Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

DOE ET AL. *v.* REED, WASHINGTON SECRETARY OF STATE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09–559. Argued April 28, 2010—Decided June 24, 2010

The Washington Constitution allows citizens to challenge state laws by referendum. To initiate a referendum, proponents must file a petition with the secretary of state that contains valid signatures of registered Washington voters equal to or exceeding four percent of the votes cast for the office of Governor at the last gubernatorial election. A valid submission requires not only a signature, but also the signer's address and the county in which he is registered to vote.

In May 2009, Washington Governor Christine Gregoire signed into law Senate Bill 5688, which expanded the rights and responsibilities of state-registered domestic partners, including same-sex domestic partners. That same month, Protect Marriage Washington, one of the petitioners here, was organized as a "State Political Committee" for the purpose of collecting the petition signatures necessary to place a referendum challenging SB 5688 on the ballot. If the referendum made it onto the ballot, Protect Marriage Washington planned to encourage voters to reject SB 5688. Protect Marriage Washington submitted the petition with more than 137,000 signatures to the secretary of state, and after conducting the verification and canvassing process required by state law, the secretary determined that the petition contained sufficient signatures to qualify the referendum (R–71) for the ballot. Respondent intervenors invoked the Washington Public Records Act (PRA) to obtain copies of the petition, which contained the signers' names and addresses.

The R–71 petition sponsor and certain signers filed a complaint and a motion for injunctive relief in Federal District Court, seeking to enjoin the public release of the petition. Count I alleges that the PRA "is unconstitutional as applied to referendum petitions," and Count II

Syllabus

alleges that the PRA "is unconstitutional as applied to the Referendum 71 petition because there is a reasonable probability that the signatories . . . will be subjected to threats, harassment, and reprisals." Determining that the PRA burdened core political speech, the District Court held that plaintiffs were likely to succeed on the merits of Count I and granted a preliminary injunction preventing release of the signatory information. Reviewing only Count I, the Ninth Circuit held that plaintiffs were unlikely to succeed on their claim that the PRA is unconstitutional as applied to referendum petitions in general, and therefore reversed.

Held: Disclosure of referendum petitions does not as a general matter violate the First Amendment. Pp. 4–13.

(a) Because plaintiffs' Count I claim and the relief that would follow—an injunction barring the secretary of state from releasing referendum petitions to the public—reach beyond the particular circumstances of these plaintiffs, they must satisfy this Court's standards for a facial challenge to the extent of that reach. See *United States* v. *Stevens*, 559 U. S. ___, ___. Pp. 4–5.

(b) The compelled disclosure of signatory information on referendum petitions is subject to review under the First Amendment. In most cases, the individual's signature will express the view that the law subject to the petition should be overturned. Even if the signer is agnostic as to the merits of the underlying law, his signature still expresses the political view that the question should be considered "by the whole electorate." *Meyer* v. *Grant*, 486 U. S. 414, 421. In either case, the expression of a political view implicates a First Amendment right.

Petition signing remains expressive even when it has legal effect in the electoral process. But that does not mean that the electoral context is irrelevant to the nature of this Court's First Amendment review. States have significant flexibility in implementing their own voting systems. To the extent a regulation concerns the legal effect of a particular activity in that process, the government is afforded substantial latitude to enforce that regulation. Also pertinent is the fact that the PRA is not a prohibition on speech, but a *disclosure* requirement that may burden "the ability to speak, but [does] 'not prevent anyone from speaking.'" *Citizens United* v. *Federal Election Comm'n*, 558 U. S. ___, ___. This Court has reviewed First Amendment challenges to disclosure requirements in the electoral context under an "exacting scrutiny" standard, requiring "a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.*, at ___. To withstand this scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Davis* v. *Fed-*

Syllabus

eral Election Comm'n, 554 U. S. ___, ___. Pp. 5–7.

(c) The State's interest in preserving the integrity of the electoral process suffices to defeat the argument that the PRA is unconstitutional with respect to referendum petitions in general. That interest is particularly strong with respect to efforts to root out fraud. But the State's interest is not limited to combating fraud; it extends to efforts to ferret out invalid signatures caused not by fraud but by simple mistake, such as duplicate signatures or signatures of individuals who are not registered to vote in the State. The State's interest also extends more generally to promoting transparency and accountability in the electoral process.

Plaintiffs contend that disclosure is not sufficiently related to the interest of protecting the integrity of the electoral process to withstand First Amendment scrutiny. They argue that disclosure is not necessary because the secretary of state is already charged with verifying and canvassing the names on a petition, a measure's advocates and opponents can observe that process, any citizen can challenge the secretary's actions in court, and criminal penalties reduce the danger of fraud in the petition process. But the secretary's verification and canvassing will not catch all the invalid signatures, and public disclosure can help cure the inadequacies of the secretary's process. Disclosure also helps prevent difficult-to-detect fraud such as outright forgery and "bait and switch" fraud, in which an individual signs the petition based on a misrepresentation of the underlying issue. And disclosure promotes transparency and accountability in the electoral process to an extent other measures cannot. Pp. 8–10.

(d) Plaintiffs' main objection is that "the strength of the governmental interest" does not "reflect the seriousness of the actual burden on First Amendment rights." *Davis*, *supra*, at ___. According to plaintiffs, the objective of those seeking disclosure is not to prevent fraud, but to publicly identify signatories and broadcast their political views on the subject of the petition. Plaintiffs allege, for example, that several groups plan to post the petitions in searchable form on the Internet, and then encourage other citizens to seek out R–71 petition signers. That, plaintiffs argue, would subject them to threats, harassment, and reprisals.

The problem for plaintiffs is that their argument rests almost entirely on the specific harm that would attend the disclosure of information on the R–71 petition. But the question before the Court at this stage of the litigation is whether disclosure of referendum petitions in general violates the First Amendment. Faced with the State's unrebutted arguments that only modest burdens attend the disclosure of a typical petition, plaintiffs' broad challenge to the PRA must be rejected. But upholding the PRA against a broad-based chal-

Syllabus

lenge does not foreclose success on plaintiffs' narrower challenge in Count II, which is pending before the District Court. See *Buckley* v. *Valeo*, 424 U. S. 1, 74. Pp. 10–13.

586 F. 3d 671, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. BREYER, J., and ALITO, J., filed concurring opinions. SOTOMAYOR, J., filed a concurring opinion, in which STEVENS and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which BREYER, J., joined. SCALIA, J., filed an opinion concurring in the judgment. THOMAS, J., filed a dissenting opinion.