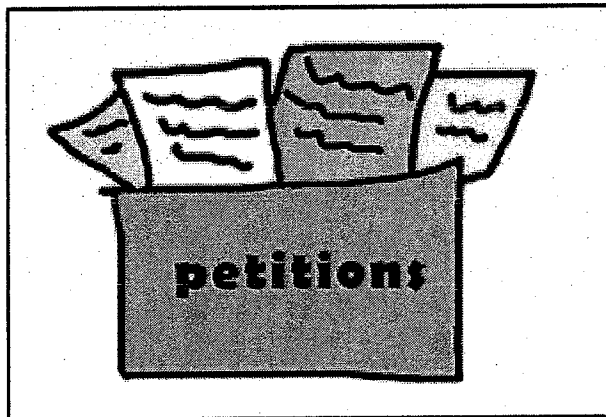




## The disclosure history of petition sheets

by Brian Zylstra | September 17th, 2009



On Wednesday, initiative king Tim Eyman distributed an e-mail to his supporters, the media, legislators and Gov. Gregoire in which he criticized Secretary of State Sam Reed and officials in our office regarding our office's history on our policy regarding the release of initiative or referendum petition sheets.

The following sets the record straight on this matter:

After Washington voters passed Initiative 276 in 1972 that created the Public Records Act, various Secretary of State administrations took the position, from 1973 to 1998, that the personal information on petition sheets were NOT subject to disclosure. However, based on advice by the Attorney General's Office in the 1990s, the Office of Secretary of State changed its policy to consider all information subject to disclosure upon request.

A fee of 10 cents per sheet was charged for such requests. Considering the extremely large volume of petition sheets for an initiative, it could cost an individual or group thousands of dollars to pay for a paper copy of the petition. As a result, from 1998 to 2006 nobody followed through on a public records request for such documents because it was too expensive. That changed in 2006 when our office made these documents available on CD or DVD for a modest fee (\$15 per CD, \$25 per DVD; each microfilm roll is \$10.75). Thanks to the digital age, requesting these documents became faster and much cheaper.

Our office has released either digital image copies or microfilm copies of petition sheets every year since 2006:

2006: I-917 and I-920

2007: I-917, I-920 and I-937

2008: I-1029

2009: I-933 and I-1033; R-71 requests are pending

Throughout Secretary Reed's tenure in this office and in the three years leading up to it, our office's position has been that the names and addresses on initiative or referendum petition sheets are public records.

The policy shift on petition sheets in the '90s wasn't made to harm initiative or referendum sponsors but

to comply with the Public Records Act. As our office has said before, initiatives and referenda are attempts to change state law. Such attempts shouldn't be hidden from public view. That being the case, when someone signs a petition sheet, they are playing a critical role in trying to change state law, so the information on these sheets should be made public if requested.

Since there is a truncated reference to a particular RCW in Mr. Eyman's e-mail, we want to provide the full text of the relevant law:

#### RCW 42.56.050:

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

#### RCW 42.56.210

(1) Except for information described in RCW 42.56.230(3)(a) and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(2) Inspection or copying of any specific records exempt under the provisions of this chapter may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.


(3) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

#### RCW 42.56.230


The following personal information is exempt from public inspection and copying under this chapter:

- (1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;
- (2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;
- (3) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;
- (4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law; and
- (5) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicard.


## 23 Responses to "The disclosure history of petition sheets"

1.  JR says:  
September 17, 2009 at 10:52 AM

These documents need to be public to prevent fraud on the part of signature gatherers. They have proven this year that they will stoop to any low, including documented video-taped lies to the public, to obtain the necessary signatures. How such fraud is not illegal is beyond me, but I hope the legislature will pass a reform law this year to clean up this entire initiative mess.

2.  Eddie says:  
September 17, 2009 at 10:52 AM

Is the Secretary's policy, when providing petition sheets via public records request, to redact the actual voters' signature(s), from the records given out to the public?

3.  Tim Eyman says:  
September 17, 2009 at 11:20 AM

Here's what he's referring to:

To: Our thousands of supporters throughout the state (cc'd to the media, house & senate members, and Governor)

From: Tim Eyman, ph: 425-493-9127, email: [tim\\_eyman@comcast.net](mailto:tim_eyman@comcast.net)

RE: BOMBSHELL: SECRETARY OF STATE HAS BEEN PERPETRATING A FRAUD (RE: PETITIONS AND THE PUBLIC RECORDS ACT)

Secretary of State Sam Reed and officials and lawyers in his office have been saying for months that signers' names, signatures, and home addresses on initiative and referendum petitions have, throughout our state's history, been made available to the public and that U.S. District Court Judge Benjamin Settle's recent ruling overturns that longstanding practice and law.

Turns out that's not true.

From 1912, when the ballot measure process was first enacted, until 1972, initiative and referendum petitions were not subject to review by anyone except the courts.

In 1972, the voters approved Initiative 276, the Public Records Act. The Secretary of State and his surrogates have been saying for months that that law made petitions "government documents" subject to review by everyone.

Turns out that's not true either.

The Secretary of State's misinformation campaign has whipped into a frenzy our state's newspaper editorial boards, journalists, columnists, the gay rights community, the faith community, and regular citizens over the past few months during this fight over Referendum 71.

The people have not been well-served.

According to Don Whiting, a very well-respected, now retired official with the Secretary of State's office from 1968 through 2000, the truth is much different than we've all been led to believe.

As pointed out by Mr. Whiting, the Public Records Act made petitions "government documents," however, the PRA specifically included this statute (RCW 42.56.210) that is still the law and it reads: The exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought.

Citizens' names, signatures, and home addresses on initiative and referendum petitions are clearly "personal information" and as such, the Secretary of State from 1972 through 2000, following the clear mandate of RCW 42.56.210, refused to violate the personal privacy of citizens who signed initiative and referendum petitions. During that time, the Secretary of State's policy was to tell petition "requesters" that they could get the petitions but that all the personal information on them would be blacked out or redacted unless they got a court order (the statute specifically allows people to go to court to show cause why the personal information should not be removed).

On December 31, 2000, Secretary of State Ralph Munro retired as did Don Whiting.

During Sam Reed's first six years as Secretary of State, that policy remained the same.

That changed in 2006.

In January of 2006, Jack Fagan, Mike Fagan, and I co-sponsored Initiative 917, "Save Our \$30 Tabs." It was our third attempt to require \$30 car tabs for everyone.

Very powerful opponents were arrayed against it.

What followed were several challenges because of the Secretary of State.

In 2005, the Legislature passed House Bill 1222 which required the printing of a declaration on the back of petitions. During the debate on the bill, we were assured by one of its sponsors, Rep. Toby Nixon, that it had to be printed on the back of the petition but didn't need to be filled out by the circulator. In January, 2006, before we printed our petitions, we confirmed that fact with the Secretary of State. So we printed it on the back of our petitions BUT NOT VERY PROMINENTLY and mailed them out to tens of thousands of supporters on our database.

Two weeks later, after our signature drive had began and was moving full steam ahead, we were notified by the Secretary of State that they had changed their position and that now they said it was required for the circulator to include their name on the back of the petition AND IF IT WASN'T THERE, THE SIGNATURES ON THE FRONT WOULD NOT BE COUNTED.

This forced us to start over, 'recall' our old petitions and throw away tens of thousands of not-yet-used petitions, and reprint them with A MUCH MORE PROMINENT request for the circulator's name on the back, and we had to resend them to our tens of thousands of supporters. This was expensive, but more significantly, it was hugely disruptive.

Toby Nixon, strongly dissatisfied with the Secretary of State's changed position, asked for and received an Attorney General's opinion in May of that year that reversed the Secretary of State's twisted interpretation, and said that valid voter signatures would count, regardless of whether the back of the petitions were filled out.

We turned in our petitions in July.

Three days later, we were notified that instead of our signature count of 300,353, the Secretary of State had determined that we had turned in only 266,006.

A full signature verification check was initiated because the smaller number didn't allow for statistical sampling.

On September 19, 2006, opponents of I-917 made a public records request for the I-917 petitions.

The Secretary of State scanned all the petitions with citizen signers' names, signatures, and home addresses unredacted, put them on CDs, and turned them over to the opponents of I-917.

THE SECRETARY OF STATE VIOLATED THE LAW (RCW 42.56.210) WHEN THEY DID THAT, OVERTURNING 33 YEARS OF SECRETARY OF STATE POLICY UNDER I-276. THIS WAS THE FIRST TIME IN WASHINGTON STATE'S HISTORY WITH BALLOT MEASURES — 94 YEARS — THAT THE PERSONAL, PRIVATE INFORMATION OF CITIZENS WHO SIGNED A PETITION WAS NOT PROTECTED BY THE SECRETARY OF STATE, DESPITE A LAW MANDATING SUCH PROTECTION.

The Secretary of State's decision to violate the law to help opponents of I-917 has now led to the likely overturning of the Public Records Act.


The Secretary of State is forcing taxpayers to spend a tremendous amount of time and money to clean up a mess that they created.

The Secretary of State has perpetrated a fraud upon the people and the press and the courts by repeatedly saying that citizens' names, signatures, and addresses on petitions have always been made public.

That's clearly not true.

So please, would everyone please stop perpetuating the myth that this is a century-old policy and law? Please, would the newspaper editorial boards back off on the chest-thumping editorials demanding citizens' names, signatures, and home addresses be released, despite the existence of a law that requires citizens' personal information be redacted? Citizens have had a right to privacy, and their personal information has been protected, from 1912 to 2006. Please, let's not allow the Secretary of State to get away with whipping us into a frenzy about a policy that they manufactured just 3 years ago.

Again, the people have not been well-served.

4.  *J Scooter* says:  
September 17, 2009 at 11:43 AM

The SoS and the AG brought this problem upon themselves. When the very original TRO was requested from Judge Settle, the SoS and AG did NOTHING to oppose it, and they allowed it to remain in effect for 40+ days — which is not allowed under federal law. If this had been challenged back when Judge Settle first issued the illegal TRO, we wouldn't be in this mess right now. And if the State loses this appeal, WASHINGTON WILL BE THE ONLY STATE IN THE U.S. WHERE ANONYMOUS PETITION SIGNERS, RESPONDING TO PETITIONS CIRCULATED BY UNKNOWN AND UNLISTED CIRCULATORS, CAN FORCE A VALIDLY-ENACTED LAW TO A PUBLIC VOTE. This is not called democracy — it's just another form of anarchy.



5. *Brian Zylstra* says:  
September 17, 2009 at 11:56 AM

Hi Eddie — Regarding your question, it is our office's policy to not redact such signatures. We have no authority to redact them. Thanks. — Brian



6. *Tim Eyman* says:  
September 17, 2009 at 1:00 PM

Eddie, what Brian said isn't true. The authority to redact the names, signatures, and home addresses on petitions is RCW 42.56.210, which is exactly the one cited by the Secretary of State's office from 1972 through 2000:

The Public Records Act specifically included this statute (RCW 42.56.210) that is still the law and it reads: The exemptions of this chapter are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought.

Ralph Munro and other Secretary's of State believed that to turn over willy nilly the names, signatures and home addresses on petitions to anyone, without a court order, WAS A VIOLATION OF THE PUBLIC RECORDS ACT. They believed that they were in full compliance with the Public Records Act by having a policy to redact the personal information for anyone requesting copies of petitions. And based on the clear language — "... can be deleted from the specific records sought" — it's simply not possible to see it otherwise.

To further illustrate the absurdity of the current Secretary of State's policy, make note of RCW 29A.72.230 which reads: The verification and canvass of signatures on the petition may be observed by persons representing the advocates and opponents of the proposed measure SO LONG AS THEY MAKE NO RECORD OF THE NAMES, ADDRESSES, OR OTHER INFORMATION ON THE PETITIONS or related records during the verification process except upon the order of the superior court of Thurston county.

Now, under this new policy, observers couldn't make records BUT THEY WOULDN'T NEED TO BECAUSE THEY'D HAVE COPIES OF ALL THE PETITIONS DOWNLOADABLE ON OBSERVERS' BLACKBERRIES.

Think about this: the Secretary of State, if not for Judge Settle's injunction, would have turned over the names, signatures, and home addresses to requesters BEFORE THE SIGNATURE

VERIFICATION PROCESS BEGAN. That's never happened before. From 2006 until this year, the petitions were only turned over AFTER THE VERIFICATION PROCESS WAS COMPLETED (presumably to ensure compliance with RCW 29A.72.230 prohibiting records being made during the signature check).

THESE ARE RECENT, RECENT, RECENT CHANGES TO THE SECRETARY OF STATE OFFICE'S LONGSTANDING POLICIES.



7. *Toby Nixon* says:  
September 17, 2009 at 1:12 PM

Tim,

Your analysis of RCW 42.56.210(1) is incorrect; you are completely misreading it. RCW 42.56.210(1) is NOT a blanket exemption from disclosure for all records "the disclosure of which would violate personal privacy". RCW 42.56.210(1) says that if some of the content of a record is exempt from disclosure, then the agency cannot withhold the entire record but must redact only the exempt portion. This section does NOT create any PRA exemption, but declares situations in which statutory exemptions DO NOT APPLY.

Even if RCW 42.56.210(1) did state an exemption (which it does not), it would not apply to initiative and referendum petitions. Every reference to "right of privacy," "privacy," or "personal privacy" in the Public Records Act is subject to the limitations in RCW 42.56.050. That section contains a two-pronged test; both parts must be met in order for a record to be exempt on the basis of a "privacy" exemption. It says that to be exempt, the "private" information must be "highly offensive to a reasonable person" AND must also be "not of legitimate concern to the public". In the case of initiative and referendum petitions, this two-pronged test is not met. Nothing on a petition is "highly offensive to a reasonable person", and the content of petitions, knowing who signed them, and the ability to verify the accuracy of the Secretary of State processes, are most definitely "of legitimate concern to the public".

In addition, RCW 42.56.050 also explicitly says that new "privacy" exemptions cannot be created out of thin air, but that they must be explicitly stated in statute: "The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records." There is no generic "right to privacy" in the Public Records Act. Those exemptions that do exist in the law must be narrowly construed (RCW 42.56.030). There is no specific exemption anywhere in the law that states that initiative and referendum petitions are exempt from disclosure, for privacy reasons or otherwise. The petitions therefore must be available for public inspection and copying. If the proponents of R-71 or anyone else want to change that, they should go to the legislature or run an initiative to get the law changed.


The Secretary of State has been following the law with regard to these records. Your accusation that the Secretary of State "violated the law" by releasing the I-917 petitions, and that he is "perpetrating a fraud" today, are false and should be retracted.

I will also say this. If the proponents of R-71 sincerely believed that an exemption in the Public Records Act applied to the referendum petitions, there would have been no need for them to go to

federal court and sue to have their release blocked on the basis of federal constitutional issues. If the Secretary of State said they intended to release copies of the petitions despite the existence or possible existence of an exemption, the proponents – or any person who signed the petition and was therefore “named in the record” – could have gone to Thurston County Superior Court or in their county of residence and sought to enjoin the release, as permitted under RCW 42.56.540. They could still do that today. Why have they not done so if they sincerely believe that an exemption applies?

Best regards,

Toby Nixon  
President, Washington Coalition for Open Government


8.  *Eddie says:*  
September 17, 2009 at 1:43 PM

J Scooter ....

Every elected Office, from President of the United States, down to City Council members are elected by anonymous and secret ballots. Do you think that is the same anarchy? What politician has never made campaign promises to entice a voter to vote for them? Is that the same fraud you speak of?

The initiative/referendum signatures, in Washington State, are in fact NOT anonymous. The names and signatures are scrutinized by the elections office in an open, to observation, process which insures only verified and valid voters' signatures count towards qualification.

When those in charge of the process are allowed to throw away qualified ballots or verified signatures for any reason . . . then we are closer to that anarchy you speak of then ever.

9.  *Tim Eyman says:*  
September 17, 2009 at 2:11 PM

In response to Toby,


It's important to note that Don Whiting, under Secretary of State Ralph Munro, and his elections office say otherwise and their policy was in effect from 1972 until 2000 and then continued under Reed until 2006.

as stated earlier:

Ralph Munro and other Secretary's of State believed that to turn over willy nilly the names, signatures and home addresses on petitions to anyone, without a court order, WAS A VIOLATION OF THE PUBLIC RECORDS ACT. They believed that they were in full compliance with the Public Records Act by having a policy to redact the personal information for anyone requesting copies of petitions. And based on the clear language — “... can be deleted from the specific records sought” — it's simply not possible to see it otherwise.



it is true that someone could have been challenged this in state court as a violation of state law, but a state law can still violate the First Amendment of the US Constitution and can be challenged in federal court – so either approach is a valid method to strike down the law as has only been recently interpreted (2006) by a new Secretary of State.

10.  *Eddie says:*  
September 17, 2009 at 2:39 PM


In response to Tim and Brian ...

So ... what could be more “personal”, or more, “personally identifying”, then an exact copy of my signature?


When the Elections Offices gives out copies of the entire State’s registered voters list it is ONLY given out with the actual signatures having been redacted. Presumably for our protection against fraud or misuse.

Seems to me that if the Secretary has “authority” to redact my very personal and one of a kind signature from the voters disc . . . then that same “authority” should be used to redact my signature from a petition disc.

Why is there an apparent double standard?

11.  *Tim Eyman says:*  
September 17, 2009 at 4:17 PM

Brian, I’m eager to read your response to Eddie’s last post.

12.  *Katie Blinn says:*  
September 17, 2009 at 4:17 PM

For Eddie’s question posted at 2:39:

RCW 42.56.210 does not create an exemption for “personal information” or for information that would violate “personal privacy” if disclosed. Nor does it give a blanket order to redact or delete personal information from the records sought. No state law lays out such a broad exemption. Rather, RCW 42.56.210 says that if some portion of a record is exempt from disclosure, then the agency must still release it but must redact the exempt portion; the agency cannot withhold the entire record simply because one portion of it is exempt from disclosure. RCW 42.56.210 is the statute that tells agencies how to redact and release properly; it does not create a blanket “privacy” exemption.

RCW 42.56.050 is the state law that spells out when privacy can be used as a reason to redact or withhold from disclosure:

RCW 42.56.050 states:

A person’s “right to privacy,” “right of privacy,” “privacy,” or “personal privacy,” as these terms

are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

Eddie has a good question: Why is a signature in the voter registration file exempt from disclosure, but a signature on a petition sheet is not? Along the same lines, why is a signature in the voter registration file exempt, but a signature on an absentee ballot envelope is not? A signature in a poll book is not exempt either.

The signature in the voter registration file is exempt from disclosure because there is a specific state law, RCW 29A.08.710, that addresses what information in the voter registration file is public information.

RCW 29A.08.710(2) states:

(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying, except as provided in RCW 40.24.060: The voter's name, address, political jurisdiction, gender, date of birth, voting record, date of registration, and registration number. No other information from voter registration records or files is available for public inspection or copying.

13.



*Eddie* says:

September 17, 2009 at 5:11 PM

Katie ...

The statute cited above (RCW 29A.06.710(2) states . "... OR FILES REGARDING A VOTER OR GROUP OF VOTERS" ..., clearly a disc containing petition signers is a "file regarding the voter(s)" ..... and the actual signature is excluded from public inspection or copying by statute.

The statute, by way excluding the signature from the list which may be disclosed, actually prohibits the actual signature from public disclosure.

Let us face it .... the signatures themselves are "personal identifiers" which are actually used by the elections department to "personally identify" the voter who signs a petition. They should not be disclosed to anyone who asks for them. In this age of identity theft this information should remain confidential.

I hope the Secretary changes policy immediately, puts new policy in writing, complies with the statute, and protects Washington voters from unnecessary risk to our privacy.

Eddie

14.



*J Scooter* says:

September 17, 2009 at 7:45 PM

Eddie has completely distorted one part of my earlier comment and, most significantly, he has completely ignored another part of my comment.

As to Eddie's distortion: each signature on the petitions is NOT a "vote" for any candidate or even for any issue; in fact, it is NOT any type of "vote" at all. Rather, a signature is a REQUEST to the SoS and to the public that there SHOULD BE A VOTE of the people on whether to approve or disapprove a law that the legislature has already validly enacted. No one has ever suggested that "votes" of any citizen, on any candidate or on any issue, should be made public. But it is obvious we are NOT dealing with "votes" that are being cast when a petition signer actually signs the petition.

As to Eddie's ignoring the other part of my comment: he has no response, and can have no response, to my point that there is no state in the USA which allows citizens to vote on whether to "undo" a law passed by a legislature based on petitions where the names of the petition signers AND the names of the circulators are not made public. Most states don't even allow referenda and initiatives, but the ones that do would NEVER allow it to happen the way that Eddie (and Judge Settle) have decided it should happen — by keeping the names of petition signers and circulators from the public. That is anarchy — that is a sham — that is not a transparent democracy.

15.

*Eddie says:*September 18, 2009 at 9:59 AM

Katie, Brian, and Tim,

When I read the statutes carefully it is clear that the NAME and ADDRESS are to be public information. It is also clear that the statutes contain the authority to redact the signatures and the prohibition against releasing the documents without redacting the signatures. Perhaps someone can answer my question.

RCW 29A.08.710(2) states:

"(2) The following information contained in voter registration records or files regarding a voter or a group of voters is available for public inspection and copying, except as provided in RCW 40.24.060: The voter's name, address, political jurisdiction, gender, date of birth, voting record, date of registration, and registration number. No other information from voter registration records or files is available for public inspection or copying."

The statute speaks to the "INFORMATION" contained in voter registration records or files ... not to the voter records themselves, or to the files themselves, but clearly and concisely to the "INFORMATION" contained in the records OR files.

My personal identifier, my personally unique signature, is some of the "INFORMATION CONTAINED" in the voter registration records maintained by the Elections office. My signature as maintained in this record is, by policy of the Secretary pursuant to the above statute, redacted when the public requests a copy of the voter registration record.

Presuming I sign a petition which is filed with the Secretary, the Elections office then verifies that my personally unique signature on the petition is valid. Matching my signature on the petition to the signature maintained in the voter registration records. After close examination the Elections office verifies that the signature on the petition sheet matches. The Elections office now, after confirming my personal identifier is the SAME exact information as contained in the voter registration record, has the SAME information in two places.

The verified information, including the personal identifiers, is then captured into an electronic

FILE and grouped with other voters who signed the petition. Now the Elections office has a FILE and a registration record containing some the same information.

Notice the statute treats this information the same, whether it is contained in the registration record, OR, whether it is contained in a file. It is the same information, and thus, it is treated the same.

1. .... "No other information from voter registration RECORDS OR FILES is available for public inspection or copying."

The statute begins, by identifying that information may be contained in records, or, it may be contained in files. The statute closes, by treating the information the SAME whether it is maintained in the record or maintained in a FILE regarding the voter or group of voters.

The statute treats my personal identifier the same, but, the Secretary's policy treats it much differently depending where this information is maintained. My personal identifier is purposely redacted from public record requests from the registration record, but it is purposely NOT REDACTED when the same type public records request is made for the same information, from the FILE.


Not only is the Secretary's policy in contradiction to the plain and precise language of the statute, but it is in complete violation of the spirit and intent of the law. The law is there to protect our personally unique signatures from privacy invasions.

There can be no other conclusion, the Secretary is both in compliance of the statute with regard to the information contained within the record, and, in violation of the statute with regard to the same information contained within the file.

RCW 42.56.050 states:


"A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public."

So .... before we even discuss how many reasonable people may be highly offended by their own , as well as millions of others', personal signatures having been given out to the public ..... What legitimate concern is my identifier to the public? What possible legitimate use, has the Secretary determined my signature is to be used for, once it is released to the public? What?

16.  *J Scooter* says:  
September 18, 2009 at 2:28 PM


When a citizen writes a letter to a state agency about a matter, or a citizen sends in comments to a state agency in connection with an agency's proposed regulations, and the letter or the comments are released under the state FOIA, do state agencies actually 'redact' (remove) the letter writer's 'hand-written signature' before releasing the letter or comments? Or is the entire document (including 'hand-written signature') released? For example, if the SoS is proposing new regulations and if citizens send in comments and then sign their comments, does the SoS redact the 'hand-written signatures' on the submitted comments before it makes those comments public?

To my knowledge, under federal law and under the laws of other states, the entire letter and entire comments in such situations are publicly released if the document itself is releasable — and there is no removal of the person's 'hand-written signature' based on claims of privacy. If that's the case, then there is no reason to remove the 'hand-written signature' when the referendum petitions are released.

17.  *Tim Eyman* says:  
September 18, 2009 at 8:19 PM

The initiative and referendum process is a guaranteed right under our state Constitution. As such, the only laws that are allowed are those that 'facilitate' (which means 'make easier') the process. Signing a petition is participating in that fundamental right. Writing a letter to a state agency is not an act that is protected in our Constitution.

Interestingly, under the Secretary of State's absurd interpretation, a person's right to a drivers license, which isn't guaranteed by the state Constitution, is provided more protection than a person's right to sign a petition for a ballot measure, which is guaranteed. Anyone asking for drivers license info about citizens is told that the information will be redacted (blacked out) but no such respect for citizens' rights are afforded this same protection by this Secretary of State. It's totally goofy.

18.  *Tim Eyman* says:  
September 21, 2009 at 9:09 AM

Please make note of what Don Whiting, assistant Secretary of State under Ralph Munro, had to say about this in a Friday news story:

It never would have happened before Reed came along, said Don Whiting, who used to be one of the top officials in the office. Until Reed took over in 2001, the secretary of state's office always took a hard line on any attempt to infringe on the voting process, he said.

Whiting, now retired, was the state's top elections official from 1974 to 1988, and then served as assistant secretary of state under Ralph Munro, from 1989 to 2000. Whiting has been watching the debate from the sidelines. To him it all seems a little baffling – he said the office seems to be looking for political cover, rather than fighting a battle that ought to be fought.

Soon after the state's public-disclosure law was approved by voters in 1972, Whiting said there was an initiative limiting pay increases for elected officials. Someone asked for signatures. There wasn't any question that the petitions were public records, but the names were a different matter. The office offered to make copies and black out the signatures. The requester sued in Thurston County Superior Court and lost, then decided not to appeal. After that, when people learned they couldn't get the signatures and a records request was pointless, most of them stopped asking.

Yes, Whiting said, the attorney general's office offered a legal opinion in the late '90s that petition signatures might have to be disclosed.

"We did get some advice from the attorney general that we probably couldn't survive a court challenge if one came up. But we probably would have ignored the advice at that point. Sam's


trying to make sure he has cover for the fact that he was in office the first time it came up.”

Reed could just as easily have said no – so sue me.

And if it got to that point, Whiting said he could have let the courts decide. The fact that a federal judge has blocked Reed shows that the attorney general’s opinion is just that – an opinion – and that the courts might feel otherwise. Why the office is appealing that decision is something Whiting has trouble understanding.

The problem with disclosing signatures is so obvious that the office under Munro never would have stood for it, Whiting said. It discourages people from using the right to petition. “If you give those names away, would it discourage people from signing those petitions?” he asked. “I know of instances where employers might not like their employees signing petitions.”

Here’s a link to the complete story: [http://www.yourhealthcaretoday.com/home/1853-it\\_s\\_reed\\_s\\_call.htm](http://www.yourhealthcaretoday.com/home/1853-it_s_reed_s_call.htm)


19.  *Larry Cebula* says:  
September 21, 2009 at 9:38 AM

He who lives by the referendum shall die by the referendum, eh?

For some background, what might be motivating advocates of keeping the identity of the petition signers secret are the events in California surrounding Proposition 8, which was designed to overturn a California Supreme Court ruling allowing gay marriage.

In the aftermath of that successful effort, opponents of Proposition 8 used the public records to release the names of those who had signed the petitions—even creating some custom Google Maps showing where the signers lived: <http://www.eightmaps.com/>.

As a historian this is interesting to me in a number of ways, not in the least to see the advocates and opponents of releasing the signatures making their cases on a blog run out of the Office of the Secretary of State. We live in interesting times.

20.  *J Scooter* says:  
September 21, 2009 at 1:44 PM

I find Mr. Eyman’s response to my question to be erroneous and disingenuous. Apparently, because he recognizes that the SoS and other state agencies do NOT redact the names / signatures of persons who file comments on proposed agency regulations or who write letters of concern to agencies, Mr. Eyman tries to distinguish such comments/letter writing from signing referenda/initiative petitions by saying: “Signing a petition is participating in that fundamental right. Writing a letter to a state agency is not an act that is protected in our Constitution.”

The Declaration of Rights in Article I of the State Constitution says:

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Interesting, the right of initiatives/referenda is NOT in the Declaration of Rights, but it is elsewhere. Yet Mr. Eyman claims that the right to petition the government (which is often done by writing letters or sending comments) and the right to send comments/ letters to the government (which is the essence of free speech) is NOT an act that is 'protected in our constitution', whereas signing an initiative/referenda petition is a 'fundamental right' in the constitution. Perhaps he should read the WA constitution, because nothing is more 'fundamental' than what is mentioned in the Declaration of Rights.

In any event, the point is clear: despite the public's right to 'petition' the government and to 'freely speak' as set out in the WA constitution's Declaration of Rights, there has never been a practice of a wholesale redaction of the names/signatures of persons who sign letters/ comments to WA agencies or WA government officials when their letters / comments are publicly disclosed under the public disclosure law. It is simply ridiculous to claim that persons who sign petitions for initiatives/referenda have some greater right to conceal their names from the public than persons who write letters / comments to public officials. If WA allows such names to remain secret, it will be the only state in the USA that allows a law to be forced to public vote by persons who sign petitions but who can shield their names from public disclosure.

21.

*Tim Eyman says:*September 21, 2009 at 6:03 PM

From 1912 to 2006, the Secretary of State's office never, ever released the names, signatures and home addresses of citizens who signed initiative or referendum petitions. Previous Secretaries of State recognized that to do so would, as Don Whiting said, "The problem with disclosing signatures is so obvious that the office under Munro never would have stood for it, Whiting said. It discourages people from using the right to petition. "If you give those names away, would it discourage people from signing those petitions?" he asked. "I know of instances where employers might not like their employees signing petitions."

Signing a petition is obviously political free speech protected by the First Amendment of the US Constitution. It is also protected by our state Constitution as 'the first power reserved by the people is the initiative.' In addition, our state Constitution assures 'absolute privacy' with regard to elections and voting.

Moreover, the Secretary of State's current practice violates each signer's state constitutional right not to be "disturbed in his private affairs." Art. I, sec. 7 Wash. Const.

22.

*J Scooter says:*September 22, 2009 at 9:59 AM

Again, Mr. Eyman fails to address my points. It really doesn't matter what the Secretary of State did or didn't do from 1912 thru 2006 unless the SoS action (or refusal to act) was sanctioned by the WA Supreme Court — which never ruled on this issue. As for what Mr. Don Whiting says, well that's his opinion — others surely have other opinions. Saying that the SoS didn't release names or signatures for decades, so it must be the legal thing to do, is a bit like saying that because

schools were segregated for 100 years (until Brown v Board of Education ruled otherwise), then the past practice must mean that segregation is constitutional. Sorry to say, but it doesn't work that way.

The point that "employers might not like their employees signing petitions" about referenda/initiatives also applies to letters/comments that people send to their state agencies. An employer might not like the fact that its employee wrote a letter to a state agency asking it to adopt stricter non-discrimination rules or that its employee filed comments with a state agency in support of proposed regulations that increase safety standards in factories. If employers can find out whether their employees sent such letters or comments to state agencies, it might discourage employees from sending these letters / comments — which the WA constitution protects their right to do as part of petitioning the government or speaking freely. But again — and Mr. Eyman never disputes this fact — state agencies do NOT routinely and in a wholesale manner redact the names and signatures of people who send letters / comments to the agencies. In other words, the public's right to know who has submitted a letter / comment is more important than the chance that someone (employer? neighbor? fellow church member?) might get upset at a person who submitted a letter/comment to the government agency. The same principle applies to referenda/initiative petitions: the public right to know who triggered this process is paramount to concealing the identity of petition signers. There is no constitutional basis for deciding otherwise, contrary to Mr. Eyman's assertions.

I have every confidence that the Ninth Circuit court of appeals will overturn Judge Settle's unprecedented ruling. Of course, when that happens, Mr. Eyman and others will probably accuse the court of violating constitutional rights of petition signers. It seems that when they like a court ruling (like Judge Settle's ruling or Judge McPhee's ruling), then they see the courts as protectors of the citizens; but when they don't like a court ruling, then all of a sudden the judges are 'activists'. Well, we shall see.....

23.

*J Scooter says:*September 22, 2009 at 2:44 PM

#### 9TH CIRCUIT ORDERS EXPEDITED APPEAL

Well, we will know soon enough what happens here. The US 9th Circuit Court of Appeals has agreed to an emergency appeal and all briefs will be filed by September 30. Then the Court will hear the arguments on Wednesday, Oct 14 — so it's likely there will be a ruling within a couple of days after that. Still too much delay — but at least it will be known before the referendum election whether the petition signers can continue to conceal their names from the public.

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