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NO. 33682-4

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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CITY OF CLARKSTON,  
a Washington municipal corporation,

*Respondent,*

v.

VALLE DEL RIO, LLC, a Washington limited liability company,  
d/b/a GREENFIELD COMPANY; MATT PLEMMONS,  
individually and as a member of VALLE DEL RIO, LLC; and  
AARON TATUM, individually and as a member of  
VALLE DEL RIO, LLC,

*Appellants.*

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**AMICUS BRIEF OF THE STATE OF WASHINGTON**

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## I. INTRODUCTION

Article XI, section 11 of the Washington Constitution grants cities and counties plenary authority to legislate except when in conflict with state law. Appellants Valle Del Rio, LLC, *et al.* (Valle) defied an ordinance of Respondent City of Clarkston (Clarkston), opening a marijuana retail business in violation of a presumptively valid city ordinance. When the superior court entered a preliminary injunction to enforce this ordinance, Valle appealed to this Court, arguing that local governments have no authority to prohibit marijuana businesses.

Nothing in state law, however, deprives local governments of their preexisting authority granted by article XI, section 11 to regulate or prohibit marijuana businesses. In evaluating preemption claims, “a heavy burden rests upon the party challenging” the local ordinance. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003). Although Initiative 502 (I-502) markedly changed the State’s approach to marijuana, nothing in I-502 or subsequent legislation deprives cities or counties of their regulatory authority over businesses. Clarkston has exercised that authority in adopting the ordinance the city enforced through injunction. While the State takes no position on Clarkston’s choice as a policy matter, Clarkston was well within its constitutional

authority in enacting its policy. This Court should affirm the superior court's entry of injunctive relief to enforce Clarkston's ordinance.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

The Attorney General files this amicus curiae brief on behalf of the State of Washington. The Attorney General's powers include the submission of amicus curiae briefs on matters affecting the public interest. *See Young Americans for Freedom v. Gorton*, 91 Wn.2d 204, 212, 588 P.2d 195 (1978). The State has important interests concerning the proper interpretation of Washington's marijuana laws.

The Attorney General has also participated in several other cases raising essentially the same issue. The Attorney General intervened on behalf of the State in two cases currently pending before Division II of this Court presenting the issue of whether city or county ordinances prohibiting marijuana businesses are preempted by state law. *MMH, LLC, v. City of Fife*, Cause No. 46723-2-II; *Emerald Enterprises v. Clark County*, Cause No. 47068-3-II. Division II heard oral argument in *MMH* on January 22, 2016, and has stayed proceedings in *Emerald Enterprises* pending resolution of *MMH*.<sup>1</sup> The Attorney General also filed an amicus

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<sup>1</sup> The Attorney General also intervened in three additional cases in which superior courts held local ordinances prohibiting marijuana businesses were not preempted by State law. The plaintiffs in all of those cases subsequently dismissed their appeals. *Americanna Weed, LLC, V. City of Kennewick*, Cause No. 91127-4 (Wash. 2015) (Mandate 6-29-15); *Green Collar, LLC v. Pierce County*, Cause No. 47140-0-II

curiae brief in *Cannabis Action Coalition v. City of Kent*, 183 Wn.2d 219, 351 P.3d 151 (2015), in which the Washington Supreme Court upheld a local ordinance prohibiting marijuana businesses against an argument that the State’s medical marijuana laws preempted it. Before litigation on this question began, the Attorney General also issued a formal opinion concluding that state law does not preempt local ordinances prohibiting marijuana businesses. 2014 Op. Att’y Gen. No. 2.

### **III. ISSUES ADDRESSED BY AMICUS**

The State addresses the following issue:

Does state law preempt local ordinances that prohibit marijuana businesses within the local government’s jurisdiction?

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

Clarkston describes the background to this appeal in the city’s brief. Clarkston Br. at 3-8. It is sufficient to note for purposes of this brief that the case concerns a city ordinance prohibiting marijuana businesses as land uses within the city. Valle opened for business in defiance of the ordinance. The superior court granted a preliminary injunction in favor of Clarkston to enforce the ordinance. Amicus is informed that Clarkston’s

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(Wash. Ct. App. 2015) (Mandate 1-27-16); *SMP Retail, LLC v. City of Wenatchee*, Cause No. 32911-9-III (Wash. Ct. App. 2015) (Mandate 1-9-15).

city council now permits marijuana retailers within the city, but the parties continue to dispute the issues presented on this appeal.

## V. ANALYSIS

### A. Standard of Review

An appellate court reviews a grant of a preliminary injunction for abuse of discretion. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). The standards for granting an injunction are well established. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). They include examining the likelihood that the party seeking an injunction will prevail on the merits. “Although generally a reviewing court is not to adjudicate the ultimate rights in the case when addressing the propriety of a preliminary injunction, the court may reach the merits of any purely legal question *provided* that the interim harm factor is undisputed.”<sup>2</sup> *Kucera*, 140 Wn.2d at 216 (internal quotation marks omitted).

In this case, Clarkston is likely to prevail on the merits because as a matter of law cities derive plenary legislative authority directly from article XI, section 11 of the Washington Constitution: “Any county, city,

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<sup>2</sup> Valle says that harm is disputed in this case. Valle Br. at 9. The harm to Clarkston in Valle’s defiance of local law is harm *per se* as an open challenge to the rule of law. See *City of Seattle v. Davis*, 174 Wn. App. 240, 306 P.3d 961 (2012) (affirming preliminary injunction where essential facts were not in dispute). Whatever dispute remains is purely one of law, properly reviewed on appeal. *Id.*

town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Cities require no affirmative grant of authority in statute. The party claiming preemption bears a heavy burden in challenging the presumptively valid ordinance. *HJS Dev., Inc.*, 148 Wn.2d at 477.

**B. State Law Does Not Expressly Preempt Clarkston’s Ordinance**

State statutes can preempt local ordinances by (1) expressly saying so, (2) occupying the field of regulation and leaving no room for local jurisdiction, or (3) creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010); *see also* 2014 Op. Att’y Gen. No. 2, at 4 (discussing preemption in the context of I-502).<sup>3</sup>

Valle claims that state law expressly preempts the field of marijuana regulation based upon RCW 69.50.608.<sup>4</sup> Valle Br. at 25. But that statute, a provision of the controlled substances act that predates

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<sup>3</sup> Copy attached for ease of reference. Courts generally afford great weight to Attorney General’s Opinions, although they are not binding authority. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011).

<sup>4</sup> RCW 69.50.608 provides: “The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.”

I-502, makes clear that state law only “fully occupies and preempts the entire field of *setting penalties* for violations of the controlled substances act.” RCW 69.50.608 (emphasis added). RCW 69.50.608 otherwise preserves local jurisdictions’ concurrent authority to regulate drug-related activity. *City of Tacoma v. Luvene*, 118 Wn.2d 826, 834, 827 P.2d 1374 (1992). Clarkston’s ordinance does not set penalties for violations of the controlled substances act, and accordingly RCW 69.50.608 expressly *does not* preempt it. RCW 69.50.608 (last sentence, expressly preserving local authority to adopt ordinances not in conflict with the controlled substances act). This case is easy proof of that: Valle’s proposed activity—licensed operation of a marijuana retail store—would not violate the controlled substances act as amended by I-502. Thus, describing the ordinance as setting a penalty for violating the statute makes no sense. *See, e.g., Luvene*, 118 Wn.2d at 834 (RCW 69.50.608 allows local governments to regulate “drug-related activity” not prohibited by the controlled substances act).

**C. State Law Does Not Impliedly Preempt Clarkston’s Ordinance**

**1. Irreconcilable Conflict Arises Only Where State Law Creates a Right to Engage in an Activity in Circumstances Prohibited by a Local Ordinance**

An ordinance is invalid under conflict preemption if it directly and irreconcilably conflicts with state law such that the two cannot be

harmonized. *Lawson*, 168 Wn.2d at 682; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. *HJS Dev., Inc.*, 148 Wn.2d at 477 (internal quotation marks omitted). Conflict preemption arises only “when an ordinance and statute cannot be harmonized.” *Entm’t Indus. Coal. v. Tacoma-Pierce County Health Dep’t*, 153 Wn.2d 657, 663, 105 P.3d 985 (2005).

Valle relies upon a shorthand version of the test for state preemption of local ordinances that Washington courts have sometimes articulated: “An ordinance conflicts with state law if it permits what state law forbids or forbids what state law permits.” Valle Br. at 15 (citing *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004)). But Valle misunderstands how this test is applied.

Our supreme court has never held that any time state law permits an activity in some general sense, local governments must also allow it. Indeed, the court has held the opposite—that even “[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998). The Washington Supreme Court

has recently acknowledged that while the test for preemption might be easily stated, “the analysis is often nuanced.” *Cannabis Action Coal.v. City of Kent*, 183 Wn.2d 219, 227, 351 P.3d 151 (2015).

Valle argues that because state law “allows” marijuana businesses that have been licensed by the state, that state law therefore preempts local ordinances that ban them. Valle Br. at 16. But in *Cannabis Action Coalition*, the Washington Supreme Court rejected the same analysis as it applied to a statute governing medical marijuana collective gardens.<sup>5</sup> The plaintiffs in that case argued that a state statute “allowed” collective gardens and that therefore a city could not ban them. *Cannabis Action Coal.*, 183 Wn.2d at 232 n.5. But this is not the sense in which the word “allow” is used in describing preemption. State law preempts a local law that prohibits an activity only if the state law “grants a ‘stand-alone’ or ‘absolute’ right to engage in” that activity. *Id.*<sup>6</sup>

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<sup>5</sup> Valle attempts to distinguish *Cannabis Action Coalition* on the basis that the statutes at issue in that case were later amended. Valle Br. at 33. This is irrelevant to the court’s analysis of preemption and to the application of the court’s method to this case.

<sup>6</sup> Valle’s claim that Washington recognizes only a “modified” form of home rule is incorrect. As demonstrated in a recent scholarly article, Washington grants broad police power authority to counties, cities, and towns, but case law has sometimes failed to carefully delineate the differences between that broad authority and the more narrow delegation of authority to other local bodies, including special districts. Hugh D. Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 Seattle U. L. Rev. 809, 824-28 (2015) (discussing home rule). State law vests counties, cities, and towns with broad local authority. See *Snohomish County v. State*, 97 Wn.2d 646, 649, 648 P.2d 430 (1982) (discussing breadth of county authority); *City of Seattle v. Sisley*, 164 Wn. App. 261, 266, 263 P.3d 610 (2011) (“First-class cities, including Seattle, are self-governing bodies, and the only limitation on their power is that their actions cannot contravene

Earlier cases make this point abundantly clear. For example, in *Weden*, the court upheld San Juan County’s ban on jet-skis, even though state law created a licensing and registration system for jet-skis and regulated their use. The court said: “Nowhere in the language of the statute can it be suggested that the statute creates an unbridged right to operate [jet-skis] in all waters throughout the state.” *Weden*, 135 Wn.2d at 695. Instead, “[r]egistration of a vessel is nothing more than a precondition to operating a boat.” *Id.* at 695. “No unconditional right is granted by obtaining such registration.” *Id.*

Similarly, in *Lawson*, state law imposed many regulations on mobile home tenancies, and it contemplated that such tenancies could include recreational vehicles (RVs). The City of Pasco, however, banned RVs from mobile home parks. The plaintiff contended that “Pasco’s ordinance conflicts with [state law] because it prohibits what [state law] permits: the placement of RVs in mobile home parks.” *Lawson*, 168 Wn.2d at 682-83. The court rejected this argument, concluding that state law did not “affirmatively authorize[] [RVs] on any mobile home lot in the state.” *Id.* at 683. “The statute does not forbid recreational vehicles

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constitutional provisions or legislative enactments.”); *City of Port Angeles v. Our Water—Our Choice!*, 170 Wn.2d 1, 14 n.7, 239 P.3d 589 (2010) (discussing the broad authority of cities organized under the optional municipal code). The state constitution clearly provides that counties, cities, and towns possess plenary police power authority except where state law irreconcilably conflicts. Const. art. XI, § 11; *Lawson*, 168 Wn.2d at 682.

from being placed in the lots, nor does it create a right enabling their placement.” *Lawson*, 168 Wn.2d at 683. Because state law created no affirmative right to place an RV in a mobile home park, it did not prevent municipalities from barring them. *Id.* at 684. The same analysis holds here: I-502 grants Valle no right to operate in Clarkston regardless of local law.

Valle relies upon a recent Court of Appeals’ decision, *Department of Ecology v. Wahkiakum County*, 184 Wn. App. 372, 337 P.3d 364 (2014), *review denied*, 182 Wn.2d 1023 (2015). The statute and regulatory scheme at issue in that case was not at all like the State’s regulation of marijuana businesses. Wahkiakum County enacted an ordinance that prohibited application of “class B biosolids” (treated municipal sewage). The Department of Ecology challenged the ordinance, successfully arguing that it conflicted with a state statute administered by Ecology. The statute at issue in that case mandated “that the program shall, *to the maximum extent possible*, ensure that municipal sewage sludge is reused as a beneficial commodity[.]” RCW 70.95J.005(2) (emphasis added). Division II of this Court explained: “Ecology adopted a regulatory scheme that specifically grants permits for land application of class B biosolids and . . . *created a right to land application of class B biosolids when a permit is acquired.*” *Wahkiakum County*, 184 Wn. App. at 381 (emphasis added). That regulatory system, unlike the one at issue in this case,

“created a right to land application of class B biosolids when a permit is acquired.” *Wahkiakum County*, 184 Wn. App. at 381. The court found the ordinance irreconcilable with the statute because the ordinance prevented meeting Ecology’s mandate under state law. *Id.* at 374.

As these cases illustrate, to show that local law “prohibits what state law permits,” Washington cases require more than that state law allows an activity generally. Rather, our court has found that a local ordinance “forbids what state law permits” only when the state law creates an entitlement to engage in the activity in specific circumstances forbidden by the local legislation. *Lawson*, 168 Wn.2d at 683-84; *Weden*, 135 Wn.2d at 694. The real question is thus whether state law creates a “right” to do something that the ordinance specifically prohibits. *Id.* at 695 (finding no conflict because state law created no “right to operate [jet-skis] in all waters throughout the state”); *Lawson*, 168 Wn.2d at 683 (finding no conflict because the “statute does not . . . create a right enabling [RV] placement”); *see also City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729, 743, 300 P.3d 494, 156 Cal. Rptr. 3d 409 (2013) (rejecting an argument that state law preempted a local ordinance related to medical marijuana, and construing a constitutional provision identical to article XI, section 11, and holding that state law preempts a local ordinance only when “the ordinance directly requires

what the state statute forbids or prohibits what the state enactment demands”).

**2. State Law Does Not Create a Right for Marijuana Businesses to Operate Regardless of Local Law**

Applying the proper test, state law does not irreconcilably conflict with Clarkston’s ordinance because state law creates no right to operate a marijuana business regardless of local law. Thus, the ordinance does not prohibit anything that the license holder has “a ‘stand-alone’ or ‘absolute’ right to” do under state law. *Cannabis Action Coal.*, 183 Wn.2d at 232 n.5.

Valle seems to contend that because the state Liquor and Cannabis Board is tasked with issuing licenses to regulated marijuana businesses, that these licenses grant an unfettered right for the licensee to do so anywhere in the state. But the license merely gives marijuana businesses an exemption from what would otherwise be prohibited as criminal acts under the state controlled substances act. RCW 69.50.325 (creating exceptions to what would otherwise be criminal conduct). And granting a state license does not preclude a local ban. *Rabon*, 135 Wn.2d at 292.

State law simply authorizes the issuance of state licenses for marijuana businesses, without affording any right to do business without complying with local law. “There may be licensed, in no greater number in each of the counties of the state than as the state liquor and cannabis

board shall deem advisable, retail outlets established for the purpose of making marijuana . . . products available for sale to adults aged twenty-one and over.” RCW 69.50.354. But this permissive provision is merely a grant of authority to the Board, not a clear statement of intent to displace local power. Other statutes, moreover, only authorize the Board to determine a maximum number of retail stores per county, making no mention of any mandate for any minimum number. RCW 69.50.345.

Similarly, RCW 69.50.342(1) authorizes the Board “to adopt rules regarding” a number of issues, including “[r]etail outlet locations and hours of operation.” RCW 69.50.342(1)(f). This rulemaking power falls far short of showing clear and express intent to override local authority. *See Cannabis Action Coal.*, 183 Wn.2d at 226. Indeed, in adopting rules to implement this provision, the Board specified: “The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.” WAC 314-55-020(11). It turns the law on its head to argue that a statutory program that the Board implemented specifically to require compliance with local rules actually overrides such rules.

In this regard as well, state marijuana laws are distinguishable from the law that Division II of this Court found preemptive in

*Wahkiakum County*. In that case, state law directed the Department of Ecology to regulate biosolids such that, “to the maximum extent possible” municipal sewage sludge is “reused as a beneficial commodity.” *Wahkiakum County*, 184 Wn. App. at 380-81 (citing RCW 70.95J.005(2)). I-502 expresses no policy of maximizing the availability of marijuana, but just the opposite. It provides only for a very limited and regulated marijuana market. It imposes limits on the number of marijuana retailers, regulates the advertising of marijuana, and contemplates a state educational program aimed at reducing marijuana abuse. RCW 69.50.354, .357, .540(2)(b)(i). I-502 modestly exempts licensed marijuana businesses from state criminal laws that would otherwise apply, RCW 69.50.325, but never grants licensees an absolute right to do business without regard to local law.

Cases finding local ordinances preempted by state law further demonstrate that such preemption is not applicable here. For example, in one case our supreme court found preemption when state law affirmatively granted water districts the authority to decide whether to fluoridate their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 432. The state law in that case thus preempted a local ordinance requiring all water districts in the county to fluoridate their water. *Id.* at 433. The statute and the ordinance conflicted irreconcilably. *Id.* This is not the case here, when

state law grants marijuana businesses no right to operate without regard to local regulatory authority.

Similarly in another case, state law at the time banned smoking in public places, but it explicitly entitled “certain business owners . . . to designate smoking . . . locations in their establishments.” *Entm’t Indus. Coal.*, 153 Wn.2d at 664 (discussing former RCW 70.160.040(1) (2004), repealed by Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901)). The court struck down a local ordinance that prohibited smoking in all businesses open to the public because the state law explicitly gave certain business owners a right to designate smoking areas, but the ordinance prohibited this. *Id.*

Unlike in both *Parkland Light & Water Co.* and *Entertainment Industry Coalition*, the state’s marijuana laws contain no specific language creating a right that Clarkston’s ordinance denies. I-502 authorizes the Board to issue licenses to producers, processors, and retailers of marijuana, who thereby escape state criminal liability for conduct that would otherwise be illegal. RCW 69.50.325. But it says nothing about local zoning and regulatory authority, and it certainly does not say that such a license grants a right to operate regardless of local law. Indeed, the Board itself does not interpret a license issued under I-502 as creating such a right. *See* WAC 314-55-020(11).

It is true, as Valle notes, that state law allows local governments to object to the issuance of particular state licenses. RCW 69.50.331(7)(b). Valle's argument that this necessarily precludes local bans of marijuana businesses does not follow. RCW 69.50.331(7)(b) merely recognizes that local governments may have factual information that the State lacks regarding particular licensees or license applicants. It thus serves a different purpose than a local prohibition and offers no basis for inferring a legislative intent to preempt local bans. And state law governing liquor licenses includes a parallel provision allowing for local government input, RCW 66.24.010(8), but couples that provision with one that expressly allows local governments to prohibit the sale of liquor by public vote. RCW 66.40.020. Thus, the two provisions are clearly reconcilable.

Valle's reliance upon an early case regarding regulation of street cars is inapt in this light because in that case the state and local laws established separate processes for performing the same function. *Seattle Elec. Co. v. City of Seattle*, 78 Wash. 203, 206-07, 138 P. 892 (1914). Here, in contrast, the administrative procedure provided by RCW 69.50.331(7)(b) serves a different purpose than does the local ordinance, that of affording specific factual information to a state board.

Valle argues that since state law does not affirmatively grant local governments the authority to regulate marijuana business, local

governments must lack that authority. Valle Br. at 6. This argument gets the standard for preemption precisely backwards. “A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated.” *State ex rel. Schillberg v. Everett Dist. Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979). State law demonstrates no clear intent to take away local authority to prohibit marijuana businesses, and this Court should not read in such a provision.

### **3. Amendments to State Law Enacted in 2015 Contemplate that Local Governments May Ban Marijuana Businesses**

In 2015, the legislature amended the statute governing the marijuana excise tax to share a portion of the revenue with counties, cities, and towns—but only those that have not prohibited operating marijuana businesses. RCW 69.50.540(2)(g)(i). Under the formula, thirty percent of the funds set aside for local use is distributed to local governments in which marijuana retailers are physically located. Laws of 2015, 2d Spec. Sess., ch. 4, § 206(2)(g)(i)(A) (amending RCW 69.50.540). Seventy percent is shared only with local governments that have not imposed bans. “*Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.*” Laws of 2015, 2d Spec. Sess., ch. 4, § 206(2)(g)(i)(B) (emphasis added). The legislature has thus expressly recognized local authority to prohibit

marijuana businesses. The Washington Supreme Court has “recognized that when a state statute expressly provides for local jurisdiction over a subject, state law does not impliedly preempt the field of that subject.” *Cannabis Action Coal.*, 183 Wn.2d at 226-27. Even with regard to conflict preemption, the legislature cannot reasonably have intended to preempt the very possibility upon which it conditioned the distribution of tax revenue.

The second way in which the 2015 legislature expressly contemplated local regulation further demonstrates that state law does not impliedly preempt local ordinances prohibiting marijuana businesses. The 2015 legislation expressly contemplates that local jurisdictions will apply their zoning authority to marijuana businesses. Laws of 2015, 2d Spec. Sess., ch. 4, § 301 (amending RCW 69.50.331 to add a new subsection (9) authorizing local governments to prohibit marijuana producers or processors in certain residential and rural zones); *id.* § 1001(3)(c) (precluding medical marijuana cooperatives from being located “[w]here prohibited by a city, town, or county zoning provision”).<sup>7</sup> State law

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<sup>7</sup> The manner in which the legislature proceeded in amending RCW 69.50.331 demonstrates that it did not intend the authority to prohibit marijuana businesses in residential and rural zones to be the exclusive extent of zoning authority. This is so because the very same bill that added RCW 69.50.331(9) also expressly contemplated local bans by conditioning the distribution of tax revenue to cities and counties on whether they had bans in place. RCW 69.50.540 (as amended by Laws of 2015, 2d Spec. Sess., ch. 4, § 206(2)(g)(i)). Even more clearly, the legislature’s amendment adding RCW 69.50.331(9) took place through a series of amendments on the floor of the House

accordingly contemplates the type of local legislation at issue here and Valle's preemption argument should be rejected.

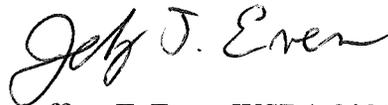
## VI. CONCLUSION

The State respectfully requests that this Court affirm the decision of the Superior Court entering a preliminary injunction in favor of the City of Clarkston. Clarkston's ordinance does not irreconcilably conflict with state law. This Court should uphold the constitutional authority of cities and counties to legislate locally in ways that do not irreconcilably conflict with State law.

RESPECTFULLY SUBMITTED this 31st day of March 2016.

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of Representatives. 2E2SHB 2136, § 301 (enacted as Laws of 2015, 2d Spec. Sess., ch. 4, § 301) (debate recorded on audit by TVW at <http://www.tvw.org/watch/?eventID=2015061081> (last visited Mar. 24, 2016)); *see Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 470, 139 P.3d 1078 (2006) ("This court may consider sequential drafts of a bill in order to help determine the legislature's intent."). The House first added subsection (9) to RCW 69.50.331 at a point at which the bill included a provision that would have generally prohibited local governments from enacting bans on marijuana businesses except by public vote. But then later in the same debate, the House removed from the bill the language in section 1601 that would have preempted local authority to ban marijuana businesses. The debate concerning the latter amendment made clear the legislative intent to allow local bans at the discretion of local government. *See* TVW recording *supra* at 27:30 through 48:00.

# ATTACHMENT

# Opinion

Robert W. Ferguson

Attorney General of Washington

**STATUTES—INITIATIVE AND REFERENDUM—ORDINANCES—COUNTIES—  
CITIES AND TOWNS—PREEMPTION—POLICE POWERS—Whether Statewide  
Initiative Establishing System For Licensing Marijuana Producers, Processors, And  
Retailers Preempts Local Ordinances**

1. Initiative 502, which establishes a licensing and regulatory system for marijuana producers, processors, and retailers, does not preempt counties, cities, and towns from banning such businesses within their jurisdictions.
2. Local ordinances that do not expressly ban state-licensed marijuana licensees from operating within the jurisdiction but make such operation impractical are valid if they properly exercise the local jurisdiction's police power.

January 16, 2014

The Honorable Sharon Foster  
Chair, Washington State Liquor Control Board  
3000 Pacific Avenue SE  
Olympia, WA 98504-3076

Cite As:  
AGO 2014 No. 2

Dear Chair Foster:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

1. Are local governments preempted by state law from banning the location of a Washington State Liquor Control Board licensed marijuana producer, processor, or retailer within their jurisdiction?
2. May a local government establish land use regulations (in excess of the Initiative 502 buffer and other Liquor Control Board requirements) or business license requirements in a fashion that makes it impractical for a licensed marijuana business to locate within their jurisdiction?

#### BRIEF ANSWERS

1. No. Under Washington law, there is a strong presumption against finding that state law preempts local ordinances. Although Initiative 502 (I-502) establishes a licensing and regulatory system for marijuana producers, processors, and retailers in Washington State, it includes no clear indication that it was intended to preempt local authority to regulate such

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businesses. We therefore conclude that I-502 left in place the normal powers of local governments to regulate within their jurisdictions.

2. Yes. Local governments have broad authority to regulate within their jurisdictions, and nothing in I-502 limits that authority with respect to licensed marijuana businesses.

**BACKGROUND**

I-502 was approved by Washington voters on November 6, 2012, became effective 30 days thereafter, and is codified in RCW 69.50. It decriminalized under state law the possession of limited amounts of useable marijuana<sup>1</sup> and marijuana-infused products by persons twenty-one years or older. It also decriminalized under state law the production, delivery, distribution, and sale of marijuana, so long as such activities are conducted in accordance with the initiative's provisions and implementing regulations. It amended the implied consent laws to specify that anyone operating a motor vehicle is deemed to have consented to testing for the active chemical in marijuana, and amended the driving under the influence laws to make it a criminal offense to operate a motor vehicle under the influence of certain levels of marijuana.

I-502 also established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. The marijuana producer's license governs the production of marijuana for sale at wholesale to marijuana processors and other marijuana producers. RCW 69.50.325(1). The marijuana processor's license governs the processing, packaging, and labeling of useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers. RCW 69.50.325(2). The marijuana retailer's license governs the sale of useable marijuana and marijuana-infused products in retail stores. RCW 69.50.325(3).

Applicants for producer, processor, and retail sales licenses must identify the location of the proposed business. RCW 69.50.325(1), (2), (3). This helps ensure compliance with the requirement that "no license may be issued authorizing a marijuana business within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8).

Upon receipt of an application for a producer, processor, or retail sales license, the Liquor Control Board must give notice of the application to the appropriate local jurisdiction. RCW 69.50.331(7)(a) (requiring notice to the chief executive officer of the incorporated city or town if the application is for a license within an incorporated city or town, or the county legislative authority if the application is for a license outside the boundaries of incorporated

<sup>1</sup> Useable marijuana means "dried marijuana flowers" and does not include marijuana-infused products. RCW 69.50.101(l).

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cities or towns). The local jurisdiction may file written objections with respect to the applicant or the premises for which the new or renewed license is sought. RCW 69.50.331(7)(b).

The local jurisdictions' written objections must include a statement of all facts upon which the objections are based, and may include a request for a hearing, which the Liquor Control Board may grant at its discretion. RCW 69.50.331(7)(c). The Board must give "substantial weight" to a local jurisdiction's objections based upon chronic illegal activity associated with the applicant's operation of the premises proposed to be licensed, the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. RCW 69.50.331(9). Chronic illegal activity is defined as a pervasive pattern of activity that threatens the public health, safety, and welfare, or an unreasonably high number of citations for driving under the influence associated with the applicant's or licensee's operation of any licensed premises. RCW 69.50.331(9).<sup>2</sup>

In addition to the licensing provisions in statute, I-502 directed the Board to adopt rules establishing the procedures and criteria necessary to supplement the licensing and regulatory system. This includes determining the maximum number of retail outlets that may be licensed in each county, taking into consideration population distribution, security and safety issues, and the provision of adequate access to licensed sources of useable marijuana and marijuana-infused products to discourage purchases from the illegal market. RCW 69.50.345(2). The Board has done so, capping the number of retail licenses in the least populated counties of Columbia County, Ferry County, and Wahkiakum County at one and the number in the most populated county of King County at 61, with a broad range in between. *See* WAC 314-55-081.

The Board also adopted rules establishing various requirements mandated or authorized by I-502 for locating and operating marijuana businesses on licensed premises, including minimum residency requirements, age restrictions, and background checks for licensees and employees; signage and advertising limitations; requirements for insurance, recordkeeping, reporting, and taxes; and detailed operating plans for security, traceability, employee qualifications and training, and destruction of waste. *See generally* WAC 314-55.

Additional requirements apply for each license category. Producers must describe plans for transporting products, growing operations, and testing procedures and protocols. WAC 314-55-020(9). Processors must describe plans for transporting products, processing operations, testing procedures and protocols, and packaging and labeling. WAC 314-55-020(9). Finally, retailers must also describe which products will be sold and how they will be displayed, and may only operate between 8 a.m. and 12 midnight. WAC 314-55-020(9), -147.

The rules also make clear that receipt of a license from the Liquor Control Board does not entitle the licensee to locate or operate a marijuana processing, producing, or retail business in violation of local rules or without any necessary approval from local jurisdictions. WAC 314-

<sup>2</sup> The provision for objections based upon chronic illegal activity is identical to one of the provisions for local jurisdictions to object to the granting or renewal of liquor licenses. RCW 66.24.010(12).

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-55-020(11) provides as follows: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements."

ANALYSIS

Your question acknowledges that local governments have jurisdiction over land use issues like zoning and may exercise the option to issue business licenses. This authority comes from article XI, section 11 of the Washington Constitution, which provides that "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." The limitation on this broad local authority requiring that such regulations not be "in conflict with general laws" means that state law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010).

Local ordinances are entitled to a presumption of constitutionality. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Challengers to a local ordinance bear a heavy burden of proving it unconstitutional. *Id.* "Every presumption will be in favor of constitutionality." *HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003) (internal quotation marks omitted).

A. Field Preemption

Field preemption arises when a state regulatory system occupies the entire field of regulation on a particular issue, leaving no room for local regulation. *Lawson*, 168 Wn.2d at 679. Field preemption may be expressly stated or may be implicit in the purposes or facts and circumstances of the state regulatory system. *Id.*

I-502 does not express any indication that the state licensing and operating system preempts the field of marijuana regulation. Although I-502 was structured as a series of amendments to the controlled substances act, which does contain a preemption section, that section makes clear that state law "fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act." RCW 69.50.608 (emphasis added).<sup>3</sup> It also allows "[c]ities, towns, and counties or other municipalities [to] enact only those laws and

<sup>3</sup> RCW 69.50.608 provides: "The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality." The Washington Supreme Court has interpreted this provision as giving local jurisdictions concurrent authority to criminalize drug-related activity. *City of Tacoma v. Livene*, 118 Wn.2d 826, 835, 827 P.2d 1374 (1992).

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ordinances relating to controlled substances that are consistent with this chapter.” RCW 69.50.608. Nothing in this language expresses an intent to preempt the entire field of regulating businesses licensed under I-502.

With respect to implied field preemption, the “legislative intent” of an initiative is derived from the collective intent of the people and can be ascertained by material in the official voter’s pamphlet. *Dep’t of Revenue v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973); see also *Roe v. TeleTech Customer Care Mgmt., LLC*, 171 Wn.2d 736, 752-53, 257 P.3d 586 (2011). Nothing in the official voter’s pamphlet evidences a collective intent for the state regulatory system to preempt the entire field of marijuana business licensing or operation. Voters’ Pamphlet 23-30 (2012). Moreover, both your letter and the Liquor Control Board’s rules recognize the authority of local jurisdictions to impose regulations on state licensees. These facts, in addition to the absence of express intent suggesting otherwise, make clear that I-502 and its implementing regulations do not occupy the entire field of marijuana business regulation.

**B. Conflict Preemption**

Conflict preemption arises “when an ordinance permits what state law forbids or forbids what state law permits.” *Lawson*, 168 Wn.2d at 682. An ordinance is constitutionally invalid if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Id.*; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. *HJS Dev.*, 148 Wn.2d at 477 (internal quotation marks omitted). We adopt this same deference to local jurisdictions.

An ordinance banning a particular activity directly and irreconcilably conflicts with state law when state law specifically entitles one to engage in that same activity in circumstances outlawed by the local ordinance. For example, in *Entertainment Industry Coalition v. Tacoma-Pierce County Health Department*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005), the state law in effect at the time banned smoking in public places except in designated smoking areas, and specifically authorized owners of certain businesses to designate smoking areas. The state law provided, in relevant part: “A smoking area may be designated in a public place by the owner . . .” Former RCW 70.160.040(1) (2004), *repealed by* Laws of 2006, ch. 2, § 7(2) (Initiative Measure 901). The Tacoma-Pierce County Health Department ordinance at issue banned smoking in all public places. The Washington Supreme Court struck down the ordinance as directly and irreconcilably conflicting with state law because it prohibited what the state law authorized: the business owner’s choice whether to authorize a smoking area.

Similarly, in *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), the Washington Supreme Court invalidated a Tacoma-Pierce County Health Department ordinance requiring fluoridated water. The state law at issue authorized the water districts to decide whether to fluoridate, saying: “A water district by a

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majority vote of its board of commissioners may fluoridate the water supply system of the water district." RCW 57.08.012. The Court interpreted this provision as giving water districts the ability to regulate the content and supply of their water systems. *Parkland Light & Water Co.*, 151 Wn.2d at 433. The local health department's attempt to require fluoridation conflicted with the state law expressly giving that choice to the water districts. As they could not be reconciled, the Court struck down the ordinance as unconstitutional under conflict preemption analysis.

By contrast, Washington courts have consistently upheld local ordinances banning an activity when state law regulates the activity but does not grant an unfettered right or entitlement to engage in that activity. In *Weden v. San Juan County*, the Court upheld the constitutionality of the County's prohibition on motorized personal watercraft in all marine waters and one lake in San Juan County. The state laws at issue created registration and safety requirements for vessels and prohibited operation of unregistered vessels. The Court rejected the argument that state regulation of vessels constituted permission to operate vessels anywhere in the state, saying, "[n]owhere in the language of the statute can it be suggested that the statute creates an unbridged right to operate [personal watercraft] in all waters throughout the state." *Weden*, 135 Wn.2d at 695. The Court further explained that "[r]egistration of a vessel is nothing more than a precondition to operating a boat." *Id.* "No unconditional right is granted by obtaining such registration." *Id.* Recognizing that statutes often impose preconditions without granting unrestricted permission to participate in an activity, the Court also noted the following examples: "[p]urchasing a hunting license is a precondition to hunting, but the license certainly does not allow hunting of endangered species or hunting inside the Seattle city limits," and "[r]eaching the age of 16 is a precondition to driving a car, but reaching 16 does not create an unrestricted right to drive a car however and wherever one desires." *Id.* at 695 (internal citation omitted).

Relevant here, the dissent in *Weden* argued: "Where a state statute licenses a particular activity, counties may enact reasonable regulations of the licensed activity within their borders but they may not prohibit same outright[.]" and that an ordinance banning the activity "renders the state permit a license to do nothing at all." *Weden*, 135 Wn.2d at 720, 722 (Sanders, J., dissenting). The majority rejected this approach, characterizing the state law as creating not an unbridged right to operate personal watercraft in the state, but rather a registration requirement that amounted only to a precondition to operating a boat in the state.

In *State ex rel. Schillberg v. Everett District Justice Court*, 92 Wn.2d 106, 594 P.2d 448 (1979), the Washington Supreme Court similarly upheld a local ban on internal combustion motors on certain lakes. The Court explained: "A statute will not be construed as taking away the power of a municipality to legislate unless this intent is clearly and expressly stated." *Id.* at 108. The Court found no conflict because nothing in the state laws requiring safe operation of vessels either expressly or impliedly provided that vessels would be allowed on all waters of the state.

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The Washington Supreme Court also rejected a conflict preemption challenge to the City of Pasco's ordinance prohibiting placement of recreational vehicles within mobile home parks. *Lawson*, 168 Wn.2d at 683-84. Although state law regulated rights and duties arising from mobile home tenancies and recognized that such tenancies may include recreational vehicles, the Court reasoned "[t]he statute does not forbid recreational vehicles from being placed in the lots, nor does it create a right enabling their placement." *Id.* at 683. The state law simply regulated recreational vehicle tenancies, where such tenancies exist, but did not prevent municipalities from deciding whether or not to allow them. *Id.* at 684.

Accordingly, the question whether "an ordinance . . . forbids what state law permits" is more complex than it initially appears. *Lawson*, 168 Wn.2d at 682. The question is not whether state law permits an activity in some places or in some general sense; even "[t]he fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law." *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998) (finding no preemption where state law authorized licensing of "dangerous dogs" while city ordinance forbade ownership of "vicious animals"). Rather, a challenger must meet the heavy burden of proving that state law creates an entitlement to engage in an activity in circumstances outlawed by the local ordinance. For example, the state laws authorizing business owners to designate smoking areas and water districts to decide whether to fluoridate their water systems amounted to statewide entitlements that local jurisdictions could not take away. But the state laws requiring that vessels be registered and operated safely and regulating recreational vehicles in mobile home tenancies simply contemplated that those activities would occur in some places and established preconditions; they did not, however, override the local jurisdictions' decisions to prohibit such activities.

Here, I-502 authorizes the Liquor Control Board to issue licenses for marijuana producers, processors, and retailers. Whether these licenses amount to an entitlement to engage in such businesses regardless of local law or constitute regulatory preconditions to engaging in such businesses is the key question, and requires a close examination of the statutory language.

RCW 69.50.325 provides, in relevant part:

- (1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. . . .
- (2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. . . .

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(3) There shall be a marijuana retailer's license to sell useable marijuana and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. . . .

RCW 69.50.325(1)-(3). Each of these subsections also includes language providing that activities related to such licenses are not criminal or civil offenses under Washington state law, provided they comply with I-502 and the Board's rules, and that the licenses shall be issued in the name of the applicant and shall specify the location at which the applicant intends to operate. They also establish fees for issuance and renewal and clarify that a separate license is required for each location at which the applicant intends to operate. RCW 69.50.325.

While these provisions clearly authorize the Board to issue licenses for marijuana producers, processors, and retail sales, they lack the definitive sort of language that would be necessary to meet the heavy burden of showing state preemption. They simply state that there "shall be a . . . license" and that engaging in such activities with a license "shall not be a criminal or civil offense under Washington state law." RCW 69.50.325(1). Decriminalizing such activities under state law and imposing restrictions on licensees does not amount to entitling one to engage in such businesses regardless of local law. Given that "every presumption" is in favor of upholding local ordinances (*HJS Dev., Inc.*, 148 Wn.2d at 477), we find no irreconcilable conflict between I-502's licensing system and the ability of local governments to prohibit licensees from operating in their jurisdictions.

We have considered and rejected a number of counterarguments in reaching this conclusion. First, one could argue that the statute, in allowing Board approval of licenses at specific locations (RCW 69.50.325(1), (2), (3)), assumes that the Board can approve a license at any location in any jurisdiction. This argument proves far too much, however, for it suggests that a license from the Board could override any local zoning ordinance, even one unrelated to I-502. For example, I-502 plainly would not authorize a licensed marijuana retailer to locate in an area where a local jurisdiction's zoning allows no retail stores of any kind. The Board's own rules confirm this: "The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements." WAC 314-55-020(11).

Second, one could argue that a local jurisdiction's prohibition on marijuana licensees conflicts with the provision in I-502 authorizing the Board to establish a maximum number of licensed retail outlets in each county. RCW 69.50.345(2); *see also* RCW 69.50.354. But there is no irreconcilable conflict here, because the Board is allowed to set only a *maximum*, and nothing in I-502 mandates a minimum number of licensees in any jurisdiction. The drafters of I-502 certainly could have provided for a minimum number of licensees per jurisdiction, which would have been a stronger indicator of preemptive intent, but they did not.

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Third, one could argue that because local jurisdictions are allowed to object to specific license applications and the Board is allowed to override those objections and grant the license anyway (RCW 69.50.331(7), (9)); local jurisdictions cannot have the power to ban licensees altogether. But such a ban can be harmonized with the objection process; while some jurisdictions might want to ban I-502 licensees altogether, others might want to allow them but still object to specific applicants or locations. Indeed, this is the system established under the state liquor statutes, which I-502 copied in many ways. Compare RCW 69.50.331 with RCW 66.24.010 (governing the issuance of marijuana licenses and liquor licenses, respectively, in parallel terms and including provisions for local government input regarding licensure). The state laws governing liquor allow local governments to object to specific applications (RCW 66.24.010), while also expressly authorizing local areas to prohibit the sale of liquor altogether. See generally RCW 66.40. That the liquor opt out statute coexists with the liquor licensing notice and comment process undermines any argument that a local marijuana ban irreconcilably conflicts with the marijuana licensing notice and comment opportunity.

Fourth, RCW 66.40 expressly allows local governments to ban the sale of liquor. Some may argue that by omitting such a provision, I-502's drafters implied an intent to bar local governments from banning the sale of marijuana. Intent to preempt, however, must be "clearly and expressly stated." *State ex rel. Schillberg*, 92 Wn.2d at 108. Moreover, it is important to remember that cities, towns, and counties derive their police power from article XI, section 11 of the Washington Constitution, not from statute. Thus, the relevant question is not whether the initiative provided local jurisdictions with such authority, but whether it removed local jurisdictions' preexisting authority.

Finally, in reaching this conclusion, we are mindful that if a large number of jurisdictions were to ban licensees, it could interfere with the measure's intent to supplant the illegal marijuana market. But this potential consequence is insufficient to overcome the lack of clear preemptive language or intent in the initiative itself. The drafters of the initiative certainly could have used clear language preempting local bans. They did not. The legislature, or the people by initiative, can address this potential issue if it actually comes to pass.

With respect to your second question, about whether local jurisdictions can impose regulations making it "impractical" for I-502 licensees to locate and operate within their boundaries, the answer depends on whether such regulations constitute a valid exercise of the police power or otherwise conflict with state law. As a general matter, as discussed above, the Washington Constitution provides broad authority for local jurisdictions to regulate within their boundaries and impose land use and business licensing requirements. Ordinances must be a reasonable exercise of a jurisdiction's police power in order to pass muster under article XI, section 11 of the state constitution. *Weden*, 135 Wn.2d at 700. A law is a reasonable regulation if it promotes public safety, health, or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued. *Id.* (applying this test to the personal watercraft ordinance); see also *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 26, 586 P.2d 860 (1978) (applying this

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test to a zoning ordinance). Assuming local ordinances satisfy this test, and that no other constitutional or statutory basis for a challenge is presented on particular facts, we see no impediment to jurisdictions imposing additional regulatory requirements, although whether a particular ordinance satisfies this standard would of course depend on the specific facts in each case.

We trust that the foregoing will be useful to you.



WROS

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## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the foregoing Amicus Brief Of The State Of Washington to be served via electronic mail on the following:

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