No. _____

IN THE
Supreme Court of the United States

JOHN DOES 1, 2, 4, AND 5,
Petitioners,

v.

SEATTLE POLICE DEPARTMENT
AND SAM SUEOKA,
Respondents.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE
SUPREME COURT OF WASHINGTON

Petition for Writ of *Certiorari*

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i. QUESTIONS PRESENTED

This Court has repeatedly held that the First Amendment protects an individual's right to engage in anonymous political expression. *See, e.g.*, *Talley v. California*, 362 U. S. 60, 64 (1960); *Watchtower Bible & Tract Soc. of N. Y., Inc.* v. *Village of Stratton*, 536 U. S. 150, 166–167 (2002). Nonetheless, the Washington State Supreme Court's holding in *Does 1, 2, 4, & 5 v. Seattle Police Dep't*, 563 P.3d 1037 (Wash., 2025) allows the widespread dissemination of an investigation targeting the circumstances of the lawful attendance of four off-duty Seattle Police Officers at a public rally in Washington D.C. on January 6, 2021. The questions presented are:

(1) Whether compelled public disclosure of politically sensitive information, including compelled statements regarding political beliefs, motivations, and associations, in response to public records requests, violates the First Amendment constitutional right to anonymous political expression and association.

(2) Whether Petitioners' First Amendment interest to proceed in litigation anonymously justifies their use of pseudonyms in a litigation seeking to preserve that very interest in anonymity.

ii. PARTIES TO THE PROCEEDING

Petitioners were respondents below before the Washington State Supreme Court. They are four current and former Seattle Police Officers who attended President Donald Trump's public political rally ("Rally") on January 6, 2021, in Washington, D.C., but were found, following a police department investigation, not to have engaged in unlawful or unprofessional conduct. After being notified of a number of public records requests targeting their attendance at the Rally, Petitioners brought suit against the City of Seattle seeking declaratory and injunctive relief prohibiting public disclosure of unredacted investigatory records. These records include, among other records, transcripts of interviews in which the applicants were compelled to participate, under threat of termination, and were required to disclose their political beliefs, affiliations, reasons for attending the Rally, and their mental impressions as to the content of the Rally.

Respondents were petitioners below. They are the Seattle Police Department and Sam Sueoka ("Sueoka"), one of many private citizens who submitted records requests pursuant to the Washington State Public Records Act ("PRA"), Chapter 42.56 RCW, seeking disclosure of the investigatory records pertaining to police officers who participated in any of the events of January 6, 2021. During litigation on this issue, Sueoka repeatedly moved to change the case title and bar the use of pseudonyms.

iii. RELATED PROCEEDINGS

King County Superior Court (State of Washington)

JOHN DOES V. SEATTLE POLICE DEP'T ET AL. (21-2-02468-4 SEA) (denying preliminary injunction)

Washington State Court of Appeals (Div. I) (83700-1) (reversing denial of preliminary injunction)

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1. PETITION FOR WRIT OF *CERTIORARI*

For nearly a century, the rights afforded by the First Amendment have been protected against intrusion by the States as an "inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). During this time, this Court has repeatedly recognized that encompassed within this liberty interest is the right of individuals to privacy in their political beliefs and associations. *Watchtower Bible*, 536 U.S. at 166 ("…there are a significant number of persons who support causes anonymously… anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible"). *See, e.g.*, *Talley*, 362 U.S. at 64 (holding First Amendment protects the anonymous distribution of unsigned handbills); *McIntyre*, 514 U.S. at 342 (declaring unconstitutional an Ohio statute prohibiting the distribution of anonymous campaign literature); *Nat'l Ass'n for Advancement of Colored People*, 357 U.S. at 462 (1958) (privacy in group association may be indispensable to preservation of freedom of association). This privacy interest "yield[s] only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91–92 (1982) (quoting *Sweezy v. New*

Hampshire, 354 U.S. 234, 265 (1957) (quoting *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963).

And while all fifty states have enacted public disclosure laws[1] designed to enhance the democratic process by ensuring governmental transparency, these statutes must give way to constitutionally protected anonymous expression and association. *Doe v. Reed*, 561 U.S. 186, 232 (2010) (Thomas, J., dissenting) ("This Court has long recognized the 'vital relationship between' political association 'and privacy in one's associations,' and held that '[t]he Constitution protects against the compelled disclosure of political associations and beliefs.'" (alteration in original) (citation omitted). To be sure, courts should heed the legislative mandate to enforce public disclosure laws thereby aiding the desired level of governmental accountability. However, courts should not endorse public disclosure statutes as a tool to invade the privacy of public employees and allow requestors to deliberately pry into their political and personal views. But that is exactly what occurred here.

In the aftermath of events of January 6th, four Seattle Police Officers were ordered by their public employer to sit for interviews and forced to answer questions about their motivations for attending the Rally and share their impressions and reactions to the

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[1] *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 791 (3d Cir. 1994) ("The federal Freedom of Information Act ("FOIA") is codified at 5 U.S.C. § 552. All fifty states have some form of freedom of information legislation.").

Rally, along with their political affiliations under threat of termination. No assertions of misconduct precipitated this investigation. Instead, the investigation was entirely premised on these Officers' attendance at President Donald Trump's political rally in Washington, D.C. While the investigation was pending, the Seattle Police Department ("SPD") and the Office of Police Accountability ("OPA") notified them of the receipt of four requests pursuant to the Washington Public Records Act, RCW 42.56 *et seq.* ("PRA"), and SPD's impending intent to disclose records absent an injunction. Even after these Officers were cleared of any wrongdoing following an administrative investigation into their whereabouts on January 6, 2021, the Washington Supreme Court concluded these Officers lacked any protected right in anonymous attendance at the Rally because "they took [no] measures to attend the rally anonymously or to exercise their political beliefs in private." *Does 1, 2, 4, & 5*, 563 P.3d at 1053.

However, Petitioners' argument went far beyond mere physical attendance at the Rally, and, instead, raised concerns over disclosing these Officers' identities while being paired with the inquiries into their motivations, viewpoints, and associations. As two Justices of this Court have noted previously, the Washington Supreme Court "sidestepped this argument." *John Doe, et al. v. Seattle Police Department, et al.*, 605 U. S. ____ at *2 (June 4, 2025). Indeed, the scope and nature of this investigation—which was entirely spurred by Petitioners' attendance at the Rally—focused on more than physical attendance, it focused on the fundamental core of

political speech. And, the results of this investigation were not only compelled by a public employer, but will be, absent intervention from this Court, widely disseminated to a population which includes many who wish to do these Officers harm.

The Washington Court's reasoning that "these officers were not prohibited from attending a political rally" is simply inconsistent with basic Constitutional First Amendment precedent and would violate their federal constitutional right to anonymity in political belief and association. *See, e.g.*, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton,* 536 U.S. 150 (2002), 536 U.S. 150; *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334 (1995); *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976); *Gibson*, 372 U.S. 539; *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); *Talley v. California,* 362 U.S. 60 (1960), 362 U.S. 60; *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Watkins v. United States,* 354 U.S. 178, 197 (1957); *Sweezy*, 354 U.S. 234. That reasoning, likewise, ignores that this widespread disclosure would expose to the public not only records evidencing the Officers' attendance at the Rally, but also the transcripts of interviews in which they were compelled to "articulate [their] political views," discuss whether they were "affiliated with any political groups," and describe "[their] impressions of, and reactions to, the content of the Rally."). *Doe 1 v. Seattle Police Department*, 531 P.3d 821, 837 (Wash. App. Div. 1, 2023). Because the requested records implicate the Petitioners' personal political views and their affiliations, if any, with

political organizations, both the Petitioners' attendance at the January 6th Rally and their compelled statements to investigators implicate the First Amendment protections. Exposure by the government of this information, even if done pursuant to the PRA, would impinge Petitioners' constitutional right to anonymity in their political beliefs and associations.

And, having found no Conditionally protected interest, the Washington Supreme Court also held that these Officers had not shown a sufficient privacy interest that could be invaded to enable them to preserve that interest by litigating *in pseudonym*. *Id.* at 1055. Litigating this case pseudonymously is essential to having its merits meaningfully heard. Because of the obvious need of these Officers to proceed *in pseudonym* to vindicate their First Amendment rights, the same reasons warranting review of the First Amendment right to anonymity in political belief and association equally justify the need to review the pseudonym issue. *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) ("Suit may be brought under a pseudonym, as so frequently has been done"); *see also, Doe 1*, 531 P.3d at 858–59 ("First Amendment guarantees are implicated when a court decides to restrict public scrutiny of judicial proceedings.") (citing *Thomas Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981); *Jane Roe II v. Aware Woman Ctr. for Choice, Inc.*, 253 F.3d 678, 688 (11th Cir. 2001)).

OPINIONS BELOW

The opinion of the Supreme Court of Washington is reported at *Does 1, 2, 4, & 5 v. Seattle Police Dep't*, 563 P.3d 1037 (Wash., 2025) (hereafter, "*Does 1, 2, 4, & 5*"). That decision reversed the unanimous opinion of the Washington Court of Appeals, Division One, reported at *Doe 1 v. Seattle Police Department*, 531 P.3d 821, 837 (Wash. App. Div. 1, 2023). The Washington Supreme Court denied a petition for rehearing on April 9, 2025. Those opinions and orders, together with the orders of the trial court, are reproduced in the Appendix. Likewise, the Order of King County Superior Court requiring Petitioners to reveal their identities while seeking review by this Court (and the related motions) are reproduced in the Appendix. The Washington State Court of Appeals' denial of the request to review that order is reproduced in the Appendix. Finally, the original application for a stay of the mandate, as well as the denial of that application, is also reproduced in the Appendix.

JURISDICTION

The judgment of the Washington State Supreme Court was entered on February 13, 2025. *See* App. C. Reconsideration was denied on April 9, 2025. *See* App. J. This Court has jurisdiction under 28 U.S.C.A. § 1257 to review a final decision of the Washington Supreme Court because this appeal involves important federal constitutional questions which intersect state freedom of information laws.

Although this matter arises out of state enacted public records legislation, numerous Washington State appellate decisions, including those from which review is sought here, recognize that PRA's legislatively created "other statutes" exemption, found in RCW 42.56.070(1), allows for the withholding of public records when disclosure would otherwise impair an individual's Constitutional right. *Does 1, 2, 4, & 5*, 563 P.3d at 1053 ("Consistent with our prior decisions, we agree the catchall "other statutes" provision allows a person to object to disclosure of public records based on constitutional principles."). *See*, *e.g., Yakima County v. Yakima Herald-Republic*, 246 P.3d 768 (Wash., 2011) (addressing the argument that provisions of the United States Constitution qualify as "other statutes"); *Freedom Found. v. Gregoire*, 310 P.3d 1252, 1258 (Wash., 2013) (because "the constitution supersedes contrary statutory laws, even those enacted by initiative," "the PRA must give way to constitutional mandates"); *Washington Fed'n of State Employees v. State*, 534 P.3d 320, 333 (Wash., 2023) (observing "other statutes" exemption incorporates substantive due process rights). Thus, the application of Washington's PRA statute involves a question of federal law.

And, although Petitioners seek review of a denial of a preliminary injunction and an order disallowing pseudonym litigation, both orders operate as an effective determination of the litigation because (1) the subject records will be disclosed absent a preliminary injunction prior to final adjudication of the merits thereby frustrating any appeal, and (2) the

trial court has ordered that Petitioners proceed in their own names in face of a pending dismissal.

The Supreme Court of Washington's decision reversing the preliminary injunction is a final judgment for purposes of Supreme Court jurisdiction because it involved a right "separable from, and collateral to the merits", in that it will "deprive them of rights protected by the First Amendment". *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977). Where, as here, a State Supreme Court's decision on a preliminary injunction "finally determined the merits of applicants' claim that the [reversal of an] injunction would deprive them of rights protected by the First Amendment" then "[t]hat order is a final judgment for purposes of [Supreme Court] jurisdiction". *Id.* Indeed, because the Supreme Court of Washington's determination on the injunction would "finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated", *i.e.,* whether the Officers' First Amendment rights will be violated, this issue is ripe for review pursuant to 28 USC § 1257 (a). *Local No. 438 Const. & Gen. Laborers' Union, AFL-CIO v. Curry*, 371 U.S. 542, 549 (1963).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, that

"Congress shall make no law…abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Supremacy Clause to the United States Constitution provides (U.S. Const. art. VI, cl. 2):

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

RCW 42.56.070(1) is reproduced in the appendix. App. M provides, in relevant part, that Washington State public agencies "shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records." As noted above, the Washington Supreme Court has construed the "other statutes" language to incorporate the Federal Constitution as an exemption under the Washington Public Records Act.

STATEMENT

Following the January 6, 2021 Capital Riot, the Seattle Police Department ("SPD") investigated four of its Police Officers ("Officers") based solely on their lawful off-duty attendance at an outdoor political event. During compulsory interviews, coerced by threat of termination, these Officers were grilled about their political beliefs and associations, including whether they attended the Rally "to articulate [their] political views," whether they were "affiliated with any political groups," and "[their] impressions of, and reactions to, the content of the [r]ally." Following its investigation, The Office of Police Accountability ("OPA") did not sustain a single allegation against any of them. *See* App. 294a-301a.

Even after the Officers were cleared[2] of any wrongdoing, including having any involvement in the ensuing riot, their identities continued to be targeted by members of the public at large. The mandatory reporting of off-duty political activities and subsequent disclosure to those seeking to demonize them for partaking in a rally viewed as unpopular by the majority of the people these Officers serve, offends bedrock principles of First Amendment jurisprudence.

Such mandatory disclosure imposes an obvious chilling effect on lawful political expression and the

[2] The OPA Summary included specific findings of "Unfounded" as to three of the Respondent Officers, and "Inconclusive" with respect to one other Respondent Officer. *See* App. 294a-301a.

City of Seattle lacks a compelling governmental interest in facilitating disclosure of the Petitioners' identifying information. Because the First Amendment would otherwise be violated by this intended widespread disclosure, a Constitutional exception grounded in the "other statutes" phrasing of the Washington Public Records Act (RCW 42.56 *et. seq.*) applies based on this Court's longstanding First Amendment jurisprudence concerning anonymous political expression. *See,* e.g.*, Watchtower Bible*, 536 U.S. 150; *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334; *Talley*, 362 U.S. 60.

A. Relevant Facts.

This case arises from the imminent release of records relating to Seattle's OPA investigations and the identities of officers in response to a number of public records requests. Petitioners are four unnamed Seattle Police Officers who attended President Donald Trump's political rally and speech in Washington, D.C. on January 6, 2021. *See* App. 66a. Unfortunately, some of the attendees at that Rally went on to commit crimes at the United States Capitol ("Capital Riot"). However, Petitioners were investigated, and no wrongdoing was found. *Id.* In the aftermath of January 6th, the Seattle Police Department ("SPD") directed any of its officers who attended the Rally to self-report and required them to submit to an investigation by the OPA to determine if they participated in the Capitol Riot or engaged in other criminal acts or misconduct. *Id.* The four Petitioners self-reported their presence at the January 6, 2021 Rally. Within a few weeks, each of

the four Petitioners received a complaint from OPA alleging a possible violation of the law and SPD policies by "trespassing on Federal property and/or participating in the planning and/or forced illegal entry of the U.S. Capitol Building that day." *Id.*

As part of the investigation, SPD ordered each Petitioner to submit to interviews. At the outset of the interview, each Petitioner was informed by the OPA examiner of an SPD directive to answer all questions asked, truthfully and completely, and that failure to do so could result in discipline up to and including termination. *Id.* Understandably, SPD held significant concerns about any officer's presence at or near the Capitol Building. Despite these legitimate concerns over SPD officer involvement in the Capitol Riot, the investigation focused on more than just the Petitioners' whereabouts. OPA investigators explored the Petitioners' motivations for attending the Rally, their impressions and reactions to the Rally, as well as their political affiliations. *See* App. 90a-91a, FN 11. Importantly, in some cases, Petitioners were asked, directly, to explain away how their lawful attendance at this Rally, in and of itself, did not amount to unprofessional conduct. *Id.* Because Petitioners were ordered to answer all these personal questions, they did so truthfully and completely. *Id.* In addition to the Government disclosing the identities of Petitioners, the records themselves demonstrate more than just mere attendance at a political rally.

Several members of the public made records requests to the SPD pursuant to the PRA, Chapter 42.56 RCW, seeking disclosure of the investigatory

records pertaining to police officers who participated in the events of the January 6, 2021 Rally. *See* App. 66a-67a. The Officers anonymously sued the SPD, OPA, and requestors, seeking a preliminary injunction to prevent the release of their identities within those public records. *Id.*

B. Procedural History.

Petitioners filed their complaint in King County Superior Court on February 23, 2021, and moved for a temporary restraining order the same day. *See* App. 67a. Petitioners also concurrently filed a motion for permission to proceed *in pseudonym* as required by Washington State General Rule 15 and King County Local Civil Rule 10, arguing the circumstances of this case required anonymity.[3] *See* App. I. On March 9, 2021, the King County Superior Court Chief Civil Judge granted Petitioners' motion for permission to proceed *in pseudonym*, finding in pertinent part that Petitioners had made the requisite showing of need to proceed using pseudonyms because the very nature of Petitioners' claims centered on Petitioners' efforts to prevent the

[3] The language relating to the names of parties in Civil Rule 10(a) and Federal Rule of Civil Procedure 10(a) is identical. Although Washington applies its own test for pseudonym litigation in *Seattle Times Co. v. Ishikawa*, 640 P.2d 716 (1982), Washington courts are permitted to rely on federal authority, while also addressing the *Ishikawa* factors. *See Rufer v. Abbott Labs*, 114 P.3d 1182 (2005) (affirming sealing because the trial court essentially applied *Ishikawa* by allowing all parties to assert their respective interests, weighing the parties' interests, and applying the federal "compelling interest" standard in making its determination).

disclosure of their identities. *Id*. At the ensuing preliminary injunction hearing, however, the assigned trial judge denied Petitioners' request for a preliminary injunction. *See* App. H. That denial was ultimately appealed to the Washington Supreme Court and remanded back to the trial court to consider the results of the then-recently released OPA investigation results. *See* App. G.

Following remand, Petitioners renewed their motion for a preliminary injunction arguing that the rubric of the PRA's statutory privacy exemptions were met and, notwithstanding, the compelled disclosure of off-duty lawful political activities would impose a chilling effect on protected First Amendment speech. In an effort to make an end run around the merits, Sueoka filed a series of cross-motions seeking to require disclosure of Petitioners' identities, renewing his previously denied motions seeking to require the Officers' names in the case caption. *See* App. 140a-143a.

The Trial Court ultimately concluded that a privacy interest was not implicated[4] in attending a public rally because Petitioners admitted having voluntarily attended the Rally. *See* App. 242a. Its findings overlooked that Petitioners were investigated for having participated in the Capitol

[4] The trial court denied the motion to change the case caption noting, requiring Petitioners "to use their real names in court filings would effectively prevent them from seeking any relief…Sueoka's request, if granted, would effectively prevent [Petitioners] from obtaining the relief that they seek." *See* App. 237a-238a.

Riot, and were specifically questioned as to their political beliefs, motivations for attending the Rally, and their impressions resulting from same. Thus, it's unclear why the trial court concluded, without so much as conducting in camera review, that the records did not concern Petitioners' political beliefs. At no point in this litigation has the City of Seattle disputed Petitioners' testimony that they were indeed questioned about their political beliefs, motivations, and impressions in connection with the Rally.

The Washington State Court of Appeals, Division I, unanimously reversed the Trial Court's denial of Petitioners' preliminary injunction and right to proceed *in pseudonym*, recognizing the right to exercise First Amendment rights "anonymously while in public." *Doe 1*, 531 P.3d 821. In holding that the First Amendment prohibited the widespread dissemination of the Officers' identifying information, Division I of the Washington State Court of Appeals reasoned that, because these requests constituted "compel[ed] disclosure of an individual's political beliefs and associations," disclosure could only occur if the government could "demonstrat[e] a compelling state interest with sufficient relation to the information sought to be disclosed." *Id.* at 846.

The Court of Appeals both recognized that the PRA's "other statutes provision" in RCW 42.56.070(1) contemplated a "catch all" exemption based on Constitutional considerations, and that the state injunction standard was satisfied,

> …[g]iven the State's paramount

> interest in affirming the federal constitutional rights of its citizens, disclosure that would impinge the Doe Officers' First Amendment rights would clearly not be in the public interest and because the Does' constitutional rights would be impinged by disclosure of the unredacted records, such disclosure would of necessity substantially and irreparably damage the Does.

Id. at 855 (internal quotations omitted).

However, eighteen months later, the Washington State Supreme Court reversed the Court of Appeals, unanimously holding, in spite of well-established United States Supreme Court decisional authority, that there was no such right to remain anonymous in public and that the Petitioners' need to proceed *in pseudonym* was unnecessary to vindicate that non-existent right. *Does 1, 2, 4, & 5,* 563 P.3d 1037.

The Officers filed a motion for reconsideration with the Washington Supreme Court, which was denied on April 9, 2025, and this matter was remanded back to the trial court. *See* App. J. On June 18, 2025, the trial court entered an order requiring Petitioners to refile their lawsuit under their true names within ten days. The Petitioners' request to stay the order was denied. *See* App. B. On emergency appeal, the Washington State Court of Appeals, Division I, also declined to stay the trial court's order,

making its ruling on June 23, 2025. *See* App. A. Pursuant to Rule 23, Petitioners sought a stay with this Court pending its review of this petition.

C. Legal Basis.

1. Petitioners have a first amendment right to anonymous political expression and association.

This Court has recognized that our government is "built on the premise that every citizen shall have the right to engage in political expression and association," a right enshrined by the First Amendment. *Sweezy*, 354 U.S. 234, 266. "[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the liberty assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). Additionally, there is a right of privacy against government intrusion that is implicit in the First Amendment, which protects the right of individuals to maintain their privacy in their political expression and association. *Sweezy*, 354 U.S. at 266 ("thought and action are presumptively immune from inquisition by political authority."). This right may be impinged only on the basis of a subordinating state interest that is compelling. *Gitlow*, 268 U.S. 652.

Petitioners face the public production of records by a government agency relating to their constitutionally protected political beliefs and associations, thereby risking a violation of their First

Amendment right to privacy. The analysis of the issues presented relies on the holdings of this Court, establishing that the First Amendment confers a right of privacy in an individual's political beliefs and associations.

This Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S. 1 (citing *Gibson*, 372 U.S. 539); *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415 (1963); *Bates*, 361 U.S. 516; *Shelton*, 364 U.S. 479; *Nat'l Ass'n for Advancement of Colored People*, 357 U.S. 449.

For example, in *Talley v. California*, 362 U.S. 60, this Court embraced the tradition of anonymity in the advocacy of political causes. In that case, this Court considered whether a Los Angeles City ordinance violated the First Amendment by requiring the names and addresses of anyone distributing and compiling handbills to appear on the cover. *Id*. at 61. In finding the right to anonymously distribute handbills, the court said:

> There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'

Id. at 64 (quoting *Lovell v. City of Griffin*, 303 U.S. 452 (1938).

The *Talley* court also referenced *NAACP v. Alabama*, noting, "there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified" because "identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Id.* at 65. According to *Talley,* the ordinance at issue was subject to the same infirmity.

In this case, Petitioners maintained a higher level of anonymity than those distributing handbills in *Talley*. They merely attended a public rally amongst thousands of attendees. In contrast, the petitioners in *Talley* personally approached individuals to distribute pamphlets hundreds or even thousands of times. Therefore, Petitioners in this case should also be able to maintain their First Amendment right of anonymity. Furthermore, this Court protected the anonymity of religious proselytizers going door to door in *Watchtower Bible*, 536 U.S. 150. In that case, Jehovah's Witnesses challenged a village ordinance which required them to register with the mayor and receive a permit before door-to-door canvassing. *Id.* at 153. In explaining what this court called the "pernicious" effects of such a permit requirement, it explained "there are a significant number of persons who support causes anonymously. 'The decision in favor of anonymity may be motivated by fear of economic or official

retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.'" *Id.* at 166 (*quoting McIntyre*, 514 U.S., at 341-42). This Court took issue with the permit requirement because it would necessarily result in a surrender of that anonymity. *Id.*

Watchtower also makes a clear distinction that a "conspicuous public act," like going door-to-door, does not extinguish one's First Amendment right to remain anonymous in public. Again, by going door-to-door in a small community, the proselytizers in *Watchtower* were far less anonymous than the Petitioners here. Furthermore, even though the proselytizing activity was allowed, this Court still took issue with the permit requirement because of the effect it could have on speech. Similarly in this case, it is irrelevant whether the government allowed the Petitioners to attend the rally, because the government disclosure pursuant to the PRA will chill the activity. It is not simply a "heavy-handed frontal attack" against which First Amendment freedoms are protected, but "also from being stifled by more subtle governmental interference." *Bates*, 361 U.S. at 523. The government need not take direct action to unlawfully impinge an individual's constitutional privacy right. *NAACP*, 357 U.S. at 461. Rather, even if it is unintentional, infringement on such rights may inevitably follow from varied forms of governmental action, including action that "may appear to be wholly unrelated to protected liberties." *Id.*

Also instructive here is *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021). In that case, this Court considered whether a California regulation requiring tax exempt charities to disclose names and addresses of their major donors to the Attorney General's Office violated First Amendment association rights. *Id*. at 600. This Court analyzed this issue under an "exacting scrutiny" standard, which requires a substantial relation between the government's disclosure requirement and a sufficiently important government interest. *Id*. at 607. "To withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id*. "Such scrutiny…is appropriate given the 'deterrent effect on the exercise of First Amendment rights' that arises as an 'inevitable result of the government's conduct requiring disclosure.'" *Id.* (quoting *Buckley*, 424 U.S., at 65).

Under this standard, this Court found that the Attorney General's disclosure requirement imposed a widespread burden on donor associational rights, and that the burden could not be justified on the grounds that it was "narrowly tailored" to investigating charitable wrongdoing or for administrative convenience. *Id*. at 618. This Court reasoned that, when it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution, and compelled disclosure regimes were no exception. *Id*. at 610.

Similarly, in *Shelton v. Tucker*, this Court considered an Arkansas statute that required teachers to disclose every organization to which they belonged or contributed. 364 U.S. at 480, 81 S.Ct. 247. Acknowledging the importance of "the right of a State to investigate the competence and fitness of those whom it hires to teach in its schools," this Court distinguished prior decisions in which it had found "no substantially relevant correlation between the governmental interest asserted and the State's effort to compel disclosure." *Id*. at 485. Nevertheless, this Court held that the Arkansas statute was invalid because even a "legitimate and substantial" governmental interest "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Id*. at 488.

Shelton stands for the proposition that a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored. This requirement makes sense. Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—"[b]ecause First Amendment freedoms need breathing space to survive." *Button*, 371 U.S., at 433.

In analyzing this case under the same principles as *Bonta* and *Shelton*, exacting scrutiny fails. The same result should apply to privacy rights implicated by a PRA request directed specifically at one's identity concerning public political participation. Here, Petitioners were given the choice between self-incrimination and losing their

livelihoods. Given this choice, it is likely that those willing to engage in such political expression and association would decline to do so, thereby chilling their First Amendment activity. Even if there is an important government interest in obtaining this information that the Officers willingly supplied, it does not follow that the government can then go and supply that information in response to the public records request without infringing on their First Amendment rights. Understandably, the Petitioners would have significant and well-founded concerns about their privacy and safety if their identities were to be disclosed pursuant to the PRA. The chilling effect this would have on First Amendment activity is obvious.

However, as noted by the Washington Court of Appeals panel, much of this Court's jurisprudence establishing a constitutional privacy right to anonymity in political belief and association, which is grounded in the First Amendment to the United States Constitution, predates the Court's modern formulation of the strict scrutiny standard applicable to governmental action impinging such rights. *Doe 1*, 531 P.3d at 851–53. Because speech is an essential mechanism for democracy, the City's action in restricting speech should be evaluated under a strict scrutiny standard. As aptly stated by Judge Dewyer of the Washington State Court of Appeals:

> The Supreme Court's modern formulation of the strict scrutiny standard, as pertinent here, is articulated in *Citizens United v.*

Federal Election Commission, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), in which the Court pronounced:

> Speech is an essential mechanism for democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.
>
> ...
>
> For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest."

Citizens United, 558 U.S. at 339-40 (citation omitted) (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007)). Thus, the Supreme Court's more

recent formulations of the strict scrutiny standard require that government restrictions on protected speech be "narrowly tailored" to achieving the government's compelling interest, a mandate that was not explicitly articulated in the Court's previous jurisprudence establishing a First Amendment privacy right in political belief and association. See, *e.g.*, *Brown*, 459 U.S. 87; *Gibson*, 372 U.S. 539; *Bates*, 361 U.S. 516; *Shelton*, 364 U.S. 479; *NAACP*, 357 U.S. 449.

The Citizens United explication of the modern formulation is grounded in the Court's historical jurisprudence and finds its genesis in the Court's statement in *McIntyre* that "[w]hen a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest." 514 U.S. at 347.

As discussed above, our Supreme Court's decisional authority and the policies animating the PRA lead to the inexorable conclusion that, here, the government has no

> compelling interest in disclosure of the Does' identities in the requested records. Rather, the government's interest in the disclosure of public records is to uphold the PRA's purpose of enabling the public to ensure "that its public officials are honest and impartial in the conduct of their public offices." Cowles Publ'g Co., 109 Wn.2d at 719. Further evidencing the absence of a compelling state interest in total disclosure of all records, our legislature has enacted a plethora of exceptions to the PRA's disclosure mandate—in fact, as of March 2022, there were 632 such legislatively enacted exceptions. Without question, this proliferation of exceptions to the PRA's disclosure mandate renders implausible any argument that a compelling state interest in disclosure of the Does' identities exists here. Rather, the government's interest in disclosure of the requested records inheres only in making public a redacted version of those records.

Id.

Thus, this Court should grant *certiorari* to determine whether the Government's disclosure, pursuant to the PRA, of the Petitioners' identities in

the requested records, which implicate their political beliefs and associations, is proper.

2. The Washington Supreme Court overlooked First Amendment implications beyond mere attendance.

The OPA investigation was not limited to whether the Petitioners attended the January 6, 2021 Rally at the Capitol. Petitioners were subject to further inquiries about their political beliefs and associations, as well as their reasons for attending the Rally. Some questions included:

- Why did they attend the January 6th Rally?
- Who did they plan to attend the Rally with?
- Were they at the January 6th Rally to articulate their political views?
- Were they showing support for a political group by attending the January 6th Rally?
- Were they affiliated with any political groups?
- What were their impressions of, and reactions to, the content of the January 6th Rally?
- Why was their mere attendance at the January 6th Rally professional conduct?

See App. 90a–91a, FN 11.

These very private questions strike at the core of political speech that the Government is now intending to disclose publicly. The Washington State Supreme Court's decision does not address the fact of the further imposition posed by the Government here was beyond mere attendance—these questions were personal and knowing that these would be disclosed in tandem with their identities would simply further chill them.

The Washington State Supreme Court gave no credence to the principle that the scope of the State's inquiry cannot be unlimited. For example, in *Shelton*, where this Court addressed the constitutionality of a statute requiring public school teachers to disclose all organizations with which they had been associated, this Court recognized the legitimate interest in investigating the fitness and competency of teachers. *Shelton*, 364 U.S. at 479. However, this Court found that this interference with associational freedom went far beyond what might be justified in the exercise of a legitimate inquiry.

Hereto, while the public is entitled to be informed concerning the workings of its government, and the SPD is entitled to investigate wrongdoing on the part of its officers, this entitlement cannot be unlimited and inflated into general power to invade the constitutional privacy rights of individuals. Core components of personal identity, such as political activities, are deeply private and not the proper subject of a public records request. Police officers are entitled to the same constitutional protections as all

other Americans, and do not forfeit those rights by merely attending a political rally.

Moreover, based on seminal First Amendment jurisprudence, the Washington State Court of Appeals, Division I, unanimously recognized the right to express one's First Amendment rights "anonymously while in public." *Doe 1*, 531 P.3d at 827. Based on the precedent cited above, there is a significant possibility that this Court will decide similarly to the Court of Appeals.

Furthermore, a majority of this Court will likely conclude that the decision below was erroneous because the Petitioners' position squarely aligns with both the majority and the dissent in *Bonta*. In the *Bonta* dissent, Justice Sotomayor's main disagreement with the majority was that it allowed regulated entities who wish to avoid their obligations the ability to do so by vaguely waving toward First Amendment privacy concerns. *Bonta*, 594 U.S. at 624 (Sotomayor, J., dissenting). The dissent reasoned that the majority opinion was discarding the requirement that plaintiffs must plead and prove that disclosure will likely expose them to objective harm, such as threats, harassment, or reprisals. *Id.* at 645 (citing *Reed*, 561 U.S. 232).

The Petitioners have already been the targets of such harassment. The core of this matter is that members of the greater Seattle Community do not believe that Petitioners are entitled to a First Amendment right to attend a political rally while off duty.

The opposing party has also publicly assailed Petitioners with insults, repeatedly claiming that the Rally attended was for fascists and white supremacists. They have attempted to paint guilt by association, wondering aloud on the purpose for Petitioners' attendance at the rally, obviously insinuating they are tied to right wing extremists.

National organizations have also targeted Petitioners. The National Lawyers Guild (NLG) and National Police Accountability Project (NPAP) filed Amici Briefs in the Washington State Supreme Court stating multiple falsehoods about the Petitioners, calling them white supremacists and claiming they have a propensity for racially motivated crimes. Neither Brief bothered to mention the results of the OPA investigation, which concluded that Petitioners did not participate in any insurrection or commit any crimes.

These Briefs, full of false and inflammatory allegations about the Petitioners, are available to anyone who wishes to access them. This alone is a reprisal as a result of lawfully exercising First Amendment rights.

Each Petitioner has testified that this entire experience has already chilled their First Amendment Rights and willingness to voice unpopular opinions. This is understandable: would anyone feel free to exercise their First Amendment rights knowing that their names would be plastered all over the Seattle Times?

Accordingly, the *Bonta* dissent standard, as well as the majority standard, is met here.

Likewise, this Court should review the Washington Supreme Court's disallowance of pseudonyms. Absent reversal of this bar to pseudonym usage, Petitioners' substantive rights will be extinguished by requiring vindication of those rights in their real names. Because the very injury litigated against is the disclosure of their identities in the requested records, barring them from litigating pseudonymously will in effect inflict the very injury they seek to prevent.

In sum, pursuant to the United States Supreme Court decisional authority, the City must demonstrate that disclosure of the unredacted requested records would further a compelling state interest and that such disclosure is narrowly tailored to achieve that interest. Here, no compelling governmental interest exists to justify disclosure of the unredacted records. For the same reasons as in *Talley*, *Watchtower*, *Shelton*, *Bonta*, and other precedents cited above, as well as the extensive reasoning based on First Amendment jurisprudence set out by the Washington Court of Appeals, Division I, there is a majority of this Court will conclude that the decision below to disclose Petitioners' identities was erroneous and deserving of review. Likewise, this Court should review the Washington Supreme Court's disallowance of pseudonyms. Absent reversal of this bar to pseudonym usage, Petitioners' substantive rights will be extinguished by requiring

vindication of those rights in their real names. Because the very injury litigated against is the disclosure of their identities in the requested records, barring them from litigating pseudonymously will in effect inflict the very injury they seek to prevent.

REASONS FOR GRANTING THE PETITION

This case involves important and novel issues surrounding the protections and contours of the First Amendment and will have far-reaching effects on the current political and social environment, especially because of the underlying subject matter—*i.e.*, the January 6th Rally and subsequent riot, and police officers' anonymous participation therein—and therefore merits review by this Court. These issues include the First Amendment right to anonymity in public as protesters, coerced divulgence and subsequent publication by the government of officers' political beliefs and motivations, and governmental publication of the identities of police officers who, while off-duty, participated in the January 6th Rally but were cleared of any wrongdoing. The Washington Supreme Court's ruling in this case will have a chilling effect on First Amendment rights, which underlines further why this Court should review this case.

Indeed, "[t]he mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference." *Watkins,* 354 U.S. 178. These Officers were forced, under threat of governmental punishment, to answer very private

questions about their political affiliations, beliefs, motivations, and other issues which strike at the core of political speech, and the Government not only compelled these citizens to answer truthfully, but now intends to disclose the collected answers, and their identities, publicly.

This Court has shown time and again that potential erosions of—or opportunities to more clearly define the contours of—the First Amendment and related constitutional protections have sufficient importance to grant *certiorari*. *See, e.g.*, *Wood v. Georgia,* 370 U.S. 375, 376 (1962) ("[w]e granted certiorari to consider the scope of the constitutional protection to be enjoyed by persons when the publication of their thoughts and opinions is alleged to be in conflict with the fair administration of justice"); *Witters v. Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 481 (1986) (cert. granted to decide whether First Amendment precluded state from extending assistance under state vocational assistance program to citizen who chose to study at a Christian college); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 552, (1975) ("Because of the First Amendment overtones, we granted certiorari"); *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 56 (1989) ("Resolution of this important issue of the possible limits the First Amendment…should not remain in doubt. Whichever way we were to decide on the merits, it would be intolerable to leave unanswered, under these circumstances, an important question...under the First Amendment").

Beyond the inherent importance of finally

deciding these important First Amendment issues, this Court should grant *certiorari* because of the prominent social importance. Increased political division and amplified vitriol from all corners of the political spectrum has put constitutional protections in the crosshairs, and rule of law may bend or give way to ordering what feels right with reference to political affiliations instead of to the Constitution of the United States and this Court's carefully crafted doctrine. It is of paramount importance that this Court take on this case, which deals squarely with some of the deepest roots of this social convention: President Donald Trump, the January 6th Riot, and police officer participation in politics. The convergence of these significant topics as the factual backdrop, combined with the importance and novel character of the First Amendment issues implicated in this case, further stress why this Court should grant *certiorari*.

CONCLUSION

For the foregoing reasons, the Petition for Writ of *Certiorari* should be granted.

Respectfully submitted.

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