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No. 95134-9

SUPREME COURT
OF THE STATE OF WASHINGTON

PROTECT PUBLIC HEALTH, and
CITY OF SEATTLE,

Respondents,

v.

JOSHUA FREED, IMPACTION,

Appellants,

and

CITIZENS FOR A SAFE KING COUNTY,
KING COUNTY, and JULIE WISE in her official capacity,

Defendants.

BRIEF OF APPELLANTS

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A. INTRODUCTION

Ignoring this Court's well-established protocol for addressing pre-election challenges to state and local initiatives and referenda, the trial court here prevented the voters of King County ("County") from deciding if they want heroin injection sites located in their communities.

Appellants IMPACTion and Joshua Freed, the initiative sponsors, (hereinafter, "IMPACTion"), ask this Court to reverse the trial court's October 16, 2017 ruling in which that court enjoined the placement of King County Initiative 27 ("I-27") on the ballot.

Because the issue I-27 presents is essentially a binary public policy decision – heroin injection sites: yes or no – that does not involve budgetary issues, administrative matters, or a decision entrusted exclusively to the King County Council ("Council"), the trial court erred in substituting its judgment for that of the voters. That this is a policy decision for the voters not entrusted exclusively to the Board or the Council itself is manifest in the fact that the Council effectively overrode the Board and a task force whose recommendations the Board adopted, mandating that local communities affirmatively approve the siting of heroin injection sites.

This Court should direct that County voters have the chance to vote on I-27.

B. ASSIGNMENTS OF ERROR

(1) Assignment of Error

The trial court erred in entering its October 16, 2017 order.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err specifically in conducting a broadly based pre-election review of I-27 in violation of this Court's often-stated policy of avoiding pre-election review of initiatives? (Assignment of Error Number 1)

2. Did the trial court err in enjoining the placement of I-27 on the February 2018 ballot in King County where the public policy at issue – whether heroin injection sites should exist in King County – was a binary, yes or no, policy decision that was not entrusted exclusively to the Board or the Council, as the Council itself recognized by requiring cities to “opt-in” before such could be established? (Assignment of Error Number 1)

C. STATEMENT OF THE CASE

City of Seattle (“City”) and County elected officials and public health personnel participated in a Heroin and Prescription Opiate Addiction Task Force (“Task Force”) that recommended the creation of heroin injection sites,¹ euphemistically termed “Community Health Engagement Locations.” CP 428-528.² The King County Public Health

¹ Heroin is a Schedule I controlled substance, RCW 69.50.204, whose mere possession is a felony in Washington, RCW 69.50.4013, and a federal crime. 21 U.S.C. § 844.

² The Task Force, consisting of various representatives from government agencies and advocacy groups, CP 467-68, was “convened” by the mayors of Seattle, Renton, and Auburn, and the County Executive. CP 430. Renton and Auburn later banned the location of any heroin injection sites within those communities. The Task

Board (“Board”)³ promulgated a January 20, 2017 resolution that adopted the Task Force recommendations, including the heroin injection sites. CP 161-67. This action prompted a significant public outcry against such sites. *See, e.g.*, <https://www.seattletimes.com/seattle-news/crime/seattle-king-county-move-to-create-2-injection-sites-for-drug-users/>.

IMPACTion filed I-27 with the Council Clerk on April 14, 2017 and the initiative was assigned the number “I-27” by the Clerk that same day. CP 684. A ballot title was submitted by the County Prosecuting Attorney to the Clerk on May 1, 2017. CP 685. The form for the initiative petitions was approved by the Clerk on May 2, 2017. *Id.*⁴ IMPACTion began soliciting voter signatures immediately, rapidly gathering some 69,850 signatures. *Id.*

On June 28, 2017, the Council enacted the County’s 2017-18 supplemental budget in Ordinance 18544, CP 685, implementing the Task Force recommendations. CP 174-77. However, its contents were not confined to fiscal matters. Recognizing the outcry against such sites, the

Force had no actual legal standing as no statute or ordinance authorized or mandated the creation of this task force.

³ The Board is made up of three health officials and eight elected officials, including four County Council members, the mayor of Kenmore, and city council members from Auburn, Federal Way, and Redmond. <http://www.kingcounty.gov/depts/health/board-of-health.aspx>. The cities represented by the three city council members have already refused to locate any heroin injection site within their boundaries.

⁴ I-27 is in the Appendix.

ordinance addressed the underlying public policy issue by expressly requiring cities in the County to “opt-in” to the siting of heroin injection sites in their communities. King County Ordinance 18544 § 37.⁵ Numerous County cities have declined to do so.⁶

An organization described itself as “Protect Public Health” (“PPH”)⁷ filed an action on August 21, 2017 in the King County Superior Court against IMPACTion and I-27’s sponsors seeking a ruling that I-27 was not beyond the local initiative power and the courts should enjoin its placement on the ballot. CP 1-23. The City moved to intervene, CP 383-403, and the trial court granted that motion. CP 585-86. The City filed its own complaint. CP 394-403, 548-72.

⁵ § 37 states:

Of this appropriation, no funds shall be expended or encumbered to establish except in any city which chooses to establish such a location by vote of its elected governing body any community health engagement locations, as described in the Heroin and Opiate Addiction Task Force Final Report and Recommendations, dated September 15, 2016, presented by the heroin and opiate addiction task force to the King County executive and mayors of the cities of Auburn, Renton and Seattle.

CP 176. In the absence of an affirmative “opt-in,” such sites could not be established.

⁶ Auburn, Bellevue, Burien, Des Moines, Enumclaw, Federal Way, Kent, Renton, Sammamish, and SeaTac have banned sites. Issaquah enacted a 6-month moratorium on such sites, as did Snohomish County. There is considerable irony in the fact that two of the alleged leaders of the Task Force were mayors of Auburn and Renton, CP 430, 634, whose cities immediately refused the siting of heroin injection sites in those communities.

⁷ This organization claims in its complaint to be a non-profit corporation, but it is plainly involved in the politics of I-27 and it received significant contributions and made major expenditures against I-27.

Both the City and PPH moved for injunctive and declaratory relief. CP 24-382, 609-23. IMPACTion opposed the motions. CP 667-81.

Ultimately, the trial court here agreed with PPH, concluding in its October 16, 2017 order that I-27 intruded upon the Council's budgetary power and public health issues are entrusted exclusively to local public health boards by the Legislature. CP 690-95. *See* Appendix.

IMPACTion timely appealed the trial court's order to this Court. CP 696-704.

D. SUMMARY OF ARGUMENT

Washington law disfavors pre-election challenges to popular measures because the judiciary should not lightly intrude upon the fundamental power of the people themselves to legislate. Such challenges are confined to narrow circumstances in which the measure addresses administrative matters, matters delegated exclusively by the Legislature to a local legislative body, or matters entirely beyond the purview of the particular governmental unit.

None of the exceptions to Washington's policy disfavoring pre-election challenges to popular measures applies here. The issue of heroin injection sites is a policy, not an administrative, matter as the Council itself documented by mandating that cities adopt an ordinance authorizing such sites before they could be sited within a jurisdiction. This issue, like

other aspects of drug use and abuse, has not been entrusted exclusively to the Council, particularly where cities have to enact an ordinance approving the location of such sites. Clearly, this issue is within the power of County government to address.

This Court should direct that I-27 be placed on the next available general election ballot for the County.

E. ARGUMENT⁸

(1) The Trial Court's Decision Contradicts This Court's Decisions Limiting the Scope of Pre-Election Review

In numerous decisions, this Court has established a clear policy limiting the scope of pre-ballot review of State and local popular measures. This policy is based on judicial deference to, and respect for, popular sovereignty, prudential restraints on the exercise of judicial authority, and the desire to keep courts out of political battles.

First and foremost, the people have a fundamental right to themselves legislate. King County Charter art. 2, § 230.50. The courts defer to such popular sovereignty that is enshrined in the Constitution at the State level and in local charters. *Seattle Bldg. & Constr. Trades*

⁸ This Court employs a highly deferential standard in reviewing local initiatives. The Court “liberally construe[s] initiative proposals so as to give them effect, and a hypertechnical construction which deprives them of effect is to be avoided.” The burden is on a challenger to an initiative. *Maleng v. King County Corr. Guild*, 150 Wn.2d 325, 334, 76 P.3d 727 (2003) (reversing trial court decision that barred county initiative amending the King County Charter to reduce the size of the Council from the ballot).

Council v. City of Seattle, 94 Wn.2d 740, 745, 620 P.2d 82 (1980) (“It is the general policy of [the Washington courts] to refrain from inquiring into the validity of a proposed law, including an initiative or referendum, before it has been enacted.”). As the Court stated in *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996) “[r]ecognizing the importance of the initiative power . . . this court has allowed for pre-election review only in rare circumstances, consistently making the distinction that while a court may decide whether the initiative is authorized by article II, section 1, of the state constitution, it may not rule on the constitutional validity of a proposed initiative.” *Id.* at 717.

Pre-ballot review of popular measures is also limited based on purely prudential grounds. Washington courts are aware that pre-ballot review injects the judiciary into a political thicket, potentially allowing the courts to be used by proponents or opponents of a measure. *See, e.g., Philadelphia II*, 128 Wn.2d at 716 (reluctance to interfere with a proposed initiative stems from the courts “desire not to interfere in the electoral process or give advisory opinions”). More fundamentally, pre-ballot review is unwise because it may be unnecessary: the people may reject a measure, obviating a need for judicial review. *See State ex rel. O’Connell v. Kramer*, 73 Wn.2d 85, 86-87, 436 P.2d 786 (1968); *State v. Superior*

Court In and For Thurston County, 92 Wash. 44, 47, 159 P. 101 (1916).

Given this deferential policy, this Court has foreclosed pre-election challenges that raise substantive legal challenges to a measure, claiming, for example, that if passed, the enacted law would violate state or federal law. *Coppernoll v. Reed*, 155 Wn.2d 290, 297-99, 119 P.3d 318 (2005).⁹ Rather, challenges are limited to circumstances where the enactment is entirely beyond the scope of the initiative power. *Id.* at 299.

This Court has also *strictly* reviewed the scope of injunctive relief in such pre-election actions, limiting that remedy to circumstances where there is a *clear* legal or equitable right to be upheld. *Huff v. Wyman*, 184 Wn.2d 643, 652, 361 P.3d 727 (2015). In *Huff*, this Court refused to allow injunctive relief in a pre-election challenge of Initiative 1366, an initiative it later found to be unconstitutional *after* the voters enacted it. *Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016). The Court summarized the heavy burden on pre-election challengers seeking to enjoin a ballot measure from the ballot: “A doubtful case will not warrant an injunction.” *Id.*

In sum, consistent with this Court’s policy on pre-election challenges to initiatives, all doubts about the scope of the measure must be

⁹ By contrast, I-27 more accurately reflects current state and federal laws criminalizing possession and distribution of heroin.

resolved in favor of placing it on the ballot. *Maleng*, 150 Wn.2d at 333-34. *See also, Washington State Labor Council v. Reed*, 149 Wn.2d 48, 53, 65 P.3d 1203 (2003) (court declined to rule on a referendum’s validity, deferring a decision on whether the referendum was within the people’s power where there was insufficient time to fully litigate the case before the election). Courts must not lightly issue injunctions to prevent initiative measures from being placed on the ballot.

The trial court was seemingly oblivious to these overarching policy principles of deference to local voters.

(2) The Trial Court Erred in Concluding that Injunctive or Declaratory Relief Was Appropriate Here

The trial court determined that declaratory relief was appropriate here, enjoining I-27 from the ballot as a result. CP 690-95. The trial court erred in employing judicial authority to frustrate the ability of the County’s people to legislate.

(a) Declaratory Relief Was Improper

Given this Court’s policy disfavoring pre-election challenges to initiatives and referenda, declaratory relief was improper. Declaratory relief under RCW 7.24 is unavailable unless there is “(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement,

(2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. Absent these elements, the court ‘steps into the prohibited area of advisory opinions.’” *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994), (quoting *Nollette v. Christianson*, 115 Wn.2d 594, 800 P.2d 359 (1990) and *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 514 P.2d 137 (1973)) (citations omitted). *See also, Spokane Entrepreneurial Center v. Spokane Moves to Amend the Constitution*, 185 Wn.2d 97, 103, 369 P.3d 140 (2016) (declaratory relief unavailable unless party meets stringent 2-part test for standing).¹⁰

The mere qualification of I-27 for the February 2018 ballot did not involve an “actual,” as opposed to a “hypothetical,” disagreement. Most obviously, voters could reject I-27. But the County Charter also permits the Council to “adopt[] a substitute ordinance concerning the same subject matter” as a proposed initiative. King County Charter art. 2, § 230.50. If the Council selected this option, “the substitute ordinance shall be placed

¹⁰ Under that test, the interest sought to be protected must first arguably be within the zone of interests protected or regulated by the statute or constitutional provision at issue. Second, the plaintiff must have suffered injury in fact. 185 Wn.2d at 103. PPH’s interest in whether I-27 reaches the ballot and whether heroin injection sites are created does not satisfy this test. The City’s interest is equally marginal. The decisions at issue here were made by the Board, a County agency, and the Council. The policy decision at stake is a County-wide decision.

on the same ballot with the [initiative]; and the voters shall first be given the choice of accepting either or rejecting both and shall then be given the choice of accepting one and rejecting the other.” *Id.* The Council considered an alternative ordinance that would explicitly permit heroin injection sites. *See* King County Council file # 2017-0420. Had such an ordinance been placed on the ballot alongside I-27, it is entirely possible that a majority of voters might reject I-27 and approve the Council’s alternative. This fact makes the disagreement even more clearly hypothetical.

The trial court was oblivious to this facet of County law on initiatives. Its order granting declaratory relief, CP 695, precluded that possibility, and instead resulted in the trial court issuing what amounted to an advisory opinion regarding a version of an ordinance that may never be enacted.

(b) Injunctive Relief Was Improper

Compounding its zealous intrusion of judicial authority into the legislative process, the trial court erred by granting injunctive relief. CP 695. By enjoining the Council and Elections Director from referring I-27 to the ballot, the trial court was oblivious again to the fact that PPH and the City had to show “a clear legal or equitable right, that there is a well-grounded fear of immediate invasion of that right, and that the acts

complained of have or will result in actual and substantial injury.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998), citing *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). Further, “these criteria must be examined in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate.” *Id.* Ultimately, injunctive relief is an *extraordinary* remedy that should not be “lightly indulged in.” It should be “sparingly” granted. *Huff*, 184 Wn.2d at 648.

PPH and the City did not have a “clear” right to such injunctive relief, for reasons that will be noted *infra*. Moreover, because of the inherent finality to injunctive relief, the *Rabon* and *Tyler Pipe* courts also mandated that the interests of the public be considered before granting injunctive relief. Before enjoining I-27 from the ballot, the trial court failed to honor the interests of the 69,850 voters who publicly signed their name to the initiative, a far greater number than those insiders who attended a few “community meetings” of the Task Force or submitted public comment to the Board or the Council.

The Court should also consider the 1.3 million registered voters in the County, and their interest in this important public policy decision. The purpose of prohibitions against referendums on budget items or initiatives involving administrative actions is to promote efficient governance –

much of the work performed by local governments, from picking up garbage to putting out fires to paving roads, would grind to a halt if every minor decision were subject to the lengthy initiative process.

Despite the contrary suggestions of PPH and the City, there is no evidence that the intent of the Legislature was to ever prohibit citizens from participating in a major decision affecting their neighborhoods and their quality of life. The decision to begin opening government-sanctioned heroin injection sites throughout the County, effectively condoning the use of a substance it is *illegal* to even possess in Washington, was the product of a volunteer task force, without standing in statute or in ordinance, adopted by an administrative agency, before the Council ultimately addressed it. This decision to allow heroin injection sites is not the sort of routine, day-to-day activity governance in which public health departments typically engage. This represents a major decision and a substantial departure from current policy; *these sites do not exist anywhere else in the United States*. CP 669. Whether these sites are a good idea or a bad idea, I-27 would give the entire voting public the right to be heard on the major policy issue of heroin injection sites – yes or no.¹¹

¹¹ That I-27 is not merely a referendum on the Task Force/Board/Council decision is made clear by the fact that I-27 focuses on the policy of whether such sites

(3) The Trial Court Erred in Concluding that the Exceptions to the Policy Disfavoring Pre-Election Challenges Applied Here Where I-27 Does Not Intrude Upon Authority Conferred Exclusively Upon the Board and It Calls for a Binary—Yes or No—Decision on Heroin Injection Sites, Just as the Council Allowed Local Cities to Make

The trial court failed to apply the deferential policy on pre-election challenges described above and instead misapplied the *exceptions* to that policy, enjoining I-27 from ballot. CP 690-95. It erred.

This Court has recognized only limited and narrow exceptions to the overarching policy disfavoring pre-election challenges to initiatives. In the context of local initiatives, this Court has considered three questions to determine whether an ordinance is subject to the initiative process: Is the ordinance a legislative or administrative act of the municipality? Is the power exercised in the initiative granted by the Legislature to the municipal corporate entity or to its legislative authority? Does the municipality have the authority to enact the ordinance? *Spokane Entrepreneurial Center*, 185 Wn.2d at 107-08.

(a) I-27 Involves a Policy, not Administrative Decision

As for the first question, I-27 does not address administrative matters. This Court defined an administrative action in *Leonard v. City of Bothell*, 87 Wn.2d 847, 850, 557 P.2d 1306 (1976) as follows:

should be legal in the County. It does not purport to override the Council's provision mandating city approval for such sites, for example.

Durocher v. King County, supra 80 Wash.2d at 152-53, 492 P.2d at 555, quoting 5 E. McQuillin, Supra at 213, sets out the applicable tests for determining when an act is legislative in nature:

Actions relating to subjects of a permanent and general character are usually regarded as legislative, and those providing for subjects of a temporary and special character are regarded as administrative ...

The test of what is a legislative and what is an administrative proposition, with respect to the initiative or referendum, has further been said to be whether the proposition is one to make new law or to execute law already in existence. The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it.

I-27 addresses an issue that is permanent in nature and involves new law. I-27 establishes a new *policy*, forbidding heroin injection sites in the County. It does not “merely carry out and execute law or policy already in existence.” *Ruano v. Spellman*, 81 Wn.2d 820, 823, 505 P.2d 447 (1973). See *Spokane Entrepreneurial Center, supra* (various zoning, water law issues); *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 239 P.3d 589 (2010) (fluoridation of water); *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004), *review denied*, 153 Wn.2d 1020 (2005) (creek regulations). In this instance, the creation of heroin injection sites, the question at the heart of this dispute, represents a new policy decision, not only for the County, but one of first impression

for the entire United States.

Below, PPH relied on *Ruano* and *Our Water-Our Choice!* to argue that I-27 challenged an administrative decision. However, under the applicable test that “the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence,” *Our Water-Our Choice!*, 170 Wn.2d at 10, both cases are distinguishable. In *Our Water-Our Choice!*, the city council chose to fluoridate the city’s drinking water “pursuant to the both the city’s existing water management plan and detailed state administrative regulations governing water.” *Id.* at 11-12. In a pre-election challenge to two separate citizen initiatives that sought to bar the fluoridation of city water, this Court held that the fluoridation plan in dispute was not a “new” law or policy, because “the initiatives were filed three and one-half years after the city council approved fluoridating and one and one-half years after the city council entered into a contract to build and install the system.” *Id.* at 12. Initiative 27, on the other hand, was filed less than three months after the Board approved a resolution adopting the Task Force recommendations, and nearly three months *before* any funds were appropriated to implement the Task Force recommendations.

Our Water-Our Choice! is this Court’s most recent discussion of what constitutes an administrative decision. The Court summarized the

distinction between administrative and policy decisions as follows:

Municipal legislative bodies regularly perform both legislative and administrative functions. The trial court found that these initiatives were administrative in nature and thus not the proper subject for initiatives. *See Ruano*, 81 Wash.2d at 823, 505 P.2d 447. Generally speaking, a local government action is administrative if it furthers (or hinders) a plan the local government or some power superior to it has previously adopted. *Id.* at 823-24, 505 P.2d 447; *Heider v. City of Seattle*, 100 Wash.2d 874, 876, 675 P.2d 597 (1984). Discerning whether a proposed initiative is administrative or legislative in nature can be difficult. Justice Brachtenbach suggested that at least for the case before the court at the time, the appropriate question was “whether the proposition is one to make new law or declare a new policy, or merely to carry out and execute law or policy already in existence.” *Ruano*, 81 Wash.2d at 823, 505 P.2d 447 (citing *People v. City of Centralia*, 1 Ill.App.2d 228, 117 N.E.2d 410 (1953)).

170 Wn.2d at 10. The Council’s enactment of Ordinance 18544 adopting the Task Force recommendations is key; there, the Council made a policy decision requiring cities to approve of heroin injection sites. In doing so, the Council was decidedly not furthering or hindering a plan the Council or “some power superior to it” previously adopted. It made *policy*. Similarly, I-27 makes policy.

The *Our Water-Our Choice!* court also noted the Legislature’s very specific grant of authority to the Department of Health to set “maximum contaminant levels in drinking water” and the various federal statutes and administrative directives concerning drinking water

contaminants that local governments must comply with. The Court's determination that the fluoridation plan was administrative in nature relied on its conclusion that the addition of fluoride was not "a new policy or plan, indicative of a legislative act" but rather modification or implementation of "a plan already adopted by the legislative body itself, or some power superior to it, indicative of an administrative act." *Id.* at 14 (citing *Heider v. Seattle*, 100 Wn.2d 874, 876, 675 P.2d 597 (1984)). Unlike the comprehensive set of water quality regulations that Port Angeles was confronting, the establishment of heroin injection sites was a new policy for the County; it did not implement any state or federal mandate or scheme; rather, it contravenes state and federal law as noted *supra*.

In *Ruano*, a County initiative would have repealed the resolution authorizing the construction of the Kingdome and the bonds financing it, and prohibit the expenditure of any additional funds. This Court found the initiative was administrative in nature, but only did so by relying on the trial court's finding that "King County was wholly, totally, completely, and irretrievably and irrevocably committed to the King Street site and to the construction of the stadium with only administrative decisions remaining to complete the project." *Ruano*, 81 Wn.2d at 824. By the time the initiative was certified, the County had executed numerous contracts

and spent over \$6 million (\$35 million in 2017 dollars) on the project. *Id.*

In contrast, here, the County has merely published a Request for Letters of Interest from contractors who wished to operate the heroin injection sites, and to date authorized the expenditure of only approximately \$2 million to implement the entire set of Task Force recommendations (of which heroin injection sites are only a portion). CP 672-73.¹²

Ruano also concluded the initiative was administrative in nature because “[n]o new law would be involved,” the County would merely be “executing an already adopted legislative determination,” and “only administrative decisions remained in connection with the stadium project.” 81 Wn.2d at 824-25. The County here was not implementing a former County policy when it acted. No prior “policy,” reflected in statute or ordinance existed as to such sites. Moreover, further action beyond the Board and Council was required – city councils had to make a legislative decision to provide for the siting of heroin injection facilities within their city limits.

Simply put, I-27 involves a policy, not administrative, decision.

¹² The other recommendations in the Task Force report included prevention efforts, expanded treatment opportunities, and increased distribution of heroin alternatives. CP 431.

(b) I-27 Is Not Beyond the Power of County Government

As for the final question, this is not a matter beyond the power of county government. It is not an attempt to alter state or federal policy, statutory or constitutional as in cases like *Philadelphia II* (federal constitutional convention); *Spokane Entrepreneurial Center, supra* (attempt to amend state/federal labor laws); *Seattle Bldg. & Trade Council, supra* (Seattle measure sought to halt State's I-90 project). Rather, it *is* a matter of County public policy.¹³ Plainly, I-27 is within the power of County government.

(c) I-27 Does Not Involve an Issue Delegated by the Legislature Exclusively to the Council

The central issue here is whether I-27 trespassed upon specific authority of the Council and the Board. Courts limit the right of initiative only when a “provision presents no ambiguity” that the Legislature delegated the authority *exclusively to the legislative authority*. *State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 386, 494 P.2d 990 (1972). The burden of proving that the people’s power to initiate a measure is unavailable is on challengers like PPH and the City. *Maleng*, 150 Wn.2d at 334.

¹³ And, it is a county policy that seemingly condones the open violation of contrary state and federal law on heroin possession.

Washington courts have held that “[a]n initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.” *Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn.2d 41, 51, 272 P.3d 227 (2012), citing *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d 943 (2006); *Leonard*, 87 Wn.2d at 849-50; *Lince v. City of Bremerton*, 25 Wn. App. 309, 311, 607 P.2d 329 (1980). Of course, this rule extends to counties as well. See, e.g., *Snohomish County v. Anderson*, 123 Wn.2d 151, 868 P.3d 116 (1994).¹⁴

If the Legislature delegated responsibility over an issue to the municipality generally, the people may legislate by initiative on the issue. See *Citizens for Financially Responsible Gov’t v. City of Spokane*, 99 Wn.2d 339, 662 P.2d 845 (1983) (upholding initiative because RCW 35.22.280 “delegated taxing powers to ‘any city,’ not exclusively to a legislative body”); *Dahl v. Braman*, 71 Wn.2d 720, 430 P.2d 951 (1967).

The trial court here concluded that I-27 intruded upon the

¹⁴ The rule that the local initiative power can only be exercised where authority has been delegated to the county or city itself, rather than its legislative body, originates with the early-20th century cases of *Hindman v. Boyd*, 42 Wash. 17, 84 P. 609 (1906) and *Benton v. Seattle Electric Co.*, 50 Wash. 156, 96 P. 1033 (1908). In *Hindman*, the power in question had been delegated to a city, and initiative powers were found to apply. Two years later, this Court reached the opposite conclusion in *Benton*, when the power in question has been granted by the state to a local “legislative authority.” The Court determined that the legislative intent of vesting power in a local “legislative authority” was to vest such power with the mayor and city council exclusively. *Benton*, 50 Wash. at 159-60. Thus, the Court reasoned, the power granted by the Legislature could not be further delegated, such as to the people by initiative or referendum. *Id.*

Council’s budgetary authority and the statutory authority of the Board and therefore was disqualified from the ballot. CP 690-95. It was wrong. The trial court missed the necessary perspective it must employ: courts must not get lost in the minutiae of a measure, but must look to its “fundamental and overriding purpose.” *Huff*, 184 Wn.2d at 652; *Philadelphia II*, 128 Wn.2d at 719. I-27 essentially poses a binary public policy decision to King County voters – heroin injection sites: yes or no. The purpose and effect of I-27 is not merely budgetary but rather to prohibit the establishment of heroin injection sites in King County.¹⁵

That the policy decision at issue here – heroin injection sites: yes or no – is a decision not entrusted exclusively to the Council is manifest in several key aspects.

¹⁵ The budgetary references in the initiative were simply designed to effectuate the people’s public policy decision on whether such sites were appropriate in the County at all. No money could be spent on such sites by the County if the people approved I-27 and rejected their establishment. Moreover, I-27 does not purport to alter the Council’s budgetary decision. Ordinance 18544 directs that \$2,127,000 to be expended “solely for implementing the recommended goals, rationale and approach in the Heroin and Opiate Addiction Task Force Final Report and Recommendations.” If I-27 is successful, the County could still expend \$2,127,000 to implement the goals of the Task Force report; it just could not specifically fund a heroin injection site. If PPH and the City were correct that I-27 effectively exercises the specific appropriations authority granted by RCW 70.12.025 – despite I-27 not actually limiting the Council’s authority to appropriate any sum it chooses – King County effectuated that policy in a supplemental budget ordinance, including the city approval policy. I-27 does not purport to stop the expenditure of more than \$2.1 million to address the opioid problem in the county. It addresses the policy of heroin injection sites. If PPH and the City were correct that a mention of funding prevents a local initiative going forward, then *any* subject matter could be shielded from the citizen initiative process by a municipal legislative authority that simply appropriates a nominal sum of money toward that subject and labels it “public health work.”

First, the trial court failed to start the analysis at the proper point. The issue being addressed by I-27 involves the plenary police power granted by the Washington Constitution to “[a]ny county” (*not* to any county legislative authority) to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Wash. Const. art. XI, § 11. Specifically, I-27 would make it “unlawful for any person to operate or maintain” a heroin injection site. The ability of a county to prohibit certain conduct (particularly, as is the case in I-27, when that conduct is already prohibited under state and federal law) within its jurisdiction also squarely falls within the *plenary police power* extended to counties and cities since statehood.

Second, the Legislature has not delegated authority to local governments to establish heroin injection sites. Nothing in RCW 70.05.060 or anywhere in state law so provides. Not only has the Legislature not delegated the authority to create heroin injection sites to the County or the Board, no statute or ordinance authorized the creation of the Task Force. Its recommendation, in particular, heroin injection sites, carried no legal effect until the Council acted on Ordinance 18544.

Third, all activities relating to drug use are not matters of public health alone. For example, the Legislature has determined that various drug-related activity is illegal, subject to Washington criminal law. In

fact, the Council itself has treated drug-related activity as a crime as well. For example, KCC § 12.81.010 regulates places where drug paraphernalia is displayed and makes it a crime for the business owner to display such equipment for the intended purpose of violating RCW 69.50 as to controlled substances like heroin.¹⁶ KCC § 12.82 authorizes drug-free zones. Thus, public health does not “occupy the field” of drug regulation in King County.¹⁷

Finally, the central focus of the trial court was its belief that the Legislature entrusted essentially all decisions touching upon public health matters by statute to public health boards pursuant to RCW 70.05.060. CP 693-94. But this is a superficial analysis of the relationship between counties and public health boards. Plainly, such boards are agencies of county government (and in this case city government as well); they are the recipients of Council appropriations and are subject to Council policy making.

¹⁶ The Council did not amend this part of the Code that would raise questions about the legality of heroin injection sites under County ordinance.

¹⁷ The establishment and siting of heroin injection sites is a policy issue precisely because drug use and such sites are not purely a matter of public health alone. Allowing such sites may lead to additional illegal drug trafficking and use in and about such sites with the attendant need for law enforcement and treatment services. Such services will have significant governmental fiscal implications. Moreover, courts cannot be oblivious to the real world impact of such sites on living standards in and near the sites. Plainly, residents and businesses near them will be affected. This is why so many cities in the County have already availed themselves of the “opt out.”

The case law in Washington on delegation of decisions to local governments, as opposed to local legislative authorities, has never involved purported legislative delegation to an agency (or in this case, delegation to an extralegal task force convened by various elected officials). The cases have always involved delegation of decisions to local legislative bodies, before this and other courts have concluded that decisions are beyond the people's initiative power.¹⁸ Subdelegation to governmental agencies would violate this Court's limit-on-delegation rationale of cases like *Hindman* and *Benton* discussed *supra* that originated this restriction on local government initiative authority.

In any event, the scope of delegated authority from the Legislature in RCW 70.05.060 to public health boards is narrower than the trial court determined. The Legislature conferred authority over public health upon the County generally and it has given authority to local boards to make only regulatory, *not* legislative, decisions. *Snohomish County Health Dist. v. Brockett*, 120 Wn.2d 140, 839 P.2d 324 (1992).¹⁹ As the court in

¹⁸ If the basis to disqualify an initiative from the ballot is that a decision was entrusted to a local *legislative body*, then clearly the trial court here erred because by PPH/City's own arguments below and the trial court's ruling, not all public health decisions are entrusted by the Legislature to local legislative bodies.

¹⁹ PPH and the City contended that I-27 exercises the authority granted to local boards of health and local health officers below by RCW 70.05.060 and 70.05.070, and rely on *Brockett* to argue that this authority is "broad" and, novelly, "not subject to delay or veto through the local initiative and referendum process." CP 46. But they misread *Brockett*, which dealt with whether certain programs implemented under RCW 70.05

Lindsey v. Tacoma-Pierce County Health Dep't, 8 F. Supp. 2d 1213 (W.D. Wash. 1997) noted, the Legislature may not delegate “legislative power,” that is, the power to enact, suspend, or repeal laws, or to declare general public policy, to the boards. *Id.* at 1218. At issue here is the suspension of the general public policy on heroin possession and the declaration of a public policy regarding heroin injection sites – general public policy determinations for county government.

Moreover, the trial court plainly erred in concluding that the Legislature somehow delegated *exclusive* powers over public health to the Board. In addition to the fact that the County itself has addressed drug use in ways other than as a “public health” phenomenon, as noted *supra*, the Council believed that it had the authority to make a *legislative*, not administrative or budgetary, decision when it enacted § 37 of Ordinance 18544, *mandating that cities in the County had to agree to allow heroin injection sites within their communities*. The Council believed that it had the power to make such a decision, notwithstanding RCW 70.05.060. If the Council can delegate its authority to decide whether to establish heroin

(granting plenary power to local boards of health and health officers) and RCW 70.24 (the “AIDS Act”) violated state criminal law, not whether the authority found in RCW 70.05 was vested with a county or its legislative body. The trial court relied upon a reading of RCW Title 70 that the Legislature’s grant of authority to local health boards and officials is *so* broad that it would effectively preempt local initiatives relating to any matter that arguably pertain to “the life and health of the people” within a locality. CP 694-95.

injection sites to other municipalities, then the authority to establish such sites cannot have been vested *exclusively* in the Board, or even the Council. Instead, the Council is exercising authority granted to the County as a municipal entity. *County voters should have the same opportunity to make a public policy choice.*

Further, merely because the issue involves public health, the authority delegated to public health boards by the Legislature should not immunize public policy decisions from the people's initiative power. Implicit in the arguments of PPH and the City is an anti-democratic notion: the people can't be trusted to address a complex public health issue intelligently. That belief is wrong. On *numerous* occasions, the popular legislative authority has extended to matters touching on public health.²⁰

F. CONCLUSION

The County desires to establish the first heroin injection sites in the United States; the trial court immunized this radical policy decision from the judgment of the people who will be affected by it.

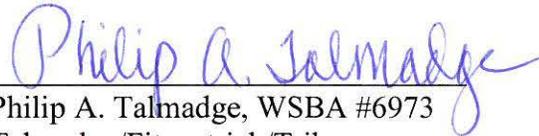
²⁰ Contrary to the City's and PPH's anti-democratic arguments here, the people are fully capable of making, and do make, public health decisions at the ballot box. Such major state-wide public health decisions as policies regarding the fluoridation of drinking water (Initiative 322), limitations on abortion (Initiatives 471 and 694), licensing of specialty health care providers (Initiatives 607 and 678), use of medical marijuana (Initiatives 685 and 692), restrictions on smoking (Initiatives 773 and 901), and physician-assisted suicide (Initiative 1000), have been subjected to the people's initiative power.

The trial court erred in failing to recognize that pre-election review of local initiatives is disfavored in Washington. The narrow exception for matters beyond the local initiative power is applicable here. The trial court misapplied the power of the courts by granting declaratory and injunctive relief.

This Court should reverse the trial court's injunction order and direct that I-27 be placed on the next available ballot. Costs on appeal should be awarded to IMPACTion.

DATED this 14th day of December, 2017.

Respectfully submitted,



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APPENDIX

King County Initiative 27: Keep Our Communities Safe

ONLY KING COUNTY VOTERS MAY SIGN

WARNING Every person who signs this petition with any other than his true name, or who knowingly signs more than one of these petitions, or who signs this petition when he is not a legal voter, or who makes herein any false statement, shall be punished as provided by law.

Key Points of I-27

1. Heroin use is a growing public health crisis.
2. Supervised drug consumption sites are inconsistent with protecting citizens and helping drug addicts.
3. Prohibits local governments and other organizations from establishing drug consumption sites in King County.
4. Protects taxpayers by prohibiting public financing of drug consumption sites.
5. Encourages local governments to offer treatment instead of continued drug use.

Paid for by IMPACTION, Joshua Freed, Chairman. PO Box 643; Bothell, WA 98043. (206) 899-1320. Volunteers: mail or deliver your petitions as they're completed, including ALL attached pages, without cutting. We must receive all petitions no later than June 21. Need more petitions? Call or visit us online. For more information see: www.safekingcounty.org

INITIATIVE PETITION FOR SUBMISSION TO THE KING COUNTY COUNCIL

To the Clerk of the King County Council, King County, Washington:
 We, the undersigned citizens of King County, State of Washington, and legal voters of the respective precincts set opposite our names, respectfully direct that this petition and the proposed measure known as Initiative Measure No. 27, and which would appear on the ballot in the following form:

Shall supervised drug consumption sites for Schedule I controlled substances (RCW 69.50.204), including heroin but excluding marijuana, be unlawful in King County?

a full, true and correct copy of which is hereby attached, and on file with the Clerk of the Council and available for public inspection, shall be transmitted to the King County Council, and we respectfully petition the Council to enact said measure into law; and, if not enacted within ninety days from the time of presentation, then to be placed on the ballot at the next regular or special election for approval by the voters of King County; and each of us for himself says: I have personally signed this petition; I am a legal voter of King County, State of Washington in the precinct, city or town written after my name and my residence address is correctly stated.

Petitioner's Signature	Petitioner's Printed Name	Residence Address <small>Street and Number (if any)</small>	City or Town	Precinct Name or Number (if known)
1.	First			
	Last			
2.	First			
	Last			
3.	First			
	Last			
4.	First			
	Last			
5.	First			
	Last			
6.	First			
	Last			
7.	First			
	Last			
8.	First			
	Last			
9.	First			
	Last			
10.	First			
	Last			
11.	First			
	Last			

AN ORDINANCE relating to supervised drug consumption sites; amending Ordinance 4785, Section 2, as amended, and K.C.C. 12.81.040, and adding new sections to K.C.C. chapter 4A.650 and K.C.C. chapter 12.81.

STATEMENT OF FACTS:

1. Heroin and prescription opioid use constitutes a public health crisis in King County, resulting in a growing number of deaths.
2. Heroin overtook prescription opioids in 2013 as the primary cause of opioid overdose deaths.
3. The use of supervised drug consumption sites is inconsistent with the county's goal of preventing substance use disorder and overdoses across King County.
4. It is the intent of the council to prohibit the funding and operation of supervised drug consumption sites in King County.

BE IT ORDAINED BY THE CITIZENS OF KING COUNTY:

NEW SECTION. SECTION 1. There is hereby added to K.C.C. chapter 4A.650 a new section to read as follows:

A. No public funds may be spent on the registration, licensing, construction, acquisition, transfer, authorization, use, or operation of a supervised drug consumption site.

B. For the purposes of this section, "supervised drug consumption site" means any building, structure, site, facility, or program with a function of providing a space or area for the use, consumption, or injection of heroin or any other controlled substance listed in Schedule I by RCW 69.50.204, except for those substances which may be possessed in accordance with RCW 69.50.4013.

C. Any person or class of persons may commence a civil action in King County superior court against the county for violating this section and, upon prevailing, may be awarded reasonable attorneys' fees and costs, such legal or equitable relief as may be appropriate to remedy the violation, and a civil penalty of up to five thousand dollars.

NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 12.81 a new section to read as follows:

A. It is unlawful for any person to operate or maintain any building, structure, site, facility or program with a function of providing a space or area for the use, consumption, or injection of heroin or any other controlled substance listed in Schedule I by RCW 69.50.204, except for those substances which may be possessed in accordance with RCW 69.50.4013.

B. Any person or class of persons may commence a civil action in King County superior court against the county or any other person violating this section and, upon prevailing, may be awarded reasonable attorneys' fees and costs, such legal or equitable relief as may be appropriate to remedy the violation, and a civil penalty of up to five thousand dollars.

C. For the purposes of this section, "person" means any individual, firm, association, organization, partnership, corporation, or any other entity, whether public or private and whether for profit or not for profit. "Person" further includes King County and any city, board of health, health department, municipal corporation, and any other political or civil subdivision.

SECTION 3. Ordinance 4785, Section 2, as amended, and K.C.C. 12.81.040 are each hereby amended to read as follows:

Any violation of ~~((this chapter))~~ Sections 12.81.010 through 12.81.030 is a misdemeanor, and the punishment shall be as provided by the laws of the state of Washington.

SECTION 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

OCT 16 2017

SUPERIOR COURT CLERK
BY Tara Shoemaker
DEPUTY

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

PROTECT PUBLIC HEALTH,

Plaintiff,

vs.

JOSHUA FREED, IMPACTION, CITIZENS
FOR A SAFE KING COUNTY, KING
COUNTY, and JULIE WISE, in her official
capacity.

Defendants.

No. 17-2-21919-3 SEA

ORDER GRANTING PLAINTIFF'S
MOTION FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

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

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

1 6. Declaration of Margaret Carney PhD;

2 7. Declaration of Dr. Robert Wood;

3 8. Defendant's Response;

4 9. Declaration of Andrew R. Stokesbary

5 10. Plaintiff Protect Public Health's Reply;

6 11. Plaintiff City of Seattle's Reply

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

9
10 FINDINGS OF FACT

- 11 1. All parties agree that Heroin and prescription opioid use constitutes a public health crisis
12 in King County. In March 2016, local County and City leaders convened the Heroin and
13 Prescription Opiate Addiction Task Force. The Task Force was co-chaired by the King
14 County Department of Community and Human Services and Public Health.¹
- 15 2. The Task Force was charged with developing strategies to combat opioid use disorder,
16 prevent overdose, and improve access to treatment and other supportive services.²
- 17 3. The Task Force set out a series of recommendations, including a recommendation to
18 establish, on a pilot program basis, two Community Health Engagement Locations (CHEL)
19 where supervised consumption will occur.³
- 20
21
22

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

25 ² *id*

³ *id*

- 1 4. On January 20, 2017, the King County Board of Health (Board) passed a resolution
2 adopting the recommendations of the Task Force, including the establishment of CHEL
3 sites.⁴
- 4 5. Proposed King County Initiative 27 (I-27) was filed with the Clerk of the King County
5 Council on April 14, 2017 and approved as to form on May 2, 2017.⁵ The intent of I-27 is
6 to “prohibit the funding and operation of supervised drug consumption sites.”
- 7 6. Section 1A of I-27 proposes that “No public funds may be spent on the registration,
8 licensing, construction acquisition, transfer, authorization, use, or operation of a supervised
9 drug consumption site.”
- 10 7. Section 1C of I-27 creates civil liability for the County should they appropriate any funds
11 to sites such as the proposed CHEL sites.
- 12 8. Section 2 of I-27 creates both civil and criminal penalties for public health officials, and
13 other persons including city and county governments operating CHEL sites.
- 14 9. On June 28, 2017, the King County Council adopted Ordinance 18544 appropriating
15 funding for the plan approved by the Board.⁶
- 16 10. I-27 seeks to amend both the Public Peace, Safety and Morals provision of the King County
17 Code (KCC), chapter 12.81.040, and The Public Health and Safety provision of the KCC,
18 chapter 4A.650.⁷
- 19
- 20
- 21
- 22

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

24 ⁵ Declaration of Andrew Stokesbary

25 ⁶(*Exhibit C to Lowney Decl*)

⁷ (*Exhibit A to Lowney Decl*)

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

4 12. Revised Code of Washington 70.12.015 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

15. King County Charter Section 230.40 states:

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

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

3 CONCLUSIONS OF LAW

4
5 To establish standing for pre-election review, plaintiffs need to show that the interest they seek
6 to protect is within the zone of interests that the initiative will protect or regulate, and that they would
7 suffer an injury in fact if the law were to pass. *Spokane Entrep. Ctr. V. Spokane Moves to Amend the*
8 *Constitution*, 185 Wn.2d 97 (2016). Plaintiffs City of Seattle and Protect Public Health have standing
9 to request pre-election review of I-27 as their interests are within the zone of interests that the initiative
10 will regulate – public health, and they would suffer an injury in fact if the initiative were to pass.
11 Furthermore, the challenge to I-27 involves “significant and continuing matters of public importance
12 that merit judicial resolution.” *American Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn.App.
13 427 (2011).

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

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

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

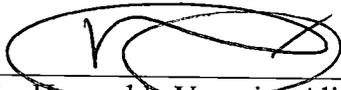
1 Our Supreme Court has recognized the broad authority public health authorities have in
2 protecting public health and addressing responses to public health crisis. In *Spokane County Health*
3 *Dist. V. Brockett*, 120 Wn2d 140 (1992), the court found that even the criminal laws of the State were
4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

7 Accordingly, this Court:

- 8
- 9
- 10 1. Declares that I-27, in its entirety, is invalid, null, and void because it extends beyond the
11 scope of the local initiative power; and
 - 12 2. Enjoins the King County Council from referring I-27 to the ballot and enjoins the Director
13 of King County Elections from placing I-27 on the ballot.

14

15 DATED: this 16 of October, 2017

16 
17 _____
18 The Honorable ~~Veronica~~ Alicea Galvan
19 King County Superior Court Judge
20
21
22
23
24
25

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the *Brief of Appellants* in Supreme Court Cause No. 95134-9 to the following parties indicated below:

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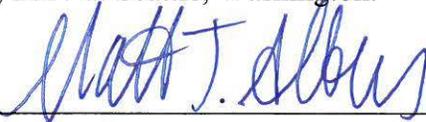
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Original e-filed with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: December 11, 2017 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

December 11, 2017 - 9:20 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95134-9
Appellate Court Case Title: Protect Public Health v. Joshua Freed, et al.
Superior Court Case Number: 17-2-21919-3

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Comments:

Brief of Appellants IMPACTion and Joshua Freed

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