No. 93227-1

IN THE SUPREME COURT OF THE
THE STATE OF WASHINGTON

ARTHUR WEST, a Citizen of Washington State,

Petitioner,

vs.

WASHINGTON NORML, *et alia*,

Respondents.

WEST'S PETITION FOR DISCRETIONARY REVIEW

On Review from the Published Opinion of the Court of Appeals, Division II, Case No. 46640-6-II

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I. IDENTITY OF PETITIONER

Petitioner Arthur West, (hereinafter, "Mr. West,") is a citizen of Washington State.

II. COURT OF APPEALS DECISION BEING REVIEWED

Petitioner seeks review of the Division II Court of Appeals April 12, 2016 ruling in Case No. 46640-6-II, affirming a Thurston County Superior Court's involuntary dismissal at the trial court level and denying West's effort to bring a citizen's action as a citizen on behalf of himself and other citizens in order to uphold a people's initiative—an initiative intended to protect not simply the state of Washington, but the rights of Washington citizens to police their own self-government, promote transparency over and non-disclosure, and ensure an open government free from secrecy and other non-democratic qualities. (Appendix Ex. A, p 1-8). On May 6, 2016, the Appeals Court also denied West's motion for reconsideration. (Appendix Ex. B, p 9).

III. ISSUES PRESENTED ON REVIEW

1. Does the Court of Appeals Division II decision conflict with the Supreme Court's decision in *Utter* that citizens have a "right" to access the courts and bring a Citizen Action under the Fair Campaign Practices Act, this Court having defined no prerequisite

of retaining counsel, and/or does the appellate court's decision raise significant questions of state law?

2. Is there a significant question of state law regarding an involuntary dismissal of West's claim for failure to provide an attorney when the law surrounding this issue was unclear?
3. Is there a conflict between Division I and Division II Court of Appeals regarding the prerequisites of citizens' actions under the Fair Campaign Practices Act?
4. Is the barrier of retaining counsel in order for the citizens to enforce campaign finance laws, as affirmed by the Court of Appeals Division II, an issue of significant public concern, especially since NORML will evade all public accountability absent the lower court's ruling being overturned?

IV. STATEMENT OF THE CASE

Under the Fair Campaign Practices Act ("FCPA"), chapter 42.17A RCW, political committees are subject to certain registration and reporting requirements. This case involves the Citizen's Action provision of the FCPA. This is a case concerning the pre-requisites for a citizen to bring a citizen's action under the FCPA, and to clarify how the FCPA is distinguished from other sunshine laws that were part of the same people's

initiative (Initiative No. 276 or "I-276") that allow citizen's to bring suit and enforce their right to open and self-government without an attorney.

The relevant FCPA Citizen's Action provision states, in part, that a person may, "bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter." RCW 42.17A.765(4). In 2012, West filed suit against NORML for failing to disclose campaign contributions and appropriate register with the state as a Political Action Committee. NORML moved to dismiss under CR 12(b)(1), lack of subject matter jurisdiction, and CR 12(b)(6), failure to state a claim upon which relief can be granted.

After a year of Petitioner being unable to secure counsel for a unique field of practice, public disclosure and campaign finance law, on August 22, 2014, the Thurston County Superior Court entered an order of involuntary dismissal of West's claim. On September 8, 2014, West timely appealed. On April 12, 2016, the Court of Appeals Division II affirmed the Superior Court's involuntary dismissal. On May 6, 2016, the Appeals Court also denied West's motion for reconsideration. West now petitions for review in this Court.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

RAP 13.4(b) provides a petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This case involves all of the above provisions.

1. The Appeals Court's decision conflicts with the Supreme Court's decision in *Utter* and other cases that citizens may bring citizens' actions, satisfying RAP 13(4)(b)(1), and the issue of whether or not an attorney is required to bring a Citizen Action raises a significant question of state law, satisfying RAP 13(4)(b)(3).

The fact that citizens may bring actions under the Fair Campaign Practices Act ("FCPA," chapter 42.17A RCW), and in fact, have a right to access the courts through Citizen Actions, is now clearly settled law. In *Utter v. BIAW*, the Washington Supreme Court held that citizens may bring Citizen Action suits under the FCPA. *Utter v. Bldg. Indus. Assn'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953, cert. denied, 136 S.Ct.

79 (2015). "A statute gives Washington citizens the right to sue for unfair campaign practices..." *Utter,* at 407. *Utter* concedes that the Fair Campaign Practices Act is obviously based on the notion that government may be wrong, and then it is up to citizens to expose the violation. What remains unsettled is whether or not a citizen needs an attorney to proceed with a FCPA claim.

This Court in *Utter* never placed any additional prerequisites on citizens to bringing suit under the FCPA or defined a citizen as a citizen *and* his or her counsel. This Court gave citizens a clear "right" to sue for unfair campaign practices. This Court also defined the ability to bring a suit as a "right" to access the courts. "Right of access to courts includes right to 'bring' or 'commence' actions." See *Utter*, at 409. In accordance with RAP 13.4(b)(1) and (3), the question of whether or not an attorney is a prerequisite to exercising one's right to a Citizen Action under the FCPA should be resolved by this Court.

Significantly, as early as 1974, this Court upheld the Constitutionality of the Citizen's Action provisions of the FCPA, identifying that *qui tam* actions include those that allow Citizens to proceed without counsel (the federal Clean Water and Air Acts and the State Consumer Protection Acts) and further stated that the cost shifting

provisions of the statute adequately protected the public from abuse of the citizen's action provision as follows:

> The statute books are legion with enactments of a *qui tam* nature. See, e.g., Int. Rev. Code of 1954 § 7214; Rivers and Harbours Act of 1889, 33 U.S.C. § 411 (1970); Clean Air Amendments of 1970, amending 42 U.S.C. § 1857h-a (1970); Federal Water Pollution Control Act Amendments of 1972 § 505, Pub. L. 92-500, 86 Stat. 816; Noise Control Act of 1972 § 12, Pub. L. 92-574, 86 Stat. 1234. Our recent decision in Hockley v. Hargitt, 82 Wn.2d 337, 510 P.2d 1123 (1973), upheld the application of a modern *qui tam* provision in the Washington Consumer Protection Act, RCW 19.86.090, which provides for the award of attorney fees, costs and, in the discretion of the court, treble damages. See also Note, 17 Loyola L. Rev. 757 (1971).
>
> In our view, the *qui tam* provision of initiative section 40(4) poses no problem of constitutional dimension. We note respondents' assertion that they fear the threat of frivolous and unwarranted harassment suits. In this connection we can also note that should the suitor fail in his action the trial court, upon finding lack of reasonable cause, may reimburse the defendant for his costs and attorney's fees. In view of the current high costs of legal services, we regard this as no small deterrent against frivolous and harassing suits. Additionally, the plaintiff in such cases is required to give the Attorney General a 40-day notice of an alleged violation. The litigant may then proceed only after the service of a second 10-day notice results in no action on the part of the Attorney General.
>
> ***We feel that these specified safeguards are ample protection against frivolous and abusive lawsuits.***
> *Fritz v. Gorton*, 83 Wn.2d 275, 314, 517 P.2d 911 (1974). [emphasis added.] APPELLANT'S MOTION FOR RECONSIDERATION OF COMMISSIONER'S RULING, at p. 10-11.

These exact same cost-shifting provisions and safeguards that serve as protection against frivolous and abusive lawsuits are present in

the FCPA. The purpose behind requiring an attorney for an action in state court, whose rules and procedures are relatively clear enough for a layman to grasp, is unclear in the context of citizens simply attempting to preserve their right to self-governance. Indeed, the Public Records Act, chapter 42.56 RCW, grafted from and originally part of the Public Disclosure Act under I-276, provides for attorney fees to the victor, yet does not require an attorney for a citizen to file suit and win. Even if there were sound reasons to require an attorney for a citizen's action, "The court will not add language to a clear statute even if it believe the Legislature intended something else but failed to express it adequately." *Adams v. Department of Soc. Health Servs.*, 38 Wn.App. 13, 16, 683 P.2d 1133 (1984). There is clear statement in the FCPA that an attorney is required to proceed. Hence, a significant question of Washington law is at issue and RAP 13.4(b)(3) applies to this case.

In sum, Petitioner contends that the Court of Appeals panel erred, in its analysis of statutory construction, to consider the letter of the law, its context in history and relation to statutes *in para materia*, and most importantly, completely failed to address the spirit, intent, and purpose of I-276 in its analysis. (Billed as "The Spirit of I-(2)76 in 1974, the

statement in the voters' pamphlet began "Our whole concept of democracy begins with an informed an involved citizenry.")[1]

In light of the purpose of I-276, the Court of Appeals failed to interpret the FCPA liberally.

> The basic rule is that a statute should be construed in light of the legislative purpose behind its enactment... being remedial in nature, (a statute) is entitled to a liberal construction to effect its purpose. *Nucleonics Department v. WPPS*, 101 Wn.2d 24, 677 P.2d 108, (1984)

As this Court noted regarding the FCPA only four years after it was overwhelmingly approved by the Voters:

> A policy requiring liberal construction is a command that the coverage of an act's provisions be liberally construed and that its exceptions be narrowly confined. *Hearst Co. v. Hoppe*, 90 Wn.2d 123, 138, 580 P.2d 246 (1978), (cited in *WPPS*).

2. An involuntary dismissal was not appropriate for failure to provide an attorney, when West wished to preserve his right to bring a citizen's action without an attorney, and is a significant question of state law under RAP 13.4(b)(3).

Petitioner contends it satisfies RAP 13.4(b)(3) in that there is a significant question of law as to the appropriate application of involuntary dismissal under CR 41(b) at the trial court level when the law on the issue of retaining counsel for a FCPA claim is unsettled. At the time of the trial court ruling, the law was unclear as to whether an attorney was required to

[1] Available within "The History and Intent of I276," David Cullier, *et. al.*, WSU (2004). http://www.washingtoncog.org/pdfs/I276%20document%20-%20David%20Cuillier.pdf

bring suit under the FCPA, resulting in the present appeal. Failure to find a lawyer within an arbitrarily prescribed amount of time, as well as attempting to ascertain and challenge an uncertain law, cannot be considered an "unacceptable litigation practice" warranting the punitive and administrative death blow of involuntary dismissal. Appellant West now has an attorney. The trial court dismissed West's case prematurely and improperly, by applying the wrong standard of review, and the question of if an involuntary dismissal can be applied for failure to procure an attorney, when that prerequisite is unsettled law, is now at issue.

A discretionary dismissal by the trial court below for failure to procure an attorney prior to this court's determination that an attorney was in fact needed for this type of action, (this having been an issue of first impression to this Court) was improper. Termination of the action, based on law West could not have possibly known to be the accepted standard during the trial court's review, and prior to this appeal, is even less appropriate.

West brought his initial suit before the trial court prior to any running of statute of limitations under the FCPA. Ultimately, he could not procure a licensed attorney to represent him and the case was dismissed involuntarily. Dismissal at the discretion of the trial court is only appropriate when there is a delay caused by "unacceptable litigation

practices." "'Dilatoriness of a type not described by CR 41(b)(1)' refers to unacceptable litigation practices other than mere inaction, whatever the duration." *Wallace v. Evans*, 131 Wn.2d 572, 577, 934 P.2d 662 (1997). Uncertainty regarding whether or not a *pro se* exemption applies under *all* provisions of the original Fair Campaign Practices Act, not just the public records section, but also fair campaign practices section, and requiring clarification West's clarification via this appeal, cannot be considered an "unacceptable litigation practice" resulting in dismissal of the case entirely.

Involuntary dismissal under CR 41(b) serves an important administrative function, but not one which applies here. "The primary function of an involuntary dismissal by a clerk's motion is to clear the clerk's record of inactive cases." *Vaughn v. Chung*, 119 Wn.2d 273, 277, 830 P.2d 668 (1992). "It is an administrative provision that creates a 'relatively simple means by which the court system itself, on its own volition, may purge its files of dormant cases.'" *Vaughn*, 119 Wn.2d at 277 (quoting *Miller v. Patterson*, 45 Wn. App. 450, 455, 725 P.2d 1016 (1986)).

The final sentence in CR 41(b)(1) "was promulgated to encourage cases to be heard on the merits, the courts recognizing that involuntary dismissal for want of prosecution 'is punitive or administrative

in nature and every reasonable opportunity should be afforded to permit the parties to reach the merits of the controversy.'" *Foss Maritime Co. v City of Seattle,* 107 Wn. App. 669, 27 P.3d 1228 (2001), citing *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166-67, 750 P.2d 1251 (1988) (quoting *Yellam v. Woerner*, 77 Wn.2d 604, 608, 464 P.2d 947 (1970)). Affirmation of the involuntary dismissal is improper where "every reasonable opportunity should be afforded to permit the parties to reach the merits..." If this court, in fact, requires counsel for the continuation of this case, West should now be afforded to try the merits of this case with the assistance of counsel.

3. There is a conflict between Division I and Division II Court of Appeals holdings satisfying RAP 13.4(b)(2).

The decision of the Court of Appeals Div. II is in conflict with decisions of the Court of Appeals Division I in *West v. DMCJA.*

In *West v. DMCJA*, the court held that West's lack of compliance with statutory procedures, not his lack of a lawyer, was the basis for dismissal of campaign non-disclosure claims:

> Because West failed to comply with the statutory procedures, he lacked authority to sue for a judgment that the Association's activities violate the restrictions on agency lobbying.
> *West v. Washington State Association of District and Municipal Court Judges*, __Wn.App.___, Ct. of Appeals Div. I, No. 72337-5-I (Nov. 2, 2015).

All that barred West from Declaratory relief in Division I was failure to give notice. That lack of a lawyer was not an operative part of that court's decision demonstrates that the court's holding was that citizens need merely follow statutory procedure to bring citizens' actions under the FCPA. This point is not mere dicta. Thus, a conflict between the two appellate courts exist and RAP 13.4(b)(2) is satisfied.

4. This case involves issues of substantial public concern, satisfying RAP 13.4(b)(4): NORML will escape all accountability absent this Citizen Action, while the Court of Appeals ruling bars the average citizen from his "right" to access to the courts for the purposes of policing his own government under the FCPA.

Whether or not hiring an attorney is a hurdle a citizen must overcome in order to enforce the FCPA is also an issue of significant public interest satisfying RAP 13.4(b)(4). Clearly, the history and spirit of I-276, a people's initiative, suggest that a citizen may bring a citizen's action him or herself. This is the only outcome that would ensure the government kept itself in check and that Washington's statute regarding public disclosure of campaign financing is actually enforced.

Applying the spirit of I-276 in this case, and allowing Appellant West to proceed in the trial court, is the only way to ensure the outcome voted for by the people in adopting Washington's public disclosure laws so many years ago: enforcement of its campaign practices to those that believe they are above the law and not beholden to the principals of open

government. There is an issue of substantial public concern in that absent West's enforcement of fair campaign practice law, NORML will evade any accountability. In addition, there is an issue of public concern in that the Court of Appeals in Division II placed the onerous and expensive burden of retaining counsel on citizens who wish to enforce their own citizens' initiative via a citizen's action.

X. CONCLUSION

For the reasons described above, the Petitioner respectfully requests that this court grant review to ensure that the citizens' campaign finance laws can be enforced and protected by citizens, without the prerequisite of having to retain counsel, and that the citizens themselves retain the right to access the courts and engage in protecting their own democracy from secrecy and non-disclosure of campaign financing.

Submitted this 6th day of June, 2016

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APPENDIX

EXHIBIT A

Filed
Washington State
Court of Appeals
Division Two

April 12, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NO ON I-502, ARTHUR WEST, Appellants, v. WASHINGTON NORML, PIERCE COUNTY NORML, AMERICAN CIVIL LIBERTIES UNION, ACLU OF WASHINGTON, ACLU FOUNDATION, ACLU ENDOWMENT, Respondents.	No. 46640-6-II PUBLISHED OPINION

JOHANSON, J. — Arthur West appeals a superior court order dismissing his complaint that alleged a violation of the Fair Campaign Practices Act (FCPA), ch. 42.17A RCW. The superior court ruled that West could not bring an FCPA action as a self-represented (pro se) litigant because the FCPA requires that such actions be maintained in the name of the state. West argues that the trial court erred by dismissing his suit because the FCPA contemplates that individuals may file "citizen's actions" under the statute without representation of legal counsel. Although the FCPA speaks of "persons" and "individuals," a citizen's action under the FCPA precludes suits by pro se litigants because such actions must be brought in the name of the state. Therefore, we hold that the superior court did not err in dismissing West's suit and we affirm.

FACTS

In 2012, Washington voters approved Initiative 502 (I-502), the legislation which legalized marijuana for recreational use. LAWS OF 2013, ch. 3. In December 2012, West, on behalf of "No on I-502," an organization that opposed I-502, sued the American Civil Liberties Union (ACLU) and the Pierce County and Washington Chapters of the National Organization for the Reform of Marijuana Laws (NORML). West attempted to sue under the "citizen's action" provision of the FCPA.

West's complaint alleged that the ACLU and NORML, in supporting I-502, had engaged in electoral politics without registering as political action committees in violation of state law. West alleged that by so acting, NORML violated its own articles of incorporation and engaged in conduct prohibited to entities registered as nonprofit organizations under 26 U.S.C. § 501(c).

In response, the ACLU, joined by NORML, moved to dismiss West's suit based in part on what it alleged was West's inability to maintain the action as a pro se litigant. In the ACLU and NORML's view, although the FCPA authorizes "citizen's actions" for alleged violations of the Act, the statute requires that such actions be filed in the name of the state. Therefore, West was representing the state's interests. Because West is not a licensed attorney, NORML argued that his prosecution of the alleged FCPA violations would amount to the unauthorized practice of law, which Washington law forbids. NORML asked the superior court to dismiss West's complaint under CR 12(b)(1) for lack of subject matter jurisdiction and also under CR 12(b)(6) for failure to state a claim upon which relief can be granted.

The superior court agreed that West could not sue in the name of the state as a pro se litigant and entered an order dismissing the action if West did not obtain legal representation within two

weeks. The superior court ruled that it would not permit West to proceed without counsel in this action because doing so would constitute the unauthorized practice of law. A licensed attorney then appeared on behalf of West, but shortly thereafter withdrew.

Subsequently, West moved for voluntary dismissal of the ACLU but maintained his claims against NORML. Nearly a year later, when West had still failed to secure the services of an attorney, the superior court dismissed the case, consistent with its original order. West appeals.

ANALYSIS

West argues that the superior court erred in dismissing his complaint by failing to construe the applicable statutory provisions liberally to effectuate the statute's remedial intent. He asserts further that the superior court erred by misinterpreting the citizen's action provision of the FCPA, which states that "persons" and "individuals" may bring such actions. We disagree.

An order granting a motion to dismiss under CR 12(b) is subject to de novo review. *McMarthy Fin., Inc. v. Premera*, 182 Wn.2d 936, 941, 347 P.3d 872 (2015). The FCPA "shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." RCW 42.17A.001; *Utter v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953, *cert. denied*, 136 S. Ct. 79 (2015).

A provision within the FCPA gives Washington citizens the right to sue for unfair campaign practices provided that certain prerequisites have been met. *Utter*, 182 Wn.2d at 407. The "citizen's action" is permitted when the attorney general and the prosecuting attorney of a

certain county either fail to commence or opt not to commence an action under the FCPA within a specified period of time. RCW 41.17A.765(4)(a)(i).

Specifically, the citizen's action provision provides,

> A person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself or herself bring *in the name of the state* any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter.
>
> . . . .
>
> (b) If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he or she shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees he or she has incurred.

RCW 42.17A.765(4) (emphasis added). For the FCPA, "person" "includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized." RCW 41.17A.005(35).

West relies on the language of the statute and the definition of "person" to support his argument that the law permits him to maintain a citizen's action as a pro se litigant. According to West, the references to "persons" as individuals and using "himself" or "herself" in the controlling provision combined with the FCPA's stated policy of liberal construction, compel the conclusion that the superior court erred by dismissing his case solely because he failed to obtain representation by a licensed attorney.

West, however, fails to reconcile this argument with the long-standing rule that, with limited exception, Washington law requires individuals appearing before the court on behalf of another party or entity to be licensed in the practice of law. *Dutch Vill. Mall v. Pelletti*, 162 Wn.

App. 531, 535, 256 P.3d 1251 (2011). Ordinarily, only those persons licensed to practice law in this state may do so without liability for unauthorized practice. *See* RCW 2.48.170. Practicing law without a license is a gross misdemeanor in Washington. RCW 2.48.180(3)(a); *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 155 Wn. App. 479, 485, 230 P.3d 608, *rev'd on other grounds*, 170 Wn.2d 577, 245 P.3d 764 (2010).

There is a recognized "pro se exception" to these general rules where a person "'may appear and act in any court as his own attorney without threat of sanction for unauthorized practice.'" *Cottringer v. Dep't of Emp't Sec.*, 162 Wn. App. 782, 787, 257 P.3d 667 (2011) (quoting *Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 56, 586 P.2d 870 (1978)). But this pro se exception is limited, applying "'only if the layperson is acting *solely on his own behalf*' with respect to his own legal rights and obligations." *Cottringer*, 162 Wn. App. at 787-88 (quoting *Wash. State Bar Ass'n*, 91 Wn.2d at 57).

Here, notwithstanding a person's right to bring a citizen's action under the FCPA, the Act itself expressly provides that any such action may be brought only in the name of the state. RCW 42.17A.765(4). The person has a right to sue if certain criteria are met, but the underlying claim always belongs to the state. The FCPA also provides that any judgment awarded based on an alleged violation of the Act escheats to the state. RCW 42.17A.765(4)(b). Thus, by maintaining this action, West is not acting "'solely on his own behalf' with respect to his own legal rights and

obligations."[1] *Cottringer*, 162 Wn. App. at 787-88 (quoting *Wash. State Bar Ass'n*, 91 Wn.2d at 57). Instead, he is necessarily acting on behalf of the state, implicating rights that belong to the state.

West makes no attempt to demonstrate that the pro se exception applies nor does he provide any analogous authority to support his argument. Although the citizen's action provision speaks in terms of individuals, corporations are also included in the definition of "person" under the FCPA. RCW 42.17A.005(35). And our courts have long held that corporations must appear in court through an attorney. *Advocates for Responsible Dev.*, 155 Wn. App at 484-85. This is true even when a pro se litigant is the sole owner, member, and officer of a limited liability company. *Dutch Vill. Mall*, 162 Wn. App. at 534, 539. These rules lend credence to NORML's assertion that the legislature did not intend to carve out a pro se exception specific to citizen's actions merely because it provides "persons" the right to maintain actions under FCPA.

Although no Washington court has addressed this specific question, a decision from the Ninth Circuit Court of Appeals is instructive and analogous. In *Stoner v. Santa Clara County Office of Education*, 502 F.3d 1116, 1128 (9th Cir. 2007), the Ninth Circuit held that a pro se party could not prosecute a qui tam action on behalf of the United States. *Stoner* involved an alleged violation of the False Claims Act, 31 U.S.C. §§ 3729-3733. 502 F.3d at 1119. The statute at issue there provided that a "person may bring a civil action . . . for the person and for the United States

[1] In his complaint, West claims to be an officer of "No on I-502" who is authorized by its board to maintain this action. It is not clear from the record whether "No on 1-502" still exists. But to the extent West brings this suit as an agent of "No on I 502," he also acts on that group's behalf and not solely on his own behalf. Therefore, the pro se exception would not apply for this reason as well.

Government" and stated that such an action would be brought in the name of the government. 31 U.S.C. § 3730(b)(1). In holding that this language did not authorize Stoner to proceed pro se, the *Stoner* court reasoned that a party suing under the statute is not prosecuting only their "'own case.'" 502 F.3d at 1126-27. Instead, the party also represents the United States, binding it to any adverse judgment. *Stoner*, 502 F.3d at 1126-27.

The Ninth Circuit then noted that while the legislation at issue there gave an individual a "'right to conduct the action,'" Stoner could point to no language which would permit him to conduct the action without a licensed attorney. *Stoner*, 502 F.3d at 1127 (quoting 31 U.S.C. § 3730(c)(3)). The court concluded that because congress did not expressly authorize a party to proceed pro se when acting on behalf of the United States, "it 'must have had in mind that such a suit would be carried on in accordance with the established procedure which requires that only one licensed to practice law may conduct proceedings in court for anyone other than himself.'" *Stoner*, 502 F.3d at 1127 (quoting *United States v. Onan*, 190 F.2d 1, 6 (8th Cir. 1951)).

The circumstances here are similar. The FCPA provides "persons" the right to bring a citizen's action, but mandates that such actions be brought in the name of the State. RCW 42.17A.765(4). As in *Stoner*, West here seeks to prosecute an alleged FCPA violation not solely as his "own case," but necessarily on behalf of the state of Washington. Although the state would not be bound to an adverse judgment under this statutory scheme, it would be entitled to the award of any favorable judgment. RCW 42.17A.765(4)(b). In this way, West is not acting solely on his own behalf regarding his own legal rights and obligations.

As in *Stoner*, West can point to no language which permits him to proceed pro se and the legislature here did not specifically authorize citizen's actions to be maintained by pro se litigants.

It appears as though the legislature envisioned that such actions would be carried on by licensed attorneys because the statute expressly provides for an award of attorney fees if the person who sues prevails. RCW 42.17A.765(4)(b).

We hold that no pro se exception applies here because West is not acting solely on his own behalf. Therefore, permitting him to maintain this action without representation by a licensed attorney would amount to the unauthorized practice of law. We affirm the superior court's dismissal of West's suit against NORML.[2]

JOHANSON, J.

We concur:

WORSWICK, P.J.

LEE, J.

[2] West also attempts to argue the substantive merits of his underlying claim regarding NORML's alleged violation of the FCPA. But because it dismissed his complaint, the superior court never reached those issues and made no ruling related to them. As a result, these issues are not properly before us and we decline to address them.

EXHIBIT B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NO on I-502, ARTHUR WEST,

Appellant,

v.

NORML, et al.,

Respondents

No. 46640-6-II

ORDER DENYING MOTION FOR RECONSIDERATION

APPELLANT moves for reconsideration of the Court's April 12, 2016 opinion filed in the above-referenced matter. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Johanson, Worswick, Lee

DATED this 6th day of May, 2016.

FOR THE COURT:

Johanson, J.
PRESIDING JUDGE

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No. _____

SUPREME COURT OF WASHINGTON

ARTHUR WEST, a Citizen of Washington State, **Petitioner,** **vs.** WASHINGTON NORML, *et. al.*, **Respondents.**	(COA No. 46640-6-II) **DECLARATION OF SERVICE**

I, Elizabeth Hallock, do declare under penalty of perjury under the laws of the State of Washington that I am over 18 years of age, am the Attorney for the Petitioner in the above proceedings, and competent to testify to the matters herein that:

On June 6, 2016, I caused to be served by mail, postage prepaid, the following pleadings along with this Declaration of Service:

1. Petitioner's Petition for Discretionary Review with Appendix

To the following at their addresses of record:
Attorneys for Respondent WASHINGTON NORML:

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Dated this 6th Day of June, 2016,

s/Elizabeth Hallock

Elizabeth Hallock, Attorney for Petitioner
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OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, June 06, 2016 11:42 AM
To: 'Elizabeth Hallock'
Cc: dan@harrismoure.com; Hilary Bricken; Robert McVay; Arthur West
Subject: RE: WEST v NORML Petition for Discretionary Review

Received 6/6/2016.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Elizabeth Hallock [mailto:ehallock.law@gmail.com]
Sent: Monday, June 06, 2016 11:23 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: dan@harrismoure.com; Hilary Bricken <hilary@harrismoure.com>; Robert McVay <robert@harrismoure.com>; Arthur West <awestaa@gmail.com>
Subject: WEST v NORML Petition for Discretionary Review

Hello,
Please see attached for filing Petitioner West's Petition for Review and Decl. of Service. This was filed electronically in Div.2 today.
Thanks,
Liz

--
Elizabeth Hallock
Attorney at Law

Ph: 360-909-6327