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6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR KING COUNTY

9 PROTECT PUBLIC HEALTH,)
10 Plaintiff,) No.
11 vs.) COMPLAINT FOR DECLARATORY
12 JOSHUA FREED, IMPACTION, CITIZENS) AND INJUNCTIVE RELIEF
13 FOR A SAFE KING COUNTY, KING)
14 COUNTY, and JULIE WISE, in her official)
15 capacity.)
16 Defendants.)

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I. INTRODUCTION

Proposed King County Initiative 27 ("proposed I-27" or "I-27") is plainly outside of the scope of the local initiative process and should be enjoined from the ballot.

Unlike the state initiative process, the local initiative and referendum process is a creature of statute with a limited scope. Courts routinely conduct pre-election review of local initiatives and referenda and will remove such a measure from the ballot if it seeks to exercise or interfere with powers that the Legislature has delegated to the local legislative body or with a statutory decision-making process that does not include initiatives and referenda.

1 Public health is one of the areas that is beyond the scope of the local initiative and
2 referendum process. The Legislature has adopted a comprehensive scheme for making public health
3 decisions. It delegates final decision-making authority for public health decisions in King County to
4 the King County Board of Health and the King County Council. Those bodies are responsible for
5 making evidence-based decisions to protect the public health. The King County Council is also
6 authorized by the Legislature to make budgetary decisions for these matters. It would be antithetical
7 to this scheme to allow citizens to delay or override urgent action on a public health crisis merely by
8 raising sufficient funds to qualify a referendum or initiative.

9 Proposed I-27 seeks to do just that. It seeks a referendum on King County's plan to combat
10 the opioid epidemic –a leading cause of death among teens and adults and a growing vector for
11 transmission of communicable diseases. Through an extensive and evidence-based decision-making
12 process, the King County Board of Health adopted an eight-point plan to combat the opioid
13 epidemic. The plan contained strategies for prevention, for addressing health issues experienced by
14 heroin and opioid drug users, and for enhancing treatment modalities and access to treatment. A
15 hallmark of the plan is that it was integrated; no one feature was thought sufficient to address the full
16 range of health issues presented by the heroin and opiate epidemic. Consistent with the Board of
17 Health's decision, the King County Council appropriated initial funding to implement this eight-
18 point plan to respond to this public health emergency.

19 The proponents of proposed I-27 hope to use the local initiative process to rewrite the
20 County's opioid epidemic response plan, vetoing one of its key features. The Board of Health and
21 County Council's plan includes Community Health Engagement Locations for individuals with
22 substance use disorders ("CHEL sites"). The primary purpose of these sites is to "engage individuals
23 experiencing opioid use disorder using multiple strategies to reduce harm and promote health,"
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1 including, but not limited to, providing needle exchanges to avoid transmission of blood-borne
2 diseases, connecting individuals with drug treatment and other services, and preventing overdoses
3 through offering safe consumption facilities and providing treatment of overdose.¹ CHEL sites have
4 been used effectively in nearly one hundred locations throughout the world.²

5 Whereas the County developed its response to this public health crisis through evidence and
6 science, and relied on the consensus of experts in the field³, I-27 seeks to have the final decisions
7 made through electioneering and moralizing. I-27 proponents attack CHEL sites with sound bites
8 and fear-mongering, without acknowledging the evidence supporting CHEL sites or the role they will
9 play in the County's epidemic response plan.

10 This is precisely the problem of subjecting complex public health decisions to referendum.
11 Unlike the Board of Health and the County Council, voters are in no position to weigh the scientific
12 evidence or understand the impact of vetoing part of a multi-prong response to a local public health
13 crisis.

14 That is why State law is clear that local public health decisions are not made by
15 electioneering. Statutes grant this decision-making power to the Board of Health and County
16 Council, to be made in a multi-jurisdictional and evidence-based decision making process. King
17 County agencies, the King County Board of Health, and the County Council had the expertise and
18 resources to adopt a local evidence-based epidemic response plan. Those decisions are not subject to
19 veto by initiative or referendum.
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23 ¹ Heroin and Prescription Opiate Addiction Task Force Final Report and Recommendations, September 15, 2016,
available at [http://www.kingcounty.gov/~media/depts/community-human-services/behavioral-
health/documents/herointf/final-heroin-opiate-addiction-task- force-report.ashx?la=en](http://www.kingcounty.gov/~media/depts/community-human-services/behavioral-health/documents/herointf/final-heroin-opiate-addiction-task-force-report.ashx?la=en).

24 ² Id. at p. 26

25 ³ The American Medical Association and even the nominee for United States Surgeon General are calling for
demonstration safe consumption projects to explore how these can save lives and improve health.

1 Proposed I-27 targets public health decisions on the opioid crisis, but its precedent would
2 open a floodgate to local initiatives on controversial public health decisions ranging from medical
3 quarantine, to compulsory medication for tuberculosis and other communicable diseases, to
4 mandatory vaccinations, to regulations to slow the spread of sexually transmitted diseases. By
5 delegating tough public health decisions to public health professionals and local legislative
6 authorities, the Legislature has provided for evidence-based decision-making with minimal political
7 interference. If public health decisions were subject to local initiative and referendum, any well-
8 resourced opponent could collect signatures to delay or permanently derail action urgently needed to
9 protect public health.

10 Plaintiff Protect Public Health seeks a declaration that I-27 is beyond the scope of the local
11 initiative power and an order enjoining I-27 from appearing on the ballot.

12 **II. PARTIES**

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14 2.1 Protect Public Health is a not for profit corporation organized under the laws of the
15 State of Washington. Its members include a range of public health professionals and others who
16 would be harmed if public health decisions were subject to delay or veto through local initiative or
17 referenda. Members include individuals involved in HIV/AIDS and hepatitis C prevention,
18 epidemiology, infectious disease prevention and control, tobacco control, palliative care, and efforts
19 to combat the opioid epidemic— all of which involve controversial public health decisions. If
20 proposed I-27 were to be placed on the ballot, these members would be forced to expend resources to
21 defeat the illegal initiative.

22 2.2 Defendants are the sponsors of proposed I-27, including: Joshua Freed, the primary
23 citizen sponsor and proponent of I-27; Citizens for a Safe King County, the organizational sponsor of
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1 I- 27; and Impaction, the Washington political committee organized to support proposed I-27
2 (collectively "Sponsors").

3 2.3 Due to the request for injunctive relief, additional necessary parties are King County,
4 a political subdivision of the State of Washington, and King County Elections Director Julie Wise,
5 named only in her official capacity.

6 **III. JURISDICTION AND VENUE**

7 3.1 This Court has subject matter jurisdiction over this action under chapter 7.24 RCW
8 and chapter 7.40 RCW.

9 3.2 Venue is proper in King County, Washington, including under RCW 4.12.020.

10 **IV. FACTUAL BACKGROUND**

11 **A. I-27 seeks to interfere with King County's response to a public health crisis.**

12 4.1 Sponsors admit that their initiative arises from a disagreement about how to address a
13 public health crisis. I-27 begins with the following findings of fact and statement of intent:
14

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

23 I-27.
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1 4.2 That the opioid epidemic constitutes a public health crisis is undeniable. In 2015,
2 229 individuals died from heroin and prescription opioid overdose in King County alone, the highest
3 number on record. In just that year alone, teen deaths from overdoses rose by 19% nationally.⁴

4 **B. King County’s response to this public health crisis was developed through a multi-
5 jurisdictional and evidence-based approach.**

6 4.3 To confront this crisis, in March 2016, King County Executive Dow Constantine,
7 Seattle Mayor Ed Murray, Renton Mayor Denis Law and Auburn Mayor Nancy Backus convened
8 the Heroin and Prescription Opiate Addiction Task Force (“Task Force”). The Task Force, co-
9 chaired by the King County Department of Community and Human Services and Public Health –
10 Seattle & King County, was charged with developing both short and long-term strategies to prevent
11 opioid use disorder, prevent overdose, and improve access to treatment and other supportive services
12 for individuals experiencing opioid use disorder.

13 4.4 In convening the Task Force, Executive Constantine stated: “Addiction to heroin and
14 prescription pain killers is devastating families in every one of our communities—sparing no age,
15 race, gender, neighborhood or income level. ... Our region has a proud tradition of working together
16 across disciplines to achieve a common goal. It’s now time for us to apply that sense of shared
17 purpose to confront this epidemic.” Dr. Jeff Duchin, the Health Officer for the Department of Public
18 Health – Seattle and King County wrote that “Prescription pain medication and heroin addiction is a
19 chronic disease like cardiovascular disease and diabetes, that is difficult to cure but can be effectively
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23 ⁴ CNN – “Teen drug overdose death rate climbed 19% in one year,” August 16, 2017, available at
24 <http://www.cnn.com/2017/08/16/health/teen-overdose-death-rate/index.html>.

1 treated. We need to fight this epidemic as we would any other disease, with a multi-faceted public
2 health approach.”⁵

3 4.5 Task Force members represented 38 entities, including the University of Washington
4 Alcohol and Drug Abuse Institute (ADAI), behavioral health services providers, hospitals, human
5 service agencies, the recovery community, criminal justice partners, first responders, and others.

6 4.6 The Task Force met over a six month period from March to September 2016 to review
7 1) current local, state and federal initiatives and activities related to prevention, treatment and health
8 services for individuals experiencing opioid use disorder, 2) promising strategies being developed
9 and implemented in other communities, and 3) evidence-based practices in the areas of prevention,
10 treatment and health services.

11 4.7 Based on a review of evidence-based practices and strategies used in other
12 communities, and building on recommendations established by Johns Hopkins Bloomberg School of
13 Public Health and the 2016 Washington State Interagency Opiate Plan, the Task Force developed
14 recommendations to both prevent opioid addiction and improve opioid use disorder outcomes in
15 King County.
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17 4.8 The Task Force adopted eight primary recommendations – essentially an eight-point
18 action plan – to address this public health crisis.

19 4.9 The Task Force spent significant time and resources investigating the evidence
20 supporting CHEL sites, where individuals suffering opioid addiction can connect with treatment and
21 services and also access a medically supervised safe consumption site. The Task Force determined
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24 ⁵ Press Release – “Executive Constantine, Mayor Murray announce task force to confront heroin and opiate prescription
25 addiction,” March 1, 2016, available at
<http://www.kingcounty.gov/elected/executive/constantine/news/release/2016/March/01-heroin-task-force.aspx>.

1 that "[T]he primary purpose of [CHEL] sites is to engage individuals experiencing opioid use
2 disorder using multiple strategies to reduce harm and promote health, including, but not limited to,
3 overdose prevention through promoting safe consumption of substances and treatment of overdose."

4 Members of the Task Force visited CHEL sites in Vancouver, British Columbia, and in several cities
5 in Europe. They also evaluated research conducted on CHEL sites from other areas of the world.

6 The Task Force found that CHEL sites could play a critical role in saving lives, reducing the
7 transmission of communicable diseases, and connecting individuals to treatment and health services.

8 . 4.10 The Task Force adopted three goals for CHEL sites:

- 9 • Reduce drug-related health risks and harms including overdose death, transmission of
10 HIV and hepatitis B and C viruses, and other drug-associated adverse health effects.
- 11 • Provide access to substance use disorder treatment and related health and social services,
12 provide a safe and trusting environment where people who use drugs can engage with
13 services to improve their health and reduce criminal justice system involvement and
14 reduce emergency medical services utilization.
- 15 • Improve public safety and the community environment by reducing public drug use and
16 discarding of drug using equipment.

17 4.11 The CHEL sites were recognized as an evolution of needle exchanges which King
18 County has been utilizing since the 1990s. Indeed, a core function of the CHEL sites would be to
19 provide such needle exchange services.

20 4.12 In September 2016, the Task Force published a 99-page report that documented its
21 work and included recommendations. These recommendations were issued under the auspices of the
22 Task Force's co-chairs, including the Department of Public Health – Seattle and King County.

23 **C. The King County Board of Health adopted the Task Force's evidence-based
24 plan to address the public health crisis.**

25 4.13 On January 19, 2017, the King County Board of Health voted 12-0 to adopt
Resolution 17.01-1, endorsing the recommendations of the Task Force as the County's opioid

1 epidemic response plan. The resolution stated that the Board of Health's decision was informed by
2 ten public briefings it held on the opioid epidemic, and that the Board had "evaluated and was fully
3 briefed on the task force report by Public Health - Seattle & King County Health Officer Dr. Jeff
4 Duchin and King County Department of Community and Human Services Behavioral Health and
5 Recovery Division Assistant Director Brad Finegood in October 2016."

6 4.14 The King County Board of Health's resolution specifically endorsed the Task Force's
7 recommendation to establish two CHEL sites in King County as a pilot program, referring to them as
8 a "specific evidence-based user health and overdose prevention response," and stating:

9 WHEREAS, supervised consumption sites have been in operation abroad since 1988, and
10 have successfully reduced overdose deaths and behaviors that cause HIV and Hepatitis C
11 infection, reduce unsafe injection practices, increase use of detox and treatment services,
12 reduce public drug use and publicly discarded injection equipment and have not increased
13 drug use, crime or other negative impacts in their areas; and

14 WHEREAS, the King County Board of Health previously adopted a resolution supporting a
15 strategic and operational plan for HIV prevention in King County that included community
16 health engagement sites, in September 2007 ...

17 4.15 The King County Board of Health's resolution called on local governments "as well
18 as Public Health -- Seattle and King County, to implement the public health policies outlined in the
19 Heroin and Prescription Opiate Addiction Task Force Final Report and Recommendations, including
20 establishing, on a pilot program basis, at least two community health engagement location sites."

21 **D. The King County Council appropriated initial funding for the Board approved plan.**

22 4.16 In June, 2017, the King County Council appropriated initial funding to implement the
23 opioid epidemic response plan adopted by the King County Board of Health. See Ordinance 2017-
24 0136.2.

25 4.17 In that appropriation process, the Council rejected a proposed amendment that would
have eliminated funding for CHEL sites. Instead, the Council passed an amendment that specifically

1 appropriated County funds to CHEL sites but required the approval of the local elected governing
2 body. A councilmember opposing CHEL sites stated "I am at least glad we are giving local
3 jurisdictions the chance to decide whether the location of these sites would be right for their
4 residents."⁶

5 **E. The State Board of Health acknowledged local health authority to implement CHEL
6 sites to respond to the opioid epidemic.**

7 4.18 On February, 2017, the Washington State Board of Health responded to the County's
8 opiate epidemic response plan, noting that it is "very concerned about the opioid misuse and
9 overdose epidemic in Washington." While it had not evaluated CHEL sites, it acknowledged that
10 "Local health jurisdictions, such as Seattle and King County, have broad authority to take certain
11 actions in response to local health care crises, such as the opioid epidemic. We believe that this is
12 the approach that Seattle and King County are taking as they plan to open Community Health
13 Engagement Locations which include safe injection sites."⁷

14 **F. Implementation of the epidemic response plan is well underway.**

15 4.19 To implement the County's opioid epidemic response plan, a King County committee
16 published *Recommended Guidelines for Planning, Implementing, and Operating Safe Consumption*
17 *Sites*, addressing a wide range of implementation issues including siting guidelines, facility features,
18 and service models and policies.

19 4.20 The County thereafter published a Request for Letters of Interests from community
20 partners who wished to operate the CHEL sites for King County. Several organizations submitted
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23 ⁶ Press Release – “Dunn: Heroin injection sites only in cities that choose to establish the sites,” June 26, 2017, available
24 at <http://www.kingcounty.gov/council/news/2017/June/06-26-RD-injection.aspx>.

25 ⁷ Washington State Board of Health, Letter to Jalair Box, Co-Chair of Speak Our Seattle! Drug Consumption Site
Committee, February 14, 2017, on file with counsel.

1 proposals to operate the CHEL sites before the window for proposals closed in approximately mid
2 July, 2017.

3 4.21 King County is currently evaluating potential partners to operate the CHEL sites,
4 locating appropriate site locations, and taking other steps to open the first of two CHEL sites.

5 **G. I-27 sponsors seek to second guess the County's public health decisions.**

6 4.22 Sponsors acknowledge that they are using the initiative process because they disagree
7 with the public health decisions of the Board of Health and King County Council. Indeed, Sponsors
8 and County's public health decision-makers both visited the CHEL sites in Vancouver, B.C.,
9 but reached opposite conclusions about whether CHEL sites should be employed to combat
10 King County's opioid crisis. Sponsors state that "If that's their solution, ... then we're not
11 properly addressing the heroin crisis."⁸ They admit that "[t]his really is a crisis," but claim
12 that "enabling [persons with opioid addiction] in a place where they continue to take drugs
13 and lead them closer and closer to overdose is not the caring route to take."

14 4.23 Sponsors claim that I-27 would "save lives before any more are lost from this opioid
15 crisis."⁹ They assert that "I-27 [is] focusing on bringing [addicts] help through proper treatment and
16 stopping dangerous injection sites that clearly have not worked elsewhere. ... We can defeat this
17 crisis, but it will take a desire to get people off the drugs that are killing them."¹⁰

18 4.24 While passionate, Sponsors lack the public health expertise and resources to second
19 guess the public health decisions made by the Board of Health and County Council.
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22 ⁸ Id. (appx. minute 17:22)

23 ⁹ <http://washingtonstatewire.com/column-keep-safe-injection-sites-king-county/>. Sponsors argue that by preventing
funding for CHEL sites, I-27 will fee up more funds for other forms of drug treatment.

24 <http://rossfire.bonneville.libsynpro.com/bothell-city-councilman-joshua-freed-on-i-27-banning-safe-injection-sites> (appx
minute 7:30). They believe that a better approach is to work with doctors to limit opioid prescriptions. Id. (appx. minute
9:00).

25 ¹⁰ <http://rossfire.bonneville.libsynpro.com/bothell-city-councilman-joshua-freed-on-i-27-banning-safe-injection-sites>

1 **H. Proposed Initiative 27.**

2 4.25 Using a combination of paid and volunteer signature gatherers, Sponsors collected
3 signatures to qualify proposed I-27 for the ballot. Proposed I-27 is attached as Appendix A.

4 **V. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

5 5.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

6 5.2 Courts review before elections a local initiative or referendum to determine, notably,
7 whether "the proposed law is beyond the scope of the initiative power." *City of Port Angeles v. Our*
8 *Water - Our Choice*, 170 Wn.2d 1, 7 (2010).

9 5.3 A controversy exists between Protect Public Health and Sponsors regarding whether
10 the subject matter of proposed I-27 is within the scope of the initiative power granted to the County's
11 citizens by State law.

12 5.4 Pre-election review of a local initiative is permitted where, as here, there is a dispute
13 regarding whether the subject matter of the proposed initiative is beyond the scope of the local
14 initiative power. If the invalid initiative were to be placed on the ballot, members of Protect Public
15 Health would be required to expend significant resources to oppose the initiative and would be
16 threatened with future initiatives on a wide variety of public health matters.

17 5.5 Protect Public Health seeks a declaration that proposed I-27 is invalid because it is
18 beyond the scope of the local initiative power, as follows:

19 **A. Proposed I-27 constitutes a fundamental attack on public health.**

20 5.6 As discussed, King County developed its response to this public health crisis through
21 an evidence-based, multi-jurisdictional process. Ultimately the Task Force adopted eight primary
22 recommendations, and the Board of Health endorsed all eight as the County's opioid epidemic
23 response plan. In turn, the County Council provided initial funding for implementation of the plan.
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1 5.7 In addition to vetoing a critical element of the epidemic response plan, I-27 explicitly
2 subjects King County, the Board of Health, and its municipal and agency partners to *civil lawsuit* and
3 *civil penalties* for carrying out the County's adopted and funded epidemic response plan. I-27 § 2.
4 The proposed initiative would make it "unlawful" for these entities to carry out the County's
5 epidemic response plan, allows "any person" to sue them for doing so, and allows the plaintiff to
6 recover attorneys fees and costs, injunctive relief, and civil penalties of up to \$5,000. *Id.* This is a
7 fundamental attack on the ability of our County to respond to a public health emergency. If this were
8 allowed, the initiative process would be available to veto other public health measures that public
9 health officials deem essential to protect us all but which are controversial.

10 **B. Proposed I-27 seeks to exercise authority granted exclusively to the County Council.**

11 5.8 "An initiative is beyond the scope of the initiative power if the initiative involves
12 powers granted by the legislature to the governing body of a city, rather than the city itself. ... When
13 the legislature enacts a general law granting authority to the legislative body (or legislative authority)
14 of a city, that legislative body's authority is not subject to repeal, amendment, or modification by the
15 people through the initiative or referendum process." *Mukilteo Citizens for Simple Gov't v. City of*
16 *Mukilteo*, 174 Wn.2d 41, 51 (2012) (internal citations omitted). "Stated another way, the people
17 cannot deprive the city legislative authority of the power to do what the constitution and/or a state
18 statute specifically permit it to do." *City of Sequim v. Malkasian*, 157 Wn.2d 251, 265 (2006).

19 5.9 I-27 states that its intent is "to prohibit the funding and operation of supervised drug
20 consumption sites in King County." I-27 (statement of facts). I-27 states that "No public funds may
21 be spent on the registration, licensing, construction, acquisition, transfer, authorization, use, or
22 operation of a supervised drug consumption site." I-27 § 1.A.

1 5.10 However, RCW 70.12.025 delegates that authority to the County Council. It provides
2 that “Each *county legislative authority* shall annually budget and appropriate a sum for public health
3 work.” (emphasis added). The County Council has already exercised this legislative authority by
4 enacting an appropriation ordinance that directs funding to implementation of Board of Health's
5 epidemic response plan, including the establishment of the pilot CHEL sites. See Ordinance 2017-
6 0136.2.

7 5.11 In funding the Board of Health's opioid epidemic response plan, including CHEL
8 sites, the County Council was exercising authority under RCW 70.12.025. Because that authority is
9 statutorily granted to the County Council, “it is not subject to repeal, amendment, or modification by
10 the people” through initiative. *Mukilteo Citizens*, 174 Wn.2d at 51. I-27 attempts to interfere with the
11 King County Council’s ability to fund public health work.

12 **C. Proposed I-27 seeks to exercise authority granted exclusively to King County Board of**
13 **Health and the County's Public Health Officer.**

14 5.12 I-27 is beyond the scope of the local initiative process because it (1) interferes with
15 authority that is statutorily delegated to the King County Board of Health and the County's Local
16 Health Officer.

17 5.13 Counties operating under a home rule charter like King County are authorized to
18 establish a local board of health and appoint a local health officer. RCW 70.05.036.

19 5.14 The Legislature has granted the King County Board of Health the authority to make
20 public health decisions in King County:
21

- 22 Each local board of health shall have supervision over all matters pertaining to the
23 preservation of the life and health of the people within its jurisdiction and shall: ...
24 (2) Supervise the maintenance of all health and sanitary measures for the protection of the
25 public health within its jurisdiction; ...
 (4) Provide for the control and prevention of any dangerous, contagious or infectious disease
 within the jurisdiction of the local health department;

1 (5) Provide for the prevention, control and abatement of nuisances detrimental to the public
2 health ...

3 RCW 70.05.060.

4 5.15 Similarly, the Legislature has empowered King County's Local Health Officer to:

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

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

9 (4) Inform the public as to the causes, nature, and prevention of disease and disability and the
10 preservation, promotion and improvement of health within his or her jurisdiction;

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

12 (9) Take such measures as he or she deems necessary in order to promote the public health, to
13 participate in the establishment of health educational or training activities...

14 RCW 70.05.070.

15 5.16 Nothing in this comprehensive regime contemplates allowing citizens to use the
16 initiative process to carry out what amounts to a line item veto of complex public health decisions
17 made by the Board of Health and the Local Health Officer. There is no reference to "initiative" or
18 "referendum" powers in RCW Chapter 70.05.

19 5.17 Because the Legislature has delegated these public health decisions to the Board of
20 Health and Local Health Officer, they are not subject to interference by initiative or referendum. See
21 *City of Port Angeles v. Our Water -Our Choice!*, 170 Wn.2d 1, 10 (2010) (Holding initiative beyond
22 scope of initiative process in part because "The legislature has explicitly vested the power to decide
23 whether or not to fluoridate in the board of commissioners of a water district. RCW 57.08.012.

24 Nothing in chapter 57.08 RCW creates the power of initiative or referendum to check such board
25 decisions.")

1 **D. The statutory scheme for public health decision-making does not allow interference by**
2 **initiative or referendum.**

3 5.18 I-27 is invalid because the use of the local initiative and referendum process is
4 fundamentally incompatible with the statutory scheme for public health decision-making.

5 5.19 The local initiative and referendum process cannot be used where the Legislature has
6 adopted a comprehensive scheme for decision-making that does not contemplate local initiatives and
7 referendum and/or would be frustrated by their use. *Whatcom County v. Brisbane*, 125 Wn.2d 345,
8 351 (1994) ("The purpose of the Growth Management Act, RCW 36.70A, would be frustrated if the
9 people of Whatcom County were permitted by referendum to amend an ordinance adopted to
10 implement the goals of a comprehensive land use plan."); *Seattle Building & Construction Trades*
11 *Council*, 94 Wn.2d at 747, 750 (the court looked broadly at the statutes and history of the I-90
12 expansion to conclude that the legislature intended that the city's approval was a matter for the city
13 municipal authorities and therefore not subject to initiative).

14 5.20 The Legislature has adopted a comprehensive scheme for making public health
15 decisions. It grants final decision-making power and extensive authority to the Board of Health and
16 Local Health Officer, and grants final funding authority to the County Council. The statutory
17 scheme does not authorize the use of the initiative or referendum process and therefore such use is
18 prohibited. *Whatcom County v. Brisbane*, 125 Wn.2d 345, 351 (1994) ("The absence of any mention
19 of referenda [in the Growth Management Act] indicates the statute's rejection of referendum rights.")
20

21 5.21 The system of public health decision-making, while carried out on a local level, is a
22 matter of statewide concern and therefore is not subject to local initiative and referenda. *Snohomish*
23 *County v. Anderson*, 123 Wn.2d 151, 159 (1994) ("Permitting the referendum would jeopardize
24 an entire state plan and thus would extend beyond a matter of local concern.") Indeed, the public
25

1 health of the *entire state* would be jeopardized if a local initiative or referenda could derail local
2 action to stem an epidemic, which is precisely what I-27 seeks to do.

3 5.22 The statutory scheme would be undermined by allowing I-27 to carry out a line item
4 veto of a multi-prong epidemic response plan. See *1000 Friends of Washington v. McFarland*, 159
5 Wn.2d 165, 180-181 (2006) ("referendum in many jurisdictions does not merely act as a veto but in
6 some counties can strike individual portions of ordinances. That is inconsistent with integrated,
7 comprehensive planning.")

8 5.23 The Washington Supreme Court has held that the authority of local health officers to
9 take actions to protect public health is so important that it overrules even the State's criminal law, so
10 it certainly also preempts the local initiative process. *Spokane County Health Dist. v. Brockett*, 120
11 Wn.2d 140 (1992), confirmed that needle exchanges are within the broad authority of the public
12 health act and the HIV and AIDS prevention act. In ruling in favor of the needle exchange, the court
13 in *Brockett* stated that, "the broad powers given local health boards and officers under Const. art. 11,
14 § 11 and RCW 70.05 authorize them to institute needle exchange programs in an effort to stop the
15 spread of HIV and AIDS," despite state criminal laws to the contrary. *Brockett* directly applies to
16 this case since the CHEL sites are a type of needle exchange facility and the public health decision-
17 making at issue in *Brockett* is analogous to King County's decision-making that I-27 seeks to
18 overturn.
19

20 **E. Use of the local initiative and referenda process is inconsistent with the multi-**
21 **jurisdictional approach to public health.**

22 5.24 Recognizing that epidemics do not stop at municipal boundaries, the Legislature has
23 authorized a multi-jurisdictional approach to public health. This multi-jurisdictional approach to
24 public health would be frustrated if the citizens of *one jurisdiction* could derail a regional response to
25 a public health emergency.

1 5.25 RCW Chapter 70.08 authorized the City of Seattle and King County to create a joint
2 department of health and they did so in 1981. RCW Chapter 70.12 authorizes the City and County to
3 pool their public health funds, and to put in the pool “any other money appropriated by the county for
4 public health work.” RCW 70.12.040.

5 5.26 The County's opioid epidemic response plan is a product of this multi-jurisdictional
6 coordination and regional cooperation. Seattle and King County, along with other local
7 governments, jointly convened the Task Force. The Task Force was co-chaired by the Department of
8 Public Health -- *Seattle and King County*. The Task Force's recommendations were then adopted by
9 the King County Board of Health, which is comprised of elected officials from King County, the City
10 of Seattle, and suburban cities.

11 5.27 The funds appropriated by the County Council for the epidemic response plan
12 constitute regionally pooled public health funds under RCW Chapter 70.12.

13 5.28 The citizens of one jurisdiction cannot use the initiative and referendum process to
14 undermine such coordinated, multi-jurisdictional action to stem an epidemic or to restrict public
15 health funds that are pooled with other jurisdictions under RCW Chapter 70.12. *See Brisbane*, 125
16 Wn.2d at 351 (“the GMA seeks coordinated planning. ... allowing referenda is structurally
17 inconsistent with this mandate.”)

18
19 **F. Proposed I-27 addresses administrative actions and is therefore invalid.**

20 5.29 “[A]dministrative matters, particularly local administrative matters, are not subject to
21 initiative or referendum.” *City of Port Angeles*, 170 Wn.2d at 8.

22 5.30 I-27 is invalid for the same reasons that the Courts invalidated a local initiative that
23 sought to reverse a Department of Health decision on water fluoridation. “They explicitly seek to
24 administer the details of the city's existing water system. The legislature gave the Department of
25

1 Health the authority and responsibility to set maximum contaminant levels in drinking water based
2 on the best available scientific information, which it has done.“ Id., 170 Wn.2d at 13.

3 We hold that the initiatives before us are administrative in nature in that they attempt to
4 interfere with and effectively reverse the implementation of Port Angeles's water fluoridation
5 program first adopted in 2003 and further implemented in 2005 pursuant to an existing city
6 regulatory system and a regulatory system established by the Washington State Legislature
7 and the Department of Health.

8 Id., 170 Wn.2d at 15.

9 5.31 Here, the Legislature gave the Board of Health the authority to set and implement
10 public health policy, which it did when it adopted the Task Force recommendations. Now the County
11 Council has appropriated funding and the County is well into implementation. It has already adopted
12 administrative policies relating to the siting and operation of the CHEL sites and solicited letters of
13 interest from entities seeking to operate the sites. I-27's “attempts to interfere with and effectively
14 reverse the implementation” of this policy is therefore administrative and not subject to initiative.

15 **G. Proposed I-27 constitutes a prohibited referendum.**

16 5.32 Proposed I-27 is an illegal referendum on an appropriation measure.

17 5.33 The County Council has enacted an appropriation ordinance providing funding for
18 CHEL sites. Under the King County Charter, § 230.40, “An appropriation ordinance ... shall not be
19 subject to referendum.” Proposed I-27 is therefore invalid under the King County Charter.

20 **VI. SECOND CAUSE OF ACTION – INJUCTIVE RELIEF**

21 6.1 The preceding paragraphs are incorporated by reference as if set forth fully herein.

22 6.2 Because proposed I-27 is not a lawful exercise of the initiative power, it should be
23 enjoined from appearing on any future ballot.

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VII. RELIEF REQUESTED

WHEREFORE, Protect Public Health seeks relief as follows:

7.1 Entry of judgment declaring that the proposed I-27, in its entirety, is invalid because it is beyond the scope of the local initiative power, and therefore null and void;

7.2 Entry of an injunction against King County and the King County Elections to bar the proposed I-27 from appearing on a future ballot.

7.3 Granting such other relief as the Court deems just and equitable.

DATED this 21st day of August, 2017.

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KING COUNTY COUNCIL

1 AN ORDINANCE relating to supervised drug consumption sites;
2 amending Ordinance 4785, Section 2, as amended, and K.C.C.
3 12.81.040, and adding new sections to K.C.C. chapter 4A.650 and
4 K.C.C. chapter 12.81.

5 STATEMENT OF FACTS:

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

14 BE IT ORDAINED BY THE CITIZENS OF KING COUNTY:

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

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

19 B. For the purposes of this section, "supervised drug consumption site" means any
20 building, structure, site, facility, or program with a function of providing a space or area for the
21 use, consumption, or injection of heroin or any other controlled substance listed in Schedule I by
22 RCW 69.50.204, except for those substances which may be possessed in accordance with RCW
23 69.50.4013.

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

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

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

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

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

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

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

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