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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JOHN DOE #1, et al.,

8 Plaintiffs,

9 v.

10 SAM REED, in his official capacity as
Secretary of State of Washington; et al.,

11 Defendants.

CASE NO. C09-5456BHS

ORDER FOR ADDITIONAL
BRIEFING

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13 This matter comes before the Court on the parties' cross motions for summary
14 judgment (Dkts. 196, 204, 208, 209). The Court has considered the pleadings filed in
15 support of and in opposition to the motions and the remainder of the file and hereby
16 requests additional briefing as discussed herein.

17 **I. DISCUSSION**

18 The parties have each submitted cross motions for summary judgment on
19 Plaintiffs' as-applied challenge to the Washington Public Records Act ("PRA"), RCW
20 Chap. 42.56, as it pertains to Referendum 71 ("R-71") petition sheets. *See* Dkts. 196, 204,
21 208, 209. Specifically, Plaintiffs seek to prevent the disclosure of the identities of those
22 who signed R-71. *See, e.g.*, Dkt. 2 (Complaint).

23 To support their case, Plaintiffs provided the Court with a vast amount of
24 documentation to support their as-applied challenge to the PRA. Plaintiffs assert that this
25 documentation will establish a material question of fact as to whether disclosure of R-71
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1 signers' identities would result in the reasonable probability of threats, harassment, or
2 reprisals.

3 In Washington Families Standing Together's ("WFST") motion for summary
4 judgment, it argues that the record is devoid of "allegations that any person who merely
5 signed the R-71 petition – without taking a public stand – has been threatened or harassed
6 There are no allegations that . . . *any* citizens refused to sign the R-71 petition for
7 fear of harassment." Dkt. 204 at 24-25. In opposition to these arguments, Plaintiffs cite to
8 their exhibits to provide examples of threats, harassment, or reprisals. *See* Dkt. 227 at 10
9 (citing Ex. 1-3, 4-84, 4-195). However, these examples are not actually responsive to
10 WFST's claim that no evidence exists regarding threats or harassment toward R-71
11 signers who have never taken a public stand on the referendum. *See id.* (the exhibits
12 actually pertain to a public figure and a website that does not appear to be directed at any
13 R-71 signer in particular). In further responding to WFST's argument on this point,
14 Plaintiffs continue to cite to non R-71 matters, which also do not respond to WFST's
15 argument. *See id.* at 10-27 (citing various documents in the record that are not R-71
16 specific or are only remotely responsive to WFST's argument on this issue).

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18 A party may not prevail in opposing a motion for summary judgment by simply
19 overwhelming the district court with a miscellany of unorganized documentation. *Zoslaw*
20 *v. MCA Distributing Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). For purposes of motions
21 for summary judgment, reasonable doubts as to the existence of material facts are
22 resolved against the moving party and inferences are drawn in the light most favorable to
23 the opposing party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000).
24 However, where no factual showing is made in opposition to a motion for summary
25 judgment, the District Court is not required to search the record *sua sponte* for some
26 genuine issue of material fact. *See Carmen v. San Francisco Unified School Dist.*, 237
27 F.3d 1026, 1029 (9th Cir. 2001). Additionally, it is not the task of this Court "to scour the
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1 record in search of a genuine issue of triable fact. [The Court relies] on the nonmoving
2 party to identify with reasonable particularity the evidence that precludes summary
3 judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

4 The Court requires a more relevant and specific response on this issue from
5 Plaintiffs. Further briefing on this issue will be helpful to the Court in resolving the
6 multiple cross motions for summary judgment. Plaintiffs shall therefore file additional
7 briefing on this issue, not to exceed five pages. The brief shall inform the Court of those
8 specific documents already in evidence that Plaintiffs believe will establish a material
9 question of fact as to whether disclosure of R-71 signers’ identities would result in the
10 reasonable probability of threats, harassment, or reprisals. These documents shall only
11 include the declarations, depositions, and documentary evidence already in the record of
12 actual R-71 signers who have not already made themselves public figures on this issue
13 (e.g., information regarding Prop 8 in California, op-ed publications, and the like will not
14 be considered relevant for purposes of this request).

15 **II. ORDER**

16 Therefore, it is hereby **ORDERED** that Plaintiffs shall file the additional briefing
17 requested herein on or before August 24, 2011. The cross motions for summary judgment
18 are renoted for consideration on the same date.
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20 DATED this 15th day of August, 2011.

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23 BENJAMIN H. SETTLE
24 United States District Judge
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