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2
3 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
4 IN AND FOR KING COUNTY
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6 PROTECT PUBLIC HEALTH,)
7 Plaintiff,) No. 17-2-21919-3 SEA
8 vs.)
9 JOSHUA FREED, IMPACTION, CITIZENS) ORDER GRANTING PLAINTIFF'S
10 FOR A SAFE KING COUNTY, KING) MOTION FOR DECLARATORY
11 COUNTY, and JULIE WISE, in her official) JUDGMENT AND INJUNCTIVE RELIEF
12 capacity.)
13 Defendants.)

14 THIS MATTER came before this Court pursuant to Plaintiff's Motion for Declaratory
15 Judgment and Injunctive Relief. To be clear, the decision of this Court is not about the merits of the
16 response by the County to the opioid crisis, the Court neither embraces nor indicts the decision to
17 implement what the local task force refers to as Community Health Engagement Locations. The Court
18 is tasked with determining a very discreet and narrow issue: whether the subjects proposed by Initiative
19 27 are properly within the scope of the law as it pertains to the local initiative process. The Court
20 reviewed and considered the records and files herein, including:

- 21 1. Plaintiff Protect Public Health's Motion for Declaratory Judgment and Injunctive Relief
22 2. Plaintiff City of Seattle's Motion for Declaratory Judgment and Injunctive Relief
23 3. Document Declarations of Knoll Lowney;
24 4. Document Declarations of Carl W. M. Seu
25 5. Declaration of Daniel Otter, R.N./M.P.H;

- 1 6. Declaration of Margaret Carney PhD;
- 2 7. Declaration of Dr. Robert Wood;
- 3 8. Defendant's Response;
- 4 9. Declaration of Andrew R. Stokesbary
- 5 10. Plaintiff Protect Public Health's Reply;
- 6 11. Plaintiff City of Seattle's Reply

7 Having considered the pleadings and submissions in this case, and being otherwise fully
8 advised herein, the Court finds as follows:

9 FINDINGS OF FACT

- 10 1. All parties agree that Heroin and prescription opioid use constitutes a public health crisis
11 in King County. In March 2016, local County and City leaders convened the Heroin and
12 Prescription Opiate Addiction Task Force. The Task Force was co-chaired by the King
13 County Department of Community and Human Services and Public Health.¹
- 14 2. The Task Force was charged with developing strategies to combat opioid use disorder,
15 prevent overdose, and improve access to treatment and other supportive services.²
- 16 3. The Task Force set out a series of recommendations, including a recommendation to
17 establish, on a pilot program basis, two Community Health Engagement Locations (CHEL)
18 where supervised consumption will occur.³

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23 ¹ Heroin and Prescription Opiate Addiction Task Force Final Report and Recommendations, September 15,
24 2016 (*Ex. A. to Lowney Decl.*)

25 ² *id*

³ *id*

- 1 4. On January 20, 2017, the King County Board of Health (Board) passed a resolution
2 adopting the recommendations of the Task Force, including the establishment of CHEL
3 sites.⁴
- 4 5. Proposed King County Initiative 27 (I-27) was filed with the Clerk of the King County
5 Council on April 14, 2017 and approved as to form on May 2, 2017.⁵ The intent of I-27 is
6 to “prohibit the funding and operation of supervised drug consumption sites.”
- 7 6. Section 1A of I-27 proposes that “No public funds may be spent on the registration,
8 licensing, construction acquisition, transfer, authorization, use, or operation of a supervised
9 drug consumption site.”
- 10 7. Section 1C of I-27 creates civil liability for the County should they appropriate any funds
11 to sites such as the proposed CHEL sites.
- 12 8. Section 2 of I-27 creates both civil and criminal penalties for public health officials, and
13 other persons including city and county governments operating CHEL sites.
- 14 9. On June 28, 2017, the King County Council adopted Ordinance 18544 appropriating
15 funding for the plan approved by the Board.⁶
- 16 10. I-27 seeks to amend both the Public Peace, Safety and Morals provision of the King County
17 Code (KCC), chapter 12.81.040, and The Public Health and Safety provision of the KCC,
18 chapter 4A.650.⁷

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23 ⁴ Board of Health Resolution 17-01.1 (*Ex. B to Lowney Decl*)

24 ⁵ Declaration of Andrew Stokesbary

25 ⁶(*Exhibit C to Lowney Decl*)

⁷ (*Exhibit A to Lowney Decl*)

1 11. All plaintiffs have an interest they seek to protect that is within the scope of the matters I-
2 27 seeks to regulate, and are at risk of harm to these interests should I-27 be placed on the
3 ballot.

4 12. Revised Code of Washington 70.12.015 states:

5 "Each county legislative authority shall annually budget and appropriate a sum for
6 public health work."

7 13. Revised Code of Washington 70.05.060(2) outlines the powers and duties of local board
8 of health and, states in pertinent part:

9 Each local board of health shall have supervision over all matters pertaining to the
preservation of the life and health of the people within its jurisdiction and shall:

10 (2) Supervise the maintenance of all health and sanitary measures for the
protection of the public health within its jurisdiction;

11 (3) Enact such local rules and regulation as are necessary in order to preserve,
promote and improve the public health and provide for the enforcement thereof;

12 (4) Provide for the control and prevention of any dangerous, contagious, or
infectious disease within the jurisdiction of the local health department

13 (5) Provide for the prevention, control and abatement of nuisances detrimental
14 to the public health

15 14. Revised Code of Washington 70.05.060 outlines the powers and duties of the local health
16 officer, and states in pertinent part:

17 The local health officer, acting under the direction of the local board of health...shall:

18 (2) Take such action as is necessary to maintain health and sanitation
supervision over the territory within his or her jurisdiction;

19 (3) Control and prevent the spread of any dangerous, contagious or infectious
diseases that may occur within his or her jurisdiction;

20 (5) Prevent, control or abate nuisances which are detrimental to the public
health;

21 (9) Take such measures as he or she deems necessary in order to promote the
public health...

22 15. King County Charter Section 230.40 states:

23 An appropriation ordinance; an ordinance necessary for the immediate preservation of
24 the public peace, health or safety or for the support of county government and its existing
public institutions; an ordinance proposing amendments to this charter; an ordinance
25 providing for collective bargaining; an ordinance approving a collective bargaining
agreement; an ordinance providing for the compensation or working conditions of county

1 employees; or an ordinance which has been approved by the voters by referendum or
2 initiative shall not be subject to a referendum.

3 CONCLUSIONS OF LAW

4 To establish standing for pre-election review, plaintiffs need to show that the interest they seek
5 to protect is within the zone of interests that the initiative will protect or regulate, and that they would
6 suffer an injury in fact if the law were to pass. *Spokane Entrep. Ctr. V. Spokane Moves to Amend the*
7 *Constitution*, 185 Wn.2d 97 (2016). Plaintiffs City of Seattle and Protect Public Health have standing
8 to request pre-election review of I-27 as their interests are within the zone of interests that the initiative
9 will regulate – public health, and they would suffer an injury in fact if the initiative were to pass.
10 Furthermore, the challenge to I-27 involves “significant and continuing matters of public importance
11 that merit judicial resolution.” *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn.App.
12 427 (2011).

13 “There are multiple limits on local initiative power,” *Spokane Entrep. Ctr.*, 185 Wn.2d at 107.

14 Where a state law gives power to a municipality’s “legislative authority” or “governing body,”
15 local direct legislation through initiative or referendum cannot supplant, place conditions, or limit the
16 legislative body’s exercise of that power. *City of Sequim v. Malkasian*, 157 Wn.2d 251, (2006). RCW
17 Chapter 36.40 vests the local legislative authority to fix and determine budgets. I-27 proposes to engage
18 in the appropriations process through prohibition of funding and therefore impinges upon the
19 legislative authority of the county.

20 The legislature adopted RCW Chapter 70 delegating the decision-making authority on public
21 health to the Board of Health, the Local Health Officer, and the County Council. RCW 70.05.060 and
22 RCW 70.12.025. I-27 interferes with the duties and obligations of the Board and County Council by
23 subjecting public health officials and the County Council to potential criminal and civil liability if they
24 attempt to fulfill the mandates which have been placed upon them by statute. In this way, I-27 is in
25 direct conflict with RCW Chapter 70. Local initiative cannot usurp state law

1 Our Supreme Court has recognized the broad authority public health authorities have in
2 protecting public health and addressing responses to public health crisis. In *Spokane County Health*
3 *Dist. V. Brockett*, 120 Wn2d 140 (1992), the court found that even the criminal laws of the State were
4 not a bar to the implementation of a needle exchange program. Accordingly, I-27 in its entirety extends
5 beyond the scope of the local initiative power. Therefore, it is hereby ORDERED, ADJUDGED and
6 DECREED that: Plaintiff's Motion for Declaratory Judgment and Injunctive Relief is **GRANTED**.

7 Accordingly, this Court:

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- 9 1. Declares that I-27, in its entirety, is invalid, null, and void because it extends beyond the
10 scope of the local initiative power; and
- 11 2. Enjoins the King County Council from referring I-27 to the ballot and enjoins the Director
12 of King County Elections from placing I-27 on the ballot.
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15 DATED: this 16 of October, 2017

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18 The Honorable Veronica Alicea Galvan
19 King County Superior Court Judge
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