No. 09-559

In The Supreme Court of the United States

JOHN DOE #1, JOHN DOE #2, and
PROTECT MARRIAGE WASHINGTON,

Petitioners,

v.

SAM REED, WASHINGTON
SECRETARY OF STATE, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF AMICUS CURIAE THE CITY OF SEATTLE IN SUPPORT OF RESPONDENTS

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I. Introduction and Statement of Interest of Amicus Curiae

Amicus Curiae the City of Seattle is the largest city in the State of Washington. Seattle, like many of Washington's local jurisdictions, employs initiatives, referenda, and other ballot measures as part of its legislative process.[1] Not only do local ballot measures constitute an integral part of Seattle's legislative process, they also play a central role in the legislative processes of hundreds of other local jurisdictions in Washington.[2] Under Washington's Public Records Act ("PRA"),[3] ballot measure petitions are public documents subject to disclosure upon request. Keeping ballot measure petitions public enhances citizens' trust

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[1] "Ballot measure" refers collectively to initiatives, referenda, and other actions that require a petition by a certain number of registered voters to place a measure before the voters on a ballot.

[2] Washington's local jurisdictions include 281 cities and towns, 39 counties, and dozens of other local entities ranging from port districts to hospital districts to park and recreation districts to school districts. Most local jurisdictions in Washington do not use initiatives or referenda, *see* Municipal Research and Services Center of Washington, Cities and Counties That Have Powers of Initiative and Referendum (updated Oct. 2008), http://www.mrsc.org/library/InitRefList.aspx, but even jurisdictions that do not use initiatives and referenda are still subject to other types of ballot measure petitions under Washington law, *see infra* note 7.

[3] Wash. Rev. Code Ch. 42.56.

and confidence in local government by increasing the transparency and accountability of the government and its legislative processes.

Petitioners seek to create a federal constitutional exemption to Washington's PRA, shielding ballot measure petitions from public view and citizen oversight. Although the integrity and transparency of Washington's state initiative and referendum process is most directly at issue under the facts of this case, a decision by this Court in favor of Petitioners would also significantly impact the ability of the City of Seattle and Washington's other local governments to keep both their representative and direct democracy legislative processes transparent. Given its interest in maintaining the transparency and accountability of its legislative processes, Seattle respectfully requests that this Court affirm the Ninth Circuit's decision and hold that the PRA's application to ballot measure petitions is constitutionally permissible.

From Seattle's perspective, this is a case about governmental transparency, not civil unions. Washington's Referendum 71 – the subject of the particular ballot measure petitions at issue in this case – addressed the issue of whether same-sex couples should be granted civil union rights under Washington law, but this lawsuit does not address that issue.[4] Rather,

[4] Referendum 71 was approved by Washington's voters in November 2009 and will remain the law of Washington regardless of the outcome of this appeal.

this lawsuit is about the integrity, transparency, and openness of the ballot measure processes used by the State of Washington and its local governments. The PRA applies to ballot measure petitions regardless of the political leanings or convictions of a particular measure's supporters or of the individuals who sign its petitions.

II. Summary of Argument

In Washington, many local governments, including the City of Seattle, use or are subject to several different types of ballot measures, which require petitions signed by a certain number of registered voters to place an issue on a ballot. For local government ballot measure petitions, various local officials are responsible for verifying ballot measure petition signatures.

Washington's state and local governments are also subject to the Washington PRA. Under the PRA, state and local government documents – including ballot measure petitions submitted to state and local election authorities – are available to the public. Washington's expansive public disclosure laws promote accountability, citizen oversight, transparency, and open government. In the specific ballot measure petition context, Washington's public disclosure laws allow individuals to monitor state and local election authorities in their signature-verification role. By seeking to create a federal constitutional exemption from the PRA for ballot measure petitions, Petitioners

would limit Washington's ability to keep its government open and would severely limit the people's ability to monitor election officials' signature verification process.

Petitioners' efforts to treat ballot measure petitions as "pure speech" are also misplaced. On both the state and local levels, the primary purpose of ballot measure petitions is to trigger the legal mechanism that places initiatives, referenda, and other types of measures on a ballot. State and local governments regulate this process to ensure the integrity of the petitions and signatures. Treating ballot measure petitions as "pure speech" would call into question other laws regulating ballot measure petitions, including laws prohibiting multiple signatures from one signer, prohibiting signing with a false name or false address, and prohibiting signatures by nonvoters. Petitions that function primarily as speech should be treated differently than ballot measure petitions, and Washington's state and local governments should be permitted to regulate the ballot measure petition process.

Petitioners also attempt to define ballot measure petitions as anonymous speech even though ballot measure petitions require signers to use their actual names and addresses. To the extent that they are speech, ballot measure petitions are nonanonymous communications from individuals to government officials. By asking that their names be kept secret, Petitioners demand a level of protection senders of nonanonymous signed communications cannot reasonably

demand or expect from the recipients of their communications, particularly in light of the PRA. If nonanonymous signed ballot measure petitions must be kept anonymous notwithstanding the PRA, any other nonanonymous communication from a member of the public to a Washington state or local official could warrant anonymity as to the general public. As such, not only could a decision in favor of Petitioners subject the City of Seattle and Washington's other local governments to increased public records litigation regarding claims that signed communication should only be produced anonymously, Washington's public sector would become less transparent, and its people would be less informed about their governments' conduct.

III. Argument

A. Washington's state government, the City of Seattle, and Washington's other local governments maintain transparency in and facilitate public oversight of their ballot measure processes through Washington's broad public disclosure laws.

Although somewhat more limited than the broad initiative and referendum powers constitutionally reserved by the people for matters of Washington state law, local government jurisdictions in Washington may generally grant their citizens the rights of initiative

and referendum on subject matters within the local legislative power.[5] Seattle, like other Washington local governments that employ initiatives and referenda, sets its own signature requirements for these ballot measures.[6] In addition to city and county

[5] *See Whatcom County v. Brisbane*, 884 P.2d 1326, 1328-29 (Wash. 1994) (citing Wash. Const. art. XI, § 4) (allowing home rule counties to adopt charters providing for initiatives and referenda); Wash. Rev. Code § 35.22.200 (allowing charter cities to "provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city"); *id.* § 35A.11.080 (allowing initiatives and referenda in noncharter code cities); Seattle City Charter art. IV, § 1(B) (adopting initiative power); *id.* art. IV, § 1(H) (adopting referendum power); King County, Wash., Charter art. II, § 230.40 (adopting referendum power); *id.* art. II, § 230.50 (adopting initiative power). Because local governments in Washington only have the authority delegated to them by state law, local initiative and referendum rights may not be used to address "power[ ] granted by the [state] legislature to the governing body of a [local government], rather than the [local government] itself." *City of Sequim v. Malkasian*, 138 P.3d 943, 948-50 (Wash. 2006) (citing *Leonard v. City of Bothell*, 557 P.2d 1306, 1310 (Wash. 1976)); *see also Brisbane*, 885 P.2d at 1328-29 (applying these rules to counties).

[6] *See* Seattle City Charter art. IV, § 1(B) (requiring signatures from "a number of registered voters equal to not less than ten (10) percent of the total number of votes cast for the office of Mayor at the last preceding municipal election" to trigger a Seattle initiative); *id.* art. IV, § 1(H) (requiring "a petition signed by a number of registered voters equal to not less than eight (8) percent of the total number of votes cast for the office of Mayor at the last preceding municipal election" to trigger a Seattle referendum); *see also id.* art. XX, § 2 (requiring a petition signed by "fifteen percent in number of the registered voters of the City voting at the last preceding election for the office of Mayor" for a voter-proposed Seattle City Charter amendment).

initiatives and referenda, Washington law provides for several other types of local government actions that require signature petition and voter approval procedures similar to initiatives and referenda, such as municipal annexation, change in forms of local government, creation of special local governmental districts, municipal charter amendments, and recall of elected officials.[7]

Washington's constitutionally-mandated state initiative and referendum rights "are to be liberally construed to the end that this right may be facilitated, and not hampered by either technical statutory provisions or technical construction thereof, further than is necessary to fairly guard against fraud and mistake in the exercise by the people of this constitutional right."[8] However, "the fundamental

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[7] *See, e.g.*, Wash. Rev. Code §§ 29A.56.110-270 (describing ballot measure petition and election process for recall of state and local elected officials); *id.* §§ 35.13.020-120 (describing ballot measure petition and election process for cities to annex unincorporated areas); *id.* § 35.22.120 (describing ballot measure petition and election process for municipal charter amendments); *id.* § 36.32.055(2) (describing ballot measure petition and election process for increasing size of boards of county commissioners in noncharter counties); *id.* § 36.69.020 (describing ballot measure petition and election process for forming park and recreation districts).

[8] *Sudduth v. Chapman*, 558 P.2d 806, 808-09 (Wash. 1977) (quoting *Rousso v. Meyers*, 390 P.2d 557 (Wash. 1964); *State ex rel. Howell v. Superior Court of Thurston County*, 166 P. 1126 (Wash. 1917); *State ex rel. Case v. Superior Court of Thurston County*, 143 P. 461 (Wash. 1914)).

requirement for a valid [ballot measure] petition is that it have the required number of signatures of legal voters."[9] To that end, in addition to ensuring that ballot measures have the required number of valid signatures, the proper purpose of state and local laws in Washington regulating ballot measure signature petitions is "to fairly guard against fraud and mistake" and "to protect the integrity of the initiative process."[10] For state initiatives and referenda – such as Referendum 71 – the Secretary of State is responsible for verifying petition signatures; for local government ballot measures, county auditors or elections directors are generally responsible for verifying petition signatures.[11]

"Washington's Public Records Act . . . gives the public access to the public records of state and local agencies, with the laudable goals of governmental transparency and accountability."[12] The PRA's stated purpose "is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the

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[9] *State ex rel. Evich v. Superior Court of Thurston County*, 61 P.2d 143, 147 (Wash. 1936).

[10] *Sudduth*, 558 P.2d at 808-09.

[11] *See, e.g.*, Wash. Rev. Code § 35.21.005(4) (addressing municipal ballot measure signature verification); *City of Seattle v. Yes for Seattle*, 93 P.3d 176, 177 (Wash. Ct. App. 2004) (same); King County, Wash., Code § 1.16.100 (addressing King County ballot measure signature verification).

[12] *City of Federal Way v. Koenig*, 217 P.3d 1172, 1172 (Wash. 2009).

accountability to the people of public officials and institutions,"[13] and the act "is a strongly worded mandate for broad disclosure of public records."[14] The act itself explains that "[t]he people insist on remaining informed so that they may maintain control over the instruments that they have created."[15] The initiative that enacted the first version of the PRA proclaimed that "full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society."[16] This is particularly true in Washington state, where "citizens have historically and consistently demanded transparent and open government to allow public oversight."[17]

Under the PRA, itself originally enacted by initiative in 1972, state and local agencies must "disclose all public records upon request, unless the record falls

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[13] *Progressive Animal Welfare Soc'y v. Univ. of Washington*, 884 P.2d 592, 597 (Wash. 1994).

[14] *Spokane Research & Defense Fund v. City of Spokane*, 117 P.3d 1117, 1123 (Wash. 2005) (quoting *Hearst Corp. v. Hoppe,* 580 P.2d 246, 249 (Wash. 1978)).

[15] Wash. Rev. Code § 42.56.030.

[16] Wash. Rev. Code § 42.17.010(11) (initially enacted as Initiative 276 in 1972 together with what is now codified separately as the PRA).

[17] *Northwest Gas Ass'n v. Washington Utilities & Transp. Com'n*, 168 P.3d 443, 456 (Wash. 2007) (citing *Progressive Animal Welfare Soc'y*, 884 P.2d at 597).

within a specific . . . statutory exemption."[18] The act defines a "public record" as "any writing containing information relating to the conduct of government . . . prepared, owned, used, or retained by any state or local agency. . . ."[19] State and local agencies bear the burden of establishing that an exemption applies to a particular public record shielding it from public disclosure, and exemptions to disclosure are narrowly construed.[20]

Ballot measure signature petitions are unambiguously public records under Washington's PRA – they plainly "contain[ ] information relating to the conduct of government," and, once submitted to the Secretary of State, a county auditor or elections director, or a city clerk, they are in the possession of a state or local agency.[21] Petitioners have not seriously challenged ballot measure signature petitions' status as public records, nor have they raised any PRA exemptions that would apply. As such, the only legal issue presented in this case is whether the First Amendment forecloses Washington state's right to implement and enforce its broad public disclosure

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[18] *Bellevue John Does 1-11 v. Bellevue School Dist. #405*, 189 P.3d 139, 144 (Wash. 2008) (footnote omitted).

[19] Wash. Rev. Code § 42.56.010(2).

[20] *See Progressive Animal Welfare Soc'y*, 884 P.2d at 251-52; Wash. Rev. Code § 42.56.030.

[21] A ballot measure signature petition that has not been submitted or otherwise sent to a state or local government agency likely would not be a public record under the PRA.

laws and promote public sector transparency and accountability.

A decision by this Court holding that the First Amendment limits the PRA's application would harm Seattle's and other local governments' abilities to function openly and effectively and to earn and maintain the confidence of the people. As noted, a central purpose of Washington's broad public disclosure laws is to ensure that the people have the ability to monitor their governments. Public servants – federal, state, and local – can only govern effectively if they maintain the confidence of the people they serve, and, in turn, the people are more likely to maintain confidence in their governments if the people have the ability to monitor their governments.

Given the significant role ballot measures play in shaping the laws and structures of the State of Washington, the City of Seattle, and other Washington local governments, canvassing ballot measure petitions and verifying their signatures is one of the more closely monitored functions of government. Under the PRA, individuals can monitor and oversee the signature-verification process by requesting and obtaining copies of the petitions and other related documents. If Petitioners prevail in limiting the PRA's application, the public would lose this right and would be forced to rely – blindly and without any meaningful oversight powers – on the Secretary of State and county auditors and elections departments

to verify petition signatures.[22] Such limitations on public oversight and open government would harm the public, the City of Seattle, and Washington's other governmental entities, which depend on open government to build and maintain public trust and confidence.

B. Treating ballot measure petitions as pure political speech would prevent state and local governments from enforcing reasonable existing laws regulating petition signatures.

When a petition circulator asks an individual to sign a ballot measure petition, that is an act of speech. But when an individual actually signs a ballot measure petition for submission to the Secretary of State or a local government authority for the purpose of putting a measure on a ballot, that is a legislative act. These two acts are distinct from one

[22] In the decision below, the Ninth Circuit observed that, absent the PRA, "[t]he oversight procedure provided by [Washington election law] allows the Secretary of State to limit observers to two opponents and two proponents of the referendum." *Doe v. Reed*, 586 F.3d 671, 679-80 (9th Cir. 2009), *cert. granted*, 130 S. Ct. 1133 (2010) (citing Wash. Rev. Code § 29A.72.230). The Ninth Circuit called "[t]his procedure . . . insufficient to shift oversight from the special interest groups to the general public" and determined that "[w]ithout the PRA, the public is effectively deprived of the opportunity independently to examine whether the State properly determined that a referendum qualified, or did not qualify, for the general election." *Id.* (citing *Progressive Animal Welfare Soc'y*, 884 P.2d at 597).

another, and they should be treated as such. Petitioners rely largely on this Court's decision in *Buckley v. American Constitutional Law Foundation, Inc.*,[23] which applies to petition circulators, not petition signers. This reliance is misplaced. Although Petitioners make the cursory assertion that "the discussant on one side of the clipboard in a protected 'discussion'" (the circulator) and "the discussant on the other side" (the signer) should be treated in the same manner,[24] an examination of their attempt to apply *Buckley* to petition signers illustrates the absurdity and the danger of this approach.

In *Buckley*, this Court struck down a Colorado law requiring that petition circulators be registered voters.[25] This Court reasoned that, for some, "the choice not to register [to vote] implicates political thought and expression," and determined that prohibiting these individuals from circulating ballot measure petitions impermissibly impeded their free speech rights.[26] *Buckley* also held that circulators had a constitutional right to not wear nametags (and therefore to remain anonymous) when circulating ballot measure petitions.[27]

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[23] 525 U.S. 182 (1999).

[24] Petitioners' Brief at 17.

[25] *See id.* at 195-97.

[26] *Id.* at 195-96.

[27] *See id.* at 197-200.

If circulators and signers were truly the same as one another, virtually all of Washington's ballot measure petition laws could be void. Under current Washington law, it is a felony for a person to sign a ballot measure petition "with any other than his or her true name."[28] It is a gross misdemeanor to knowingly sign more than one petition for the same ballot measure, for someone who is not a legally registered voter to sign a petition, or for a signer to make a false statement as to his or her residence.[29] Were *Buckley* applied in a manner treating signers the same way it treats circulators, Washington and its local governments likely could not prohibit people from signing ballot measure petitions using pseudonyms or false addresses, nor could nonvoters be prohibited from signing ballot measure petitions.[30]

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[28] Wash. Rev. Code § 29A.84.230.

[29] *Id.* Seattle's and King County's ordinances addressing ballot measure signatures for city and county ballot measures also prohibit signatures "with any other than [the signer's] true name," "knowingly sign[ing] more than one (1) petition for the same initiative, referendum, or Charter amendment measure," or "sign[ing] any such petition knowing that [the signer] is not a registered voter of the City [of Seattle]." Seattle Mun. Code § 2.16.010(A)(4); *accord* King County, Wash., Code § 1.16.090. Violation of either of these provisions is a misdemeanor. Seattle Mun. Code § 2.16.020; King County, Wash., Code § 1.16.090.

[30] Washington's and Seattle's ballot measure petition regulations are both reasonable and limited. As explained, Washington courts have held that governments may only regulate the ballot measure process to the extent necessary "to fairly guard against fraud and mistake" and "to protect the integrity of the initiative process." *Sudduth*, 558 P.2d at 809. Indeed, Washington

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Petitioners have not explicitly advocated for this result, nor should they, because coming to terms with the full implications of equating circulators with signers would highlight the important distinctions they are trying to obscure.

The essence of this Court's holding in *Buckley* is that circulating a ballot measure petition is legally the same as any other type of speech – orally advocating on a street corner, holding a sign in a park, sending a letter to a state legislator, or publishing an online blog using a pseudonym. This Court has consistently held that everyone – regardless of voter registration status, voter eligibility, citizenship status, residency, engagement with mainstream politics, ideology, or wealth – has the right to speak both freely and anonymously, subject only to very limited and narrowly-tailored restrictions. Directly participating in the electoral process is another matter. States can and do regulate who may vote, and while the content of a voter's ballot is secret, the facts that a particular

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courts struck down statutes preventing the Secretary of State from counting any signatures by a voter who signed a petition more than once, holding that the Washington Constitution required the Secretary of State to count otherwise-valid signatures once even if there is a duplicate. *See id*. (striking down duplicate signature counting statute as to referendum petitions); *Pederson v. Moser*, 662 P.2d 866, 869 (Wash. 1983) (striking down duplicate signature counting statute as to recall petitions). Washington's and Seattle's current regulations fall within the narrower "fairly guard against fraud and mistake" and "protect the integrity" boundaries set by the Washington Supreme Court in *Sudduth* and *Pederson*.

voter is registered to vote or voted in a particular election are not. Individuals may advocate, argue, and attempt to persuade freely and anonymously, but the franchise is significantly more limited than free speech, and this Court has never recognized a right to anonymously register to vote or to keep secret the fact of casting a ballot.

What makes a ballot measure petition distinct from a traditional "pure speech" petition is the ballot measure petition's legislative role in placing a measure on a ballot. The purpose of speech is to articulate, spread, or convey a message. The purpose of a ballot measure petition is to trigger a legal mechanism provided for by Washington or local law to place initiatives, referenda, and certain other measures on ballots.[31] A signature on a ballot measure petition might function in part as a political statement, but its primary purpose is to meet the legal requirement for the number of signatures necessary to place an initiative or referendum upon a ballot. Unlike "pure speech," ballot measure petitions are closely regulated to ensure that the required number of legally registered voters sign petitions to place a measure on a ballot. State and local governments need to verify the accuracy and authenticity of ballot measure petition signatures to avoid fraud and ensure that only measures with the required number of valid signatures by registered voters are placed upon the

[31] *See supra* note 6.

ballot. This type of regulation is neither necessary nor justifiable for "pure speech."

Individuals who want to express support for a ballot measure without subjecting themselves to the regulations that apply to official ballot measure petitions could, among other things, sign a petition stating their support for that ballot measure. Whether to speak or petition anonymously or openly on any petition other than a ballot measure petition is the speaker's choice. Such a "pure speech" petition could be identical in virtually every respect to an official ballot measure petition; the only difference is that it would not be submitted to the Secretary of State, county auditor, or city clerk to accomplish the legislative act of placing a measure upon a ballot.

Washington's laws regulating or otherwise affecting ballot measure petitions do not regulate the speech aspect of a ballot measure petition, they regulate the legislative aspect of the petition. The Washington Supreme Court has recognized and highlighted this distinction, holding that the distinguishing characteristic differentiating a ballot measure petition from a "pure speech" petition is the ballot measure petition's submission to the Secretary of State by the individual or organization sponsoring the ballot measure.[32] As such, it is not the character of

[32] *See State v. Patric*, 389 P.2d 292, 294 (Wash. 1964) (reversing conviction for falsely signing an initiative petition when the petition was signed with a pseudonym but never submitted to the Secretary of State).

the petition or an individual's act of signing it that matters; the sponsor's submission of the petition to the Secretary of State is what gives the state an interest in ensuring the accuracy of the signatures, voter registration status, and residency of the signers.

Petitioners ask this Court to hold that the First Amendment trumps Washington's PRA and requires all ballot measure petitions to remain secret, shielded from public view and scrutiny. Such a holding would call into question all of Washington's other state and local regulations of ballot measure petitions. If, for example, a petition signer had a right to sign a petition, submit it to the Secretary of State or a county elections department, and keep his signature a secret despite unambiguous state statutory law making the petition a public record, Washington state and its local jurisdictions will have difficulty justifying their laws criminalizing petition signatures by nonvoters, intentional submission of multiple signatures from the same signer, pseudonymous signatures, and false addresses. Calling these laws into question would throw the ballot measure petition process into turmoil, damaging an important democratic and popular institution in Washington's state and local governments.

C. Creating a constitutional rule exempting ballot measure petitions from Washington's Public Records Act would weaken or destroy several other aspects of the act.

A ballot measure petition, like any other document "containing information relating to the conduct of government," only becomes a public record under the PRA when it comes into the possession of a state or local government agency.[33] Viewed in this light, a ballot measure petition is no different than any other communication from a member of the public to a government agency or official – if it "contain[s] information relating to the conduct of government" and is "prepared, owned, used, or retained by any state or local agency," it is a public record and must be disclosed absent a statutory exemption.[34]

Under this straightforward standard, requesters are entitled to a broad array of government documents, including correspondence between members of the public and government officials. For example, the City of Seattle treats citizen correspondence to city councilmembers or the mayor as public records to the extent such correspondence is related to the conduct of government.[35] If the correspondence was sent

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[33] *See* Wash. Rev. Code § 42.56.010(2).

[34] *See Bellevue John Does*, 189 P.3d at 144.

[35] Correspondence that only contains information related to a councilmember's election campaign or strictly personal matters is likely not a public record, *see, e.g.*, *Tiberino v. Spokane*

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anonymously or pseudonymously, the sender remains anonymous or pseudonymous when the correspondence is produced; if the correspondence is sent using the sender's name, the correspondence is produced with the sender's name. In other words, whether the sender remains anonymous depends on whether he or she sent the correspondence anonymously.[36]

This framework also functions outside the public records or government contexts. For the most part, correspondence between two private, nongovernmental parties is only private to the extent the receiving party chooses to keep it private. A private party who receives correspondence may generally choose to broadcast it to the world or keep it confidential regardless of the wishes of the sender. To the extent they function as speech, ballot measure petitions are, in essence, nonanonymous correspondence from the signers to the government requesting that a particular action be taken (in this case, that Referendum 71 be placed upon Washington's November 2009 statewide ballot). Consequently, in asking this Court to

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County, 13 P.3d 1104, 1108 (Wash. Ct. App. 2000) (discussing threshold for "containing information relating to the conduct of government"), but correspondence regarding a proposed ordinance or another City of Seattle issue would generally be a public record.

[36] The PRA contains limited statutory exemptions to this rule. For example, applications for public employment are exempt from disclosure even though they are public records. *See* Wash. Rev. Code § 42.56.250(2). There is no assertion that any of these statutory exemptions apply in this case.

constitutionally prohibit the Secretary of State from producing the Referendum 71 ballot measure petitions, Petitioners are asking for significantly wider privacy protections than any other senders of non-anonymous communications would ordinarily receive in any other setting, private or public.

There is no basis for granting Petitioners these special protections – if Petitioners wanted to keep their correspondence to the government anonymous or pseudonymous, they could have sent it anonymously or pseudonymously. The advantage of petitioning or writing the government anonymously is that the speaker need not bear the burden of revealing his or her identity; the disadvantages of petitioning anonymously are that government officials are less likely to give significant weight to anonymous speech and that anonymous signatures cannot be used to place a measure upon a ballot. Any speaker can weigh these advantages and disadvantages before deciding whether to speak or petition anonymously or using his or her own name. But neither Petitioners nor anyone else should be granted the right to constitutionally circumvent public records laws by sending signed correspondence to the government while keeping it anonymous as to the general public.

Petitioners are asking this Court to push Washington's local governments down a slippery slope of ever-broadening unwritten exemptions to the PRA. If ballot measure petitions were constitutionally exempt from disclosure, future litigants will likely argue that, among other things, signed correspondence from

citizens to government officials should be withheld entirely or produced only with the sender's name redacted. Not only would this significantly narrow the scope of the PRA and cast a shadow over Washington's open government policies, it would subject the City of Seattle, along with Washington's other local governments, to significant litigation burdens as public agencies attempt to comply with the statutory scope of the PRA while anticipating a wide array of new, unwritten exemptions.

IV. Conclusion

The City of Seattle supports Washington state's long tradition of open government and strong public policies supporting broad public disclosure. These traditions, values, and policies keep the public informed and strengthen public trust and confidence in Washington's state and local governments. Seattle also supports limited, targeted regulation of the ballot measure petition process to ensure that measures only reach the ballot after obtaining the required number of valid signatures. Petitioners' arguments, if accepted by this Court, would generally make Washington's governments less open and would specifically limit the public's ability to monitor and remain informed regarding the process of determining whether a measure has qualified for the ballot.

Free speech, open government, and direct democracy are not mutually exclusive values. Petitioners

paint a misleading picture of these three values conflicting with one another; indeed, because accurate information about the conduct of government is often a key ingredient in free speech, a free press, and vibrant public discourse, the First Amendment's rights are diminished when governments become less open. Seattle respectfully requests that this Court recognize that these values are stronger when they work together by affirming the Ninth Circuit and allowing public disclosure of the Referendum 71 petitions.

Respectfully submitted,

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