

## Syllabus

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

**SUPREME COURT OF THE UNITED STATES**

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**PIERCE COUNTY, WASHINGTON v. GUILLEN, LEGAL  
GUARDIAN OF GUILLEN ET AL., MINORS, ET AL.****CERTIORARI TO THE SUPREME COURT OF WASHINGTON**

No. 01–1229. Argued November 4, 2002—Decided January 14, 2003

As part of its effort to improve the safety of the Nation’s highways, Congress adopted the Hazard Elimination Program (Program), 23 U. S. C. §152, which provides state and local governments with funding to improve the most dangerous sections of their roads. To be eligible for such funding, a government must undertake a thorough evaluation of its public roads. Because of States’ concerns that the absence of confidentiality with respect to §152’s compliance measures would increase the liability risk for accidents that took place at hazardous locations before improvements could be made and Department of Transportation’s concerns that the States’ reluctance to be forthcoming in their data collection efforts undermined the Program’s effectiveness, Congress, in 1987, adopted §409, which provided that materials “compiled” for §152 purposes “shall not be admitted into evidence in Federal or State court.” Responding to subsequent court decisions holding that §409 did not apply to pretrial discovery and protected only materials that an agency actually generated for §152 purposes, not documents that the agency collected to prepare its §152 application, Congress expressly made the statute applicable to pretrial discovery in 1991 and added the phrase “or collected” after the word “compiled” in 1995. Several months before respondent Ignacio Guillen’s wife died in an automobile accident at an intersection in petitioner county, petitioner’s §152 funding request for the intersection was denied. Its second request was approved three weeks after the accident. Petitioner declined to provide respondents’ counsel with information about accidents at the intersection, asserting that any relevant information was protected by §409. Respondents then filed an action in Washington state court, alleging that petitioner’s refusal to disclose violated the State’s Public Disclosure Act (PDA). The trial

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court granted respondents summary judgment, ordering petitioner to disclose five documents and pay respondents' attorney's fees. While petitioner's appeal was pending, respondents filed another state-court action, alleging that petitioner had been negligent in failing to install proper traffic controls at the intersection. Petitioner refused to comply with their discovery request for information regarding accidents at the intersection, and respondents successfully sought an order to compel. The State Court of Appeals granted petitioner's motion for discretionary appellate review of the interlocutory order, consolidated this and the PDA appeals, and in large part affirmed, concluding that four of the documents requested in the PDA action were not protected. On further appeal, the Washington Supreme Court determined that disclosure under the relevant state laws would be appropriate only if the requested materials were not protected by §409; that protection under §409, as amended in 1995, turned on whether the documents were collected for §152 purposes, without regard to the identity of the documents' custodian; and that the 1995 amendment's adoption exceeded Congress' powers under the Spending, Commerce, and Necessary and Proper Clauses. It therefore vacated the lower court's judgment and remanded the case.

*Held:*

1. This Court lacks jurisdiction to hear the tort portion of the case but has jurisdiction to hear the PDA portion. Certain state-court judgments can be treated as final for jurisdictional purposes even though further proceedings are to take place in the state courts. *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469, 477–483 (outlining four exceptions to the finality rule). In the tort action, the Washington Supreme Court resolved only a discovery dispute; it did not determine the litigation's final outcome. And the *Cox* exceptions do not apply to that action. Accordingly, this Court dismisses the writ of certiorari with respect to that action for want of jurisdiction. However, the PDA action falls squarely under the first *Cox* exception. The State Supreme Court's ruling that the 1995 amendment to §409 was invalid, which left four documents subject to disclosure under the PDA and only the amount of attorney's fees remaining to be decided on remand, is "conclusive" as to the federal issue and "the outcome of further proceedings preordained," *id.*, at 479. Pp. 9–12.

2. Both the original §409 and the 1995 amendment fall within Congress' Commerce Clause power. Pp. 12–17.

(a) Before addressing the constitutional question, this Court must determine §409's scope. Evidentiary privileges, such as §409, must be construed narrowly because they impede the search for the truth. See *Baldrige v. Shapiro*, 455 U. S. 345, 360. This Court agrees with the United States that §409 protects only information

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compiled or collected for §152 purposes, but does not protect information that was compiled or collected for purposes unrelated to §152, as held by agencies that compiled or collected that information, even if the information was at some point “collected” by another agency for §152 purposes. Although respondents offer the narrowest interpretation of §409—that §409 protects only materials actually created by the agency responsible for seeking §152 funding—their reading leaves the 1995 amendment (changing “compiled” to “compiled or collected”) with no real and substantial effect. By contrast, petitioner’s reading—that a document initially prepared by an agency for purposes unrelated to §152, and held by that agency, becomes protected under §409 when a copy of that document is collected by another agency for §152 purposes—gives the statute too broad of a reach, thus conflicting with the rule that privileges should be construed narrowly. The Government’s interpretation suffers from neither of these faults. It gives effect to the 1995 amendment by making clear that §409 protects not just the information an agency compiles for §152 purposes but also any information that an agency collects from other sources for those purposes. It also takes a narrower view of the privilege by making it inapplicable to information compiled or collected for purposes unrelated to §152 and held by agencies that are not pursuing §152 objectives. The Court’s view of §409 is reinforced by the 1995 amendment’s history. “[A]s collected” was added to address confusion about §409’s proper scope and to overcome judicial reluctance to protect raw data collected for §152 purposes. Congress wished to make clear that §152 was not intended to be an effort-free tool in litigation against state and local governments, but §409’s text evinces no intent to make plaintiffs worse off than they would have been had §152 funding never existed. Pp. 12–15.

(b) Section 409 is a proper exercise of Congress’ Commerce Clause authority to “regulate the use of the channels of interstate commerce” and “to regulate and protect the instrumentalities of interstate commerce,” *United States v. Lopez*, 514 U. S. 549, 558. Congress adopted §152 to assist state and local governments in reducing hazardous conditions in the Nations’ channels of commerce, but that effort was impeded by the States’ reluctance to comply fully with §152’s requirements lest those governments become easier targets for negligence actions by providing a centralized location from which would-be plaintiffs could obtain much of the evidence necessary to sue. Because Congress could reasonably believe that adopting a measure eliminating an unforeseen side effect of §152’s information-gathering requirement would result in more diligent collection efforts, more candid discussions of hazardous locations, better informed decisionmaking, and greater safety on the Nation’s roads, both the

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original §409 and the 1995 amendment can be viewed as legislation aimed at improving safety in the channels of commerce and increasing protections for the instrumentalities of interstate commerce. Pp. 15–17.

Certiorari dismissed in part; 144 Wash. 2d 696, 31 P. 3d 628, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court.