.” After a student in the class filed an informal  
 10 complaint alleging the professor’s comments were “offensive and unscientific,” the board of trustees  
 11 convened and terminated the professor. (Ex. 4-109.)

12 **4. University Fires Professor for Teaching Catholic Doctrine on Homosexuality—in a Course  
 on Catholic Doctrine**

13 In 2010, a professor was fired from the University of Illinois Urbana-Champaign for sending  
 14 what was deemed to be an offensive email to students enrolled in his course, “Introduction to  
 15 Catholicism and Modern Catholic Thought.” As part of the course curriculum, students learned about  
 16 the natural law and the corresponding Catholic doctrine that homosexual acts violate the natural law.  
 17 His students had often disagreed with the Catholic position on homosexuality in the past, but in the  
 18 Spring 2010 term, he “noticed the most vociferous reaction” he had ever witnessed against that  
 19 doctrine. His students’ intense reaction prompted him to send them an email, explaining “how this  
 20 issue might be decided within competing moral systems” by contrasting utilitarianism and natural  
 21 moral law. (Ex. 4-110.)

22 His email was lengthy but essentially explained that utilitarianism “is fundamentally a moral  
 23 theory that judges right or wrong by its practical outcomes” and not by the “inherent meaning of  
 24 acts.” Thus, he explained, “[i]f two men consent to engage in sexual acts, according to utilitarianism,  
 25 such an act would be morally okay.” On the other hand, he wrote, “[t]he natural law theory  
 26 . . . assumes that human acts have an inherent meaning” and holds that “[m]orality must be a  
 27 response to REALITY. In other words, sexual acts are only appropriate for people who are  
 28

1 complementary, not the same.” In explaining the natural law, he was merely illustrating the Catholic  
2 position. (Ex. 4-111.)

3 Apparently, one of his students took issue with his explanation, and alerted the administration  
4 of the professor’s “hate speech.” (Ex. 4-109.) At the semester’s end, the professor was summoned  
5 by the chairman of the Department of Religion, who told him that his email had been forwarded to  
6 the Office of Gay, Lesbian, Bisexual, and Transgendered Concerns, and that he would no longer be  
7 able to teach at the university. The professor protested that “to dismiss [him] for teaching the  
8 Catholic position in a class on Catholicism was a violation of academic freedom and [his] First  
9 Amendment rights of free speech.” His protest, however, was in vain. The professor had taught that  
10 course at the university since 2001. (Ex. 4-110.)

### 11 **5. Private Employers Fire Employees for Expressing Views Against Morality of 12 Homosexuality**

13 Many private employers have been just as aggressive. In 2002, a Kodak employee in New York  
14 was reportedly fired after he objected to a memorandum distributed by his supervisor that expressed  
15 a pro-homosexual viewpoint. The termination was the result of the employee’s refusal to recant his  
16 remarks, which company officials said “did not adhere to the company’s ‘Winning & Inclusive  
17 Culture.’” (Ex. 4-112.)

18 In 2005, an Allstate manager in Illinois was reportedly terminated because he wrote a column  
19 discussing his traditional views regarding homosexuality. The column was written on the employee’s  
20 own time and on his own computer. Nonetheless, Allstate fired him because it deemed the ideas  
21 expressed in his column to be counter to the company’s “policy to maintain a working environment  
22 free of any type of discrimination and harassment.” In irony that evidently was lost on the  
23 corporation, Allstate justified its action in the name of “tolerance” and “diversity” of beliefs. (Ex.  
24 4-113.)

25 And according to news statements, in 2011 Cisco Systems fired Frank Turek—a leadership  
26 consultant hired “to design and conduct a leadership and team-building program”—after learning  
27 of his political and religious views on same-sex marriage. Turek never discussed his pro-traditional-  
28 marriage views in the workplace, but after leading one of his training sessions, “a manager in that

1 session phoned in a complaint” to Cisco’s “senior director of inclusion and diversity,” after learning  
2 about Turek’s book *Correct, Not Politically Correct: How Same-Sex Marriage Hurts Everyone*.  
3 According to Turek, “The guy who saw the book never read it—he just didn’t like the fact that I was  
4 against same-sex marriage. And he told the in-charge director there about it and they fired me within  
5 hours, without ever even looking at the book or even ever asking me a question. They just fired me  
6 without ever talking to me.” When Turek challenged the director of inclusion and diversity over the  
7 firing, Turek reported that she (like officials at Kodac and Allstate) recited “platitudes about the  
8 ‘inclusive’ work environment of Cisco.” (Ex. 11-2.)

9 In 2007, a Georgia woman was fired for expressing her beliefs. Marcia Walden is a Christian  
10 who sincerely believes that it is “immoral to engage in same-sex sexual relationships.” (Ex. 4-114  
11 ¶ 14.) As a professional counselor, “it would violate her sincerely held religious precepts . . . to  
12 encourage or otherwise facilitate such relationships.” (Ex. 4-114 ¶ 1.) When a woman came to her  
13 for counseling regarding a troubled homosexual relationship, Ms. Walden concluded that the  
14 woman’s desire to obtain same-sex relationship counseling “conflicted with her religious beliefs”  
15 and, furthermore, that the conflict created an ethical duty in her to see that the client received the best  
16 counseling possible, which she could not give. Accordingly, she referred the client to another  
17 counselor, politely explaining to the client that she had a conflict because of her religious views, and  
18 that it would be “unfair” to the client for her to serve as her counselor. In doing so, Ms. Walden  
19 emphasized her desire to help. (Ex. 4-114 ¶¶ 14–15.)

20 Though the client was fully satisfied with the new counselor’s services, later that day, she called  
21 Ms. Walden’s supervisor and complained about Ms. Walden’s “homophobia.” (Ex. 4-114 ¶ 17.)  
22 When confronted about the complaint by her supervisor, Ms. Walden explained that her decision to  
23 refer the client was based on a religiously based conflict, and “not because of discriminatory  
24 animus.” She emphasized that “she had counseled other individuals involved in same-sex  
25 relationships for various reasons, but noted that she could not counsel a client when the goal is to  
26 repair or otherwise facilitate a same-sex relationship, because that goal is at odds with her religious  
27 principles.” (Ex. 4-114 ¶ 19.)

28 After enduring a series of religious-based questions from her supervisors, Ms. Walden was told



1 that “if a similar situation arose in the future, [she] should tell the client something else—for  
 2 example, that she was not experienced in relationship counseling—instead of discussing her  
 3 religiously based conflict.” In other words, she should lie to avoid possibly offending the client. (Ex.  
 4 4-114 ¶ 20.) Shortly thereafter, Ms. Walden was placed on leave without pay, pending the company’s  
 5 “investigation of [the client’s] allegations of ‘sexual orientation’ discrimination.” (Ex. 4-114 ¶ 21.)  
 6 She was terminated two weeks later, even though the company had not yet completed its  
 7 “investigation.” (Ex. 4-114 ¶ 28.)

8 **B. Forced Resignations, Boycotts, and Demands for “Hush Money”<sup>6</sup>**

9 There are also extensive examples of forced resignations, boycotts, and demands for “hush  
 10 money.” The film and theater industry was particularly vindictive. In the wake of Proposition 8 in  
 11 California, revelations as to who contributed money in support of traditional marriage, made possible  
 12 by publicly disclosed donor lists, caused many in Hollywood to call for widespread boycotts,  
 13 blacklists, firings, or de facto shunning of those people and studios who supported the proposition.  
 14 Some were adamant about retribution. Chad Griffin, a political advisor to Hollywood executives  
 15 said, “A dollar to the yes campaign is a dollar in support of bigotry, homophobia and discrimination.  
 16 There are going to be consequences. Any individual who has held homophobic views and who has  
 17 gone public by writing a check, you can expect to be publicly judged. Many can expect to pay a price  
 18 for a long time to come.” (Ex. 4-116.)

19 Scott Eckern was employed as director of the nonprofit California Musical Theater in  
 20 Sacramento before being targeted for personally donating \$1,000 to Prop 8. Once Mr. Eckern’s  
 21 support for traditional marriage was discovered, the theater was “deluged” with criticism from  
 22 prominent artists who supported same-sex marriage. (Ex. 4-117.) Critics included Marc Shaiman,  
 23 the composer of *Hairspray*, who stated that his work could not be performed at the theater because  
 24 of Mr. Eckern’s support for traditional marriage. (Exs. 4-118; *see also* Exs. 4-119, 4-120.) Mr.  
 25 Eckern eventually resigned. (Exs. 4-117, 4-120, 4-121.)

26 Richard Raddon was the director of the Los Angeles Film Festival before he landed in the

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27 <sup>6</sup> The term “hush money” was used by an *L.A. Times* editorial to describe quasi-extortion techniques used in  
 28 connection with organized boycotts. (Ex. 4-115.)

1 crosshairs of traditional marriage opponents. Mr. Raddon personally donated \$1,500 to Prop 8. As  
2 in the case of Mr. Eckern, once information about Mr. Raddon’s personal donation was disclosed  
3 to the state and published on the Internet, he became a target of traditional marriage opponents. (Ex.  
4 4-117; *see also* Ex. 4-122.) According to an op-ed in the *Wall Street Journal*, “A threatened boycott  
5 and picketing of the next festival forced him to resign.” (Ex. 4-117.)

6 Many were targeted for truly insignificant contributions. In one case, a mere \$100 contribution  
7 touched off an amazing series of events. Marjorie Christoffersen was a 67-year-old restaurant  
8 employee who donated \$100 to support traditional marriage in California. (Ex. 4-58.) Once  
9 information about Ms. Christoffersen’s \$100 donation was published on the Internet, traditional  
10 marriage opponents launched a protest against El Coyote, the restaurant where she worked—even  
11 though the restaurant itself had not made a donation—prompting the restaurant to offer activists a  
12 free brunch and Ms. Christoffersen to offer an apology. (*See* Ex. 4-58.) However, when Ms.  
13 Christoffersen refused to renounce her support for Prop 8—like Scott Eckern and Richard Raddon,  
14 Marjorie Christoffersen is a Mormon—the meeting “turned ugly” and “[b]oisterous street protests  
15 erupted that night.” (Ex. 4-58.) “Hundreds of protesters converged on [the restaurant] . . . , and the  
16 picketing got so heated that LAPD officers in riot gear had to be called.”<sup>7</sup> (Ex. 4-123.) The *Los*  
17 *Angeles Times* referred to the demonstrators as an “angry mob.” (Ex. 4-124.) “The mob left, but so  
18 did the customers” (Ex. 4-124), the *Times* reported, and Ms. Christoffersen decided to take a leave  
19 of absence to protect the restaurant (which is owned by her mother) and the other employees who  
20 worked there. (Ex. 4-58; *see also* Ex. 4-125.)

21 Many media outlets expressed discomfort with the protestors’ tactical decision to go after Ms.  
22 Christoffersen and the restaurant that employed her. Many journalists—who made clear they fully  
23 supported same-sex marriage—condemned the attacks as unfair and uncivil. One article—drenched  
24 in sarcasm and entitled “Major Victory for Prop 8 Protesters”—opened, “Today, I salute gays for a  
25 major civil rights victory: They forced some old lady to quit her job.” (Ex. 4-126.) The *Los Angeles*  
26 *Times*’s Steve Lopez quoted Fred Karger, orchestrator of the Californians Against Hate web site, as  
27

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28 <sup>7</sup> Among other things, “some of [the protesters] shout[ed] ‘shame on you’ at customers.” (Ex. 4-124.)

1 saying “Christoffersen’s small personal donation didn’t warrant such a backlash against [the  
2 restaurant].” (Ex. 4-124.) And the *Huffington Post* ran an article highlighting the hypocrisy of firing  
3 people based on their political views when homosexuals have fought for years for legal protections  
4 in the workplace: “If individuals perform their jobs well, if they are good students or good human  
5 resource managers, then they should be allowed to continue in their positions.” (Ex. 4-128.)

6 Scores of other businesses were boycotted after their support for traditional marriage was  
7 exposed by state-mandated political contribution reports.<sup>8</sup> In many cases, businesses were singled  
8 out simply because the company’s owner or manager made a *personal* contribution in support of  
9 traditional marriage—even though the company itself (like the restaurant that employed Ms.  
10 Christoffersen) had not contributed anything.<sup>9</sup> In one case, a boycott was organized by a California  
11 group against fifty-three Utah car dealerships in retaliation for the dealership’s owner’s *mother’s*  
12 personal contribution.<sup>10</sup>

13 Activists slumped to a new low when they demanded what the *Los Angeles Times* called “hush  
14 money” in exchange for calling off boycotts.<sup>11</sup> For example, “boycotters . . . demanded” that El

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15  
16 <sup>8</sup> Boycotts have been waged against businesses large and small. *E.g.*, Ex. 4-129 (boycott organized against  
17 family-owned health food store after political reporting records exposed the store’s financial support for traditional  
18 marriage); Ex. 4-130 (protests and boycotts against family-run ice cream shop that made financial contribution to  
19 support traditional marriage); Ex. 4-131 (boycott against Grand Hyatt hotel in San Diego because its owner  
20 contributed \$125,000 to support traditional marriage); Ex. 4-132 (same); Ex. 4-133 (same); Ex. 4-134 (targeting a  
21 self-storage company whose owner (and his family) donated money to support traditional marriage); *see also* Ex. 4-  
22 120 (cataloguing several examples of boycotts). *Cf.* Ex. 4-135 (boycott organized against the fast-food chain  
23 Chick-fil-A after homosexual advocates discovered that one of Chick-fil-A’s Pennsylvania restaurants provided  
24 meals for a marriage seminar sponsored by a group that promotes traditional marriage).

25 <sup>9</sup> *E.g.*, Ex. 4-120 (small insurance company picketed with signs such as “Purves Family Supports Homophobia”  
26 after family members donated individually to support traditional marriage); Ex. 4-136 (boycotting Texas-based  
27 Cinemark (the movie company) after state-mandated political reports revealed that CEO made personal contribution  
28 to support traditional marriage); Ex. 4-123 (reporting on boycott against Cinemark); Ex. 4-137 (calling for boycott  
against Hoehn Motors because its president made a personal contribution to support traditional marriage); Ex. 4-139  
(urging boycott against retail clothing store Urban Outfitters because years ago, the company’s president and founder  
Richard Hayne, and his wife, made donations from personal funds totaling \$13,150 to the political campaigns of  
Rick Santorum, who supports amending the U.S. Constitution to ban same-sex marriage); Ex. 4-140 (clarifying that  
the \$13,150 donation was in fact a compilation of donations from both Hayne and his wife “over the years,” and that  
the donations occurred at least before 2003).

<sup>10</sup> The group created an Internet site, boycottkengarffautomotive.com, to boost awareness for the state-wide  
boycott. (Ex. 4-141.)

<sup>11</sup> Ex. 4-115. To be fair, the *Los Angeles Times* used the term “hush money” to describe tactics employed by the  
pro-traditional-marriage side when they “sent letters to various companies that had donated to the opposition camp  
. . . warn[ing] donors to pay an equal amount to the ‘Yes’ side or risk being publicly outed as opponents of  
‘traditional marriage’ (the implication being that they would then face a boycott).” (Ex. 4-115.) Surely, however,

1 Coyote manager Marjorie Christoffersen “pony up \$100 to help [advance same-sex marriage]”—a  
 2 sum equal to her own contribution in favor of traditional marriage.<sup>12</sup> Ms. Christoffersen declined and  
 3 the boycott continued. Similarly, *Time* magazine reported that a boycott against Bolthouse  
 4 Farms—which gave \$100,000 to support traditional marriage—was dropped after Bolthouse Farms  
 5 agreed “to give an equal amount of money to gay rights political causes.” (Ex. 4-142.) That amount  
 6 “ultimately equaled \$110,000.” (Ex. 4-142.) The Daily Kos, “the nation’s most popular liberal blog”  
 7 (Ex. 4-60), suggested that even the businesses of Mormons who had *not* made a financial  
 8 contribution to protect traditional marriage should “[p]robably” be boycotted if they (the individuals  
 9 themselves) pay tithes to their church, “unless he or she also makes a reasonable countervailing  
 10 donation to LGBT causes.” (Ex. 4-143.) The *Los Angeles Times* opined that this “tactic”—i.e.,  
 11 threatening economic reprisals unless and until a matching countervailing donation is  
 12 made—“look[s] and quack[s] a lot like extortion” and “goes over the line.” (Ex. 4-115.)

13 In July 2011, a New York woman resigned as town clerk in the town of Barker because  
 14 otherwise, beginning July 24, 2011, she would have been forced, against her conscience, to perform  
 15 “marriages” for same-sex couples. (Exs. 11-6, 11-7.) In her resignation letter, the woman lamented  
 16 that the newly enacted legislation in the Empire State provided no protection “for Town Clerks who  
 17 are unable to sign these marriage licenses due to personal religious convictions, even though our U.S.  
 18 Constitution supports freedom of religion.” (Ex. 11-7.) Commenting on the situation, New York’s  
 19 governor showed no empathy, stating curtly “if [she] can’t enforce the [new] law, then [she]  
 20 shouldn’t be in that position.” (Ex. 11-6.) The woman’s resignation follows on the heels of a number  
 21 of similar resignations across the country in states where marriage has been legalized between same-  
 22 sex partners (Ex. 11-8), and is surely a portent of things to come. One commentator opined, “Forcing  
 23 a public employee with a religious objection to facilitate a same-sex marriage would be intolerant  
 24 in the extreme when little is to be gained by such rigid demands.” (Ex. 11-8.) Meanwhile, other  
 25 public commentators gloated over her resignation. Writing for *Above the Law*, Elie Mystal wrote,

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26 there is no principled distinction between asking for money up front (to prevent a boycott) and demanding it after the  
 27 boycott has begun (to bring it to an end).

28 <sup>12</sup> Ex. 4-58. Activists refused to lift the boycott “even after some El Coyote employees raised \$500 to help  
 repeal the new ban [on same-sex marriage].” (Ex. 4-58.)

1 “Everybody who thinks God really hates gays should follow [Barker town clerk] Lisa Fotusky’s  
2 example and get the hell out of our *secular* administration of laws and government.” (Ex. 11-12.)

### 3 **C. Reverse Boycotting: Business Refuses to Serve Customer over Marriage Stance**

4 In at least one case, the tables were turned—and it was the *business owner* that was, so to speak,  
5 boycotting the customer, by refusing to serve a woman because of her outspoken support for  
6 traditional marriage. A Washington woman was in effect denied services from a salon that otherwise  
7 offered its services to the general public. The woman actively opposed SB 5688, and because of  
8 multiple media reports, her picture and name had been publicly associated with the effort to overturn  
9 SB 5688. (Ex. 2 ¶¶ 8–11.) During the run-up to the November election in 2009, she stopped by a  
10 salon in Olympia where she had recently had her hair cut, hoping to get a quick “bang trim,” for  
11 which she expected to be charged a nominal \$2.00 fee. (Ex. 2 ¶¶ 7, 13, 18, 29.) To her surprise, the  
12 salon owner—who appeared to be openly homosexual—told her, in no kind words, that instead it  
13 would be \$60. “Unsure that he had understood [her], [she] asked again.” (Ex. 2 ¶ 16.) “This time,”  
14 however, “[the salon owner] stopped cutting the client’s hair, looked directly at [her] and repeated  
15 ‘\$60.00.’ His demeanor was harsh.” (Ex. 2 ¶ 16.) “Stunned” and “[f]rustrated,” she left the  
16 establishment and went to a nearby salon that cut her bangs for free. There, she “got [her] bangs cut  
17 in less than two minutes on the spot and left a \$2.00 tip.” (Ex. 2 ¶¶ 16–17, 19.)

18 In May 2011, the woman returned to the salon. (Before doing so, she called the salon, and the  
19 salon confirmed that a bang trim is in fact \$2.00.) (Ex. 2 ¶¶ 20, 29.) As she entered the premises, one  
20 of the stylists “pleasantly acknowledged” her, indicating she would be with her in just a moment.  
21 (Ex. 2 ¶ 20.) While she patiently waited, however, the salon owner noticed the woman, and  
22 apparently recognized her, for he walked directly toward her from the back of the salon. (Ex. 2 ¶ 22.)  
23 As he approached, the woman asked, “Do you remember me?” and he said “yes.” (Ex. 2 ¶ 23.) She  
24 continued,

25 Uncertain that he could remember me from [almost] two years ago, I mentioned that he had  
26 cut my hair and that he quoted me a \$60.00 charge for a bang trim. He said he remembered  
and . . . I was taken aback by his reaction.

27 So trying to be cordial and to clarify, I reminded him that he had charged \$60.00 for  
28 a full haircut and style, but I had only wanted a bang trim when he quoted me the \$60.00  
charge. Still not smiling, he said abruptly, “That’s what I charge.” I then said, “why would  
you charge that much for a bang trim?” He didn’t answer.

1 So I asked him again how he could charge so much. He wouldn't answer and then said,  
2 "That is my fee and that's what I am going to charge."

3 When I again tried to explain to him that his full service haircuts and styles are \$60.00  
4 (thinking he might not have heard me correctly), he put both his hands behind his back,  
5 leaned down within 12–14 inches from my face, and said, "I can charge any price I want."  
6 And then said, "I can deny service to anyone I want." I am five-foot-three; he is between  
7 six-foot-one or two inches tall. [His] posturing by getting in my face was a deliberate act  
8 of intimidation and hostility that was totally unjustified.

9 After he told me he could deny service to anyone he wanted, he started toward the back  
10 of the room, and in front of all the students and clients in the chairs, loudly told me to  
11 "leave his business."

12 Stunned, frustrated, and embarrassed by this unprofessional and untoward response in  
13 front of everyone in his place of business, I pointed my finger at [him], as he walked back  
14 toward the break room, and said, "You are a liar, [salon owner's name]." I then left the  
15 premises.

16 (Ex. 2 ¶¶ 23–28.)

## 17 VI. Technological Advances Have Pushed Exposure to Almost Unthinkable Limits.

18 WFST tries to argue that exposing the R-71 petition signers will actually be a *boon* to free  
19 speech and the First Amendment. Unless the State releases the names, its argument goes, the  
20 "salutary effects of free speech cannot be felt" because that would allow all of us to "retreat to the  
21 comfort of those we know already agree with us." (WFST MSJ 23.) Aside from the fact that the state  
22 interest the Supreme Court relied on in upholding the publication of names of petition signers (in  
23 general) was an interest in ferreting out fraud—and not some undefined interest in promoting  
24 valuable conversation amongst political adversaries, *Doe*, 130 S. Ct. at 2820—this argument also  
25 seems to ignore the realities of modern life in the context of this all-too-often uncivil debate.  
26 Technological advances have changed how information about donors or petition signers may be  
27 used—and abused—by the public, to the *detriment* of a healthy and robust political debate.

28 The efforts of individuals or groups who wish to inappropriately target persons who supported  
traditional marriage are greatly facilitated by Internet web sites that combine information gleaned  
from state-mandated political reports with other publicly available information, thus enabling those  
so inclined to more easily threaten and intimidate marriage supporters at home and at work. For  
example, the web site EightMaps.com is a GoogleMaps "mashup"<sup>13</sup> that combines data obtained

<sup>13</sup> PCMag.com, "Mashup," [http://www.pcmag.com/encyclopedia\\_term/0,,t=&i=55949,00.asp](http://www.pcmag.com/encyclopedia_term/0,,t=&i=55949,00.asp) (last visited July 12, 2011) (defining "mashup" as: "A mixture of content or elements. For example, an application that was built from routines from multiple sources or a Web site that combines content and/or scripts from multiple sources is said to be a mashup. The term became popular in the 2005 time frame.").

1 from the California Secretary of State (for political donation reports) with an interactive geographical  
 2 map.<sup>14</sup> (Exs. 4-152, 4-153.) An individual can use the web site to search for any city and print a map  
 3 graphically illustrating the name, address, amount, occupation, and employer of each individual in  
 4 that city who donated to Proposition 8. A *New York Times* article commented, “Eightmaps.com is  
 5 the latest, most striking example of how information collected through disclosure laws intended to  
 6 increase the transparency of the political process, magnified by the powerful lens of the Web, may  
 7 be undermining the same democratic values that the regulations were to promote.” (Ex. 4-155.)

8 Other web sites popularly called “blacklists” have sprung up that are calculated to intimidate  
 9 would-be speakers by shaming citizens (and groups as well), by name, that adhere to traditional  
 10 notions of marriage and family values. (E.g., Exs. 4-58, 4-133, 4-157.) Each of the following web  
 11 sites lists donors or known supporters of traditional marriage and encourages action against them:<sup>15</sup>

12 <http://www.californiansagainsthate.com> (Ex. 4-62)

13 <http://fighttherightwingnuts.blogspot.com/2009/01/pro-h8-bigots-who-donated-in-palo-alto.html> (Ex. 4-161)

14 <http://knowthyneighbor.org/> (Ex. 4-162)

15 <http://www.mormonsstoleourrights.com/><sup>16</sup>

16 <http://mormonsfor8.com/><sup>17</sup> (Exs. 4-164, 4-165)

17 <http://www.stopthemormons.com/> (Ex. 4-166)

18  
 19 <sup>14</sup> The Huffington Post has a similar map, although it is aimed at revealing individual donors and how much  
 they have given to political parties and candidates. (See Ex. 4-154.)

20 <sup>15</sup> The web site “You Can’t Hide Your Hate” identifies individual supporters of Prop 8, but includes a  
 disclaimer that the web site does not advocate violence, vandalism, or threats, or, for that matter, even boycotts. (Ex.  
 21 4-158.) However, as the *Long Beach Press-Telegram* noted in an editorial, the web site’s actions speak louder than  
 its quiet disclaimer. If nothing else, the editorial pointed out, the name of the web site—You Can’t Hide Your  
 22 Hate—“tars people . . . with a broad and clumsy brush,” adding that so long as this debate rages, what is needed is a  
 “huge dose of civility.” (Ex. 4-159.)

23 In addition, at least two major California newspapers have compiled searchable databases on their respective  
 web sites that enable easy access to look up Prop 8 contributors. (Exs. 4-138, 4-170.)

24 <sup>16</sup> It appears that MormonsStoleOurRights.com has been stripped of its content, but it is evident from other  
 Internet blogs and article that the site was, for a time at least, the focal point of a “petition drive . . . to the IRS to  
 25 strip the Mormon church of its tax exempt status.” (See, e.g., Ex. 4-163.) In any event, the site  
 MormonsStoleOurRights.com was only one of several web sites that openly called for the revocation of the Mormon  
 26 church’s tax-exempt status because of its support for traditional marriage. E.g., Exs. 4-177, 4-179, 4-180.

27 <sup>17</sup> Mormonsfor8.com is a web site whose goal is to identify every Mormon donor to Prop. 8. The site actively  
 solicits help from visitors to the web site. The web site lists every individual contributor to Prop. 8, and whether each  
 contributor is Mormon or not Mormon. It encourages visitors to the site to review the list, to spot the Mormons they  
 28 know, and report them by sending an email to yeson8donors@mormonsfor8.com. (Ex. 4-165.)

1 <http://www.antigayblacklist.com/><sup>18</sup> (Ex. 4-190)

2 <http://www.hrc.org/news/11542.htm> (Ex. 11-9)

3 <http://www.dontbuyfrombigots.com/> (Ex. 11-10)

4 <http://www.afterellen.com/node/39787> (Ex. 11-11)

5 <http://boycotta-1selfstorage.com/> (Ex. 4-134)

6 Activists have used the blacklists, for instance, to go onto the restaurant web site yelp.com, and  
7 give bad reviews to restaurants that supported traditional marriage. (Ex. 4-123.) Others have spread  
8 the word via email (*e.g.*, Exs. 4-129, 4-155) and on sites like Facebook.com (*e.g.*, Ex. 4-137),  
9 Craigslist.com (*e.g.*, Ex. 4-123), and InsiderPages.com (*e.g.*, Ex. 4-172).

10 What is more, emerging technology is threatening the privacy of our political views to almost  
11 unthinkable limits. A new product called “Inbox Influence” is now being marketed by the Sunlight  
12 Foundation “that allows you to see the political contributions of the people and organizations that  
13 are mentioned in emails you receive”—simply by dragging the mouse over the name of any person  
14 or entity in the body of the email. (Ex. 4-173.) The Sunlight Foundation touts its product:

15 *Inbox Influence provides details on any entity in the body of the email, plus  
16 information on both the sender of the email and the company from which it was sent. With  
17 it, you can even see how your friends and family have given to political campaigns. Perhaps  
18 Uncle Joe has more mainstream views after all?*

18 (Ex. 4-173.)

19 The blacklists and other emerging technology aimed at exposing political views of private  
20 citizens are made possible only by political exposure reports publicized by the government. Several  
21 news reports confirm that the blacklists are indeed being compiled by referencing government-  
22 compiled political exposure reports. For example, the *Los Angeles Times* reported that “activists”  
23 found their targets by “por[ing] though campaign contribution databases” (Ex. 4-123), and an article

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24  
25 <sup>18</sup> Thought the web site AntiGayBlacklist.com appears to have been removed, a print-screen of the web site is  
26 reproduced in Exhibit 4-190. Multiple media reports confirm its existence and its purpose. *Time* magazine, for  
27 example, reported that on “AntiGayBlacklist.com, individuals who gave money toward Prop. 8 are publicized, and  
28 readers are urged not to patronize their businesses or services.” (Ex. 4-142; *see also, e.g.*, Ex. 4-128 (reporting that  
the writer personally “looked up the Anti-Gay Blacklist, a collection of names and affiliations lifted from the public  
record of political donations to the Yes on 8 campaign”).) Moreover, the original Anti-Gay Blacklist has been  
replicated (and is still available) at several web sites. (*See, e.g.*, Exs. 4-167, 4-168, 4-169.)



1 appearing in the *San Francisco Chronicle* reported that same-sex marriage advocates “harness[ed]  
2 technology and open-records laws in their efforts” to “focus on the Mormons” (Ex. 4-60).

3 In fact, those who publish the blacklists use the fact that their data is compiled from publicly  
4 available reports as justification for their actions. Fred Karger—founder of  
5 CaliforniansAgainstHate.com, which has its own blacklist dubbed the “dishonor roll”—exonerated  
6 himself in these words: “People are going to do what they want, and it’s in this society where you  
7 have campaign reporting that is all public information.” (Ex. 4-123.)

8 The advent of Internet blacklists, together with the tense and hostile atmosphere surrounding  
9 the debate over same-sex marriage, caused many in the media (across the political spectrum) to  
10 openly question whether society can handle, civilly, the instant availability of public records detailing  
11 private citizens’ controversial political views. The *Los Angeles Times*, for instance, ran an editorial  
12 entitled “Prop. 8—Boycott, or Blacklist?” with the subtitle “Shunning businesses is one thing;  
13 intimidation crosses the line.” The *Times* had nothing positive to say about what it called the  
14 “vengeful campaign against individuals who donated to the gay-marriage ban.” “As much as we  
15 abhorred Proposition 8, there’s nothing to cheer about when private individuals are afraid to donate  
16 to the political campaigns of their choice because it may cost them their livelihood.” (Ex. 4-115.)

17 Likewise, *The New York Times* published an article critical of what it called the “ugly specter  
18 of intimidation”—referring to several documented episodes of threats, harassment, and reprisals:

19 With tools like eightmaps—and there are bound to be more of them—strident political  
20 partisans can challenge their opponents directly, one voter at a time. The results, some  
21 activists fear, could discourage people from participating in the political process altogether.

22 (Ex. 4-155.)

23 Meanwhile, a host of journalists in Washington State joined in this line of thinking—specifically  
24 as it pertained to the issue of revealing R-71 petition signers.<sup>19</sup> A *Seattle Times* editorial columnist  
25 “wonder[ed] why gay-rights supporters have jumped into the toxic mud of using identity as a  
26 weapon.” After clearly stating that he fully supported same-sex marriage, he minced no words  
27 making his point:

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28 <sup>19</sup> National columnists also weighed in on the question of whether to expose those who signed the R-71 petition.  
*E.g.*, Ex. 4-174.

1 What I, and this page, take issue with is the Web site called whosigned.org. The site  
2 will list everyone who signed Referendum 71. On the Web site it says this is being done so  
voters can make sure the public record is correct.

We all know that is not the case. The real purpose of whosigned.org is intimidation.

3  
4 *The Spokesman-Review* ran a story asking readers to ponder a series of thought-provoking  
questions before deciding whether it was a good idea to “out[ ] the signers of Referendum 71”:

5  
6 What would “pro-choice” groups have said in 1990 if a “pro-life” group announced  
plans to send the Catholic dioceses the names of everyone signing Initiative 120, which  
7 guaranteed *Roe v. Wade* abortion rights in Washington, or last year’s Death with Dignity  
initiative?

8 What would worker rights groups have said about a business lobby in 1998 sending  
out the names of all signers to I-688, which tied the minimum wage to inflation, so  
employers could compare them against their personnel records?

9 What would civil rights groups have said if a law enforcement organization in 1998  
10 copied off the names of signers of I-692, the medical marijuana initiative, and shipped them  
to the nearest drug task force?

11 The article concluded, “Anyone who said ‘Wait a minute’ to any of [these questions] should have  
12 a problem” with publishing the identities of R-71 petition signers. (Ex. 9-6.)

13 *The Yakima Herald-Republic* ran an editorial entitled, “Publicizing Petition Signers Will Bring  
14 Nothing but Trouble.” The editors questioned whether exposing those who signed the R-71 petition  
15 would in reality lead to “friendly debate, not harassment.” “While we hope that becomes the case,  
16 we doubt it will. We see this only as a means of coarsening the debate.” (Ex. 9-10.)

17 Many private Washingtonians who personally supported same-sex marriage also shared their  
18 deep concerns over the proposed publication of names. One “member of the gay community” wrote  
19 a letter to the editor of a Tacoma newspaper, questioning the wisdom of taking such “an  
20 inflammatory action [i.e., exposing the R-71 petition signers] on a highly emotional topic” when the  
21 apparent intent is to “attempt[ ] to intimidate people by making them think twice about exercising  
22 their legal right for fear that they may have an uninvited visitor at home or an unwanted conversation  
23 in line at the grocery store.” “Common justifications,” she continued, “mean nothing balanced  
24 against the gravity of condoning political intimidation as an acceptable tool.” She ended, “Our  
25 community is commonly accused of holding values detrimental to the well-being of society. To  
26 Brian Murphy [of WhoSigned.org] I say: Do not bless our critics with an act that appears to justify  
27 that conclusion.” (Ex. 9-12.)

28 Even one citizen group who passionately advocated in defense of SB 5688 went on the record

1 opposing the plan to publicize the names. In early June 2009, Equal Rights Washington—a political  
2 advocacy organization that advocates for lesbians, gays, bisexuals, and transgendered individuals  
3 in Washington (Ex. 4-178)—publicly opposed WhoSigned.org’s stated intention to publish the  
4 names of all R-71 signers on its web site. Josh Friedes, a spokesman for Equal Rights Washington,  
5 explained, “I have concerns that the Web site can be perceived as hostile or intimidating, and that’s  
6 just not helpful.” (Ex. 9-7; *see also* Ex. 9-9 (reporting that WFST asked WhoSigned.org not to post  
7 the names and addresses of R-71 petition signers online because “the approach [was] too  
8 confrontational.”).)

### 9 **Conclusion**

10 WFST has not made the showing necessary to warrant granting its motion for summary  
11 judgment, and accordingly Plaintiffs pray the Court to deny its motion.

12 Dated this 18th day of July, 2011.

13 Respectfully submitted,

14  
15 /s/ Jared Haynie

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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 Intervenor Washington Families Standing Together's Motion for Summary Judgment, with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

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

Executed this 18th day of July, 2011.

/s/ Jared Haynie  
Jared Haynie  
*Counsel for All Plaintiffs*