No. 12-722

In the Supreme Court of the United States

INITIATIVE AND REFERENDUM INSTITUTE, ET AL., PETITIONERS

v.

UNITED STATES POSTAL SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a United States Postal Service regulation, 39 C.F.R. 231.1, that prohibits the collection of signatures for petitions, polls, or surveys on sidewalks that are within Postal Service property and that are physically distinguishable from public sidewalks, is consistent with the First Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 685 F.3d 1066. The opinion of the district court (Pet. App. 21a-47a) is reported at 741 F. Supp. 2d 27. A previous opinion of the court of appeals (Pet. App. 48a-83a) is reported at 417 F.3d 1299. Previous opinions of the district court (Pet. App. 84a-102a, 103a-123a) are reported at 297 F. Supp. 2d 143 and 116 F. Supp. 2d 65.

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2012. A petition for rehearing was denied on September 10, 2012 (Pet. App. 124a-125a). The petition for a writ of certiorari was filed on December 10, 2012 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 1998, the United States Postal Service amended its existing regulations to prohibit soliciting signatures for petitions, polls, or surveys on all Postal Service property. Petitioners brought a facial challenge to that prohibition. The district court granted summary judgment for the Postal Service, see Pet. App. 84a-102a, but the court of appeals reversed and remanded for further proceedings, see *id.* at 48a-83a. Following the court of appeals' decision, the Postal Service amended its regulation to prohibit only the collection of signatures (not their solicitation) on interior sidewalks (not perimeter sidewalks that are physically indistinguishable from public sidewalks). See 39 C.F.R. 232.1(a)(ii) and (h)(1). On remand, the district court held that the amended regulation does not violate the First Amendment, see Pet. App. 21a-47a, and the court of appeals affirmed, see *id.* at 1a-20a.

1. a. Before 1963, the Postal Service prohibited all forms of vending or financial solicitation on postal premises. See *United States* v. *Kokinda*, 497 U.S. 720, 731 (1990) (plurality opinion). Over the next 15 years, the Postal Service permitted various exceptions to that general rule for fundraising by national nonprofit, charitable, or philanthropic organizations. See *id.* at 731-732. In 1978, however, the Service concluded that a return to its "categorical ban on solicitation was necessary, because the 'Postal Service lacks the resources to enforce such regulation in the tens of thousands of post offices throughout the nation. In addition, such regulation would be, of necessity, so restrictive as to be tantamount to prohibition, and so complex as to be unadministrable.'" *Id.* at 732 (quoting 43 Fed. Reg. 38,824 (Aug. 31, 1978)); see 42 Fed.Reg. 63,911 (Dec. 21, 1977) (noting

the need to decrease "unnecessary, nonmission related administrative burdens on the Postal Service").

This Court addressed the Postal Service's ban on financial solicitation in *Kokinda*. In that case, volunteers for a national political committee "set up a table on the sidewalk near the entrance" of a post office "to solicit contributions, sell books and subscriptions to the organization's newspaper, and distribute literature." 497 U.S. at 723 (plurality opinion). When the volunteers refused to leave, they were arrested and convicted of violating the relevant Postal Service regulation, 39 C.F.R. 232(h)(1) (1989). This Court rejected the defendants' First Amendment challenge to their convictions. A plurality of the Court reasoned that the interior sidewalk at issue was a nonpublic forum and that the Service's limitation of financial solicitation was reasonable. See *Kokinda*, 497 U.S. at 727, 733-735 (plurality opinion). Justice Kennedy concurred in the judgment on the ground that even if the sidewalk were a public forum, the Service's regulation was a content-neutral restriction that was narrowly tailored to advance the Service's important interest in facilitating customers' postal transactions. See *id.* at 737-739.

b. The Postal Service's 1978 amendments to its regulations addressed only the solicitation of money and not signatures, even though the solicitation of signatures "demand[s] an immediate response from the listener" in the same way as the solicitation of funds. *Kokinda*, 497 U.S. at 761 (Brennan, J., dissenting). In 1997, based on its experience with permitting the solicitation of signatures, the Postal Service determined that the practice was "generally disruptive to postal business" and a source of "significant interference with its statutory mandate." 62 Fed. Reg. 61,481-61,482 (Nov. 18, 1977).

The Service therefore amended its regulations to prohibit "soliciting signatures on petitions, polls, or surveys." 39 C.F.R. 232.1(h)(1) (1998). At the time, the regulation applied to "all real property under the charge and control of the Postal Service." 39 C.F.R. 232.1(a) (1998).

2. Petitioners are individuals and organizations that use post office sidewalks to circulate petitions aimed at placing initiatives and referenda on state and local election ballots. In 2000, they brought a facial challenge under the First Amendment to the Service's prohibition on soliciting signatures. See Pet. App. 2a-3a. Following discovery, both parties moved for summary judgment. The Postal Service subsequently announced, consistent with this Court's decision in *United States* v. *Grace*, 461 U.S. 171 (1983), that it would not apply its regulation to sidewalks that form the perimeter of post office property and that are indistinguishable from adjacent public sidewalks. See Pet. App. 3a. In *Grace*, this Court had held that such perimeter sidewalks on its own grounds are traditional public fora. See 461 U.S. at 178-180. The Service also announced that its regulation would be enforced only against collecting signatures, not simply asking for them. See Pet. App. 3a.[1]

The district court granted summary judgment to the Postal Service, holding that the regulation, as narrowed by the newly announced enforcement policy, was a reasonable time, place, or manner restriction that would

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[1] Petitioners and the court of appeals refer to perimeter sidewalks on postal property that are physically indistinguishable from public sidewalks as "*Grace* sidewalks." See, *e.g.*, Pet. 12; Pet. App. 3a n.1. Petitioners also refer to interior sidewalks on postal property as "*Kokinda* sidewalks." See Pet. 12. This brief sometimes uses the same terminology to refer to perimeter and interior postal sidewalks.

pass constitutional muster even on sidewalks that were public fora. See Pet. App. 84a-102a. The court of appeals, however, reversed and remanded for further proceedings. See *id.* at 48a-83a. The court of appeals reasoned that the Service's prohibition on soliciting signatures would be impermissible if postal sidewalks were public fora. See *id.* at 70a. In light of petitioners' facial challenge, the court of appeals remanded for the district court to determine whether the prohibition reached a substantial number of public fora. See *id.* at 71a; see also *id.* at 4a & n.2. To guide that inquiry, the court of appeals noted that, by its terms, the regulation applied to *Grace* sidewalks (notwithstanding the Service's contrary enforcement policy). See *id.* at 4a, 74a, 83a. The court of appeals also noted that "[e]ven in nonpublic forums * * * a ban on merely asking for signatures" would not be reasonable, although "[t]he Postal Service's new enforcement policy * * * remedied that infirmity by plausibly construing the ban to bar only the actual collection of signatures." *Id.* at 4a; see *id.* at 79a-80a.

3. On remand, the Postal Service amended its regulation to resolve both of the concerns that the court of appeals had identified. As amended, the regulation does not apply to *Grace* sidewalks, *i.e.*, "sidewalks along the street frontage of postal property falling within the property lines of the Postal Service that are not physically distinguishable from adjacent municipal or other public sidewalks." 39 C.F.R. 232.1(a)(ii); see 70 Fed. Reg. 72,078 (Dec. 1, 2005). The amended regulation also prohibits only "collecting signatures on petitions, polls, or surveys." 39 C.F.R. 232.1(h)(1). Accordingly, as the Service explained, the current regulation prevents only the "actual collection of the signatures," not "communi-

cation that promotes the signing of petitions, polls, and surveys somewhere other than on Postal Service premises." 70 Fed. Reg. at 72,078.

a. Notwithstanding those amendments, the district court determined that it needed further information to evaluate whether the regulation applies to a substantial number of public fora. The parties therefore agreed that the Postal Service would conduct a survey of a representative sample of post offices. That survey revealed that only seven percent of postmasters reported seeing expressive activity on any post office sidewalk, whether interior or exterior. See Pet. App. 11a. Only four percent of postmasters reported that they had ever seen any expressive activity on interior sidewalks, and fewer than one percent of postmasters reported such activity occurring more than twice in a year. See C.A. J.A. 856-858, 860; Pet. App. 25a.

The district court granted summary judgment for the Postal Service. See Pet. App. 21a-47a. The court recognized as an initial matter that the amended regulation applies only to interior *Kokinda* sidewalks, not perimeter *Grace* sidewalks. See *id.* at 29a-33a, 36a-37a. The court then reasoned that "[petitioners] have not demonstrated through their facial challenge that there are significant numbers of *Kokinda* sidewalks that have served historically as sites for a significant amount of expressive activity." *Id.* at 42a. The court concluded that "the prohibition on signature collecting on postal property is a reasonable regulation of speech in nonpublic forums." *Id.* at 44a; see *ibid.* ("[Section] 232.1(h)(1) is a reasonable effort by the government to manage its property in pursuit of its business.") (internal quotation marks omitted).

b. The court of appeals affirmed. See Pet. App. 1a-20a. The court first held that interior postal sidewalks are not public fora. The court observed that "[f]ive courts of appeals have addressed the status of interior postal sidewalks * * * and all have agreed with the [*Kokinda*] plurality that they are not public forums." *Id.* at 8a (citing cases). The court agreed with those other circuits that interior postal sidewalks typically have "physical separation" from municipal sidewalks: "Most lead only to the front door of the post office building, and a person stepping onto one would generally be aware that he was not on an ordinary sidewalk." *Id.* at 9a (internal citation omitted). In addition, the court explained, interior postal sidewalks have a "different purpose" than municipal sidewalks, because they are "typically used only by customers and employees of the post office and are built solely to provide efficient access to the post office." *Id.* at 10a. The court further explained that, unlike with municipal sidewalks, "[t]here is no venerable tradition of using [interior postal] sidewalks for expressive activities," and the survey evidence in the record "do[es] not show that a substantial number of these sidewalks have been used for political activity and expression with sufficient historical regularity to make them traditional public forums." *Id.* at 10a-11a.

The court of appeals then upheld the Service's prohibition on collecting signatures as a reasonable restriction on interior postal sidewalks as nonpublic fora. See Pet. App. 13a-15a. The court reasoned that, like the collection of funds at issue in *Kokinda*, the collection of signatures "could be reasonably banned because it would cause postal customers to stop, transact the business requested, and thus disrupt the flow of traffic at the post office." *Id.* at 14a (citing *Kokinda*, 497 U.S. at

733-734 (plurality opinion)). The court rejected petitioners' argument that soliciting and collecting signatures are equally disruptive. The court noted that, in its prior opinion, it had "previously made that very distinction": "Tracking the analysis of the plurality and Justice Kennedy in *Kokinda*, we observed that different consequences are likely to follow from merely asking postal customers for their signatures and actually collecting them." *Id.* at 14a. The court concluded that "it would be reasonable to ban a request that naturally leads to an immediate response that would disrupt customer traffic at the post office." *Ibid.* (citing *Kokinda*, 497 U.S. at 738-739 (Kennedy, J., concurring in the judgment)).

c. Judge Brown concurred. See Pet. App. 17a-20a. She joined the court's "public forum analysis in full." *Id.* at 17a. She also joined the court in recognizing that the Service's decision to permit signature solicitation but not signature collection was reasonable in light of the court of appeals' previous decision approving that distinction. See *ibid.* In Judge Brown's view, however, collecting a postal customer's signature does not increase (and may decrease) the disruption from soliciting that person's signature and then "invit[ing] the patron to move to the nearest *Grace* sidewalk to affix his signature." *Id.* at 18a-19a. Judge Brown thus suggested that the Postal Service reasonably could decide to permit "the entire signature-gathering encounter" on interior sidewalks. *Id.* at 20a.

ARGUMENT

The court of appeals' decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. The First Amendment principles that govern petitioners' claims are well settled. A private speaker's

right to access government property for expressive activity depends on whether the government has created a forum for expression, and if so, what type of forum. "Traditional public fora are defined by the objective characteristics of the property, such as whether, 'by long tradition or by government fiat,' the property has been 'devoted to assembly and debate.'" *Arkansas Educ. Television Comm'n* v. *Forbes*, 523 U.S. 666, 677 (1998) (quoting *Perry Educ. Ass'n* v. *Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983)). Restrictions on expression in traditional public fora must be narrowly drawn to achieve a compelling state interest. *Ibid.*; see *International Soc'y for Krishna Consciousness, Inc.* v. *Lee*, 505 U.S. 672, 678 (1992) (*ISKCON*). The same test applies to designated public fora, property that the State has opened for expressive activity by part or all of the public. *Ibid.* For "all remaining public property," limitations on expressive activity are subject to a "much more limited review." *Id.* at 678-79. As long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view, the challenged regulation need only be reasonable. *Id.* at 679.

In examining whether a forum is public, this Court looks to the purpose, history, and location of the forum. See *ISKCON*, 505 U.S. at 679-680. Because the government, like other property owners, may "'preserve the property under its control for the use to which it is lawfully dedicated,' the government does not create a public forum by inaction." *Ibid.* (quoting *Greer* v. *Spock*, 424 U.S. 828, 836 (1976) (internal citation omitted)). The government also does not create a public forum "whenever members of the public are permitted freely to visit a place" that it owns or operates. *Greer*, 424 U.S. at 836. Rather, "[t]he decision to create a public forum must in-

stead be made 'by intentionally opening a nontraditional forum for public discourse.'" *ISKCON*, 505 U.S. at 680 (quoting *Cornelius* v. *NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985)). The location of property can be relevant to that inquiry because "separation from acknowledged public areas may serve to indicate that the separated property is a special enclave, subject to greater restriction." *Ibid.*

2. The court of appeals correctly applied those principles and its decision is consistent with both the plurality and concurring opinions in *United States* v. *Kokinda*, 497 U.S. 720 (1990). As the court of appeals explained, the location, purpose, and history of interior postal sidewalks all demonstrate that such sidewalks are not public fora. Interior postal sidewalks typically have "physical separation" from municipal sidewalks: "Most lead only to the front door of the post office building, and a person stepping onto one would generally be aware that he was not on an ordinary sidewalk." Pet. App. 9a (internal citation omitted). In addition, interior postal sidewalks have a "different purpose" than municipal sidewalks, because they are "typically used only by customers and employees of the post office and are built solely to provide efficient access to the post office." *Id.* at 10a. Moreover, unlike municipal sidewalks, "[t]here is no venerable tradition of using [interior postal] sidewalks for expressive activities," and the extensive survey evidence in the record here "do[es] not show that a substantial number of these sidewalks have been used for political activity and expression with sufficient historical regularity to make them traditional public forums." *Id.* at 10a-11a.

But whatever the forum status of interior postal sidewalks, the court of appeals correctly upheld the Ser-

vice's prohibition on collecting signatures. The court reasoned that, like the collection of funds at issue in *Kokinda*, the collection of signatures "could be reasonably banned because it would cause postal customers to stop, transact the business requested, and thus disrupt the flow of traffic at the post office." Pet. App. 14a (citing *Kokinda*, 497 U.S. at 733-734 (plurality opinion)). The court rejected petitioners' argument that soliciting and collecting signatures are equally disruptive. "Tracking the analysis of the plurality and Justice Kennedy in *Kokinda*," the court observed that "different consequences are likely to follow from merely asking postal customers for their signatures and actually collecting them." *Ibid.* The court concluded that "it would be reasonable to ban a request that naturally leads to an immediate response that would disrupt customer traffic at the post office." *Ibid.* (citing *Kokinda*, 497 U.S. at 738-739 (Kennedy, J., concurring in the judgment)).

The Service's prohibition on collecting signatures thus serves the same governmental interest at issue in *Kokinda*, *i.e.*, the Service's interest in "facilitating its customers' postal transactions." 497 U.S. at 739 (Kennedy, J., concurring in the judgment). Just as in *Kokinda*, based on its experience with the collection of signatures, the Service has determined that "signature gathering activities act as a real impediment to carrying out postal business." Pet. App. 92a (internal quotation marks omitted). Indeed, the record in this case is replete with examples of interference with access to post offices by those gathering signatures and customer complaints generated in response to such signature-gathering activities. See *id.* at 90a-92a. The Service's regulation is content-neutral; it is narrowly tailored to achieve that interest; and it leaves open ample alterna-

tive channels for expression. As in *Kokinda*, the regulation does not prohibit engaging in speech, distributing literature, or requesting that postal customers sign a petition, poll or survey on an adjacent *Grace* sidewalk or other public property. See 497 U.S. at 739 (Kennedy, J., concurring in the judgment).

3. Petitioners advance a number of arguments why this Court's review is necessary. None withstands scrutiny.

a. Most importantly, petitioners contend (Pet. 14-18) that *Kokinda* has produced confusion in the circuit courts. As the court of appeals recognized, that is not so. See Pet. App. 8a. The five other courts of appeals to consider the issue have held that interior postal sidewalks are not public fora. See *Del Gallo* v. *Parent*, 557 F.3d 58, 70-72 (1st Cir.), cert. denied, 130 S. Ct. 740 (2009); *Paff* v. *Kaltenbach*, 204 F.3d 425, 433 (3d Cir. 2000); *Jacobsen* v. *U.S. Postal Serv.*, 993 F.2d 649, 656-657 (9th Cir. 1992); *Longo* v. *U.S. Postal Serv.*, 983 F.2d 9, 11 (2d Cir. 1992), cert. denied 509 U.S. 904 (1993); *United States* v. *Belsky*, 799 F.2d 1485, 1489 (11th Cir. 1986). Petitioners do not contend that, since *Kokinda*, any court of appeals has held to the contrary that interior postal sidewalks used for entering and exiting post offices are public fora. See Pet. 18 n.5.

Petitioners instead argue (Pet. 14-16) that these appellate decisions, despite their consistent holdings, are inconsistent with *Kokinda*. Again, that is not so. For instance, petitioners assert (Pet. 15-16) that the Third Circuit's decision in *Paff* treated the plurality opinion rather than Justice Kennedy's concurrence in *Kokinda* as controlling. But the court in *Paff* expressly acknowledged the difference in reasoning between the plurality and concurring opinions in *Kokinda*. See 204 F.3d at

431-432. The court then concluded—based not only on *Kokinda* but also on this Court's subsequent decision in *ISKCON* and the Third Circuit's own case law—that the particular interior postal sidewalk at issue was a nonpublic forum. See *id.* at 433. Moreover, the precise question in *Paff* was one of qualified immunity, and every member of the panel agreed that it was not clearly established that the sidewalk at issue was a public forum. See *id.* at 441 (Cowen, J., dissenting) ("In analyzing what is clearly established I agree with the majority that the sidewalk leading to the post office in this case is a nonpublic forum, or at least that in the wake of *Kokinda* the status of the sidewalk is unclear.").

Petitioners also point (Pet. 16-18) to the First and Ninth Circuits' decisions in *Del Gallo* and *Jacobsen*. In both cases, however, the courts of appeals recognized that the plurality opinion in *Kokinda* is "instructive, but not dispositive of the forum analysis." *Del Gallo*, 557 F.3d at 69; see *Jacobsen*, 993 F.2d at 655 (stating that *Kokinda* does not provide "a definitive answer" on whether interior postal sidewalks are public fora). The courts therefore were guided by not only the plurality opinion in *Kokinda* but also this Court's other forum cases and their own precedents. See *Del Gallo*, 557 F.3d at 70-72; *Jacobsen*, 993 F.2d at 655-656. Petitioners correctly observe (Pet. 16-18) that the First and Ninth Circuits considered in their analysis the fact that the particular interior sidewalks at issue were physically separate from adjacent municipal sidewalks. See *Del Gallo*, 557 F.3d at 70-71; *Jacobsen*, 993 F.2d at 656. But this Court has recognized "separation from acknowledged public areas" as an important factor in forum analysis, *ISKCON*, 505 U.S. at 680; see *United States* v. *Grace*, 461 U.S. 171, 180 (1983), and Justice Kennedy did not

question the importance of that factor in his concurrence in *Kokinda*.[2]

In the end, then, petitioners cannot plausibly contend that other appellate decisions are in any conflict, or even significant tension, with *Kokinda*. And even if that were true of decisions in other cases, it is not true *of the decision in this case*. The court of appeals explained why the Postal Service's prohibition on collecting signatures on interior postal sidewalks is permissible under the approaches of both the plurality opinion and Justice Kennedy's concurrence in *Kokinda*. See Pet. App. 14a. As that court observed, the collection of signatures "could be reasonably banned because it would cause postal customers to stop, transact the business requested, and thus disrupt the flow of traffic at the post office." *Ibid.* (citing *Kokinda*, 497 U.S. at 733-734 (plurality opinion)). Similarly, even assuming interior postal sidewalks were public fora of some kind, the Service's concern in "facilitating its customers' postal transactions" justifies either a restriction on collecting signatures or funds, provided that, as here, the restriction is content-neutral, narrowly tailored, and leaves open ample alternative channels for expression. *Kokinda*, 497 U.S. at 738-739 (Kennedy, J., concurring in the judgment).

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[2] Petitioners also rely (Pet. 14, 18, 24) on cases that did not involve postal sidewalks. In any event, consistent with this Court's forum jurisprudence, those cases examined the location, history, and purposes of the various venues at issue. See *Lederman* v. *United States*, 291 F.3d 36, 41 (D.C. Cir. 2002) (sidewalk on the Capitol Grounds is a public forum); *New England Reg'l Council of Carpenters* v. *Kinton*, 284 F.3d 9, 22-23 (1st Cir. 2002) (fishing pier is not a public forum); *Pouillon* v. *City of Owosso*, 206 F.3d 711, 715-717 (6th Cir. 2000) (city hall steps are a public forum); *Henderson* v. *Lujan*, 964 F.2d 1179, 1182 (D.C. Cir. 1992) (sidewalk abutting Constitution Avenue next to the Vietnam Veterans Memorial is a public forum).

b. At a more abstract level, petitioners argue (Pet. 19-29) that this Court's forum jurisprudence has produced an overly rigid set of categories that is not sufficiently protective of private expression. Petitioners therefore invite (Pet. 29) the Court to revisit the entirety of its public forum doctrine. Petitioners, however, have not pointed to any support for their argument—or any reason to accept their invitation—in the context of interior postal sidewalks. As explained above, the courts of appeals have consistently considered the location, history, and purposes of the different interior postal sidewalks at issue, and they have uniformly concluded that those particular sidewalks are not public fora. To be sure, courts of appeals also have concluded that other types of sidewalks—like those on the Capitol Grounds or adjacent to the Vietnam Veterans Memorial—*are* public fora. See Pet. 24; see also p. 14 n.2, *supra*. But that simply reflects the fact that not all sidewalks share the same attributes and thus courts should and do assess the characteristics of each alleged forum. It does not reflect confusion over application of this Court's forum doctrine to sidewalks generally or interior postal sidewalks specifically.

c. Petitioners also contend (Pet. 29-36) that the court of appeals erred in holding that they have failed to establish either that interior postal sidewalks are public fora or that the Service's ban on collecting signatures is unreasonable. But as explained above, those determinations do not conflict with any decision of this Court or of any other court of appeals. In addition, those determinations rested in significant part on the particular record compiled by the parties in this case. Because petitioners have challenged the Service's signature-collection prohibition on its face and as applied to all in-

terior postal sidewalks, and because the record in this case clearly undercuts petitioners' facial challenge, this Court's review is not warranted.

At the direction of the district court, the Postal Service conducted a survey of a representative sample of post offices. See Pet. App. 24a-26a. That survey revealed that only seven percent of postmasters reported seeing expressive activity on any post office sidewalk, whether interior or exterior. See *id.* at 11a. Only four percent of postmasters reported that they had ever seen any expressive activity on interior sidewalks, and fewer than one percent of postmasters reported such activity occurring more than twice in a year. See C.A. J.A. 856-858, 860. The Postal Service also submitted extensive evidence of interference with access to post offices by those gathering signatures and of customer complaints generated in response to such signature-gathering activities. See Pet. App. 90a-92a.

In light of that evidence, the courts below correctly determined that the record in this case "do[es] not show that a substantial number of these sidewalks have been used for political activity and expression with sufficient historical regularity to make them traditional public forums." Pet. App. 11a (internal quotation marks omitted); see *id.* at 42a ("[Petitioners] have not demonstrated through their facial challenge that there are significant numbers of *Kokinda* sidewalks that have served historically as sites for a significant amount of expressive activity."). The courts below also correctly determined that "the prohibition on signature collecting on postal property * * * is a reasonable effort by the government to manage its property in pursuit of its business." *Id.* at 44a (internal quotation marks omitted); see *id.* at 13a-14a. Petitioners argue (Pet. 30, 35) that

the evidence in the record should have led the courts below to make different determinations with respect to both forum status and reasonableness, but those case-specific arguments do not merit this Court's attention.

Finally, petitioners argue (Pet. 32-36) that the Service's regulation is unreasonable because it permits the gathering of signatures as part of voter registration activities. To the contrary, that simply highlights the regulation's narrow tailoring. As the Service explained below, voter registration activities do not typically involve the same degree of active solicitation as the soliciting of signatures for ballot initiatives and referenda. See Gov't Br. 44-45. Voter registration activities on postal property are also subject to numerous other specific restrictions, including that they not interfere with the conduct of postal business or postal customers. See *id.* at 45; see also 39 C.F.R. 232.1(h)(4). The Service has reasonably determined, based on decades of "experience with expressive activity on its property," that the collection of signatures for voter registration "deserves different treatment from alternative forms of solicitation and expression"—namely, the solicitation of funds and the collection of signatures for petitions, polls, and surveys. *Kokinda*, 497 U.S. at 739 (Kennedy, J., concurring in the judgment). Petitioners offer no better reason here than in *Kokinda* to reject the Service's considered judgment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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