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SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT UTTER and FAITH IRELAND
in the name of the STATE OF WASHINGTON,

Petitioners,

v.

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Respondent.

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN, INC., IN SUPPORT OF THE PETITIONERS

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I. INTEREST OF AMICUS CURIAE

Public Citizen, Inc., a national consumer-advocacy and government-reform organization founded in 1971, appears on behalf of its members and supporters nationwide, including those in the State of Washington, before legislative bodies, administrative agencies, and courts on a wide range of issues. Public Citizen works for enactment and enforcement of laws fostering open, accountable, and responsive government and protecting consumers, workers, and the public. Through legislative advocacy and litigation, Public Citizen has long supported campaign finance laws that combat the appearance and reality of political corruption by limiting and requiring disclosure of funds used for political campaigns.

Integral to the success of campaign finance reform measures are effective means of enforcement, including provisions allowing private citizens and organizations to bring enforcement actions in appropriate cases when government agencies have failed to do so. Having previously submitted a memorandum supporting the petition for review, Public Citizen offers this brief in support of the petitioners to provide further elaboration of the argument that the Court of Appeals has misconstrued the provisions of Washington's Fair Campaign Practices Act (FCPA) allowing citizens to bring enforcement actions when government officials have not done so. The lower court's decision not only fails to give effect

to the plain meaning of the statutory language, but also significantly impairs the efficacy of the citizen's action provision. Public Citizen believes that this brief, which brings to bear textual analysis and authorities not fully addressed by the parties, may assist this Court as it determines the meaning of the statute.

II. STATEMENT OF THE CASE

Public Citizen relies on the petitioners' statement of the case.

III. ARGUMENT

A. The Statute's Plain Language Provides That a Citizen's Action Is Barred Only When Government Officials Commence Formal Legal Proceedings in Response to the Citizen's Complaint.

The plain language of RCW 42.17A.765(4)(a)(iii) provides that a citizen may "bring" any of the "actions" authorized under the law if the attorney general or local prosecutor fails to "bring such action" after two notices from the citizen. The statute unambiguously means that a citizen may file a lawsuit unless one of the relevant officials has initiated formal legal proceedings to address the violations referred to in the citizen's notice. By holding that mere investigation by state officials, rather than the attorney general's commencement of a legal action, bars a citizen's action under RCW 42.17A.765(4), the Court of Appeals misread the law's plain language, in contravention of this Court's established principles of statutory interpretation.

BIAW argues, with virtually no reference to the actual language of the statute, that "[o]nly if the State fails to 'act' can citizen's suits seeking enforcement of the FCPA in the name of the State proceed." BIAW Supp. Br. 4–5. Under BIAW's interpretation and the lower court's decision, a citizen's action is barred not only if the attorney general *brings an action*, but also if the attorney general *acts* in any way in response to the citizen's notice, including by transmitting the complaint to Public Disclosure Commission (PDC) for initial investigation. *See Utter v. Building Indus. Ass'n of Wash.*, 176 Wn. App. 646, 672–74, 310 P.3d 829 (2013). The Court of Appeals concluded that "[t]he State took an action against BIAW under RCW 42.17A.765 when it caused the PDC to investigate the allegations that BIAW was a political committee and then declined to file a lawsuit ...." *Id.* at 674. According to the court, a citizen's action is only "permitted where the state refuses to investigate" a citizen's complaint. *Id.*[1]

[1] BIAW asserts in its supplemental brief (at 7–8) that the Court of Appeals did not rely solely on the attorney general's referral of the complaint to the PDC for investigation, but based its decision that the attorney general commenced an action in part on the attorney general's initiation of a lawsuit against a separate entity, BIAW-MSC. The court's own statement of its holding, cited in the text, directly contradicts BIAW's argument. Although the court did mention the lawsuit against BIAW-MSC in passing, *see id.* at 843, the court did not suggest that that was the "action" that barred this citizen's action, undoubtedly because it was not an action based on the petitioners' allegations that BIAW itself had committed a violation. *See* 176 Wn. App. at 672 (noting that the statute permits a citizen to file a lawsuit on issues with respect to which the attorney general does not commence an action).

By overlooking the critical statutory language, which refers not to "acting" or "taking action" but to *bringing an action*, the analysis of both the lower court and BIAW fails to adhere to this Court's repeated admonitions that, in construing statutes, courts must "give effect to the plain meaning of the language used as the embodiment of legislative intent," giving words "their ordinary meaning" and "consider[ing] the statutory context ... and the entire statutory scheme." *Swinomish Indian Tribal Community v. Washington State Dept. of Ecology*, 178 Wn.2d 571, 581–82, 311 P.3d 6 (2013).

The citizen's action provision provides straightforwardly that a citizen may "bring" an enforcement action in court if, upon notice to the attorney general and the prosecuting attorney in the county where an alleged violation occurred, those officials have "failed to commence an action" within 45 days of the initial notice and then "failed to bring such action within ten days" of a required second notice. RCW 42.17A.765(4)(a)(i)–(iv). Read in context and given their natural meaning, the statutory terms "commence an action" (RCW 42.17A.765(4)(a)(i)) and "bring [an] action" (RCW 42.17A.765(4)(a)(iii)) unambiguously refer to initiating a legal proceeding. Indeed, soon after the statute was adopted through the passage of Initiative 276 in 1972, this Court matter-of-factly noted that a citizen's action had been initiated after "[t]he Attorney

General declined to bring any action under the Act," *State v. (1972) Dan J. Evans Campaign Committee*, 86 Wn.2d 503, 504, 546 P.2d 75 (1976)—words that reflect the statutory language entitling a citizen to bring a suit when government officers have declined to do so.

BIAW and the lower court misread the statute, which says that a citizen action is barred if the attorney general or prosecuting attorney "commence[s] an action" or "bring[s] such action," not that a citizen's action is barred if those officials merely took any step authorized by RCW 42.17A.765(1)–(3), including investigating allegations or referring them for investigation by the PDC. Framing the issue as "what constitutes 'action' by the State," 176 Wn. App. at 672, BIAW and the court below define the statutory term "action" to include any of the things that the statute authorizes the attorney general and prosecuting attorney to *do* in response to a possible violation of the law. *See id.* at 673. This Court, however, should not limit its consideration to the meaning of the term "action" in isolation, as BIAW advocates.

Rather, in accordance with established principles of statutory construction, the Court should consider the term "action" in context, together with the words that surround it. *See In re Adams*, 178 Wn.2d 417, 423, 309 P.3d 451 (2013) ("[T]he rules of statutory construction ... require that the statutory provisions be analyzed together in order to fulfill

the intent of the statute."). Courts may not address individual words of the statute "in isolation," "especially where to do so undermines the overall statutory purposes." *Id.* at 424.

Here, the statute does not use the term "action" in isolation, but repeatedly (and apparently interchangeably) refers to "bringing," "commencing," or "filing" an "action." *See* RCW 42.17A.765(1), (4), (4)(a)(i), (4)(a)(ii), (4)(a)(iii), (4)(a)(iv), (4)(b), (5). Thus, the proper question is not the meaning of "action" by itself, but what it means to "bring" an "action." Although the word "action" by itself can mean something that someone does, when "action" is used in a statute or other legal writing together with the verbs "commence," "bring," or "file," it unambiguously refers to the initiation of a legal proceeding, as many of this Court's decisions illustrate. *See, e.g.*, *Goldmark v. McKenna*, 172 Wn.2d 568, 575, 259 P.3d 1095 (2011) (discussing attorney general's power to "commence actions"); *Waples v. Yi*, 169 Wn.2d 152, 159, 234 P.3d 187 (2010) (action is "commenced" by filing a complaint); *State v. Conte*, 159 Wn.2d 797, 810, 154 P.3d 194 (discussing attorney general's power to "bring an action"), *cert. denied*, 552 U.S. 992 (2007); *Whitney v. Buckner*, 107 Wn.2d 861, 865, 734 P.2d 485 (1987) (discussing right of court access to "bring" or "commence" "actions"); *Berge v. Gorton*, 88 Wn.2d 756, 761, 567 P.2d 187 (1977) (discussing attorney general's power to "commence

actions or institute proceedings"); *State ex rel. Rosbach v. Pratt*, 68 Wash 157, 158, 122 P. 987 (1912) (same). BIAW points to no examples of statutes using the terms "bring an action" or "commence an action" to refer to something other than the initiation of a proceeding.

In addition, the statute uses the expression "bring an action" to describe only certain specific steps the attorney general or prosecuting attorney may take with respect to an alleged violation of the campaign finance laws: namely, "bring[ing] civil actions in the name of the state for any appropriate remedy, including but not limited to the special remedies provided in RCW 42.17A.750." RCW 42.17A.765(1). That language plainly refers to initiating legal proceedings. Further, the statute provides that "[i]n *any action* brought under this section, the *court* may award" costs and fees to the state if it prevails, and further specifies what the "judgment" in "such an action" shall encompass. RCW 42.17A.765(5) (emphasis added). The statutory language can only be understood as meaning that bringing "any action" under RCW 42.17A.765 refers to commencing a legal proceeding. Indeed, if the statute's references to bringing "any action" included things done entirely outside the judicial process, the statute's statement that "the court" may award costs "[i]n any action" would be nonsensical.

Likewise, the statute makes plain that the "citizen's action" it authorizes is an action that a person "bring[s] in the name of the state" in court. RCW 42.17A.765(4). The law describes a citizen's action as something "brought" and "filed" by the citizen—terms that unambiguously refer to initiating a legal proceeding. RCW 42.17A.765(4)(a)(i), (iv). The statute provides for the disposition of the "judgment" when "the person who brings the citizen's action prevails," and also grants "the court" discretion to award costs and fees to "the defendant" when "a citizen's action ... is dismissed and ... the court also finds [it] was brought without reasonable cause." RCW 42.17A.765(4)(b). That language leaves no doubt that, under the FCPA, "bring[ing]" a citizen's "action" means commencing a civil proceeding in court aimed at obtaining a judgment.

Although the Court of Appeals' failure to give effect to the plain meaning of the terms "bring an action" and "commence an action" within the specific context of this statute led it astray, the court correctly understood that bringing an action should mean the same thing whether it refers to a citizen's action or the kind of action by the attorney general that would bar a citizen's action. *See* 176 Wn. App. at 672–73. But BIAW, like the court below, draws the wrong conclusion from that premise. As just demonstrated, the law's references to bringing a citizen's action unambiguously mean an action filed in court, so giving a consistent

meaning to the concept of bringing or commencing an action throughout the section necessarily requires construing the statute's references to the bringing of an action by the attorney general to refer to the initiation of formal legal proceedings.

By the same token, the *only* provision of RCW 42.17A.565 that expressly authorizes the attorney general to "bring" any "action" is 42.17A.465(1), which provides that the attorney general may "bring civil actions ... for any appropriate civil remedy," including remedies authorized elsewhere in the FCPA. Because that provision, too, expressly refers to actions filed in court, the interest of giving a consistent meaning to the same terms is served by construing the references to commencing and bringing an action in the citizen's action subsection, 42.17A.465(4), likewise to refer to the initiation of formal legal proceedings.

Thus, construing the statute to bar a citizen's action only when the attorney general has brought an action—that is, filed a formal legal proceeding—gives bringing an action a consistent and symmetrical meaning throughout the provision. The citizen's action provision authorizes a citizen who has given the requisite notice to "bring" *any* of the kinds of "actions" that the attorney general is authorized by the statute to "bring"—that is, civil actions seeking the remedies provided in RCW 42.17A.750 or any other appropriate civil remedies, *see* RCW

42.17A.765(1)—but only if government officials have failed to "commence" or "bring" such a legal proceeding. RCW 42.17A.765(4)(a)(ii) & (iii). Thus, in all of its uses throughout the section, bringing an action consistently refers to filing suit.

BIAW's position, that to "commence" or "bring" an "action" means to do any of the things referred to in subsections (1) through (3) of RCW 42.17A.765, not only ignores the normal meaning of those terms and the many other textual signals that bringing an action means filing a legal proceeding, but also would lead to anomalous consequences. Given the lower court's correct view that bringing an action should mean the same thing in each of the subparts of the statutory provision, its reading of the statute would necessarily imply that if the attorney general failed to take any action at all, a citizen could not only bring an action in court, but also do any of the other things listed in subsections (2) and (3), including issuing investigative "orders" requiring any person to appear at any location in any county where that person may be found and produce all documents possibly material to an investigation of an alleged violation. It seems highly doubtful that the legislature would have intended to delegate the power to issue such investigative orders to private individuals, let alone that it would have done so in a provision that by its terms merely authorizes a citizen to "bring" an "action."

Moreover, interpreting the statute's references to commencing or bringing an action to mean merely undertaking an investigation would drastically alter the meaning of the FCPA's statute of limitations. That provision, RCW 42.17A.770, provides that, "[e]xcept as provided in RCW 42.17A.765(4)(a)(iv) [establishing a shorter limitations period for citizen's actions], any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred." If, as the Court of Appeals held and BIAW argues, the attorney general commences an action under the FCPA merely by taking the initial steps of an investigation, the statute of limitations becomes virtually meaningless, allowing the attorney general an unlimited time to file suit as long as he takes some pro forma investigatory steps within five years of an alleged violation. Such a construction would be contrary to the long-established principle that "an action is tentatively commenced by service of a summons or the filing of a complaint[.]" *Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 820, 792 P.2d 500 (1990).

Case law construing similar citizen's suit provisions underscores the clarity of the statutory language. Of particular relevance are decisions interpreting the citizen's suit provision of the federal Resource Conservation and Recovery Act (RCRA), which, like the FCPA, provides that a citizen's suit is barred if the government has "commenced" an

"action." *See* 42 U.S.C. § 6972(b)(1)(B), (b)(2)(B)(i), (b)(2)(C)(i). Federal courts construing RCRA have rejected the argument that the government commences an action within the meaning of the statute when it merely undertakes investigative or other informal actions and has not filed suit. *See, e.g., Chico Serv. Station, Inc. v. Sol Puerto Rico Ltd.*, 633 F.3d 20, 35 (1st Cir. 2011); *PMC, Inc. v. Sherwin-Williams Co.*, 151 F.3d 610, 618–19 (7th Cir. 1998), *cert. denied*, 525 U.S. 1104 (1999). As Judge Posner put it in *PMC*, "[p]reliminary and informal" steps are "not 'actions' in the legal sense in which the statute appears to be using the term .... Writing a letter would hardly be described as 'commencing' or 'prosecuting' an 'action.'" *Id.*

So, too, here. An English speaker familiar with the common usages "bring an action" and "commence an action" would not say that the attorney general "brought an action" against BIAW when he referred a complaint to the PDC and then decided *not* to file suit. BIAW's position that a citizen's action is barred if the attorney general does anything that might colloquially be described as taking "action" fails to account for the statute's specific language, which, by referring to *bringing*, *commencing*, and *filing* an action and repeatedly referring to how *courts* are to handle such actions, leaves no doubt that bringing an action means filing a legal proceeding.

B. BIAW's Non-Textual Construction of the Statute Would Nullfy the Efficacy of Citizen's Actions.

Giving effect to the ordinary meaning of the statutory language of the citizen's suit provision would further, rather than undermine, the overall purposes of the FCPA. Under BIAW's view of the statute, a citizen's action is available only when the attorney general fails to take even the most basic, pro forma steps toward investigating allegations of wrongdoing. Because the attorney general's routine practice is to refer complaints to the PDC for initial investigation, *see State ex rel. Evergreen Freedom Fdn. v. Nat'l Educ. Ass'n*, 119 Wn. App. 445, 447 n.3, 81 P.3d 911 (2003), acceptance of BIAW's position here would preclude citizen's actions in virtually every case—except perhaps those where the allegations of wrongdoing were so frivolous on their face that the attorney general deemed even an initial referral for investigation unnecessary. Permitting citizen's actions only in *frivolous* cases, however, would contravene the self-evident function of the statute to provide remedies where government authorities decline to bring potentially *meritorious* actions against wrongdoers.

Such drastic limits on the availability of citizen's actions are fundamentally at odds with the broad objectives of Initiative 276. As this Court recognized long ago in upholding the FCPA, including its citizen's

suit provisions, against broad constitutional challenges, Initiative 276 reflected "public dissatisfaction and/or disenchantment with the functioning or responsiveness of government institutions, to the social needs and desires of the electorate," and in particular widespread public concerns "about the problem of the impact and influence of money and property on governmental decision making." *Fritz v. Gorton*, 83 Wn.2d 275, 279, 285, 517 P.2d 911 (1974). The citizen's action provisions of the initiative upheld by this Court in *Fritz* are an integral part of the means chosen by the people to carry out the objectives of the statute. The people expressed their desire for "[d]irect action ... by the people, limiting or mandating government or official action to conform more closely with the needs and desires of people," *Id.* at 279, not only by enacting the statute through the initiative process, but also by providing citizens a direct role in enforcing it.

Importantly, Initiative 276, both as enacted by the electorate and as later recodified, expressly states that its provisions "shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying ... so as to assure continuing public confidence [in] fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." RCW 42.17A.001. As this Court has held in another statutory

context, narrow limits on the availability of private enforcement actions aimed at protecting public interests are incompatible with a statutory mandate of liberal construction. *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 40–41, 204 P.3d 885 (2009) (Consumer Protection Act).

Moreover, and contrary to BIAW's view, there is nothing strange about the notion of empowering citizens to sue when government agencies have chosen not to do so. Indeed, beginning with the citizen's suit provisions of the federal Clean Air Act, whose passage in 1970 helped give birth to the modern citizen's suit and inspired passage of dozens of similar provisions in federal and state laws (including Washington's FCPA), enabling citizens to sue when agencies have chosen not to do so has been the *raison d'etre* for citizen's suits.[2] Thus, like the FCPA's own citizen's action provision, such statutes typically provide that a citizen's suit is precluded not by mere governmental investigative activity, but only by formal legal action.[3]

Such provisions reflect the concern that limitations on government resources, as well as the prospect that enforcement agencies may be

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[2] *See generally* James R. May, *Now More Than Ever: Trends in Environmental Citizen Suits at 30*, 10 Widener L. Rev. 1 (2003).

[3] *See generally* Peter A. Appel, *The Diligent Prosecution Bar to Citizen Suits: The Search for Adequate Representation*, 10 Widener L. Rev. 91 (2003); Jeffrey G. Miller, *Theme and Variations in Statutory Preclusions Against Successive Environmental Enforcement Actions by EPA and Citizens: Part One: Statutory Bars In Citizen Suit Provisions*, 28 Harv. Envtl. L. Rev. 401 (2004).

"captured" by regulated entities or that government officials may lack the political will to bring enforcement actions, will unduly limit the commencement of enforcement litigation by government agencies, and that lawsuits by citizens are therefore a necessary supplement to governmental enforcement actions.[4] Citizen's suit provisions generally balance their authorization of legal action by citizens with requirements that agencies receive notice and have the opportunity to bring actions before citizens may do so, in order both to motivate agencies to act and to maintain their primary role as enforcers.[5] But precluding suit when the government has failed to bring an action would be wholly contrary to the rationale for citizen's actions, which is that agencies may not be willing or able to bring enforcement actions needed to ensure compliance with the law and protection of the public. Indeed, allowing agencies to preclude citizen's actions merely by undertaking pro forma investigations or taking other preliminary measures short of initiating actual enforcement actions would not only prevent citizen's action notices from fulfilling their function of helping spur agencies to enforce the law vigorously, but also create the possibility that complaisant officials might seek to immunize

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[4] *See* May, *Now More Than Ever*, 10 Widener L. Rev. at 1–7; Matthew D. Zinn, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits*, 21 Stan. Envtl. L. Rev. 81, 84 (2002).

[5] *See* May, *Now More Than Ever*, 10 Widener L. Rev. at 7; Appel, *The Diligent Prosecution Bar*, 10 Widener L. Rev. at 91.

wrongdoers from suit simply by engaging in toothless investigatory activity.

Over forty years of history of citizen's suits have demonstrated the utility of allowing citizens to bring actions when agencies have considered doing so but have chosen not to, whether because of lack of resources or as a result of political reasons for non-enforcement. Successful citizen's actions under the federal environmental laws, for example, have redressed harmful discharges of pollutants and ultimately led to the adoption of more protective standards by regulators who had initially chosen not to bring actions after receiving notices of alleged violations.[6] Had these citizen's suits been subject to preclusion by agency activities short of the bringing of legal actions, however, these benefits would likely never have been achieved.

Narrow limits on the availability of citizen's actions are likewise incompatible with the broad remedial purpose of enforcing campaign finance laws. Citizen's suit provisions by nature have the "obvious purpose" to "encourage enforcement by so-called 'private attorneys

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[6] *See* May, *Now More Than Ever*, 10 Widener L. Rev. at 3–4, 7–8; *see also* Kristi M. Smith, *Who's Suing Whom?: A Comparison of Government and Citizen Suit Environmental Enforcement Actions Brought Under EPA-Administered Statutes, 1995-2000*, 29 Colum. J. Envtl. L. 359 (2004); Karl S. Coplan, *Citizen Litigants Citizen Regulators: Four Cases Where Citizen Suits Drove Development of Clean Water Law*, 25 Colo. Nat. Resources, Energy & Envtl. L. Rev. 61 (2014).

general'" and thus reflect an unwillingness to rely on governmental enforcement alone. *Bennett v. Spear*, 520 U.S. 154, 166, 117 S. Ct. 1154, 137 L. Ed.2d 281 (1997). The "intent to permit enforcement by everyman," *id.*, is especially critical when, as in the area of campaign finance law, there is the ever-present possibility that governmental enforcement decisions may reflect political considerations.

At the federal level, for example, enforcement by the Federal Election Commission has been significantly impaired by partisan deadlock among the Commissioners. *See* Public Citizen, *Roiled in Partisan Deadlock, Federal Election Commission Is Failing* (2013), http://www.citizen.org/documents/fec-deadlock-statement-and-chart-january-2013.pdf. When deadlock prevents a meritorious enforcement action, citizen's suits are often the only way to seek real enforcement of campaign finance disclosure requirements. For example, Public Citizen and others recently filed suit after the Commission deadlocked on a staff recommendation that it pursue action against the political spending group Crossroads GPS for failing to register as a political committee. *See Public Citizen v. FEC*, No. 14-cv-148 (D.D.C. filed Jan. 31, 2014). Such actions reflect Congress's intent to "authorize this kind of suit" to "protect voters" from suffering injury attributable to campaign finance disclosure violations. *FEC v. Akins*, 524 U.S. 11, 19, 118 S. Ct. 1777,141 L. Ed.2d 10

(1998). The same intent animates the citizen's action provision of Washington's FCPA.

Unfortunately, the efficacy of citizen's actions under federal campaign finance law is impaired by the requirement that the plaintiff show that the agency's inaction was arbitrary or unlawful. 2 U.S.C. § 437g(a)(8)(C). Washington law, by contrast, imposes no such requirement, and thus provides a safety valve against weak enforcement of the law by permitting citizen's actions when government officers, after notice, fail to bring actions themselves. This Court should not cut off that safety valve by adopting an interpretation of the statute that impairs enforcement of the law.

Finally, contrary to BIAW's contention (BIAW Supp. Br. 9–10), gutting the citizen's action provision is not necessary to prevent a denial of "due process." A citizen's action creates no possibility of denial of due process, as the full protections available to a defendant against a wrongful deprivation of liberty or property in any judicial proceeding are equally available to the defendant in a citizen's action. Indeed, the citizen's action provision gives even greater protection to defendants than is available in most civil actions, by providing a prevailing defendant, in appropriately limited circumstances, an entitlement to costs and attorneys' fees. RCW 42.17A.765(4)(b). As this Court held in *Fritz v. Gorton*, the statute

provides "ample protection against frivolous and abusive lawsuits." 83 Wn. 2d at 314.

BIAW's suggestion that *Fritz*'s affirmance of the constitutionality of citizen's actions somehow rested on the cramped construction of the law that BIAW advocates in this case is unfounded: This Court in *Fritz* merely observed that a citizen's suit may proceed only after two notices result in "no action"—i.e., no lawsuit—by the attorney general. *Id.* Here, where the attorney general brought no action against BIAW after receiving the required notices, a citizen's action may proceed.

IV. CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted this 25th day of April, 2014.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 25, 2014, I arranged for service of the foregoing Brief of Amicus Curiae Public Citizen, Inc., in Support of the Petitioners, to the Court and to counsel for the parties to this action as follows:

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DATED at Seattle, Washington this 25th day of April, 2014.

V. Vigoren

Victoria K. Vigoren

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Attached for filing is the Brief of Amicus Curiae Public Citizen, Inc. in Support of the Petitioners, in *Utter v. Building Industry Association of Washington*, Cause No. 89462-1. The attorney filing this document is Howard M. Goodfriend, WSBA No. 14355, e-mail address: howard@washingtonappeals.com.

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