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HOUSE BILL 2714

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Shea, Condotta, McCune, Short, Crouse, Hinkle, Klippert, Pearson, Roach, Kristiansen, and Warnick

Read first time 01/12/10. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to adopting the right to anonymous political speech  
2 act of 2010 by clarifying that state law does not require or authorize  
3 the release of the name, signature, and/or address of any individual  
4 who signs an initiative or referendum petition; amending RCW  
5 29A.72.230; adding new sections to chapter 42.56 RCW; creating new  
6 sections; and declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
9 Washington right to anonymous political speech act of 2010.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56 RCW  
11 to read as follows:

12 (1) The legislature finds that the rights of citizens to free  
13 speech, to privacy, and to peaceably assemble and petition the  
14 government for redress of grievances are among the most fundamental  
15 rights protected by the United States Constitution and the Washington  
16 state Constitution. Inherent within these rights is the right of  
17 individuals to engage in anonymous speech, speech that has played an  
18 important role in the progress of mankind, such as the Federalist

1 papers. The United States supreme court has recognized there is  
2 nothing inherently suspect with an individual wanting to keep his or  
3 her support for an issue private noting that the decision in favor of  
4 anonymity may be motivated by fear of economic or official retaliation,  
5 by concern about social ostracism, or merely by a desire to preserve as  
6 much of one's privacy as possible. The public release of initiative  
7 and referendum petitions containing the names and addresses of  
8 Washington residents pursuant to Washington's public records act  
9 threatens to undermine the goals of these fundamental rights as  
10 protected by the United States Constitution and the Washington state  
11 Constitution to encourage uninhibited, robust, and wide open debate,  
12 and will create a reasonable probability of exposing those individuals  
13 to a significant risk of threats, harassment, and reprisals. By  
14 publicly disseminating the names of individuals signing an initiative  
15 or referendum petition, individuals and organizations may hope to make  
16 it personally, economically, and politically unpopular to advocate a  
17 particular position on sensitive, controversial issues of critical  
18 importance.

19 (2) The legislature further finds clearly and unambiguously that  
20 there has been a privacy policy in place in Washington state for over  
21 ninety years. From 1912 until 2006, citizens exercising their  
22 political free speech rights by affixing their names, signatures, and  
23 home addresses on ballot measure petitions in Washington were protected  
24 and every secretary of state until recent times protected citizens'  
25 privacy. In 1973, the secretary of state was sued by a state senator  
26 for refusing to turn over the names, signatures, and home addresses of  
27 citizens who signed petitions to cap politicians' pay. The secretary  
28 of state in that case made clear the office's longstanding practice,  
29 supported by attorney general opinions issued in 1938 and 1956, of not  
30 releasing such information saying it had long been their office's  
31 policy to not release the names of citizens signing initiative or  
32 referendum petitions, that the release of such information had no legal  
33 value, that the release of such information could have deep political  
34 ramifications to those individuals who signed the petitions, and that  
35 he or she would not violate the public trust by releasing such  
36 information. The attorney general's office further made clear that the  
37 public records act, Initiative 276 which passed the previous year,  
38 required the attorney general to redact that personal information,

1 stating that section 26, chapter 1, Laws of 1973 (Initiative 276)  
2 provided that to the extent required to prevent an unreasonable  
3 invasion of personal privacy, an agency shall delete identifying  
4 details when it makes available or publishes any public record.

5 (3) The legislature recognizes that although current law provides  
6 for the limited exposure of petition signatures to public scrutiny  
7 during the signature counting and verification process, it restricts  
8 that exposure to the least intrusive extent possible in order to  
9 maintain the maximum extent of privacy possible for the individual  
10 providing his or her name, signature, and home address on the petition.

11 (4) The legislature intends by this act to reiterate and reaffirm  
12 that the state of Washington lacks a compelling interest sufficient to  
13 justify the public disclosure of information in initiative and  
14 referendum petitions, that the release of the names and addresses of  
15 persons who sign such petitions constitutes an unreasonable burden on  
16 an individual's rights to free speech, to privacy, and to peaceably  
17 assemble and petition the government for redress of grievances, that if  
18 the law were to be applied in a manner to require the public disclosure  
19 of the names and addresses of petition signers the result would  
20 significantly inhibit communication with voters about proposed  
21 political change such an application is not warranted by other state  
22 interests, such as administrative efficiency, fraud detection, and  
23 informing voters, alleged to justify the release of such information,  
24 and would result in compelled political speech which is politically and  
25 legally unacceptable.

26 (5) The legislature does not agree with or accept the secretary of  
27 state's or attorney general's understanding and position on the law or  
28 legislative intent in *Doe #1, John, et al. v. Reed, Wa Sec. of State,*  
29 *et al*, 09A356-10-19-09, and reasserts and clarifies that the law of  
30 this state, including the Washington public records act, RCW 42.56.001,  
31 et seq., was never intended to and does not require or authorize the  
32 release of initiative and referendum petitions containing the names and  
33 addresses of Washington residents, rather it is intended and designed  
34 to protect the privacy of citizens who sign initiative and referendum  
35 petitions and to prevent the release of such information. To prevent  
36 any potential miscarriages of the law, the legislature finds it is  
37 necessary to amend chapter 42.56 RCW. This amendment is intended to be  
38 curative in nature only.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 42.56 RCW  
2 to read as follows:

3        Nothing in this chapter or other provision of law requires or  
4 authorizes the release of the name, signature, and/or address of any  
5 individual who signs an initiative or referendum petition. Signature  
6 petitions for initiatives or referenda are exempt from public  
7 inspection and copying.

8        **Sec. 4.**    RCW 29A.72.230 and 2003 c 111 s 1823 are each amended to  
9 read as follows:

10        (1) The legislature recognizes there is a legitimate reason under  
11 this section for limited public inspection of an initiative or  
12 referendum petition by persons representing the advocates and opponents  
13 of the proposed measure as observers to ensure governmental officials  
14 who are verifying and canvassing the names of the legal voters on a  
15 petition are properly examining the signatures in order to determine  
16 that petitions with a sufficient number of valid signatures move  
17 forward and that petitions with an insufficient number of valid  
18 signatures do not move forward, so long as such observers make no  
19 record of the names, addresses, or other information on the petitions  
20 or related records during the verification process, except upon the  
21 order of the superior court of Thurston county. Such an inspection is  
22 exclusively for the limited purpose of making sure governmental  
23 officials are properly doing their jobs and does not allow one private  
24 citizen to invade the privacy of another private citizen.

25        (2) Upon the filing of an initiative or referendum petition, the  
26 secretary of state shall proceed to verify and canvass the names of the  
27 legal voters on the petition. The verification and canvass of  
28 signatures on the petition may be observed by persons representing the  
29 advocates and opponents of the proposed measure so long as they make no  
30 record of the names, addresses, or other information on the petitions  
31 or related records during the verification process except upon the  
32 order of the superior court of Thurston county. The secretary of state  
33 may limit the number of observers to not less than two on each side, if  
34 in his or her opinion, a greater number would cause undue delay or  
35 disruption of the verification process. Any such limitation shall  
36 apply equally to both sides. The secretary of state may use any  
37 statistical sampling techniques for this verification and canvass which

1 have been adopted by rule as provided by chapter 34.05 RCW. No  
2 petition will be rejected on the basis of any statistical method em-  
3 ployed, and no petition will be accepted on the basis of any  
4 statistical method employed if such method indicates that the petition  
5 contains fewer than the requisite number of signatures of legal voters.  
6 If the secretary of state finds the same name signed to more than one  
7 petition, he or she shall reject all but the first such valid  
8 signature. For an initiative to the legislature, the secretary of  
9 state shall transmit a certified copy of the proposed measure to the  
10 legislature at the opening of its session and, as soon as the  
11 signatures on the petition have been verified and canvassed, the  
12 secretary of state shall send to the legislature a certificate of the  
13 facts relating to the filing, verification, and canvass of the  
14 petition.

15 (3) Signature petitions are exempt from public inspection and  
16 copying in accordance with section 3 of this act.

17 NEW SECTION. **Sec. 5.** The provisions of this act control in the  
18 event of a conflict between the provisions of this section and other  
19 state or local laws and regulations.

20 NEW SECTION. **Sec. 6.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

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