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SUPREME COURT OF THE STATE OF WASHINGTON

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STEVE SARICH, et al.,

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STATE OF WASHINGTON  
RF

Petitioners,

v.

CITY OF KENT, et al.,

Respondents.

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BRIEF OF AMICUS CURIAE STATE OF WASHINGTON

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## I. INTRODUCTION

Article XI, section 11 of the Washington Constitution grants cities and counties plenary authority to legislate unless the legislature preempts that authority. The Plaintiffs in this case seek to turn that rule on its head.

Plaintiffs argue that local governments have no authority to regulate or prohibit “collective gardens” under Washington’s Medical Use of Cannabis Act. But that Act does nothing to remove local authority over collective gardens; indeed, it expressly preserves local authority to regulate the production, processing, or dispensing of cannabis. RCW 69.51A.140. The Act does bar local governments from imposing requirements that “preclude the possibility of siting *licensed dispensers* within the jurisdiction” (RCW 69.51A.140 (emphasis added)), but because of Governor Gregoire’s veto of large portions of the Act, there is currently no such thing as a “licensed dispenser” in Washington. It is undisputed that “collective gardens” and “licensed dispensers” are not the same thing.

Because nothing in state law deprives local governments of their preexisting authority to regulate or prohibit collective gardens, they retain such authority. The City of Kent exercised that authority in adopting the ordinance at issue here. While the State takes no position on Kent’s choice as a policy matter, Kent was well within its rights as a legal

matter. Plaintiffs' contrary arguments fail, and this Court should affirm the decision of the Court of Appeals upholding Kent's ordinance.

If the Court disagrees, however, and concludes that the Act requires Kent to allow collective gardens, the Court should reject Kent's alternative argument that such a requirement is preempted by federal law. There is a strong presumption against finding that federal law overrides state authority, and Kent has failed to demonstrate that Congress intended to override Washington's medical cannabis laws.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

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

Additionally, the Attorney General is an intervenor in another case raising similar issues. *MMH, LLC, v. City of Fife*, Sup. Ct. No. 90780-3. *MMH* relates to Washington's statutes governing the licensed and regulated production, processing, and sale of recreational marijuana. Petitioner in that case attacks an ordinance of the City of Fife prohibiting

cannabis businesses from operating there. As in the present case, Fife offered an alternative argument to the trial court, contending that if its ordinance is preempted by state law, state law is in turn preempted by the federal controlled substances act. Thus, although different state laws are at issue in this case and in *MMH*, similar issues are presented.

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

1. Does RCW 69.51A.140, which preserves local authority to regulate the production, processing, or dispensing of cannabis, preempt the authority of local governments to prohibit locating collective gardens within their jurisdictions?
2. Given the express preservation of local authority under RCW 69.51A.140, does RCW 69.51A impliedly preempt local ordinances that prohibit collective gardens?
3. If state law does require local governments to allow collective gardens, is the state law in turn preempted by federal law?

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

Through the enactment of Initiative 692 (I-692) in 1998, Washington voters determined that “some patients with terminal or debilitating illness, under their physician’s care, may benefit from the medical use of marijuana.” Laws of 1999, ch. 2, § 2 (codified as amended at RCW 69.51A.005). I-692 enacted the Medical Use of Cannabis Act,

establishing an affirmative defense for qualifying patients if charged with a criminal violation of state law relating to cannabis. Laws of 1999, ch. 2, § 2 (codified as amended at RCW 69.51A.040). As originally enacted, it contained no mechanism for the legal production, processing, or acquisition of cannabis for medical use, except that it allowed qualified patients to grow their own cannabis. Laws of 1999, ch. 2, § 6.

Legislation enacted in 2011 amended the Act, but a partial veto limited the scope of those amendments. Laws of 2011, ch. 181 (cited by the Court of Appeals as ESSSB 5073). Four aspects of that 2011 legislation are pertinent. First, the 2011 act authorized qualified patients to “create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use” subject to specified conditions. RCW 69.51A.085 (enacted as Laws of 2011, ch. 181, § 403). Those conditions include limiting collective gardens to no more than ten qualified patients and limiting the number of plants and quantity of cannabis a collective garden may hold. RCW 69.51A.085.

Second, the 2011 act, but for the governor’s partial veto, proposed to establish a state-run registry system for qualified patients and providers. At the same time, it proposed to establish a system for licensing dispensers of cannabis for medical use, which would have resulted in a licensed and regulated system for the production, processing, and distribution of

cannabis for medical use in addition to collective gardens and patients growing their own. The governor vetoed those sections of the bill that would have established the registry and the regulated system of licensed producers, processors, and dispensers. Laws of 2011, ch. 181 (governor's veto message).

Third, the 2011 act, as it passed the legislature, additionally proposed that the medical use of cannabis by patients who registered with the state would not be a crime. Laws of 2011, ch. 181, § 401 (codified as RCW 69.51A.040). Alternatively, those qualified patients who elected not to register would continue to merely have an affirmative defense available if arrested. Laws of 2011, ch. 181, § 402 (codified as RCW 69.51A.043). Although the governor did not veto that provision of the 2011 act, her veto of provisions establishing the registry resulted in there being no patients on the registry because the registry was not established.

Finally, the 2011 act included a provision clarifying its impact on local authority. The act makes clear that local governments retain the authority to adopt zoning requirements, business licensing requirements, health and safety requirements, and business taxes pertaining to the production, processing, or dispensing of cannabis. RCW 69.51A.140. The legislature limited this authority only by prohibiting local governments from imposing "zoning requirements or other conditions *upon licensed*

*dispensers* [that] . . . preclude the possibility of siting *licensed dispensers* within the jurisdiction.” RCW 69.51A.140. (emphases added). As noted, the governor’s veto deleted from the act the provisions establishing a system of licensed dispensers, which accordingly do not exist in Washington.

## V. ANALYSIS

### A. Washington’s Medical Use Of Cannabis Act Preserves, And Does Not Preempt, Local Authority To Prohibit Collective Gardens

#### 1. Cities Derive Broad Authority To Legislate Directly From The Washington Constitution

Cities derive authority to legislate directly from the Washington Constitution, requiring no affirmative statutory grant of authority from the legislature. This authority comes from article XI, section 11 of the Washington Constitution, which provides that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”

“The scope of [a municipality’s] police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people.” *State v. City of Seattle*, 94 Wn.2d 162, 165, 615 P.2d 461 (1980). “Municipal police power is as extensive as that of the legislature, so long as the subject matter is local and the regulation does not conflict with general laws.” *Id.*

An ordinance's validity therefore does not depend upon an affirmative grant of statutory authority. Without a preemptive statute, cities retain concurrent legislative jurisdiction with the state. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003); *Cannabis Action Coal. v. City of Kent*, 180 Wn. App. 455, 478, 322 P.3d 1246 (2014).

State law can preempt local regulations and render them unconstitutional either by occupying the field of regulation, leaving no room for concurrent local jurisdiction, or by creating a conflict such that state and local laws cannot be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010); *see also* Op. Att'y Gen. 2 (2014), at 4 (discussing preemption in the context of Washington's recreational marijuana act, Initiative 502).

## **2. The State Has Not Preempted The Field Of Regulating Medical Cannabis**

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

State law expressly disclaims preempting the field regarding the medical use of cannabis. The legislature has provided that municipalities

may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, *so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction*. If the jurisdiction has no commercial zones, the jurisdiction is not required to accommodate licensed dispensers.

RCW 69.51A.140(1) (emphasis added).

State law therefore directly disposes of the possibility that it preempts the field of regulating the medical use of cannabis. It expressly preserves the general legislative authority normally afforded cities, towns, and counties under the state constitution. *See* Const. art. XI, § 11. It carves out an exception only for local ordinances that would preclude locating any licensed dispensers within a jurisdiction. But the governor vetoed the provisions that would have established licensed dispensers. Laws of 2011, ch. 181 (governor's veto message). Thus, unless the legislature changes the law to allow "licensed dispensers," RCW 69.51A.140 has no preemptive effect. As the Court of Appeals correctly concluded in the opinion under review: "This necessarily implies that a city retains traditional authority to regulate all other uses of medical marijuana." *Cannabis Action Coal.*, 180 Wn. App. at 478; *see also In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (applying the

construction maxim that “to express one thing in a statute implies the exclusion of the other”).

RCW 69.51.140 therefore fully disposes of this case. It expressly permits cities, towns, and counties to regulate the production, processing, or dispensing of cannabis within their jurisdictions. This is precisely what the ordinance at issue does. The only statutory exception to this legislative expression of intent *not to preempt* applies to licensed dispensers, which do not exist because of the governor’s veto and are not at issue. Laws of 2011, ch. 181 (governor’s veto message). Kent retains its constitutional authority to prohibit collective gardens.

### **3. Kent’s Ordinance Does Not Directly And Irreconcilably Conflict With State Law**

Faced with the express provision of RCW 69.51A.140 preserving local legislative authority, Plaintiffs nevertheless contend that a local prohibition against collective gardens irreconcilably conflicts with state law. As the Court of Appeals correctly discerned, this is not the case. *Cannabis Action Coal.*, 180 Wn. App. at 481-83.

An ordinance is invalid under conflict preemption if it directly and irreconcilably conflicts with the statute such that the two cannot be harmonized. *Lawson*, 168 Wn.2d at 682; *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998); *see also Dep’t of Ecology v. Wahkiakum County*, \_\_\_ Wn. App. \_\_\_, 337 P.3d 364, 368 (2014)

(petition for review pending) (finding a county ordinance preempted based upon specific statutory language displacing local authority). Because “[e]very presumption will be in favor of constitutionality,” courts make every effort to reconcile state and local law if possible. *HJS Dev.*, 148 Wn.2d at 477 (internal quotation marks omitted).

Plaintiffs focus on RCW 69.51A.085, which allows qualifying patients to create and participate in collective gardens, subject to specific conditions. As the Court of Appeals recognized, however, “this statutory provision cannot be read in isolation.” *Cannabis Action Coal.*, 180 Wn. App. at 477. Once again, the plain language of RCW 69.51A.140 explicitly preserves local authority to legislate. State law therefore does not grant an unfettered right to operate collective gardens because that right is conditioned upon compliance with local regulation under RCW 69.51A.140. The local ordinance therefore does not irreconcilably conflict with state law. *Weden*, 135 Wn.2d at 695.<sup>1</sup> Thus, as the Court of Appeals held, the plain language of RCW 69.51A.140 “expressly authorizes cities to enact zoning requirements to regulate or exclude

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<sup>1</sup> See also *Entm't Indus. Coal. v. Tacoma-Pierce County Health Dep't*, 153 Wn.2d 657, 661-63, 105 P.3d 985 (2005); *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn.2d 428, 433, 90 P.3d 37 (2004) (both finding an irreconcilable conflict between state law and a local ordinance only where the state law provided an unfettered right to engage in an activity prohibited by the local ordinance).

collective gardens.” *Cannabis Action Coal.*, 180 Wn. App. at 477. Plaintiffs effectively ask this Court to read this section out of the act.

Plaintiffs’ only response is to claim that RCW 69.51A.140 has no application to collective gardens. In Plaintiffs’ view, the statutory language preserving local authority as to “the production, processing, or dispensing of cannabis” does not apply to collective gardens because these terms describe only “commercial” enterprises (Tsang Suppl. Br. at 17), which, in their view, are distinct from collective gardens. Plaintiffs offer no reasoned basis for reading this limitation into the statute.

The crux of Plaintiffs’ argument is that “production, processing, or dispensing of cannabis” is not what collective gardens do. But the very statute they embrace elsewhere refutes their argument, explaining that collective gardens exist “for the purpose of *producing, processing, transporting, and delivering cannabis for medical use.*” RCW 69.51A.085(1) (emphasis added). Moreover, Plaintiffs’ suggestion that the meaning of “production, processing, or dispensing” is limited to commercial activities is entirely unsupported. These terms are nowhere defined in the Act, and their plain meaning is not limited to commercial uses.<sup>2</sup> Moreover, the Act itself uses these terms to refer to noncommercial

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<sup>2</sup> See, e.g., *Webster's Third New International Dictionary* 1810 (2002) (defining “production” as including “something that is produced naturally or as the result of labor and effort”); *id.* at 1808 (defining “process” as including “to subject to a particular

activities, including collective gardens. *See, e.g.*, RCW 69.51A.010(3) (defining “medical use of marijuana” to include, among other things, “the production . . . of marijuana”), .025 (explaining that the Act does not prohibit “the private, unlicensed, *noncommercial production . . . of cannabis*”), .085(1) (authorizing collective gardens “for the purpose of producing, processing, transporting, and delivering cannabis for medical use”). Thus, Plaintiffs cannot overcome the Act’s plain language preserving local authority to “adopt and enforce” a wide range of regulations as “to the production, processing, or dispensing of cannabis.” RCW 69.51A.140.

This plain language is buttressed by the reality that the collective gardens contemplated by RCW 69.51A.085 are not *per se* legal activity. *Cannabis Action Coal.*, 180 Wn. App. at 482. Plaintiffs’ argument that RCW 69.51A.085 grants an unfettered right to operate them is therefore untenable. As proposed by the legislature, medical use of cannabis would have become legal if qualified patients voluntarily registered on the proposed state registry, but the governor vetoed the section of the 2011 legislation establishing the registry. Therefore, the legal status for qualified medical cannabis patients remains the same as when I-692 was

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method, system, or technique of preparation, handling, or other treatment designed to effect a particular result”); *id.* at 653 (defining “dispense” as including “to prepare and distribute (medicines) to the sick”).

initially enacted: an affirmative defense against criminal prosecution for violations of the controlled substances act. RCW 69.51A.043; Laws of 2011, ch. 181 (governor's veto message).

Respondent Tsang relies upon a decision of this Court for the proposition that, despite the governor's veto of the patient registry, "in 2011 the legislature amended the Act making qualifying marijuana use a legal use, not simply an affirmative defense." Tsang's Suppl. Br. at 9 (quoting *State v. Kurtz*, 178 Wn.2d 466, 476, 309 P.3d 472 (2013)). But the issue presented in *Kurtz* was whether the act superseded the common law medical necessity defense for marijuana, not the proposition for which Plaintiffs cite it. *Kurtz*, 178 Wn.2d at 473. "Where the literal words of a court opinion appear to control an issue, but where the court did not in fact address or consider the issue, the ruling is not dispositive and may be reexamined without violating stare decisis in the same court or without violating an intermediate appellate court's duty to accept the rulings of the Supreme Court." *ETCO, Inc. v. Dep't of Labor & Indus.*, 66 Wn. App. 302, 307, 831 P.2d 1133 (1992). As the court below noted, the parties in *Kurtz* did not brief the question of whether the 2011 act made the medical use of cannabis *per se* legal, and this Court's statement was not important to its holding. *Cannabis Action Coal.*, 180 Wn. App. at 472 n.13. "*Kurtz* cannot be read to stand for the proposition that the amendments decriminalized

marijuana use for defendants who were unregistered and therefore not qualified marijuana users.” *State v. Reis*, 180 Wn. App. 438, 453, 322 P.3d 1238 (2014), *review granted*, 336 P.3d 1165 (Sup. Ct. No. 90281-0).

In short, RCW 69.51A.140’s text allows local governments to prohibit collective gardens. That collective gardens are not *per se* legal buttresses that clear text. For these reasons, Kent’s ordinance and state law can easily be harmonized, and they do not irreconcilably conflict. *See Entm’t Indus. Coal. v. Tacoma-Pierce County Health Dep’t*, 153 Wn.2d 657, 663, 105 P.3d 985 (2005).<sup>3</sup>

**B. Federal Law Does Not Preempt Washington’s Medical Use Of Cannabis Act**

If the Court agrees that RCW 69.51A.140 preserves Kent’s normal legislative authority, then the Court need not and should not decide whether the Act conflicts with federal law. *See Wash. State Farm Bureau*

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<sup>3</sup> The California Supreme Court recently reached a similar conclusion, that a state law providing a criminal law exemption for the medical use of cannabis did not preempt the “inherent local police power” of a city to determine “appropriate uses of land within a local jurisdiction’s borders.” *City of Riverside v. Inland Empire Patients Health & Wellness Ctr., Inc.*, 56 Cal. 4th 729, 738, 300 P.3d 494 (2013). The court reasoned that a medical cannabis law did not conflict with a local ordinance prohibiting medical cannabis dispensaries within a city because it was not impossible to comply simultaneously with both. *Id.* at 754. The California court construed constitutional language the same as Washington’s to preempt local ordinances only when “the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands.” *Id.* at 743; *accord Weden*, 135 Wn.2d at 695 (state law does not preempt a local ordinance unless the local ordinance prohibits an activity to which state law creates an unfettered right). The California court held that even an initiative “stat[ing] an aim to ‘ensure’ a ‘right’ of seriously ill persons to ‘obtain and use’ medical cannabis” did not override local bans on medical cannabis dispensaries absent an operative section carrying out that intent. *City of Riverside*, 56 Cal.4th at 753.

*Fed'n v. Gregoire*, 162 Wn.2d 284, 307, 174 P.3d 1142 (2007) (“Principles of judicial restraint dictate that if resolution of an issue effectively disposes of a case, we should resolve the case on that basis without reaching any other issues that might be presented.”) (quoting *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn.2d 55, 68, 1 P.3d 1167 (2000)). Indeed, Kent’s supplemental brief suggests that it has abandoned its alternative federal preemption argument. Suppl. Br. of City of Kent at 17 (alluding to seeking federal review of decision that its ordinance is preempted). But if this Court addresses Kent’s federal preemption argument, that argument lacks merit.

### **1. Overview Of Federal Preemption**

Just as there is a strong presumption that state law does not supersede local ordinances, there is a strong presumption that Congress does not intend to override state laws. “State laws are not superseded by federal law unless that is the clear and manifest purpose of Congress.” *Hue v. Farmboy Spray Co.*, 127 Wn.2d 67, 78, 896 P.2d 682 (1995) (quoting *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 265, 884 P.2d 592 (1994)). The burden of proof is on Kent to prove “beyond a reasonable doubt” that Congress intended to preempt state law as applied here. *See, e.g., State v. Quintero Morelos*, 133 Wn. App. 591, 600, 137 P.3d 114 (2006).

Federal preemption of state law can take three forms: express, field, or conflict preemption. *Stevedoring Servs. of Am., Inc. v. Eggert*, 129 Wn.2d 17, 23, 914 P.2d 737 (1996) (citing *Progressive Animal Welfare Soc'y*, 125 Wn.2d at 265). Express preemption occurs where “Congress passes a statute that expressly preempts state law.” *Stevedoring Servs.*, 129 Wn.2d at 23. Field preemption occurs where “Congress occupies the entire field of regulation.” *Id.* Conflict preemption occurs when “state law conflicts with federal law” (*id.*), and it takes two forms: (a) impossibility preemption, “when compliance with both federal and state laws is physically impossible,” or (b) obstacle preemption, “when state law stands as an obstacle to the accomplishment and execution of Congress’s full purposes and objectives.” *Dep’t of Ecology v. Pub. Util. Dist. 1*, 121 Wn.2d 179, 195, 849 P.2d 646 (1993), *aff’d sub nom. Pub. Util. Dist. 1 v. Dep’t of Ecology*, 511 U.S. 700, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994).

## **2. Application Of Federal Preemption Rules To Kent’s Claim**

Kent claims that the Federal Controlled Substance Act of 1970 (CSA) preempts any requirement that Kent zone for or grant business licenses to collective gardens. The CSA does no such thing.

The federal CSA contains a clause expressly preserving state legislative authority and limiting the preemptive scope of federal law

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903.

This statute significantly narrows the range of federal preemption issues relevant here. Congress made clear that it only intended to preempt state laws that create a “positive conflict” with the CSA. 21 U.S.C. § 903. The statute thus excludes field preemption, because Congress did not “occupy the field” of regulating controlled substances. Express preemption also effectively becomes irrelevant, because the statute expressly preempts only state laws that create a “positive conflict.” *See, e.g., County of San Diego v. San Diego NORML*, 165 Cal. App. 4th 798, 819, 81 Cal. Rptr. 3d 461(2008) (“numerous courts have concluded[] that . . . 21 U.S.C. § 903 demonstrates Congress intended to reject express and field preemption of state laws concerning controlled substances”). The statute limits preemption to state laws where “there is a positive conflict between . . . [the CSA] and that State law so that the two cannot consistently stand together.” 21 U.S.C. § 903. Courts have therefore held that obstacle preemption is also irrelevant under the CSA, because the only form of conflict the CSA is concerned with “is a positive conflict”

21 U.S.C. § 903. *see, e.g., San Diego NORML*, 165 Cal. App. 4th at 825; *People v. Crouse*, 2013 WL 6673708, at \*4 (Colo. App. Dec. 19, 2013).

Thus, the only type of preemption ultimately at issue is the “impossibility preemption” aspect of conflict preemption. *See, e.g., San Diego NORML*, 165 Cal. App. 4th at 825; *Crouse*, 2013 WL 6673708, at \*4; *cf. S. Blasting Serv., Inc. v. Wilkes County, NC*, 288 F.3d 584, 591 (4th Cir. 2002) (reaching same conclusion as to substantively identical preemption clause in 18 U.S.C. § 848). The question here, then, is solely whether Washington law renders Kent’s “compliance with both federal and state laws [] physically impossible.” *Pub. Util. Dist. 1*, 121 Wn.2d at 195. It does not.

Kent fails to explain what it is that state law requires it to do that would allegedly violate federal law. The Act imposes no requirement that local governments do anything. The CSA prohibits a number of actions relating to cannabis, but state law doesn’t require Kent to do any of those things. *See, e.g., 21 U.S.C. § 841* (making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance), § 856 (making it illegal to “knowingly open, lease, rent, use, or maintain any place . . . for the purpose of manufacturing, distributing, or using any controlled substance”).

Kent's only argument is that state law is federally preempted if it obligates Kent not to prohibit something that federal law prohibits. Suppl. Br. of City of Kent at 16-17. Kent offers no authority for the proposition that it must prohibit anything that federal law prohibits, and the City's notion is without merit.

Even if the concept of obstacle preemption applied under 21 U.S.C. § 903, obstacle preemption arises only when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963) (internal quotation marks omitted). Nothing in state law precludes the federal government from enforcing existing federal law as it deems necessary to accomplish federal objectives. *See Gonzales v. Raich*, 545 U.S. 1, 17-19, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005) (upholding Congressional authority to prohibit cannabis). The State's Medical Use of Cannabis Act in no way acts as an obstacle to federal enforcement of federal law, but merely provides a narrow affirmative defense against the otherwise-applicable enforcement of state law. RCW 69.51A.043.

In short, Kent cannot show that state law would require it to violate federal law, and thus cannot show that it is impossible for the City

to comply with both state and federal law. Accordingly, there is no basis for a finding of federal preemption here.

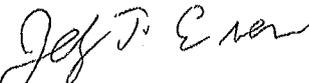
## VI. CONCLUSION

The State respectfully requests that this Court affirm the decision of the Court of Appeals and uphold the constitutional authority of cities and counties to legislate locally in ways that do not irreconcilably conflict with state law. Kent's ordinances at issue in this case do not irreconcilably conflict with state law, and are therefore valid. This Court need not and should not reach Kent's alternative argument that state laws authorizing medical cannabis are preempted by federal law, but if this Court does reach those issues, it should reject the City of Kent's alternative argument.

RESPECTFULLY SUBMITTED this 9th day of January, 2015.

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## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington that I served, via electronic mail and USPS regular mail a true and correct copy of the Motion for Leave to File Brief of Amicus Curiae and the Brief of Amicus Curiae State of Washington, upon the following:

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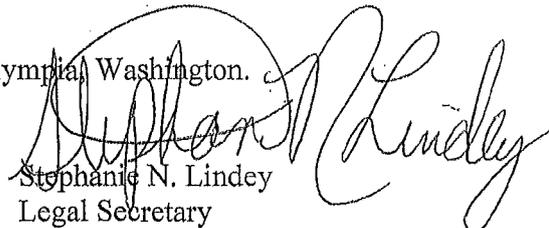
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DATED this 9th day of January 2015, at Olympia, Washington.

  
Stephanie N. Lindey  
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Dear Clerk,

Attached for filing in case number 90204-6, please find the Attorney General's Motion for Leave to File Brief of Amicus Curiae State of Washington and the Brief of Amicus Curiae State of Washington.

Thank you,

<< File: 90204-6 Mtn for Leave to File Brief of Amicus Curiae State of WA.pdf >> << File: 90204-6 Brief of Amicus Curiae State of WA with COS.pdf >>

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