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;

6. Declaration of Margaret Carney PhD;

7. Declaration of Dr. Robert Wood;

8. Defendant's Response;

9. Declaration of Andrew R. Stokesbary

10. Plaintiff Protect Public Health's Reply;

11. Plaintiff City of Seattle's Reply

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

FINDINGS OF FACT

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

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

[2] *id*

[3] *id*

4. On January 20, 2017, the King County Board of Health (Board) passed a resolution adopting the recommendations of the Task Force, including the establishment of CHEL sites.[4]

5. Proposed King County Initiative 27 (I-27) was filed with the Clerk of the King County Council on April 14, 2017 and approved as to form on May 2, 2017.[5] The intent of I-27 is to "prohibit the funding and operation of supervised drug consumption sites."

6. Section 1A of I-27 proposes that "No public funds may be spent on the registration, licensing, construction acquisition, transfer, authorization, use, or operation of a supervised drug consumption site."

7. Section 1C of I-27 creates civil liability for the County should they appropriate any funds to sites such as the proposed CHEL sites.

8. Section 2 of I-27 creates both civil and criminal penalties for public health officials, and other persons including city and county governments operating CHEL sites.

9. On June 28, 2017, the King County Council adopted Ordinance 18544 appropriating funding for the plan approved by the Board.[6]

10. I-27 seeks to amend both the Public Peace, Safety and Morals provision of the King County Code (KCC), chapter 12.81.040, and The Public Health and Safety provision of the KCC, chapter 4A.650. [7]

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

[5] Declaration of Andrew Stokesbary

[6](*Exhibit C to Lowney Decl)*

[7] (Exhibit A to Lowney Decl)

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

12. Revised Code of Washington 70.12.015 states:

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

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

> Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:
> (2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;
> (3) Enact such local rules and regulation as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;
> (4) Provide for the control and prevention of any dangerous, contagious, or infectious disease within the jurisdiction of the local health department
> (5) Provide for the prevention, control and abatement of nuisances detrimental to the public health

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

> The local health officer, acting under the direction of the local board of health…shall:
> (2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;
> (3) Control and prevent the spread of any dangerous, contagious or infectious 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

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

CONCLUSIONS OF LAW

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

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

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

The legislature adopted RCW Chapter 70 delegating the decision-making authority on public health to the Board of Health, the Local Health Officer, and the County Council. RCW 70.05.060 and RCW 70.12.025. I-27 interferes with the duties and obligations of the Board and County Council by subjecting public health officials and the County Council to potential criminal and civil liability if they 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

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

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

DATED: this 16 of October, 2017

The Honorable Veronica Alicea Galvan
King County Superior Court Judge