

Editor's note: The Washington Coalition for Open Government submitted this article to The New York Times prior to the U.S. Supreme Court's June 24, 2010, ruling on a case from Washington. The court ruled 8-1 that signatures on initiative and referendum petitions are public records. The submission was not published.

Supreme Court Case Endangers Open Government

By Lynn Kessler and Toby Nixon

The 56 patriots who signed the Declaration of Independence weren't anonymous; no one signed "John Doe." They believed that the power to govern should be exercised openly.

This foundational principle is threatened by a case to be argued before the U.S. Supreme Court on April 28 (*Doe v. Reed*). The case jeopardizes the constitutionality of Washington State's Public Records Act ("PRA") and openness of the legislative process nationwide.

The case seeks to make secret the signatures on an official referendum or initiative petition that directs a proposal be placed before voters. If the Supreme Court upholds this challenge, it would take away existing citizen rights to public records, undermining democracy itself.

Although, the U.S. Constitution guarantees citizens the right to petition their government to request that action be taken, it leaves to each state to decide whether to adopt the referendum process, and whether to require the names of signers be public. Twenty-seven states have adopted the referendum and initiative process, giving citizens the same power as legislators to put laws on the ballot.

In a 1912 amendment to the State's Constitution, Washington citizens reserved to themselves the power to act as citizen legislators through referendums and initiatives. In effect, in signing referendum petitions, citizens do not request, but rather direct, that proposed legislation be put to a vote.

In 1972, the state's citizens overwhelmingly passed an initiative mandating openness of public records, thereby affirming the principle that citizens can more effectively and responsibly exercise their power to control government if they are fully informed. In adopting the PRA, Washington citizens decided petitions are public records, which has helped keep the state's initiative and referendum process free of mismanagement.

The non-partisan Washington Coalition for Open Government has joined with the state's Democratic governor and legislative leadership and its Republican attorney general and secretary of state in calling on the Supreme Court not to overturn Washington's Public Records Act. (WCOG has taken no stance on Referendum 71, which sought to negate a 2009 law providing certain rights to gay couples.)

Proponents of secrecy express concern that supporters of Referendum 71 might face “uncomfortable conversations” from citizens with opposing views. However, the American tradition is to encourage robust, vigorous and sometimes uncomfortable debate on matters of public concern. There is no need to overturn open government laws in favor of the ability of citizens to legislate anonymously. Harassment or violence against petition signers can be dealt with through existing laws that prohibit such conduct.

Secret petitions would undermine democracy, not serve it. Public disclosure of referendum petitions allows citizens to oversee the conduct of public officials, who validate whether petitions qualify for the ballot. While Washington state law provides that citizens can challenge the validation process, this right is eviscerated if petitions are kept secret. And just as legislators are required to be listed as sponsors of proposals they have filed, public disclosure of petitions enables voters to learn who is behind a law proposed on the ballot.

Washington’s Public Records Act empowers citizens to most effectively and responsibly exercise their power over government by guaranteeing them full information about its operation. Its preamble channels the spirit of the Founders: “The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

If the Supreme Court strikes down a state’s right to disclose the names of citizen legislators (those who sign initiative and referendum petitions), open government at the federal, state, and local levels is in grave danger. John Hancock’s bold signature on the Declaration of Independence stood strongly for openness and against anonymity. By adoption of their Public Records Act, Washington citizens have also shown their commitment to openness, a principle that the U.S. Supreme Court should not override.

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