

No. 947775

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

Appeal from Court of Appeals Division II - No. 48000-0-II

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DONNA ZINK,

Appellant,

v.

JOHN DOE P; JOHN DOE Q; JOHN DOE R; and JOHN DOE S,  
as individuals and on behalf of others similarly situated;  
THURSTON COUNTY, a municipal organization, and its  
departments the THURSTON COUNTY PROSECUTING  
ATTORNEY and THURSTON COUNTY SHERIFF,

Respondents.

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**RESPONSE OF THURSTON COUNTY RESPONDENTS TO  
PETITION FOR DISCRETIONARY REVIEW**

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JON TUNHEIM  
PROSECUTING ATTORNEY

KAREN A. HOROWITZ, WSBA #40513  
Deputy Prosecuting Attorney  
Civil Division – Building 5  
2000 Lakeridge Dr SW  
Olympia, WA 98502  
Phone: (360) 786-5540  
Fax: (360) 709-3006

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## I. IDENTITY OF THE RESPONDENT

Thurston County, the respondent, by and through its counsel, asks this Court to grant Ms. Zink's petition for review of the Court of Appeals decision terminating review in *John Doe P. v. Thurston County*, No. 48000-0-II, as to the question of whether Special Sex Offender Sentencing Alternative ("SSOSA") and Special Sex Offender Disposition Alternative ("SSODA") evaluations held by the Thurston County Prosecuting Attorney's Office and Thurston County Sheriff's Office are "health care information" about a "patient" which are, therefore, exempt from disclosure by those agencies under the Public Records Act, ch. 42.56 RCW, due to the terms of the Uniform Health Care Information Act ("UHCIA"), ch. 70.02 RCW.

## II. COURT OF APPEALS OPINION

The Court of Appeals held in *John Doe P v. Thurston County* that adult criminal defendants and juvenile respondents participating in SSOSA and SSODA evaluations are "patients" receiving "health care," and, therefore, affirmed the trial court's decision that pursuant to the UHCIA, the unredacted evaluations were exempt from disclosure under the Public Records Act. *John Doe P v. Thurston County*, No. 48000-0-II, 199 Wn. App. 280, 292-

97 (June 20, 2017). On July 5, 2017 Thurston County filed a motion asking Division II of the Court of Appeals to stay the mandate in *John Doe P v. Thurston County*, No. 48000-0-II, until 30 days after this Court issues a decision in *John Doe v. Dep't of Corrections*, No. 94203-0, where review has been granted on the same issue. Thurston County's motion to stay the mandate is still pending before the Court of Appeals, Division II. On July 20, 2017 Ms. Zink filed her petition seeking review of the decision by the Court of Appeals, and Thurston County now asks this Court to grant her petition as to the issue of whether SSOSA and SSODA evaluations should be withheld from a requester pursuant to the UHCIA.

### **III. ISSUE PRESENTED FOR REVIEW**

1. Whether the Court of Appeals correctly determined that a SSOSA or SSODA evaluation qualifies as "health care information" under the Uniform Health Care Information Act.

### **IV. STATEMENT OF THE CASE**

For purposes of this response, the State relies on the facts as presented in the Court of Appeals opinion, *John Doe P v. Thurston County*, No. 48000-0-II, 199 Wn. App. 280.

**V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED  
ON THE ISSUE OF WHETHER SSOSA AND SSODA  
EVALUTIONS ARE EXEMPT FROM DISCLOSURE**

This Court will accept review when the decision of the Court of Appeals a) conflicts with a decision of the Supreme Court, RAP 13.4(b)(1); b) conflicts with another decision of the Court of Appeals, RAP 13.4(b)(2); c) raises a significant question of law under the Washington or the United States Constitutions, RAP 13.4(b)(3); or d) involves an issue of substantial public interest that should be determined by the Supreme Court, RAP 13.4(b)(4).

1. The Court of Appeals holding regarding whether the SSOSA and SSODA evaluations fall within the Uniform Health Care Information Act's prohibition on disclosure involves a significant question of law and an issue of substantial public interest.

The question of whether SSOSA and SSODA evaluations contain "health care information" which is exempt from disclosure pursuant to the UHCIA and the Public Records Act raises a significant question of law regarding the scope of privacy rights, and involves an issue of substantial public interest.

First, this Court has already recognized the importance of this issue by granting review on an identical question. On May 30, 2017 this Court granted review in the case of *John Doe, et al. v. Department of Corrections, et al.* to consider whether unredacted

SSOSA evaluations of level I sex offenders contain “health care information” exempting the evaluations from disclosure under RCW 42.56.360(2) of the Public Records Act. *John Doe v. Dep’t of Corrections*, No. 94203-0.

Second, this question involves significant balancing of the public’s interest in open government with the privacy interest of an individual in sensitive information. In his dissent in *Koenig v. Thurston County*, Justice Chambers noted that serious privacy concerns are implicated by the release of a SSOSA evaluation to the public, as the evaluations contain a great deal of sensitive information about the offender. *Koenig v. Thurston County*, 175 Wn.2d 837, 854-55, 287 P.3d 523 (2012). This must be weighed against the legislative command to interpret the Public Records Act liberally; specifically RCW 42.56.550(3) provides that “[c]ourts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others.”

Additionally, the Court of Appeals decision also potentially implicates a number of other classes of documents held by public agencies. For example, competency evaluations conducted

pursuant to RCW 10.77.065 also contain sensitive information regarding a criminal defendant, but are provided to the trial court and the prosecuting attorney to aid in the determination of whether a defendant is competent to stand trial. Competency evaluations are commonly contained in the public court file where they are open to inspection by the public. See, e.g., Spokane County Superior Court Local General Rule 0.31 (“The court orders the following documents to be placed in the public court file after consideration by the court: (A) Mental condition evaluations (RCW 10.77) ...”).

Aside from public interest considerations, the Court of Appeals decision will have a significant practical effect on public agencies. The Court of Appeals held that because SSOSA and SSODA evaluations fall within the UHCIA’s prohibition against disclosure of health care information about a patient, the trial court did not err when it concluded that unredacted SSOSA and SSODA evaluations are exempt from disclosure under the Public Records Act. This reference to unredacted evaluations appears to indicate that the court believed there is some information contained within the SSOSA and SSODA evaluations which would not be exempt from disclosure. The Court of Appeals, however, provided no guidance to public agencies regarding what portions or categories



of information should be redacted from a SSOSA or SSODA evaluation. This Court has previously recognized the importance of providing clear guidance to public agencies relating to public records issues. *See, e.g., Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 431, 327 P.3d 600 (2013) (“In this difficult area of the law, we endeavor to provide clear and workable guidance to agencies insofar as possible.”). Currently, the Court of Appeals decision leaves many unresolved questions about how public agencies should conduct business to avoid liability under either the UHCIA or the Public Records Act.

## **VI. CONCLUSION**

This Court should accept review of the holding of the Court of Appeals that adult criminal defendants and juvenile respondents participating in SSOSA and SSODA evaluations are “patients” receiving “health care,” and that the UHCIA, therefore, exempts the

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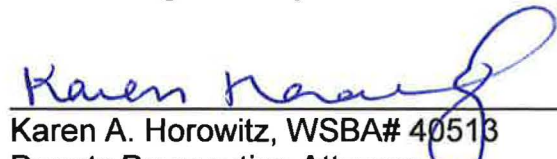
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evaluations from disclosure under the Public Records Act.

Acceptance of review on this issue is supported by RAP 13.4.

Respectfully submitted this 25<sup>th</sup> day of August, 2017.

JON TUNHEIM  
Prosecuting Attorney

  
Karen A. Horowitz, WSBA# 40513  
Deputy Prosecuting Attorney  
Attorney for Thurston County Respondents

**CERTIFICATE OF SERVICE**


A copy of this document was emailed per agreement of the parties to the following individual(s) on the date indicated below:

Salvador A. Mungia, WSBA #14807  
Reuben Schutz, WSBA #44767  
Gordon Thomas Honeywell LLP  
1201 Pacific Ave., Ste 2100  
Tacoma, WA 98401-1157  
Email: smungia@gth-law.com  
Email: rschutz@gth-law.com  
*Counsel for Respondents Doe*

Prachi V. Dave, WSBA #50498  
Vanessa Hernandez, WSBA #42770  
ACLU of Washington  
901 Fifth Ave, Ste 630  
Seattle, WA 98164  
Email: pdave@aclu-wa.org  
Email: vhernandez@aclu-wa.org  
*Counsel for Respondent ACLU*

Donna Zink  
P.O. Box 263  
Mesa, WA 99343  
Email: dlczink@outlook.com  
*Pro se Appellant*

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: 8/25/17  
Signature: 

# THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

August 25, 2017 - 2:21 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94777-5  
**Appellate Court Case Title:** John Doe, et al. v. Thurston County, et al.  
**Superior Court Case Number:** 15-2-00094-0

### The following documents have been uploaded:

- 947775\_Answer\_Reply\_20170825140927SC225513\_9128.pdf  
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- vhernandez@aclu-wa.org

### Comments:

Please Note: This pleading is be filed by Karen Horowitz, NOT Elizabeth Petrich. However, the Appellate Court's portal would not let me select Karen Horowitz, but would let me file under our prior attorney, Ms. Petrich.

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Sender Name: Linda Olsen - Email: olsenl@co.thurston.wa.us

**Filing on Behalf of:** Elizabeth Petrich - Email: petrice@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:  
2000 Lakedrige Dr SW  
Olympia, WA, 98502  
Phone: (360) 786-5540

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