

**FILED**

NOV 25 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 33682-4

---

IN THE COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

---

CITY OF CLARKSTON,

Respondent,

v.

VALLE DEL RIO, LLC, *et. al.*

Appellants.

---

**APPELLANTS' OPENING BRIEF**  
**On Appeal from the Rulings of the Hon. Scott Gallina, Asotin County**

---

LAW OFFICE OF E. HALLOCK, P.C.  
Elizabeth Hallock, WSBA 48125  
2669 NW KENT AVE.  
Camas, WA 98607  
360-909-6327  
Ehallock.law@gmail.com

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....iii-vi

STATUTES AND RULES .....vii-viii

I. STATEMENT OF ERROR/ISSUES PRESENTED ON APPEAL .....1

**Preliminary Injunction.** Did the trial court err when it issued a preliminary injunction where the City failed to meet its burden under the *Tyler Pipe* standard of review, the lower court consolidated the pre-trial proceedings with a trial on the merits, and it substantively ruled on the plaintiff’s underlying cause of action?

**State Nuisance Law.** Did the trial court err in enjoining as a nuisance *per se*, and, therefore, as a harm *per se*, a state lawful business?

**Constitutionality and Statutory Pre-Emption by the Uniform Controlled Substances Act.** Did the trial court err where it was impossible for the plaintiff to prevail on the merits when Clarkston Ordinance No. 1532 is unconstitutional under Washington State Constitution Art. XI, § 11 for the *de facto* criminalization of that which is legal within the boundaries of Washington state?

II. STATEMENT/NATURE OF THE CASE AND DECISION .....1

A. Voters Approve I-502, Decriminalizing Recreational Marijuana Possession and Regulating the Marketplace .....1

B. Defendant Valle del Rio, LLC (“Valle”) Operates a Secure, Safe, Licensed and Legal Retail Marijuana Store.....3

C. Clarkston Obstructs the State’s Regulated Market. ....4

D. State Agency WSLCB has Final Authority over I-502 .....5

E. Case History.....6

III. RELIEF SOUGHT IN THE COURT OF APPEALS.....8

IV. ARGUMENT.....8

    A. The Trial Court Erred in Issuing the Preliminary Injunction  
    Because the City Failed to Meet Its Burden Under the *Tyler Pipe*  
    Standard of Review and the Court Substantively Ruled on the  
    Underlying Cause of Action.  
    .....8

    B. The Trial Court Erred in Enjoining a Legal Activity That Cannot  
    By Definition Be a Nuisance *Per*  
    *Se*.....12

    C. Plaintiff Could Not Possibly Have Prevailed on the Underlying  
    Merits of Its Claim Where Ord. No. 1532 is Unconstitutional:  
    Washington State Law Preempts Such *De Facto*  
    Criminalization.....15

V. REQUEST FOR ATTORNEYS' FEES .....37

VI. CONCLUSION.....38

## TABLE OF AUTHORITIES

<i>Addleman v. Board of Prison Terms</i> , 107 Wn.2d 503, 730 P.2d 1327 (1986).....	32
<i>Alex v. Gregory</i> , 177 Wash. 465, 32 P. (2d) 560 (1934) .....	22
<i>Auto. Drivers &amp; Demonstrators Union Local 882 v. Dep't of Ret. Sys.</i> , 92 Wash. 2d 415, 598 P.2d 379 (1979) .....	24
<i>Avlonitis v. Seattle District Court</i> , 97 Wn.2d 131, 641 P.2d 169, 646 P.2d 128 (1982) .....	32
<i>Berne v. Maxham</i> , 82 Wash. 235, 144 P. 23 (1914) .....	37
<i>Bloom v. Worcester</i> , 363 Mass. 136, 293 N.E.2d 268 (1973) .....	31
<i>Brown v. City of Yakima</i> , 116 Wn.2d 556, 807 P.2d 353 (1991) ..	20, 24-25
<i>CAC v. Kent</i> , 183 Wash.2d 219, 351 P.3d 151 (2015) .....	33
<i>Chemical Bank Chemical Bank v. WPPSS</i> , 99 Wn.2d 777 (1983) .....	17
<i>City of Bellevue v. East Bellevue Cmty. Council</i> , 138 Wash. 2d 937, 983 P.2d 602, (1999) .....	24
<i>City of Bellingham v. Shampera</i> , 57 Wash. 2d 106, 356 P.2d 292, 92 A.L.R.2d 192 (1960) .....	19, 21
<i>City of Seattle v. Eze</i> , 111 Wn.2d 22, 759 P.2d 366 (1988) .....	16
<i>C.L. Featherstone v. Dessert</i> , 173 Wash. 264, 22 P.2d 1050 (1932) .....	23
<i>County of King ex. rel Sowers v. Chisman</i> , 33 Wn. App. 809, 658 P.2d 1256 (1983) .....	14
<i>Dent v. West Virginia</i> , 129 U.S. 114 (1889) .....	25
<i>Dept. of Ecology v. Campbell &amp; Gwinn, L.L.C.</i> , 146 Wn.2d 1, 43 P.3d 4 (2002) .....	36

<i>Dept. of Ecology v. Wahkiakum County</i> , WA Ct.App. Div. 2, No. 44700-II (Nov. 4, 2104) .....	16, 20
<i>The Derby Club, Inc. v. Becket</i> , 41 Wn.2d 869, 252 P.2d 259 (1954) .....	22
<i>Donahue v. Johnson</i> , 9 Wash. 187, 37 P.322 (1894) .....	37
<i>Edmonds Shopping Ctr. Assocs. V. City of Edmonds</i> , 117 Wn.App. 334, 71 P.3d 233 (2003) .....	17
<i>Entertainment Indus. Coal v. Tacoma-Pierce County Board of Health</i> , 153 Wn.2d 657, 105 P.3d 985 (2005) .....	22
<i>In re Ferguson</i> , 80 Wn. 102, 141 Pac. 322 (1914) .....	21
<i>Great Western Shows</i> , 27 Cal.4 <sup>th</sup> 853, 118 Cal.Rptr.2d 746, 44 P.3d 120 (2002) .....	28
<i>Greenwood v. Olympic, Inc.</i> , 51 Wn.2d 18, 315 P.2d 295 (1957).....	10, 14
<i>Heinsma v. City of Vancouver</i> , 144 Wn.2d 556, 29 P.3d 709 (2001) .....	25
<i>HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning &amp; Land Servs.</i> , 148 Wn.2d 451, 61 P.3d 1141 (2003) .....	18
<i>Kitsap County v. Kitsap Rifle and Revolver Club</i> , 184 Wash.App. 252 (2014) .....	10, 14
<i>Kucera v. Dep't of Transp.</i> , 140 Wn.2d 200, 995 P.2d 63 (2000) .....	15
<i>Landmark Dev., Inc. v. City of Roy</i> , 138 Wn.2d 561, 980 P.2d 1234 (1999) .....	30
<i>Law v City of Sioux Falls</i> , 804 NW2d 428, 2011 SD 63 (2012) .....	27-28
<i>Lawson v. City of Pasco</i> , 168 Wn.2d 675, 230 P.3d 1038 (2010) .....	18, 34
<i>Lemaine v Seals</i> , 47 Wn.2d 259, 287 P.2d 305 (1955) .....	9, 13
<i>Lenci v. Seattle</i> , 63 Wash.2d 664, 388 P.2d 926 (1964) .....	18, 20

<i>Massie v. Brown</i> , 84 Wn.2d 490, 527 P.2d 476 (1974) .....	29
<i>Morgan v. Johnson</i> , 137 Wn.2d 887, 976 P.2d 619 (1999) .....	25
<i>Northwest Gas Ass'n v. Washington Utilities &amp; Transp. Com'n</i> , 141 Wn. App. 98, 168 P.3d 443 (2007) .....	9
<i>Parkland Light &amp; Water Co. v. Tacoma–Pierce County Bd. of Health</i> , 151 Wn.2d 428, 90 P.3d 37 (2004) .....	15
<i>Parsons Supply, Inc. v. Smith</i> , 22 Wash.App. 520, 591 P.2d 821 (1979) .....	37
<i>Rabon v. City of Seattle</i> , 135 Wn.2d 278, 957 P.2d 621 (1998)...8-9, 13, 16, 20-21, 24	
<i>Reagan v. Farmer's Loan &amp; Trust Co.</i> , 154 U.S. 362 (1894) .....	21
<i>St. George Greek Orthodox Cathedral of W. Massachusetts, Inc. v Fire Dept. of Springfield</i> , 462 Mass 120, 967 NE2d 127 (2012) .....	26
<i>Seattle v. Gervasi</i> , 144 Wash. 429, 258 Pac. 328 (1927) .....	22
<i>Seattle Electric Co. v Seattle</i> , 78 Wash. 203, 138 Pac. 892 (1914).17, 31-32	
<i>Seattle Newspaper-Web Pressmen's Local 26 v. Seattle</i> , 24 Wn. App. 462, 604 P.2d 170 (1979) .....	19
<i>Spokane v. J-R Distrib. Inc.</i> , 90 Wn.2d 722, 585 P.2d 784 (1978) .....	16
<i>Spokane v. Portch</i> , 92 Wn.2d 342, 596 P.2d 1044 (1979) .....	26
<i>Spokane County Health District v. Brockett</i> , 120 Wash. 2d 140 (1992) ..	35
<i>State v. Fairbanks</i> , 25 Wash. 2d 686, 171 P.2d 845 (1946) .....	36
<i>State v. Kirwin</i> , 165 Wn.2d 818, 203 P.3d 1044 (2009) .....	22
<i>State v. McCollum</i> , 88 Wn. App. 977 (1997) .....	32

<i>State v. Riles</i> , 135 Wash. 2d 326 (1998) .....	35
<i>State v. Savidge</i> , 75 Wash. 116, 134 P. 680 (1913) .....	36
<i>State v. Seattle</i> , 94 Wn.2d 162, 615 P.2d 461 .....	16, 22-23
<i>State ex. rel. Evans v. Brotherhood Etc.</i> , 41 Wn.2d 133, 247 P.2d 787 (1953) .....	19
<i>State ex rel. Schillberg v. Everett Dist. Justice Court</i> , 92 Wash.2d 106, 594 P.2d 448 (1979) .....	20
<i>State ex rel. Thornbury v. Gregory</i> , 191 Wash. 70, 70 P. (2d) 788 (1937)	22
<i>Tiegs v. Watts</i> , 135 Wn.2d 1, 954 P.2d 877 (1998) .....	10, 14
<i>Tyler Pipe Indus. v. Dep't of Revenue</i> , 96 Wn.2d 785, 638 P.2d 1213 (1982) .....	8, 13-14
<i>Trimen Dev. Co. v. King County</i> , 124 Wash.2d 261, 877 P.2d 187 (1994)	19
<i>Vita Food Prods., Inc. v. State</i> , 91 Wash. 2d 132, 587 P.2d 535 (1978) ..	24
<i>Weden v. San Juan County</i> , 135 Wash.2d 678, 958 P.2d 273 (1998) .....	34
<i>Welch v. Southland Corp.</i> , 134 Wash. 2d 629, 952 P.2d 162 (1998) .....	2
<i>White v. City of N. Yakima</i> , 87 Wash. 191, 151 P. 645, 647 (1915) .....	37
<i>White v. Wilhelm</i> , 34 Wash.App.763, 665 P.2d 407 (1983) .....	37

**STATUTES AND RULES**

City of Clarkston Ordinance No. 1529 .....4

City of Clarkston Ordinance No. 1532 ..... 1, 4, 7-8, 15-16, 19, 38

Clarkston Municipal Code Title 5.....7

Clarkston Municipal Code Title 17.....7

CR 65(a)(2) .....11

Second Engrossed Second Substitute House Bill 2136 .....2

Second Substitute Senate Bill (“SSB”) 5052.....2-3, 33, 35-37

Initiative Measure No. 502 (“I-502”) .....1-6, 9, 12, 15, 17, 20-21, 23-26,  
28-29, 32-38

RAP 18.1 ..... 37-38

WA Uniform Controlled Substance Act, 69.50 RCW .....3

RCW 66.40.020 .....30

RCW 69.50.331(7)(b),(c).....30

RCW 69.50.342(6).....5

RCW 69.50.342 ..... 5-6

RCW 69.50.345(1).....5

RCW 69.50.345(2).....5

RCW 69.50.608 .....11, 25

RCW 7.40.020 .....8

314-55 WAC.....3, 6

WAC 314-55-020(11).....6  
WA Const. art. XI, § 11 .....15, 17

## **I. STATEMENT OF ERROR/ISSUES PRESENTED ON APPEAL**

**1. Preliminary Injunction.** Did the trial court err when it issued a preliminary injunction where the City failed to meet its burden under the *Tyler Pipe* standard of review, the lower court consolidated the pre-trial proceedings with a trial on the merits, and it substantively ruled on the plaintiff's underlying cause of action?

**2. State Nuisance Law.** Did the trial court err in enjoining as a nuisance *per se*, and, therefore, as a harm *per se*, a state lawful business?

**3. Statutory Pre-Emption by Washington's Uniform Controlled Substances Act.** Did the trial court err where it was impossible for the plaintiff to prevail on the merits when Clarkston Ordinance No. 1532 is unconstitutional under Washington State Constitution Art. XI, § 11 for the *de facto* criminalization of that which is legal within the boundaries of Washington state?

## **II. STATEMENT/NATURE OF THE CASE AND DECISION**

### **A. Voters Approve I-502, Decriminalizing Recreational Marijuana Possession and Regulating the Marketplace**

On November 6, 2012, Washington citizens approved Initiative Measure No. 502 ("I-502"), a state law creating a robust and complex regulatory system which does not merely decriminalize marijuana use, but legalizes licensed production and sales. In enacting I-502, Washington voters acknowledged that the State's previous supply-side police enforcement measures had been wasteful, unsuccessful, and organized

crime was a natural consequence of prohibition. Clarkston voters approved I-502. It is a law of regulation, not prohibition.

Although a new state agency was not created to administer the I-502 program, under Second Substitute Senate Bill (“SSB”) 5052, passed July 1, 2015, the Washington State Liquor Control Board (“the Agency”) was renamed the Liquor Control and Cannabis Board (“WSLCCB”), highlighting the role of the WSLCCB in administering the state’s new regulatory program. SSB 5052, Laws of 2015, Chapter 70.

Under SSB 5052, all medical marijuana “collective garden” storefronts were given a deadline to become licensed I-502 stores by July 1, 2016. SSB 5052 legalized the sale of medical marijuana in Washington State, providing more to patients than solely an affirmative defense to criminal prosecution, and bringing the “grey market” under the umbrella of the I-502 program. The intent of SSB 5052 was to “ensure” access to safe, regulated products to qualified patients. SSB 5052, Laws of 2015, Chapter 70, “Findings.” (App. Exhibit C). Former Medical Use of Cannabis Act (“MUCA”) Section 1103, authorizing zoning authority to localities under the program, was entirely repealed by SSB 5052, section 48. (Under Second Engrossed Substitute House Bill 2136, Laws of 2015, Chapter 40, revenue sharing from the tax program was shared with localities. A narrow exception to the regulatory scheme<sup>1</sup>, the carrot of the legislation, denied non-participating localities proceeds.)

---

<sup>1</sup> “[A] court should read provisos and statutory exceptions narrowly.” *See Welch v. Southland Corp.*, 134 Wash. 2d 629, 636, 952 P.2d 162, 166 (1998).

Under SSB 5052, only I-502 stores with medical endorsements may sell medical marijuana. Appellants possess said medical endorsement, effective July 1, 2016. (App. Exhibit D). The converse of this is that a ban on an I-502 retail store is also a ban on the sale of medical marijuana. On September 23, 2015, the WSLCCB created rules whereby former collective gardens could apply to come into the regulatory fold by converting to I-502.

I-502 does not authorize the unfettered or unregulated possession, use, or sale of recreational or medical marijuana. Instead, I-502 removes criminal penalties under Washington law for limited marijuana possession, production, processing, and sale by and to adults over the age of 21, only where those limited activities comply with a robust regulatory regime administered by the experienced officers and law enforcement personnel at the WSLCB.<sup>2</sup>

**B. Defendant Valle del Rio, LLC (“Valle”) Operates a Secure, Safe, Licensed and Legal Retail Marijuana Store.**

Valle, dba Greenfield, operates a marijuana retail store as defined by RCW 69.50.354, at 721 Sixth Street, Clarkston, Washington. CP at 257-8. Greenfield exists in a space approved by the Liquor Control Board, “sufficiently distant from all restricted entities...safe and secured with 24-hour surveillance, alarm monitoring, a safe room with vaults to secure product, and one block from the Clarkston Police State.” *Id.* at 258.

---

<sup>2</sup> I-502 is codified at 69.50 RCW and in 314-55 WAC.

Neighbors in Greenfield's retail zone include a music store, a vacant space, and an attorney's office. *Id.*

On April 2, 2015, Valle owner Matt Plemmons signed a long-term lease for Greenfield at \$1,000 per month, and subsequently spent \$20,000 for buildout and security necessary to acquire a state license from the Liquor Control Board. *Id.* The City of Clarkston Treasurer's Office granted Valle a license for retail or wholesale on April 29, 2015. CP at 103. Plemmons has declared under penalty of perjury that he believes he has "in good faith, followed all local, state, and federal laws." CP at 258.

### **C. Clarkston Obstructs the State's Regulated Market**

On November 15, 2013, the City of Clarkston ("the city") passed a moratorium on all I-502 operations. CP at 232-233. On August 14, 2014, the city Planning Commission proposed permanently banning marijuana businesses in all city zones. On November 24, 2014, the city council adopted Ordinance No. 1532, repealing Ordinance No. 1529 and declaring that the "no recreational marijuana production processing or place of retail sale shall be permitted within this City limits" and prohibiting the issuance of a business license for any recreational marijuana business. CP at 008-009. Appendix Exhibit A.

Clarkston presented no substantive arguments in its ordinance as to why it is defying state law and has never evinced any evidence of support

from local law enforcement. The ordinance primarily relies on an Attorney General's Opinion that cities can ban I-502 businesses.<sup>3</sup> CP at 009.

The city now allows the possession of unauthorized, untested, unpackaged marijuana products, with no point of safe access to prevent access by minors or diversion of profits to the pockets of organized crime. As a result, unregulated marijuana in the Clarkston area is very readily available; Craigslist searches reveal ads with "pictures of unpackaged marijuana, sometimes with the strain names written in pencil on a piece of scratch paper, in exchange for 'donations' from 'patients'." CP at 262.

**D. State Agency WSLCB has Final Authority over I-502**

All authority under I-502 is vested with the WSLCB and requires the Board to implement protocols to vet, license, and monitor marijuana businesses. RCW 69.50.345(1). The Board must adopt rules: "according to [the law's] true intent or of supplying any deficiency therein...not inconsistent with the spirit of [the law] as are deemed necessary or advisable." RCW 69.50.342.

The WSLCB is charged with citing retail outlets throughout the State by taking into consideration (a) population distribution, (b) security and safety issues, and (c) 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); RCW 69.50.342(6).

---

<sup>3</sup> WASH. ATT'Y GENERAL, *AGO 2014 No. 2*, available at <http://www.atg.wa.gov/AGOPinions/opinion.aspx?section=archive&id=31773#.VE7qNe90xzM>, (January 16, 2014). CP at 052-061.

Nothing in I-502, the statutes codifying it, or the regulations promulgated by WSLCB allow a city or a county to ban I-502 businesses from their jurisdiction. The law contains no express statements that marijuana businesses are prohibited, nor can any agency rule be interpreted to undermine statutory intent.

WSLCB has promulgated extensive rules for marijuana establishments. The intent of the regulations was to create statewide uniformity in order to effectuate the intent of I-502 while “remedying any deficiency therein.” RCW 69.50.342. The level of detail is extraordinary, covering everything down to the pixilation required on the licensee’s security cameras. *See* 314-55 WAC. The penalties for violations are severe, and given the amount of investment and effort required to obtain a license, the incentive to abide by the rules is strong.

WSLCB regulations, rather than the statute, acknowledge that I-502 businesses must comply with local rules that universally apply to all businesses. WAC 314-55-020(11).

### **E. Case History**

Almost immediately after achieving state licensure in June 2015, Greenfield opened its doors for business. On or about June 29, 2015, an undercover Clarkston City police officer entered Greenfield without an administrative search warrant and without permission, and proceeded to question members of the Greenfield staff without identifying himself. CP at 258. The officer cited the business owners with misdemeanors for

operating without a business license. The business did possess a general business license.<sup>4</sup> The City prosecutor, charged and arraigned Mr. Tatum and Mr. Plemmons in front of a house fuller than the *Scopes* monkey trial.

On July 1, 2015, the City filed a complaint against Valle in the Superior Court of the State of Washington In and For Asotin County, seeking declaratory judgment and injunctive relief against Valle. CP at 001. The City alleged that Valle was operating in violation of Ordinance 1532, as well as sections of CMC Title 5 and 17, which carry penalties of fines and jail time. *Id.* at 003.

On July 1, 2015, the City additionally moved the Superior Court of an emergency temporary restraining order. CP at 014. The Court granted that temporary restraining order on July 2, 2015. CP at 122-125. At the hearing on that motion on July 2, 2015, Valle's former counsel was not present, leaving Valle confused and flustered. CP at 126.

On August 5, 2015, the Superior Court issued an order (the "Order," App. Exhibit B) granting the City a preliminary injunction barring defendants from "the retail sale or distribution within the city limits of the City of Clarkston...." As a result of this injunction, Valle's closure has caused extreme financial and hardship, with costs including continued payment of rent, insurance at \$460 per month on top of a \$2500 down payment, \$200 per month for traceability software on top of a \$1600

---

<sup>4</sup> While discussing it with the undercover officer, Mr. Tatum distinguished it from a neighboring marijuana business, which held a license for paraphernalia only. Unfortunately, the truncated trial court proceedings did not offer the Defendants the opportunity to challenge the officer's sworn affidavit detailing intent to break the "law."

down payment, continuing rent and electricity bills, and the potential default on the lease that would destroy Plemmon's credit. CP at 258.

On August 6, 2015, Valle filed timely notice of appeal to the Superior Court, seeking review of the Order as a matter of discretion by the Court of Appeals of the State of Washington.

### **III. RELIEF SOUGHT IN COURT OF APPEALS**

Appellants seek reversal of the trial court decision with directions to enter judgment declaring that the lawful business of Valle is not a nuisance, and thus cannot be enjoined, and declaring Clarkston Ord. No. 1532 to be in violation of the Washington State Constitution Art. XI, § 11.

### **IV. ARGUMENT**

#### **A. The Trial Court Erred in Issuing the Preliminary Injunction Because the City Failed to Meet Its Burden Under the *Tyler Pipe* Standard of Review and the Court Substantively Ruled on the Underlying Cause of Action.**

The well-established *Tyler Pipe* standard requires: (i) a clear legal or equitable right (2) a well-grounded fear of immediate invasion of that right and (iii) that the acts complained or will result in substantial injury.

*Tyler Pipe Indus. v. Dept. of Revenue*, 96 Wn.2d 785, 638 Pd.2d 1213.

The criteria are examined in light of equity, including the balancing of the parties' relative interests and the public interest. *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998).

The Superior Court issued its order without sufficient justification under RCW 7.40.020 and the standards set forth in *Tyler Pipe*. At a preliminary injunction hearing, the movant need not prove, and the trial

court *does not* reach or resolve, the merits of the three criteria for injunctive relief. *Northwest Gas Ass'n v. Washington Utilities & Transp. Com'n*, 141 Wn. App. 98, 116, 168 P.3d 443 (2007). Rather, the trial court considers only the *likelihood* that the petitioner will ultimately make the required showings. *Id.* In ratifying the City's claim of its ordinance's validity at the preliminary injunction hearing, the Court violated the standard of review for preliminary injunctions and committed reversible error.

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." *Rabon v. City of Seattle*, 135 Wn.2d 278, 285, 957 P.2d 621 (1998). Here, the interim harm factor was highly disputed, the City having only convinced the court of theoretical harm, emanating from the improperly categorized status of the Defendants' use as a nuisance. The City failed to show actual and substantial injury. See *Lemaine v Seals*, 47 Wn.2d 259, 287 P.2d 305 (1955). Yet the Court substantively ruled the City's ordinance was valid and issued an injunction, disposing of the City's underlying action.

The Defendants' main contention in Superior Court was that local bans against I-502 operations, despite varied attempts to cloak the *de facto* criminalization of state legal conduct behind gauzy shrouds of licensing and zoning violations, are quite simply, unenforceable. Criminal

prosecution for a business license violation, penalizing the same underlying substantive conduct that is lawful at the state level, without any trial on the underlying conduct, is a clear violation of due process. Zoning code violations, as the modern incarnation of nuisance law, require a finding of a nuisance violation. However, as the Defendants repeatedly argued: “Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.” RCW 7.48.160.

The Defendants contended the Court’s characterization of their operation as a nuisance was improper, and the Court lacked jurisdiction and authority to enjoin a non-nuisance. “An ordinance may not make a thing a nuisance, unless it is in fact a nuisance.” *Greenwood v. Olympic, Inc.*, 51 Wn.2d 18, 21, 315 P.2d 295 (1957); 6 E. McQuillin, *Municipal Corporations* § 24.66, at 562 (3d ed. 1980). And, “[A] lawful business is never a nuisance per se, but may become a nuisance by reason of extraneous circumstances such as being located in an inappropriate place, or conducted or kept in an improper manner.” *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wash.App. 252, 277, 337 P.3d 328 (2014) ; See also *Tiegs v. Watts*, 135 Wn.2d 1, 13, 954 P.2d 877 (1998). No circumstances warranted the instant nuisance classification. No *per se* harm is present, and absent otherwise specific and articulable harm, no injunction should have issued.

In addition, the Defendants argued: “All code cities shall observe and enforce the provisions of state laws relating to the conduct, location

and limitation on activities as regulated by state law.” RCW 35A.21.161. Where the state *expressly permits* the behavior that the City seeks to criminalize, a locality cannot criminalize the same conduct. *See City of Spokane v. White*, 102 Wn.App. 955, 10 P.3d 1095 (2000), Review denied, 143 Wn.2d 1011 (2001). The Defendants argued the plaintiff’s attempt to enjoin lawful conduct is superseded by state statutes, including RCW 69.50.360, which exempts the Defendants from criminal and civil penalties, and RCW 69.50.608, which pre-empts the field of drug regulation statewide.

The Defendants also argued a complete prohibition against state lawful conduct is (1) a violation of their Washington Constitutional right to engage in business without unreasonable government interference and (2) as applied in the proceedings below, a violation of their due process protections against arbitrary government decisions. The Defendants are placed in the *Catch 22* of being unable to lawfully secure a business license, yet facing an injunction and criminal penalties for existing.

The court improperly conflated the preliminary hearing with a trial on the merits, without adequate notice to counsel and a complete evidentiary record, as required by CR 65(a)(2).<sup>5</sup> *See Northwest Gas Ass'n v. WUTC*, 141 Wn. App. 98, 114, 168 P.3d 443 (2007) (trial court erred when it conflated the permanent injunction trial into the preliminary

---

<sup>5</sup> CR 65(a)(2) provides in part: “Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application...”

injunction hearing without “expressly informing the parties” and issued a final order on the merits.)

Despite the lack of a complete record, if all that remains for finality is *pro forma* entry of the same decision as a final judgment, as a practical matter the trial court's decision determined and discontinued the action. The Superior Court's ruling, that Defendants' business is a *per se* nuisance and a violation of a substantively valid zoning ordinance, is a final decision appealable as a matter of right.

In order to keep his position as I-502 licensee for the city of Clarkston and achieve a state license, Mr. Plemmons was required to expend thousands of dollars on construction and security, and was required to sign a long term commercial lease, insurance and software contracts, and pay state licensing fees. Mr. Plemmons' financial investment, credit, and life savings are presently at risk of being destroyed.

Mr. Tatum and Mr. Plemmons are not common criminals, drug dealers, or even dissidents: the people of Washington and Clarkston voted for this operation, and their voices should not be silenced.

**B. The Trial Court Erred in Enjoining a Legal Activity That Cannot By Definition Be a Nuisance *Per Se*.**

“Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.” RCW 7.48.160. It should be noted that when a statutory remedy exists, such as nuisance restraint, a court of equity has no jurisdiction. (See Tiedeman, *Treatise on Municipal Corporations*, Sec. 130, citing various cases “Where the act complained of

is made unlawful by ordinance, [this] presumably supplies an adequate remedy from its enforcement; A court of chancery has no jurisdiction to restrain the threatened violation of a village ordinance, unless the act carried out will be a nuisance.”)

In spite of this, in the August 5, 2015 hearing, the Court stated that “By the municipal code that is currently in effect [inaudible] the use that is before the Court is deemed *per se* a nuisance by the statute and thus, its maintenance is presumably irreparable harm to the City, if not enjoined.” RP at 24.

The City failed to show actual and substantial injury. See *Lemaine v Seals*, 47 Wn.2d 259, 287 P.2d 305 (1955). Because the interim harm factor was highly disputed, the Court should not have made a substantive ruling that the City had a clear legal or equitable right, and could not, therefore, issue an injunction. The "court may reach the merits of any purely legal question provided that the interim harm factor is undisputed." *Rabon v. City of Seattle*, 135 Wn.2d 278, 285, 957 P.2d 621 (1998). An injunction is an extraordinary remedy. “An injunction is an extraordinary equitable remedy designed to prevent serious harm. Its purpose is not to protect a plaintiff from mere inconveniences or speculative and insubstantial injury.” *Tyler Pipe Indus., supra*, 96 Wash.2d at 796, 638 P.2d 1213 (1982). The plaintiff presented no evidence of any real harm. Just as in *Tyler Pipe*, the city made specious, non-legal claims of harm, such as injury to reputation and the ability to enforce its laws, and “merely

asserted that ‘irreparable injury will be suffered’ and contained no facts supporting this assertion.” *Id.* at 794.

Valle concedes the “the violation [of the zoning code] itself” *could* be “an injury to the community.” *County of King ex. rel Sowers v. Chisman*, 33 Wn. App. 809, 658 P.2d 1256 (1983). Yet as a non-nuisance in the eyes of the state, the Defendant’s use cannot possibly be a *per se* nuisance. “Nothing which is done or maintained under the express authority of a statute, can be deemed a nuisance.” RCW 7.48.160.

“An ordinance may not make a thing a nuisance, unless it is in fact a nuisance.” *Greenwood v. Olympic, Inc.*, 51 Wn.2d 18, 21, 315 P.2d 295 (1957); 6 E. McQuillin, *Municipal Corporations* § 24.66, at 562 (3d ed. 1980). And, “[A] lawful business is never a nuisance *per se*, but may become a nuisance by reason of extraneous circumstances such as being located in an inappropriate place, or conducted or kept in an improper manner.” *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wash.App. 252 (Div.II, decided Oct. 28, 2014); See also *Tiegs v. Watts*, 135 Wn.2d 1, 13, 954 P.2d 877 (1998). No circumstances warrant the instant nuisance classification.

The City is attempting to classify the zoning code violation as a *per se* harm that results from a nuisance *per se* in order to satisfy the harm prong under *Tyler Pipe*. *Tyler Pipe Indus. v. Dep’t of Revenue*, 96 Wn.2d 785, 638 P.2d 1213 (1982). The City’s logic is circular and falls flat where there is no nuisance occurring, and nothing from which the public must be protected. A court must deny a motion for a preliminary injunction if any

of the elements of *Tyler Pipe, supra*, go unsatisfied. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 210, 995 P.2d 63 (2000). The plaintiff has failed to show a clear equitable right and actual and specific harm. Here, the interim harm factor was and is highly disputed, the City having only convinced the court of theoretical harm, emanating from the improperly categorized status of the Defendants' use as a *per se* nuisance and, therefore, *per se* harm.

**C. Plaintiff Could Not Possibly Have Prevailed on the Underlying Merits of Its Claim Where Ord. No. 1532 is Unconstitutional: Washington State Law Preempts Such *De Facto* Criminalization.**

The implementation of I-502 throughout the state of Washington presents a non-local issue involving fundamental and urgent concerns of broad public import. Local bans, such as Clarkston Ordinance No. 1532, and those in even more highly populated areas, surrounded by swaths of other bans, are (1) convenient for unauthorized drug transport to the rest of the state, and (2) defeat the primary purpose of I-502 in not just decriminalizing marijuana possession, but legalizing the extant state-wide marketplace and promoting regulated sales over black market transactions.

The standard applied for constitutionality of local laws under Const. art. XI, §11 is crystal clear—a local regulation conflicts with state law where it permits what state law forbids or forbids what state law permits. *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004). The test for determining an impermissible conflict is whether the “ordinance declares something to

be right which the state law declares to be wrong, or vice versa.” *City of Seattle v. Eze*, 111 Wn.2d 22, 33, 759 P.2d 366 (1988). The city declares regulated marijuana businesses to be wrong, while the state says they are right. This creates an irreconcilable conflict.

When a state statute and a municipal ordinance on the same subject matter cannot be harmonized, the municipal ordinance must yield. *State v. Seattle*, 94 Wn.2d 162, 166, 615 P.2d 461; *Spokane v. J-R Distrib. Inc.*, 90 Wn.2d 722, 730, 585 P.2d 784 (1978). A locality cannot do the opposite of state law or contravene a state-administered regulatory scheme. *Dept. of Ecology v. Wahkiakum County*, WA Ct.App. Div. 2, No. 44700-II (Nov. 4, 2014). Clarkston’s local “policy decision” to circumvent the state’s preferred solution to a social problem (promoting regulation and safe access over black market marijuana production and sales) must yield.

The plaintiff could not have possibly prevailed on the underlying merits of its claim. “When deciding whether a party has a clear legal or equitable right, the court examines the likelihood that the moving party will prevail on the merits.” *Rabon v. City of Seattle*, 135 Wash.2d 278, 285, 957 P.2d 621 (1998). Because Or. No. 1532 is the opposite of state law, criminalizing the same underlying substantive conduct that is legal at the state level, and prohibiting that which is *permitted* by the state (rather than adding additional restrictions to that which is otherwise prohibited), and indeed, promoted over black market sales, it was unlikely that the

plaintiff would have prevailed on the ultimate merits. A preliminary injunction, therefore, was premature and unwarranted.

**1. Cities May Adopt Reasonable Regulations, But May Not Eviscerate a Statewide Legislative Scheme**

Washington cities are limited in their jurisdiction by Art. XI, § 11, which states, in part: “any 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.” Wa. Const. Art. XI, Sec. 11. General laws are those that, for the protection of health, safety, and welfare, are in effect across the whole state. “[T]he city is subordinate to the legislature as to any matter upon which the legislature has acted...In the event of an inconsistency, the statute prevails.” *Chemical Bank v. WPPSS*, 99 Wn.2d 777, 793 (1983).

A city ordinance is unconstitutional under Article XI, § 11 if “(1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the city’s police power; or (3) the subject matter of the ordinance is not local.” *Edmonds Shopping Ctr. Assocs. v. City of Edmonds*, 117 Wn. App. 334, 351, 71 P.3d 233 (2003). The subject matter of the ordinance is not local, and undermines the spirit of I-502, a general law intended for statewide application in order to bring the illegal marijuana trade under control. A municipal corporation may not pass by-laws that infringe upon the spirit or are repugnant to the policy of the state as declared in its general legislation. This was well-stated in *Seattle Electric*:

It has been stated by respectable authority that the grant of power to a municipal corporation does not permit it to adopt by-laws which infringe the spirit or are repugnant to the policy of the state as declared in its general legislation. In 2 Dillon, Municipal Corporations (5th ed.), SS 601, it is said: "The rule that a municipal corporation can pass no ordinance which conflicts with its charter, or any general statute in force and applicable to the corporation, has been before stated. Not only so, but it cannot, in virtue of its incidental power to pass by-laws, or under any general grant of that authority, adopt by-laws which infringe the spirit or are repugnant to the policy of the state as declared in its general legislation." . . .It is our duty to construe the law as we find.

*Seattle Elec. Co., supra*, 78 Wash. 203, at 213.

The will of one municipality may not obstruct the general law, nor should Clarkston be afforded the right to do so. "Clearly, the interests of all Washington residents in these shorelines cannot be impliedly abdicated to local governments." *Biggers v. Bainbridge Island*, 169 P.3d 14 (2007) (concurring op., holding in plurality decision).

**a. Standard of Review for Conflict and Field Pre-emption of Local Law by State Law Under Washington Constitution, Art. XI, Section 11**

A municipality may not enact a zoning ordinance in which the state has preempted the field or the local ordinance conflicts with state law. Washington State Constitution Article XI, § 11; *HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs.*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003); *Lenci v. Seattle*, 63 Wash.2d 664, 670, 388 P.2d 926 (1964). State law can pre-empt local laws and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local authority, or 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). “If a statute [or ordinance] is unconstitutional, it is and has always been a legal nullity.” *State ex. rel. Evans v. Brotherhood Etc.*, 41 Wn.2d 133, 143, 247 P.2d 787 (1953).

#### **b. Conflict Pre-emption**

Unconstitutional conflict is found where an ordinance permits that which is forbidden by state law, or prohibits that which state law permits. *Trimen Dev. Co. v. King County*, 124 Wash.2d 261, 269, 877 P.2d 187 (1994); *City of Bellingham v. Shampera*, 57 Wash.2d 106, 110-11, 356 P.2d 292, 92 A.L.R.2d 192 (1960).

““In determining whether an ordinance is in ‘conflict’ with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519. *Judged by such a test, an ordinance is in conflict if it forbids that which the statute permits.*” *Bellingham v. Shampera*, 57 Wn.2d 106, 109, 356 P.2d 292 (1960), citing *State v. Carran*, 133 Ohio St. 50, 11 N.E.2d 245, 246. Clarkston Or. No. 5132 forbids what the state statute permits, thus unconstitutionally conflicting with the general law. “No real conflict can exist unless the ordinance declares something to be right which the state law declares to be wrong, or vice versa.” *Seattle Newspaper-Web Pressmen’s Local 26 v. Seattle*, 24 Wn. App. 462, 469, 604 P.2d 170 (1979), quoting *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923). Clarkston’s Ordinance 1532 declares

the Valle's conduct to be wrong when the state says it is right, and, therefore, must yield to the general law.

**i. A local ordinance may add to a floor of prohibition set by state statute, but may not contravene general laws of a regulatory nature.**

Cities may pass laws that add to a floor of prohibition set by a state statute, but may not contravene general laws of a regulatory nature. *Rabon v. City of Seattle*, 135 Wn.2d 278, 957 P.2d 621 (1998); *See also Lenci v. City of Seattle*, supra, 63 Wash.2d 664, 671, 388 P.2d 926 (1964). I-502 is not a law of prohibition, it is a law of regulation. *See, e.g., Dept. of Ecology v. Wahkiakum*, 2014 WL 5652318, 184 Wash.App. 372 (2014) (holding that municipal ordinance banning use of certain biosolids was unconstitutional for prohibiting what the state law permits; the municipal ordinance thus conflicted with the state's comprehensive regulatory scheme for managing biosolids). I-502, as a regulatory statute of statewide application, is distinct from the statutes emanating from the line of cases in which a local jurisdiction adds regulation to a law of prohibition. *See State ex rel. Schillberg v. Everett Dist. Justice Court*, 92 Wash.2d 106, 594 P.2d 448 (1979) (ordinance prohibited operation of boats on certain lakes, while statutes concerned only the operation of boats); *Lenci v. City of Seattle*, 63 Wash.2d 664, 388 P.2d 926(1964) (ordinance required eight-foot-high wall, while state law required six-foot wall); *Brown v. City of Yakima*, 116 Wash.2d 556, 807 P.2d 353 (statute restricted dates and times

for sale and use of fireworks, while ordinance further restricted those dates and times; express grant of local concurrent jurisdiction).

The dissent in *Rabon* explains the distinction:

This statutory scheme distinguishes this action from subsequent cases relying on *Brown*, which simply expand on restrictions existing in state law. But here the City completely ignores the legislative scheme with no regard for its definitions, policy, or mandates.

*Rabon v. City of Seattle*, 135 Wn.2d 278, 957 P.2d 621 (1998) (dissenting op.). The difference is further explained in *Shampera*:

The statute, as well as the ordinance, in the case at bar, is prohibitory, and the difference between them is only that the ordinance goes farther in its prohibition but not counter to the prohibition under the statute. The city does not attempt to authorize by this ordinance what the Legislature has forbidden; nor does it forbid what the Legislature has expressly licensed, authorized, or required...Unless legislative provisions are contradictory in the sense that they cannot coexist, they are not to be deemed inconsistent because of mere lack of uniformity in detail.

*Bellingham v. Shampera, supra*, 57 Wn.2d 106, at 111 (quoting *Fox v. City of Racine*, 225 Wis. 542 (Wisc. 1937) (further citation omitted)).

In the present case, the difference between the I-502 statute, (allowing licensed marijuana operations), and the Clarkston ordinance, (entirely prohibiting them), is not a difference “of mere lack of uniformity in detail.” Here, the State has expressly licensed and authorized the defendant’s conduct. The local Clarkston ordinance bans it. The local ordinance conflicts and must yield to the state statute. The power to regulate is not the power to destroy. *See Reagan v. Farmer's Loan & Trust Co., supra*, 154 U.S. 362 (1894); *See also In re Ferguson*, 80 Wash. 102,

141 Pac. 322, at 324, (1914) (“[T]he power to ‘regulate’ does not necessarily imply power to ‘prohibit’ or ‘suppress’...”); *Seattle v. Gervasi*, 144 Wash. 429, 258 Pac. 328 (1927); *Alex v. Gregory*, 177 Wash. 465, 32 P. (2d) 560 (1934); *State ex rel. Thornbury v. Gregory*, 191 Wash. 70, 70 P. (2d) 788 (1937); *The Derby Club, Inc. v. Becket*, 41 Wn.2d 869, 252 P.2d 259 (1954); *Entertainment Indus. Coal v. Tacoma-Pierce County Board of Health*, 153 Wn.2d 657, 105 P.3d 985 (2005).

**ii. Valle’s underlying substantive conduct is legal under Washington law; renaming the conduct a zoning code violation is irrelevant to an Article 11 inquiry.**

The focus of the Art. XI, § 11 inquiry is on the conduct proscribed by the two laws (a question of substance). “The two laws coexist because, although the degree of punishment differs, their substance is nearly identical and therefore an irreconcilable conflict does not arise. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). Both the state, and the city through its police powers, regulate conduct. What the state authorizes through its police powers cannot be banned by a locality where the same underlying substantive conduct is at issue. Renaming the defendant’s lawful state conduct a zoning violation is merely a matter of semantics. The substance of the state and local laws here are polar opposites, one punishes marijuana businesses, while the other authorizes it.

Another zoning case is illustrative. In *State v. Seattle*, a local ordinance empowered the city to approve any plan to alter or destroy

landmark buildings. *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980). A state statute, however, RCW 228.20.392(2)(b)(i),(ii) empowered the University of Washington Board of regents to “raze, reconstruct, alter, remodel or add to existing buildings” located within the university tract. In ruling that the local ordinance did not apply to buildings in the university tract, the court held: “The city’s landmarks ordinance as applied cannot coexist [with the statute.] The effect of applying the landmarks ordinance to the Tract would be to forbid alterations of the nominated properties without Board approval and subject designated structures to controls imposed by the city council... The legislature has clearly shown its intent that the decision-making power as to preservation or destruction of Tract buildings rests with the Board of Regents.” *State v. Seattle, supra*, 94 Wn.2d at 166.

Likewise, decision-making power—jurisdiction over I-502 businesses -- rests with the State, not localities. Granting jurisdiction to both cannot be harmonized where Clarkston prohibits that which the state permits. The local ordinance conflicts and must yield to the state law.

Law-abiding citizens should not be subject to persecution through witch hunts and Bills of Attainder when the substantive conduct in which they engage is legal and promoted over black market sales at the state level. “In the interpretation of a statute the intent of the Legislature is the vital thing, and the primary object is to ascertain and give effect to that intent.” *C.L. Featherstone v. Dessert*, 173 Wash. 264, 268, 22 P.2d 1050,

1052 (1932). Express statements in the people's state-wide legislative initiative, authorizing and legalizing marijuana businesses, cannot be regarded as mere surplusage subservient to the will of inferior legislative bodies. "A court must avoid interpreting a provision in a way that would render other provisions of the act superfluous or unnecessary," *City of Bellevue v. East Bellevue Cmty. Council*, 138 Wash. 2d 937, 946-47, 983 P.2d 602, 607 (1999).

This court should not read an exemption into the general statutory scheme, allowing municipalities to prohibit state lawful conduct. Even if the legislature's purpose was to allow cities to grant themselves an exception to the legislative scheme, a "court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission." *Auto. Drivers & Demonstrators Union Local 882 v. Dep't of Ret. Sys.*, 92 Wash. 2d 415, 421, 598 P.2d 379, 382-83 (1979) (citations omitted). See also *Vita Food Prods., Inc. v. State*, 91 Wash. 2d 132, 587 P.2d 535 (1978) (court may not add words to statute even if it believes the legislature intended something else but failed to express it).

**c. I-502 pre-empts the field of marijuana regulation.**

Preemption occurs when the legislature states its intention either expressly or by necessary implication to preempt the field, leaving no room for concurrent jurisdiction. See *Brown v. City of Yakima*, 116 Wn2d 556, 559, 807 353 (1991); *Rabon v. City of Seattle*, 135 Wash.2d 278, 289, 957 P.2d 621 (1998); both statutes at issue in *Brown* and *Rabon*

granted municipalities express grants of concurrent jurisdiction. “If the legislature is silent as to its intent to occupy a given field, resort must be had to the purposes of the statute and to the facts and circumstances upon which the statute was intended to operate.” *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709, (2001), citing *Brown v. City of Yakima*, 116 Wn.2d 556, 560, 807 P.2d 353 (1991).

Under RCW 69.50.608, the State of Washington fully occupies and preempts the entire field of setting penalties for violations of the Uniform Controlled Substance Act (“USCA”). The city’s ordinance will affect every marijuana business indiscriminately, regardless of its ability to adhere to state standards under the USCA. The city’s zoning “regulation” is a criminal law by any other name, and unfairly places Valle in an inherently arbitrary Catch 22: no matter how responsible and professional its operations, it cannot possibly escape criminal prosecution. When regulations on an occupation or business “have no relation to such calling or profession, or are unattainable by such reasonable study and application, [they] can operate to deprive one of his right to pursue a lawful application.” *Dent v. West Virginia*, 129 U.S. 114, 121-122 (1889).

**i. I-502 is a state-wide people’s initiative adopting a uniform standard for marijuana regulation.**

In addition to express statements of pre-emption, Washington courts also consider several factors when examining whether the legislature has preempted an area by implication. In considering a statute, we must “assume that the legislature means exactly what it says,” *Morgan*

*v. Johnson*, 137 Wn.2d 887, 891-92, 976 P.2d 619 (1999). One factor evincing legislative intent to preempt is whether the legislature has created a single uniform standard intended for state-wide application. *Spokane v. Portch*, 92 Wn.2d 342, 348, 596 P.2d 1044 (1979).

I-502 offers that state-wide uniform standard. RCW 69.50.603, “Uniformity of interpretation” requires uniformity of Washington’s USCA: “This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.”

A Massachusetts case, *St. George Greek Orthodox Cathedral of W. Massachusetts, Inc. v Fire Dept. of Springfield*, regarding a statewide building regulatory scheme superseding a local building code, is illustrative of how the more comprehensive a state statutory scheme, the more preemptive intent can be inferred. The Massachusetts’ High Court ruled as follows:

The ‘sheer comprehensiveness’ of the building code itself demonstrated the Legislature’s intention to foreclose inconsistent local enactments. ‘Where legislation deals with a subject comprehensively, it ‘may reasonably be inferred as intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.’ The Legislature empowered the board ‘[t]o formulate, propose, adopt and amend rules and regulations,’ i.e., the code, which would govern “the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of any building or structure and use or occupancy of all buildings and structures and parts thereof or classes of buildings and structures and parts thereof” and ‘the standards or

requirements for materials to be used in connection therewith, including but not limited to provisions for safety, ingress and egress, energy conservation, and sanitary conditions.’ Indeed, while specialized codes governing fire prevention and safety predated enactment of the code, these were incorporated into the code...thus forming a comprehensive system of regulation at the State level.

462 Mass 120, 128, 967 NE2d 127, 134 (2012) (citing *Dartmouth v. Greater New Bedford Regional Vocational Technical High Sch. Dist.*, 461 Mass. 366, 375, 961 N.E.2d 83 (2012), quoting *Boston Teachers Union, Local 66 v. Boston*, 382 Mass. 553, 564, 416 N.E.2d 1363 (1981)).

Likewise, this state’s comprehensive retail marijuana statutory scheme, which encompasses safety, penalties, taxation, apportionment of access, and tracking of product, as well as its extensive administrative regulations on the same topics, evidence a clear intent on the part of the State legislature to preempt the field of marijuana regulation. It cannot be “frustrated” by local regulation, especially in the form of outright prohibition.

By way of further example, in South Dakota, video lotteries were illegal until 1986. A local ordinance that attempted to require conditional use permits and locational requirements for video lotteries was struck down as unconstitutionally conflicting with a state regulatory scheme that preempted the field by implication. The city of Sioux Falls claimed that they were not regulating video lotteries, but merely their “location and use of buildings housing the machines” through zoning in order to “protect the health, safety, and general welfare of city residents.” *See Law v City of*

*Sioux Falls*, 2011 SD 63, 804 NW2d 428 (2011). The city also argued that under their home rule charter, the city could enact stricter standards than those imposed by state law. Even in a home rule state, the Supreme Court of South Dakota found that the statutes contained comprehensive instructions giving state agencies the power to control, manage, and regulate video lottery. The court found that the Legislature had impliedly intended to occupy the field of regulation via its comprehensive scheme and “made no room for supplementary municipal regulation.” *Id.*, at 431. The Court wrote: “Because there is no express preemption of the Legislature’s intent to regulate video lotteries...we look to the provisions of the entire law, and not to any particular statute in isolation.” *Ibid.* Looking at the entire provisions of I-502, there is no room for “supplementary municipal regulation.”

Even if the statewide I-502 regulatory scheme permitted some degree of non-uniformity or local concurrent jurisdiction, “[W]hen a statute or statutory scheme seeks to promote a certain activity and, at the same time, permits more stringent local regulation of that activity, local regulation cannot be used to completely ban the activity or otherwise frustrate the state’s purpose.” *City of Riverside v. Inland Empire Patients Health and Wellness, Inc.*, 300 P.3d 494 (Cal.2013), (orig. dec. at 34), quoting *Great Western Shows*, 27 Cal.4<sup>th</sup> 853, 868., also citing *Blue Circle Cement, Inc. v Board of County Commissioners*, 27 F.3d 1499 (10<sup>th</sup> Cir. 1994). Where the state promotes lawful, licensed marijuana operations

over unauthorized ones, local regulation cannot be used to thwart that aim and frustrate the state's purpose of bringing the black market for marijuana and organized crime under control.

Concurrent jurisdiction does not allow prohibition of a state law's application or the right to circumvent a solution to a social problem that the state actively promotes. If cities throughout Washington are allowed to overrule state law and prohibit retail marijuana stores, it will necessarily encourage illegal drug organizations to operate unauthorized drug rings, circumvent the State-licensed system, and allow violent gangs to reap the profits of marijuana decriminalization. This would defeat the purposes of I-502 *in toto*.

Furthermore, Washington State affords cities only "modified" home rule status, requiring an express or implied grant of power once a state law has addressed a subject. In *Massie v. Brown*, 84 Wn.2d 490, 527 P.2d 476 (1974), the Washington Supreme Court enjoined Seattle from placing its municipal court employees under civil service. The court pointed out that municipal courts are created by statute and can be regulated by municipal corporations only under an express delegation of power by the legislature.

The city may not usurp delegated legislative police power, albeit constitutionally granted, purely to eviscerate a state regulatory scheme. To afford local governments, non-legislative bodies, even more power than

the state legislature would rock the delicate tri-partite balance of state governmental powers and unsettle our democracy.

**ii. If it was the state legislative will that jurisdiction should be retained by the City, the insertion in the law of the right of the City to invoke the aid of the Board would be entirely useless.**

Upon notice from WSLCB regarding an applicant, a local jurisdiction may object and may request a hearing. RCW 69.50.331(7)(b) and (c). An administrative hearing at the discretion of the LCB was the *only* avenue available to cities objecting to a marijuana location. “The written objections shall include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority *may* request, and the state liquor control board *may* in its discretion hold, a hearing subject to the applicable provisions of Title 34.” RCW 69.50.331(7)(c) [italics added, “may” being precatory.] Noticeably absent from the statute is a local “opt-out” provision, such as provided for under alcohol licensing statutes, in a very “pregnant silence.” *See* RCW 66.40.020.

“Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*—specific inclusions exclude implication.” *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999) (quoting *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d

633 (1969)). A bedrock principal of administrative law and statutory construction, *expressio unius est exclusio alterius*<sup>6</sup>, demands that the cities not hold their own rogue administrative hearings when the statute and administrative rules already provide for an objection process. “A conclusion that the Legislature intended to preempt a subject may also be inferred if the Legislature has explicitly limited the manner in which cities and towns may act on that subject.” *Bloom v. Worcester*, 363 Mass. 136, 155, 293 N.E.2d 268 (1973).

An exemplary case of this principal was espoused in an era in which another new industry was forming, electric streetcars, and a state agency was created to administer its regulations. The City of Seattle attempted to use its local police powers to add additional prohibitions to the regulatory scheme. There the Washington Supreme Court found:

The right of the city to exercise the police power over a particular subject-matter ceases when the state acts upon the same subject-matter...[T]he jurisdiction of the city as to such matters was divested by the enactment of the statute, and subsequent to the time when the statute went into effect, the city had no power to act; and since the ordinance was enacted subsequent to the time when the law took effect, the city acted without power and the ordinance was therefore void.

*Seattle Electric Co. v Seattle*, 78 Wash. 203, 208, 138 Pac. 892 (1914) (*en banc*).

The Court noted that inclusion of a local administrative appeal process in the statutory scheme evidenced the legislature’s intent to divest the cities of concurrent jurisdiction. The Court held explicit mention of an

---

<sup>6</sup> From the Latin: “The express mention of one thing excludes all others.” *See also* RP at 15.

objection process, much like that available to cities under I-502, with no other express powers being statutorily delegated to cities, was evidence of the legislature's intent for the state, and only the state, to regulate rail cars. The Washington Supreme Court wrote, "if it was the legislative will that jurisdiction should be retained by the city, the insertion in the law of the right of the city to invoke the aid of the commission would be entirely useless." *Seattle Elec. Co.*, *supra*, 78 Wash. 203, at 210.

By allowing a city to ban a marijuana business via its own local zoning hearing, the portion of the I-502 statute requiring the same city to undergo an administrative hearing is rendered meaningless and superfluous. "Statutes should not be interpreted as to render any portion meaningless, superfluous or questionable." *Addleman v. Board of Prison Terms*, 107 Wn.2d 503, 730 P.2d 1327 (1986); *Avlonitis v. Seattle District Court*, 97 Wn.2d 131, 138, 641 P.2d 169, 646 P.2d 128 (1982). To argue that some cities could go through the administrative appeals process while others could initiate ban proceedings creates an exemption for certain cities where none exists. "A reviewing court will not read into a statute provisions that are not there, nor will it modify a statute by construction." *State v. McCollum*, 88 Wn. App. 977, 989 (1997) citing *Shum v. Dept of Labor and Indus.*, 63 Wn App. 405, 409, 810 P.2d 399 (1991). Just as in *Seattle Electric*, I-502's provision of an appeal procedure to the state agency is conclusive evidence that the state, and only the state, has jurisdiction over I-502 operations and that the general law pre-empts the

field of marijuana regulation statewide, leaving no room for concurrent jurisdiction.

The issue of marijuana regulation belongs to the state and is non-local. Transient citizens have a right to be protected from the violence engendered by the black market for marijuana. Local laws should be preempted when the adverse effect of local ordinances on the transient citizens of the state outweigh the possible benefit to the locality. *City of Riverside v. Inland Empire*, 156 Cal.Rptr.3d 409, 300 P.3d 494 (2013).

**2. *CAC v. Kent* is Distinguishable on Subject Matter and is Superseded by the adoption of I-502.**

The City has incorrectly attempted to analogize the present case to that of *CAC v. Kent*. Yet *Kent*, a case on medical marijuana – not recreational – is both distinguishable on the subject matter, and superseded by SB 5052, which passed four months after that case was determined. (The original complaint was filed prior to the passage of I-502.)

In *CAC v. Kent*, the Washington Supreme Court stated that “Initiative 502 is not relevant to this case because no party seeks to produce marijuana pursuant to a recreational marijuana producer’s license. *See* RCW 69.50.325(1). This case concerns Washington’s medical marijuana system.” 183 Wash.2d 219, 223, 351 P.3d 151 (2015). The entire question of the interplay between ordinance and state law, and the analysis thereof, is wholly different between the Medical Use of Cannabis Act (MUCA) and certain limited local ordinances, on the one hand, and I-502 and overly broad local prohibitions, on the other. *See Kent* at 226 (An

ordinance is not valid under the state Constitution where: “(1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the [local government’s] police power; or (3) the subject matter of the ordinance is not local.” (quoting *Weden v. San Juan County*, 135 Wash.2d 678, 692-93, 958 P.2d 273 (1998)); and “A statute preempts the field and invalidates a local ordinance within that field ‘if there is express legislative intent to preempt the field or if such intent is necessarily implied . . . from the purpose of the statute and the facts and circumstances under which it was intended to operate.’” (quoting *Lawson v. City of Pasco*, 168 Wash.2d 675, 679, 230 P.3d 1038 (2010))).

In *Kent*, the Court affirmed a ruling that the medical marijuana law provided only an affirmative defense to criminal prosecution, not legalization through a patient registry system and a system of licensing. The Court explained that when Gov. Gregoire vetoed portions of Engrossed Second Substitute Bill 5073, she removed the licensing system, and therefore, many of the bills protections and provisions. This rendered portions of the bill moot. For example, unlike I-502, the Medical Use of Cannabis Act (MUCA) contained an express provision regarding local land-use control, RCW 69.51A.140. As the Appellate Court in *Kent* noted:

Another section that the governor believed to have meaning, even though it referenced registered entities, was section 1102. [codified at RCW 69.51A.140]. With respect to this section, the governor stated:

Section 1102 sets forth local governments’ authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions.

The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for licensed dispensers.

180 Wn. App. 455, 466, 322 P.3d 1246 (2014) (quoting Orig dec at 7, Laws of 2011, ch. 181, Governor's veto message at 1375.).

State law regarding medical and recreational marijuana sales has changed, dramatically, with the adoption of I-502. As the Supreme Court in *Kent* stated, "...in 2012, the people adopted Initiative 502, LAWS OF 2013, ch. 3, to create a system for the licensed distribution of recreational marijuana and to legalize the possession of marijuana in certain circumstances." 183 Wash.2d at 223. Courts presume that when the legislature acts, it intends to change existing law. *Spokane County Health District v. Brockett*, 120 Wash. 2d 140, 154 (1992). On July 1, 2015, under SSB 5052, Washington's medical marijuana laws were finally changed to no longer simply allow an affirmative defense to criminal prosecution, but to legalize medical marijuana within Washington State and bring it within the extant statewide regulatory system of I-502. The legislature removed the ambiguity created by RCW 69.51A.140, completely repealing that section via Section 48 of SSB 5052. "[A] legislative body may clarify an earlier enactment when ambiguity arose about the statute." *State v. Riles*, 135 Wash. 2d 326, 343 (1998).

*Kent* is not about I-502 – a law on the sale of recreational marijuana that creates a completely different and more problematic

interrelationship with unreasonable, overly restrictive local ordinances. Had the *Kent* case involved an I-502 licensed business, (dispensing medical marijuana to qualified patients under a medical endorsement, which requiring store staff certified by the state and patient medical registry records on hand), the outcome would have been drastically different. Both medical and recreational cannabis have been legalized by the State of Washington, and their license sale expressly authorized. “If a statute’s meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent.” *Dept. of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

Both the medical and recreational statutes stand *in pari materia*: the possession, licensed manufacture, and licensed sale of cannabis is now legal for all adults over 21 in Washington State. “Where statutes are part of a general system relating to the same class of subjects and rest upon the same reasons, they should be so construed, if possible, as to be uniform in their application and in the results which they accomplish,” *State v. Savidge*, 75 Wash. 116, 120, 134 P. 680, 682 (1913); *See also State v. Fairbanks*, 25 Wash. 2d 686, 690, 171 P.2d 845, 848 (1946) (“It is a cardinal rule that two statutes dealing with the same subject will, if possible, be so construed as to preserve the integrity of both.”) The intent of SSB 5052 was to provide safe access to medical marijuana in I-502 retail outlets. As such, the legislative intent of SSB 5052 is dependent on I-502 outlets being open for business, not shuttered by localities.

"Laws that are in *pari materia* will be read together for the purpose of ascertaining the legislative intent." *White v. City of N. Yakima*, 87 Wash. 191, 195, 151 P. 645, 647 (1915). The intent of the legislature was to legalize and regulate the state-wide marijuana market and provide safe access to medical marijuana patients. The two statutes are complementary, and their legislative mandates must not be rendered moot by creating a judicial exemption from these statutory schemes for rogue municipalities, where no exemption exists.

#### **V. REQUEST FOR ATTORNEYS' FEES**

Pursuant to RAP 18.1, Appellants request attorneys' fees for the wrongful injunction. "As a general rule, attorney's fees are damages recoverable by the party who successfully resists a wrongful injunction." *White v. Wilhelm*, 34 Wash.App.763, 774, 665 P.2d 407 (1983) (quoting *Parsons Supply , Inc. v. Smith*, 22 Wash.App. 520, 524, 591 P.2d 821 (1979)). As the Supreme Court stated approximately one century ago:

"The commonly accepted rule is that reasonable compensation paid as counsel fees, paid in procuring the dissolution of an injunction, may be recovered in an action on a bond. 2 High, Injunctions (3d Ed.) § 1685. ...[C]ounsel fees thus allowable must be those connected with the motion, or other similar proceeding for the dissolution of the injunction...."

*Berne v. Maxham*, 82 Wash. 235, 237, 144 P.23 (1914) (quoting *Donahue v. Johnson*, 9 Wash. 187, 190-91, 37 P.322 (1894) (further citation omitted)).

In the present case, Appellants have retained counsel for the purpose of fighting for the removal of a wrongful injunction that has

shuttered their lawful business. Counsel has spent many hours through numerous motions and now this appeal to contest the injunction. If this Court rules that the trial court's injunction was wrongful, Appellants are entitled to attorneys' fees in an amount to be specified in a separate affidavit under RAP 18.1(d), to be submitted within 10 days after the filing of this Court's decision.

## VI. CONCLUSION

Municipalities generally possess constitutional authority to enact zoning ordinances as an exercise of their legislatively delegated police power. However, a municipality may not enact a zoning ordinance that is in conflict with state law. Ordinance No. 1532 is preempted because cities may not enact ordinances that are the opposite of state law. In passing Ordinance No. 1532, the City of Clarkston disregards the will of the voters, the intent of our Legislature, and the safety of the public. Because the implementation of I-502 presents an issue involving a fundamental and urgent issue of broad public import, and the trial court's injunction was wholly improper in prematurely enjoining non-nuisance, lawful activity, the Appellants' requested relief should be granted.

Respectfully submitted this 24<sup>th</sup> day of November, 2015.

THE LAW OFFICE OF E. HALLOCK, P.C.



Elizabeth Hallock, WSB# 48125  
Attorney for Appellants *Valle del Rio*  
2669 NW Kent St.  
Camas, WA 98607

360-909-6327  
ehallock.law@gmail.com

# APPENDIX

**EXHIBIT A**

ORDINANCE NO. 1532

AN ORDINANCE PROHIBITING PRODUCTION, PROCESSING AND/OR RETAIL SALES OF RECREATIONAL MARIJUANA WITHIN THE CITY LIMITS OF THE CITY OF CLARKSTON; AND IMPLEMENTED PURSUANT TO ORDINANCE NO. 1532 AND REPEALING ORDINANCE NO. 1529 WHICH ESTABLISHED ZONING REGULATIONS FOR RECREATIONAL MARIJUANA BUSINESSES.

WHEREAS, the City Council finds and determines that the production, processing and retailing of marijuana as defined by Initiative 502 and regulations promulgated thereunder should be prohibited,; and

WHEREAS, the City Council finds and determines that recreational marijuana production, processing and sale threatens the well being of our youth and serves no benefit to the public; and

WHEREAS, the City Council finds and determines that the prohibition of recreational marijuana production, processing and retail sales within the City of Clarkston is the only effective means to protect the residents, recreational facilities, families and children within the City of Clarkston; and

WHEREAS, the City Council finds and determines that the production, processing and retailing of recreational marijuana is subject to the authority and general police power of the city; and

WHEREAS Article 11, Section 11 of the State Constitution grants to cities the power to adopt land use controls, to provide for the regulation of land uses within cities, and to provide that such uses shall be consistent with applicable law (See *Canibus Action Coal v. City of Kent*, 322 P.3<sup>rd</sup> 1246; 2014 Wash App. Lexis 750 (Div. 1. Wash Ct. App. Mar. 31. 2014); and

WHEREAS, the City Council finds and determines that this ordinance is not intended to regulate the individual use of marijuana as authorized by Initiative 502 ; and

WHEREAS, the City Council has received and considered the recommendation of the Planning Commission, the record herein, and all public comments at council meetings; and

WHEREAS 1-502 includes an excise tax of 25% on production and sale, none of which goes to local government for enforcement, public safety, and related additional costs; The City of Clarkston declares that no recreational marijuana production or processing facilities nor any place for retail sale should be allowed within the City of Clarkston's city limits, nor should any business license be issued for the production, processing or retail sale of recreational marijuana within the City Limits, and

WHEREAS, the City Council finds and determines that approval of such ordinance is in the best interests of residents of the City of Clarkston and will promote the general health, safety and welfare; now, therefore

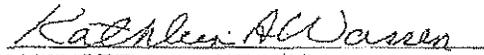
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSTON,  
WASHINGTON:

Section 1. Ordinance No. 1529, adopting zoning for licensed recreational marijuana production, processing and retailing, and passed by the city council on October 13, 2014 is hereby repealed. ]\*

Section 2. The City Council hereby adopts as its findings of fact the provisions set forth above and the opinion of the Attorney General issued on the 16 day of January, 2014 opining that the cities have the authority to ban the production, processing and sale of recreational marijuana within the city of Clarkston;

Section 3. The City of Clarkston does hereby declare that no recreational marijuana production, processing or place of retail sale shall be permitted within this City limits in any zone, and no entity or person shall be issued a business license for any recreational marijuana business. This ordinance shall supercede and pre-empt any prior enactment or ordinance to the contrary.

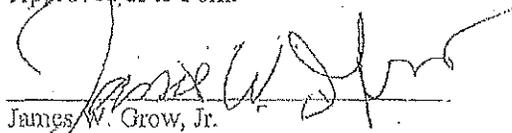
PASSED BY THE CITY COUNCIL OF THE CITY OF CLARKSTON, WASHINGTON, AND  
APPROVED BY THE MAYOR at a regularly scheduled meeting on this 24<sup>th</sup> day of November,  
2014.

  
KATHLEEN A. WARREN, Mayor

Attest:

  
Vickie Storey, City Clerk

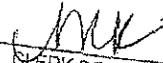
Approved, as to Form

  
James W. Grow, Jr.  
Clarkston City Attorney

**EXHIBIT B**

FILED  
OFFICE OF CO. CLERK  
ASOTIN COUNTY, WA

AUG - 5 2015

  
CLERK DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR ASOTIN COUNTY

CITY OF CLARKSTON, a Washington  
Municipal Corporation,

Plaintiff,

vs.

VALLE DEL RIO, LLC, a Washington  
Limited Liability Company, d/b/a GREEN-  
FIELD 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;

Defendants.

) NO. 15-2-00148-1

)  
)  
)  
) ORDER GRANTING PLAINTIFF'S  
) MOTION FOR PRELIMINARY  
) INJUNCTION

THIS MATTER came on for hearing before this Court upon the motion of the plaintiff, the City of Clarkston (the "City"), for a preliminary injunction and upon the order of the Court compelling defendants to show cause why the previous temporary restraining order (the "TRO") issued by the Court on or about July 2, 2015, should not remain in effect during the pendency of this action.

Having considered the City's motion and all pleadings and materials submitted in support of and in opposition to the motion, the requirements of CR 65, as well as the arguments of counsel for the parties, the Court FINDS:

ORDER ON MOTION FOR  
PRELIMINARY INJUNCTION - 1

MENKE JACKSON BEYER, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509)575-0313  
Fax (509)575-0351

1           1.       The City has banned the retail sale, processing and production of recreational  
2 marijuana within city limits, which ban was and remains a lawful exercise of the City's  
3 municipal powers granted it by statute and other applicable authority.

4           2.       Defendants above-named (collectively "defendants"), have engaged and continue  
5 to engage in the retail sale of marijuana at 728 Sixth Street in the City of Clarkston. Defendants  
6 lack a municipal business license to sell marijuana at this location, which is a requirement for  
7 any person desiring to do business within the City. Defendants are in violation of applicable  
8 municipal codes as a result of the foregoing.

9           3.       The City has demonstrated a substantial likelihood of success on the merits of its  
10 claims.

11           4.       The rights of the City with respect to enforcement of its municipal codes and  
12 regulations are being and will continue to be violated by defendants unless defendants are  
13 restrained therefrom.

14           5.       The City will suffer irreparable harm and loss if defendants are permitted to  
15 continue the retail sale of marijuana at 728 Sixth Street in violation of municipal ordinances and  
16 without a municipal business license. The public interest in orderly and consistent application of  
17 the City's ordinances, including its zoning and business license provisions, requires that the  
18 business operations of defendants comply with all applicable municipal codes and regulations.

19           6.       The City has no adequate remedy at law because money damages are not  
20 designed to cure ongoing violations of law. The City does not seek money damages but, rather,  
21 preservation of the orderly affairs of businesses within the City as regulated by its local  
22

1 ordinances. There is no way to affix a value on blatant noncompliance with legitimate laws and  
2 ordinances.

3 7. Greater injury will be inflicted upon the City of Clarkston and the public interest  
4 by the denial of temporary injunctive relief than would be inflicted upon defendants by granting  
5 such relief. Defendants could have, but did not, otherwise move against the adoption of  
6 Ordinance No. 1532 prior to commencing their business unlawfully. The abrupt opening of the  
7 business by defendants is not supported by any exigency on their part, whereas the City's interest  
8 in preserving the status quo is consistent with the City's general purpose of consistently applying  
9 its laws.  
10

11 NOW THEREFORE, it is by this Court hereby

12 ORDERED, ADJUDGED AND DECREED:

13 1. A preliminary injunction is hereby issued on the following terms and security  
14 need not be posted pursuant to RCW 4.92.080 for the reason that the City is a municipal  
15 corporation of the State of Washington.  
16

17 2. Defendants, and each of them, and any other parties with an interest in the subject  
18 matter hereof, are hereby restrained directly and indirectly, whether alone or in concert with  
19 others, including any officer, agent, employee, volunteer or representative of defendants, from  
20 the retail sale or distribution of marijuana within the city limits of the City of Clarkston, to  
21 specifically include but not be limited to, 728 Sixth Street.  
22

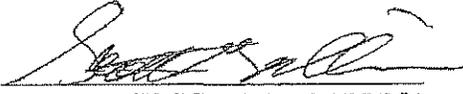
23 3. The Asotin County Sheriff's Department, or any constable or other law  
24 enforcement officer with jurisdiction, shall enforce the terms hereof, by force if necessary.  
25  
26

27  
28 ORDER ON MOTION FOR  
PRELIMINARY INJUNCTION - 3

MENKE JACKSON BEYER, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509)575-0313  
Fax (509)575-0351

1           4.       This order shall remain in full force and effect until this Court specifically orders  
2 otherwise. The prior TRO is hereby superseded by this preliminary injunction.

3                   DONE IN OPEN COURT THIS 5<sup>th</sup> day of August, 2015.

4  
5  
6                     
HON. JUDGE SCOTT D. GALLINA

7 Presented by:

8 MENKE JACKSON BEYER, LLP  
9 *Attorneys for plaintiff*

10   
11 \_\_\_\_\_  
12 KENNETH W. HARPER, WSBA #25578

13 Approved as to form and content;  
14 notice of presentation waived:

15 LAW OFFICE OF ELIZABETH HALLOCK, P.C.  
16 *Attorneys for defendants*

17 \_\_\_\_\_  
18 ELIZABETH HALLOCK, WSBA #41825

19  
20  
21  
22  
23  
24  
25  
26  
27  
28 ORDER ON MOTION FOR  
PRELIMINARY INJUNCTION - 4

MENKE JACKSON BEYER, LLP  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Telephone (509)575-0313  
Fax (509)575-0351

**EXHIBIT C**

---

SECOND SUBSTITUTE SENATE BILL 5052

---

AS AMENDED BY THE HOUSE

Passed Legislature - 2015 Regular Session

State of Washington                      64th Legislature                      2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rivers, Hatfield, and Conway)

READ FIRST TIME 02/10/15.

1            AN ACT Relating to establishing the cannabis patient protection  
2 act; amending RCW 66.08.012, 69.50.101, 69.50.325, 69.50.331,  
3 69.50.342, 69.50.345, 69.50.354, 69.50.357, 69.50.360, 69.50.4013,  
4 69.51A.005, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.043,  
5 69.51A.045, 69.51A.055, 69.51A.060, 69.51A.085, 69.51A.100,  
6 43.70.320, 69.50.203, 69.50.204, and 9.94A.518; adding new sections  
7 to chapter 69.50 RCW; adding new sections to chapter 69.51A RCW;  
8 adding a new section to chapter 42.56 RCW; adding a new section to  
9 chapter 82.04 RCW; creating new sections; repealing RCW 69.51A.020,  
10 69.51A.025, 69.51A.047, 69.51A.070, 69.51A.090, 69.51A.140,  
11 69.51A.200, and 69.51A.085; prescribing penalties; providing an  
12 effective date; providing a contingent effective date; and declaring  
13 an emergency.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

15            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
16 cannabis patient protection act.

17            NEW SECTION.    **Sec. 2.** The legislature finds that since voters  
18 approved Initiative Measure No. 692 in 1998, it has been the public  
19 policy of the state to permit the medical use of marijuana. Between  
20 1998 and the present day, there have been multiple legislative

1 attempts to clarify what is meant by the medical use of marijuana and  
2 to ensure qualifying patients have a safe, consistent, and adequate  
3 source of marijuana for their medical needs.

4 The legislature further finds that qualifying patients are people  
5 with serious medical conditions and have been responsible for finding  
6 their own source of marijuana for their own personal medical use.  
7 Either by growing it themselves, designating someone to grow for  
8 them, or participating in collective gardens, patients have developed  
9 methods of access in spite of continued federal opposition to the  
10 medical use of marijuana. In a time when access itself was an issue  
11 and no safe, consistent source of marijuana was available, this  
12 unregulated system was permitted by the state to ensure some, albeit  
13 limited, access to marijuana for medical use. Also permitted were  
14 personal possession limits of fifteen plants and twenty-four ounces  
15 of useable marijuana, which was deemed to be the amount of marijuana  
16 needed for a sixty-day supply. In a time when supply was not  
17 consistent, this amount of marijuana was necessary to ensure patients  
18 would be able to address their immediate medical needs.

19 The legislature further finds that while possession amounts are  
20 provided in statute, these do not amount to protection from arrest  
21 and prosecution for patients. In fact, patients in compliance with  
22 state law are not provided arrest protection. They may be arrested  
23 and their only remedy is to assert an affirmative defense at trial  
24 that they are in compliance with the law and have a medical need. Too  
25 many patients using marijuana for medical purposes today do not know  
26 this; many falsely believe they cannot be arrested so long as their  
27 health care provider has authorized them for the medical use of  
28 marijuana.

29 The legislature further finds that in 2012 voters passed  
30 Initiative Measure No. 502 which permitted the recreational use of  
31 marijuana. For the first time in our nation's history, marijuana  
32 would be regulated, taxed, and sold for recreational consumption.  
33 Initiative Measure No. 502 provides for strict regulation on the  
34 production, processing, and distribution of marijuana. Under  
35 Initiative Measure No. 502, marijuana is trackable from seed to sale  
36 and may only be sold or grown under license. Marijuana must be tested  
37 for impurities and purchasers of marijuana must be informed of the  
38 THC level in the marijuana. Since its passage, two hundred fifty  
39 producer/processor licenses and sixty-three retail licenses have been  
40 issued, covering the majority of the state. With the current product

1 canopy exceeding 2.9 million square feet, and retailers in place, the  
2 state now has a system of safe, consistent, and adequate access to  
3 marijuana; the marketplace is not the same marketplace envisioned by  
4 the voters in 1998. While medical needs remain, the state is in the  
5 untenable position of having a recreational product that is tested  
6 and subject to production standards that ensure safe access for  
7 recreational users. No such standards exist for medical users and,  
8 consequently, the very people originally meant to be helped through  
9 the medical use of marijuana do not know if their product has been  
10 tested for molds, do not know where their marijuana has been grown,  
11 have no certainty in the level of THC or CBD in their products, and  
12 have no assurances that their products have been handled through  
13 quality assurance measures. It is not the public policy of the state  
14 to allow qualifying patients to only have access to products that may  
15 be endangering their health.

16 The legislature, therefore, intends to adopt a comprehensive act  
17 that uses the regulations in place for the recreational market to  
18 provide regulation for the medical use of marijuana. It intends to  
19 ensure that patients retain their ability to grow their own marijuana  
20 for their own medical use and it intends to ensure that patients have  
21 the ability to possess more marijuana-infused products, useable  
22 marijuana, and marijuana concentrates than what is available to a  
23 nonmedical user. It further intends that medical specific regulations  
24 be adopted as needed and under consultation of the departments of  
25 health and agriculture so that safe handling practices will be  
26 adopted and so that testing standards for medical products meet or  
27 exceed those standards in use in the recreational market.

28 The legislature further intends that the costs associated with  
29 implementing and administering the medical marijuana authorization  
30 database shall be financed from the health professions account and  
31 that these funds shall be restored to the health professions account  
32 through future appropriations using funds derived from the dedicated  
33 marijuana account.

34 **Sec. 3.** RCW 66.08.012 and 2012 c 117 s 265 are each amended to  
35 read as follows:

36 There shall be a board, known as the "Washington state liquor  
37 (~~control~~) and cannabis board," consisting of three members, to be  
38 appointed by the governor, with the consent of the senate, who shall  
39 each be paid an annual salary to be fixed by the governor in

**EXHIBIT D**



Washington State  
Liquor and Cannabis Board

Marijuana Unit  
PO Box 43098, 3000 Pacific Ave SE  
Olympia WA 98504-3098  
Phone: (360) 664-1600

October 9, 2015

Emailed to: meplemmons@gmail.com

VALLE DEL RIO, LLC  
Trade name: GREENFIELD COMPANY  
License #: 414356 - 7Y  
UBI #: 603-351-392-001-0001

The Washington State Liquor and Cannabis Board (WSLCB) has approved your application to add a **Medical** endorsement to your marijuana retailer license. This endorsement allows you to sell marijuana for medical use to qualifying patients and designated providers.

**This endorsement does not become effective until July 1, 2016.** It will be renewed annually with your marijuana retail license.

**You must post this letter in a public service area as your temporary operating permit.** If you do not receive a new business license with this endorsement in 15 days, please contact the Department of Revenue's Business Licensing Service/Specialty Licenses at (360) 705-6744.

- Persons under twenty-one years of age are **not** permitted on the licensed premises with the exception of:
  - Qualifying patients with a recognition card between the ages of 18-21.
  - Qualifying patients with a recognition card who are under the age of 18 and are accompanied by a designated provider.
- The retailer does not authorize the medical use of marijuana for qualifying patients on the premises or permit health care professionals to authorize the medical use of marijuana for qualifying patients on the premises.
- Carry marijuana concentrates and marijuana-infused products that meet the rules and guidelines required by the Department of Health and the WSLCB.
- Keep copies of qualifying patients' or designated providers' authorization card or equivalent records to document validity of tax exempt sales.
- Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

**Alterations, changes in location, or changes in ownership require an application and WSLCB approval.** If you wish to make these changes, please contact our office for assistance.

Your marijuana license can be renewed on-line through Business Licensing Service.

cc: Enforcement  
File

**FILED**

NOV 25 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By.....

No. 33682-4

**COURT OF APPEALS FOR DIVISION III  
STATE OF WASHINGTON**

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, LCC; and  
AARON TATUM, individually and as  
a member of VALLE DEL RIO, LLC,

**Appellants,**

**vs.**

CITY OF CLARKSTON, a  
Washington Municipal Corporation,

**Respondent.**

**DECLARATION OF  
SERVICE**

---

I, Elizabeth Hallock, do declare under penalty of perjury under the laws of the State of Washington that I am over 18 years of age, am the Attorney for the

Appellants in the above proceedings, and competent to testify to the matters herein that:

On November 24, 2015, I caused to be served by electronic delivery and mail, postage pre-paid, the following pleadings, along with this Declaration of Service:

1. Appellants' Opening Brief

To the following at their addresses of record:

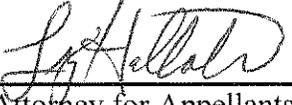
Attorneys for Respondent  
CITY OF CLARKSTON:

CLARKSTON CITY ATTORNEYS  
Todd S. Richardson  
604 6<sup>th</sup> Street  
Clarkston, WA 99403  
Phone: (509) 758-3397  
Fax: (509) 826-3399  
todd@myattorneytodd.com

James Grow  
1301 G Street  
Lewiston, ID 83501  
Phone: (208) 746-5508  
Fax: (208) 746-9466  
growlawoffice@gmail.com

MENKE JACKSON BEYER, LLP  
Ken Harper, WSB# 25578  
807 North 39<sup>th</sup> Avenue  
Yakima, WA 98902  
Phone: (509) 575-0313  
Fax (509) 575-0351  
kharper@mjbe.com

Dated this 24<sup>th</sup> Day of November, 2015,

  
Elizabeth Hallock, Attorney for Appellants  
WSBA #41825  
Law Office of Elizabeth Hallock, PC  
2669 NW Kent Ave  
Camas, WA, 98607  
Ph: 360-909-6327