

DISTRICT COURT, PUEBLO COUNTY, STATE OF COLORADO 501 N. Elizabeth St. Pueblo, CO 81003	
<p>Plaintiffs: COLORADO HEALTH NETWORK INC., a nonprofit corporation, and SOUTHERN COLORADO HARM REDUCTION ASSOCIATION, a nonprofit corporation;</p> <p>v.</p> <p>Defendant: CITY OF PUEBLO.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Plaintiffs:</i></p> <p>Timothy Macdonald, No. 29180 Sara R. Neel, No. 36904 Anna I. Kurtz, No. 51525 Lindsey M. Floyd, No. 56870 American Civil Liberties Union Foundation of Colorado 303 East 17th Avenue, Suite 350 Denver, Colorado 80203 tmacdonald@aclu-co.org sneel@aclu-co.org akurtz@aclu-co.org lfloyd@aclu-co.org P: (720) 402-3114 F: (303) 777-1773</p> <p>Christine Ranney, No. 55398 Al Kelly, No. 55112 John P. Harrison, No. 57988 Gibson, Dunn & Crutcher LLP 1801 California Street, Suite 4200 Denver, Colorado 80202 cranney@gibsondunn.com akelly@gibsondunn.com jharrison2@gibsondunn.com P: (303) 298-5700 F: (303) 298-5907</p>	<p>Case Number:</p> <p>Div:</p> <p>Ctrm:</p>
<p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>	

Colorado Health Network, Inc. (“CHN”) and Southern Colorado Harm Reduction Association (“SCHRA”) (together, “Plaintiffs”), by undersigned counsel, hereby file this Complaint for Declaratory and Injunctive Relief against Defendant City of Pueblo (“Defendant” or “the City”) and allege as follows:

INTRODUCTION

1. Syringe exchange programs (“SEPs”)—also referred to as syringe service programs or syringe access programs—are a powerful tool in stemming and preventing the spread of infectious diseases, including Human Immunodeficiency Virus (“HIV”) and Hepatitis C. The people who are served by SEPs are often connected to care providers; for example, when the service providers have built trust with participants, many will elect to get tested for HIV and other infectious diseases and be connected with medical treatment providers. SEPs are proven to reduce overdose risk and to ultimately save lives. Indeed, since the first such program opened in Pueblo in 2014, new HIV infections due to injection drug use in Pueblo County have fallen 8% as compared to the prior eight years of available data. And overdose reversals reported by program participants have doubled in recent years thanks to the programs’ distribution of life-saving overdose reversal medications.

2. As part of its statewide public health scheme, Colorado law expressly authorizes any qualified “nonprofit organization” to “operate a clean syringe exchange program.” C.R.S. § 25-1-520. According to the Colorado Department of Health and Environment (“CDPHE” or “the Department”), the goal of SEPs is to use evidence-based strategies to reduce harms associated with drug use, including injection-related health risks and overdose.

3. CDPHE’s 2024 statewide public health improvement plan recognizes that “fatal overdoses are increasing and remain a significant public health issue, both nationally and in Colorado.” In 2022, Colorado lost 1,799 residents as a result of drug overdose, and that number increased in 2023 to 1,822. The age-adjusted rate per 100,000 population of opioid-related overdose deaths increased from 19.5% in 2022 to 20.9% in 2023.

4. CDPHE has been funding SEPs for more than a decade. Statewide availability of SEPs and life-saving overdose reversal medications is crucial to Colorado’s harm reduction goals and broader public health scheme. CDPHE supports the operation of SEPs to counter the rising overdose rates in Colorado, recognizing that SEPs are the primary access point for overdose prevention education and overdose reversal medications.

5. On May 16, 2024, the City of Pueblo enacted Pueblo Ordinance No. 10698 (the “Ordinance”) purporting to prohibit “the establishment, operation, use, or participation in” SEPs within the city. This prohibition has completely halted the only two SEPs in Pueblo, which are operated by CHN and SCHRA, both of which have been providing SEPs and other services in Pueblo for many years. Plaintiffs seek to enjoin enforcement of the Ordinance, as it is preempted by Colorado law.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff CHN is a Denver-based nonprofit organization established in 1983 that seeks to meet the needs of individuals in Colorado living with or at risk of acquiring HIV and other health conditions through prevention, care, and advocacy. CHN is a non-profit organization that is qualified to operate a clean syringe program pursuant to C.R.S. § 25-1-520 and a harm reduction agency according to C.R.S. §§ 12-30-110(1)(a)(3) & (b). As part of its work, CHN operates six SEPs, including Access Point Pueblo (“Access Point”), which opened in 2014. Access Point provides unused sterile syringes and injection equipment at no cost to individuals.

7. Plaintiff SCHRA is a nonprofit organization based in Pueblo, Colorado that is qualified to operate a clean syringe program pursuant to C.R.S. § 25-1-520 and a harm reduction agency according to C.R.S. §§ 12-30-110(1)(a)(3) & (b). SCHRA was founded in 2017 in response to the overdose epidemic and provides wellness and prevention services, including an SEP. SCHRA’s program provides unused sterile syringes and injection equipment at no cost to individuals.

8. Defendant City of Pueblo enacted and enforces the challenged Ordinance. The City operates under a home-rule charter adopted pursuant to Article XX, section 6 of the Colorado Constitution.

9. This Court has jurisdiction over this action pursuant to Colo. Const. Art. VI, § 9(1) and C.R.C.P. 57 and 65. Venue is proper in this Court under C.R.C.P. 98(c)(1).

FACTUAL ALLEGATIONS

Colorado’s Statewide Goal to Reduce Communicable Disease and Overdose Through SEPs

10. Part 5 of Title 25 of the Colorado Revised Statutes establishes a robust statutory scheme regulating public health in the state. The General Assembly’s intent in establishing this statewide scheme was that “[e]ach community in Colorado should provide high-quality public health services regardless of its location.” C.R.S. § 25-1-501(b). State law also provides that “[a] strong public health infrastructure is needed to provide essential public health services and is a shared responsibility among state and local public health” actors. C.R.S. § 25-1-501(d).

11. As the General Assembly concluded, “a strong public health infrastructure requires the coordinated efforts of state and local public health agencies and their public and private sector partners.” C.R.S. § 25-1-501(e).

12. SEPs are community-based prevention programs that provide individuals who inject substances access to sterile syringes, syringe disposal, and access to other injection paraphernalia without a prescription.

13. One goal of SEPs is to provide individuals who inject substances with a bridge to a wider array of medical services. By cultivating relationships with individuals, SEPs are able to

refer individuals to additional social and medical support services, such as confirmatory testing, preventive treatment, and medication-assisted treatment, as well as education related to the recognition, prevention, and reversal of overdoses.

14. The State of Colorado and other jurisdictions have authorized SEPs because evidence demonstrates that they help protect communities from syringe litter and the threat of needlestick injury, and lower the incidence of improper syringe disposal.

15. The SEPs operated by Plaintiffs provide access to overdose reversal drugs, such as naloxone, as well as referrals to medical providers and addiction treatment programs.

16. SEPs have been legal in Colorado since 2010. In May 2010, Senate Bill 10-189 authorized the operation of SEPs in Colorado. Under this law, “a county public health agency or district public health agency may request approval from its county board of health or district board of health . . . for a clean syringe exchange program operated by the agency or by a nonprofit organization with which the agency contracts to operate the clean syringe program.” C.R.S. § 25-1-520.

17. Senate Bill 10-189 also decriminalized the possession or delivery of certain “drug paraphernalia” for individuals who were participating as employees or volunteers in SEPs. C.R.S. § 18-18-430.5(1)(a). In 2013, Senate Bill 13-208 revised C.R.S. § 18-18-430.5 to include an exemption from criminal liability for carrying drug paraphernalia for “participant[s] in an approved syringe exchange program created pursuant to section 25-1-520, C.R.S.”

18. In 2015, Senate Bill 15-146 created the Colorado HIV/AIDS Prevention Grant Program under C.R.S. § 25-4-1403. In 2019, House Bill 19-1287 appropriated more than \$5.5 million to create a grant program for “substance use disorder treatment capacity in underserved communities.” C.R.S. § 27-80-120.

19. In 2019, Senate Bill 19-227 created the Opiate Antagonist Bulk Purchase Fund as part of a harm reduction package. Under C.R.S. § 25-1.5-115(1)(a), the State was able to purchase in bulk opiate antagonists—drugs like naloxone that block or counteract the effects of opioids—at a discounted price. The purpose of the fund is to “reduce financial burden of purchasing naloxone for key partners by providing naloxone at no cost, promote public health and safety for Coloradans, and increase access to naloxone, a key tool in overdose prevention.”

20. Eligible organizations that focus on harm reduction, including Plaintiffs CHN and SCHRA, purchase opiate antagonists from the State at low or no cost. C.R.S. § 25-20.5-1001(2).

21. The opiate antagonists are available for order in three forms: a pre-filled syringe of naloxone, an empty syringe with a vial of naloxone, and a naloxone nasal spray (commonly called Narcan). Each of these forms is an FDA-approved treatments for opioid-related overdose.

22. In 2019, the Colorado Syringe Access Providers Coalition (“COSAP”)—a collection of local, state, and national harm reduction service providers—submitted policy

recommendations to the legislature, including a specific recommendation to remove the requirement in then-existing state law for local Board of Health approval for syringe exchange programs. COSAP noted that the prior local approval requirement “has been incredibly limiting to establishing [SEPs] especially in rural areas.” Of note, COSAP identified that many Boards of Health include non-health care professionals, which leads to a lack of evidence-based decision making.

23. Likewise, the Colorado General Assembly’s own Opioid and Other Substance Use Disorders Interim Study Committee recommended changes to the law after concluding that barriers to implementing harm reduction programs in certain localities—such as stigma and bias toward persons with substance use disorders—would impede the state’s public health goals.

24. In response to the recommendations of the relevant stakeholders and experts and to increase access to SEPs, in 2020 the legislature amended C.R.S. § 25-1-520 to authorize nonprofit organizations with experience operating SEPs and certain health facilities to operate clean syringe exchange programs *without* prior local approval. C.R.S. § 25-1-520(2.5).

25. When an SEP operates pursuant to C.R.S. § 25-1-520(2.5), the SEP “shall annually report to the state department specifying the nonprofit organization’s or health facility’s number of syringe access episodes in the previous year and the number of used syringes collected by the nonprofit organization or health facility.” C.R.S. § 25-1-520(2.5)(c).

CHN and SCHRA Operate SEPs in Coordination with State Regulation and Programs

What CHN’s Access Point Does in the Community

26. There are currently twenty (20) SEPs in Colorado, including the two (2) SEPs in Pueblo that are operated by Plaintiffs CHN and SCHRA.

27. CHN opened Access Point in Pueblo in 2014. Access Point operates its SEP three days per week on Tuesdays, Wednesdays, and Thursdays and offers its full range of other services Monday through Friday.

28. Through Access Point’s SEP, participants can access sterile syringes, injection equipment, wound care, and overdose prevention medication (i.e., naloxone). Access Point provides naloxone in each of the three forms of the medication: a pre-filled syringe, an empty syringe with a vial of naloxone, and the nasal spray. Access Point also provides medical waste disposal for used syringes. All of these items are provided at no cost.

29. Access Point provides safer injection and use education as well as overdose prevention education. These trainings are designed to minimize health consequences and prevent overdoses among people who inject drugs intravenously. The trainings also inform participants about their legal obligations, including to disclose their possession of syringes to peace officers or other first responders prior to a search, safety protocols for the proper handling and disposal of

injection materials, and the administration of naloxone to empower community members to respond to opioid overdose.

30. Access Point also provides SEP participants with referrals to substance use disorder treatment providers, including medication assisted treatment options, peer support, and patient navigation.

31. Access Point operates an on-site testing laboratory for sexually transmitted infections (“STIs”), Hepatitis C, HIV, and other blood-borne infections, including confirmatory testing.

32. Access Point offers referrals for treatment when an individual tests positive for any blood-borne infection. For example, when an individual has a test result for HIV or Syphilis that indicates potential infection, Access Point works with the Pueblo Community Health Center, Pueblo Department of Public Health and Environment, or another appropriate provider to establish a treatment and care plan for that individual. In these cases, Access Point staff work in tandem with CDPHE Disease Intervention Specialists to assure linkage to care.

33. If an individual tests positive for Hepatitis C, Access Point can provide treatment on-site through a telehealth station that has been established in partnership with a hospital in Denver.

34. Access Point serves as a delivery location for pharmaceuticals for individuals with unstable housing and unreliable mailing addresses.

35. Access Point provides a mental health clinic for SEP participants on a drop-in basis through two behavioral health clinicians who provide intake, counseling, and other mental health services. Funding for this program is provided through the Southeast Colorado Opioid Region 19, a division of the State’s Opiate Abatement Council, which distributes funds from the opioid settlement.

36. Access Point partners with Southern Colorado Family Medicine to provide on-site medical care during their Tuesday SEP. During this time, a medical resident from Southern Colorado Family Medicine provides services including medication prescription, abscess drainage, treatment of STIs, wound care, and initiation of treatment for Hepatitis C. If medical services cannot be provided on-site, Access Point staff work with individuals to connect them to medical services by providing transportation and appointment reminders.

37. Access Point hosts a monthly dental clinic where SEP participants can receive dental services from licensed dentists.

38. Access Point partners with CDPHE to provide a vaccine program that allows individuals access to a variety of vaccines, including Hepatitis A, Hepatitis B, COVID, Influenza, Monkey Pox, and Tetanus vaccines. Vaccinations are done on-site via a mobile clinic multiple times a year.

39. The services provided by Access Point have proven to be extraordinarily beneficial to the community. Since opening in 2014, new HIV infections due to injection drug use in Pueblo County have fallen 8% as compared to the prior eight years of available data. More than 250 individuals received referrals to substance use treatment and healthcare providers between March 2023 and March 2024. Access Point Pueblo SEP participants have self-reported nearly 1,300 overdose reversals over the past three years. The organization also has greatly increased access to infectious disease testing in Pueblo, with HIV testing increasing by 372% and Hepatitis C testing increasing by 294% from 2020 to 2023.

What Southern Colorado Harm Reduction Association Services Does in the Community

40. SCHRA is a nonprofit organization located in Pueblo that operates an SEP once a week. SCHRA's SEP provides participants with sterile supplies, including syringes. SCHRA's participants are also eligible to receive bottled water, fresh fruit, snacks, feminine hygiene products, soap, toothpaste, toothbrushes, condoms, lubricant, emergency contraception medication, and COVID tests. All of these additional products are provided free of charge.

41. SCHRA provides overdose prevention, such as naloxone, five days per week in each of the three forms of the medication: a pre-filled syringe, an empty syringe with a vial of naloxone, and the nasal spray. SCHRA also provides medical waste disposal for used syringes, and offers fentanyl and xylazine testing strips.

42. SCHRA provides safer injection and use education as well as overdose prevention education. These trainings are designed to minimize health consequences and prevent overdoses among people who inject drugs intravenously. These trainings also inform participants about their legal obligation to disclose their possession of syringes to peace officers or other first responders prior to a search in addition to safety protocols for the proper handling and disposal of injection materials.

43. Twice a month, SCHRA partners with Vivent Health to provide free testing for STI, HIV, Hepatitis C, and other blood-borne infections. If a person has a test result that indicates potential infection, SCHRA works with Vivent Health to obtain continued treatment for that individual.

44. SCHRA also sometimes runs an urgent care clinic on-site that has both a trained emergency medical technician and a virtual physician.

45. SCHRA provides SEP participants with referrals to substance use disorder treatment providers, including medication-assisted treatment options, and prevention case management. Jude Solano, the Co-Founder and CEO of SCHRA, is a Registered Nurse who is able to provide on-site medical assessments and wound care treatment when necessary. Additionally, SCHRA has a partnership with Porch Light Health (formerly Front Range Clinic). Through this partnership, a Porch Light Health representative visits SCHRA once a week to assist with referrals for medical-assisted treatment options.

46. In addition to its SEP, SCHRA provides other services for the Pueblo community. SCHRA offers Acudetox, which uses a five-point acupuncture protocol to manage withdrawal symptoms during recovery. SCHRA has four employees who are trained and certified to provide this service. Acudetox is a free service that can be utilized by SEP participants.

47. SCHRA operates the Life Empowerment and Fulfillment Program (“LEAF”) which occurs once a week in the Pueblo County Jail. Through LEAF, SCHRA instructors teach incarcerated people techniques for self-reflection and inquiry through journaling and meditation. The purpose of LEAF is to provide individuals with the emotional skills necessary to have a successful transition when released from jail. LEAF is funded through a grant provided by CDPHE.

48. SCHRA partners with the Colorado Department of Corrections and the Latino Coalition for Community Leadership to operate Work and Gain Education and Employment Skills (“WAGEES”), a program for people who have recently been released from incarceration. SCHRA employs two case managers who help individuals find housing, employment, education, vocational training, and any additional needs they may have for a successful transition. SCHRA also has a WAGEES home which can house up to four men who do not have stable housing.

49. SCHRA employs Peer Support Specialists who act as case managers for individuals who need additional support. Peer Support Specialists typically have similar backgrounds to the individuals SCHRA seeks to serve. For example, SCHRA employs Peer Support Specialists who have used SCHRA’s services before or who were previously incarcerated. Peer Support Specialists are available during the SEP. Additionally, SEP participants can make appointments to work 1-on-1 with Peer Support Specialists.

50. SCHRA is an important resource to the greater community of Pueblo. When possible, SCHRA provides supportive services to community members. For example, SCHRA has provided financial assistance for rent payments and school supplies. SCHRA also provides a program called Community Reinforcement and Family Training (“CRAFT”) that assists family and friends of people in active substance use with education to learn communication strategies to support their loved one toward treatment. Through these programs, SCHRA helps to meet the financial and emotional needs of the community they serve.

51. The services provided by SCHRA have saved lives. From January 2023 to December 2023, SCHRA served 2,856 people through its SEP. From January 2024 until its shutdown, SCHRA’s SEP served 1,205 clients. Participants have reported 630 overdose reversals thanks to the program’s distribution and training on the use of naloxone.

Plaintiffs Contract with the State to Provide SEPs

52. The State of Colorado provides Plaintiffs with funding for their services pursuant to C.R.S. §§ 25-4-1403 to 25-4-1405 through the Colorado HIV/AIDS Prevention Program (“CHAPP”). The grant program was created “to address local community needs in the areas of

medically accurate HIV and AIDS prevention and education through a competitive grant process.” C.R.S. § 25-4-1403(1).

53. CHAPP “address[es] the increasing rates of HIV in Colorado; health inequities by race, ethnicity, and gender among HIV diagnoses; and limited resources available to support agencies with a service area outside of the Denver metro area” and “serve[s] to reduce the spread of Human Immunodeficiency Virus (HIV) throughout Colorado, with a focus on serving priority populations vulnerable to acquiring HIV” within jurisdictions across the State.

54. CHAPP contracts promulgate standards and require, at a minimum, that Plaintiffs’ protocols and services must include: “safe storage, handling, and disposal of bio-waste materials; needle-stick injury prevention and management; naloxone administration plan; [and] training protocol including at a minimum: naloxone administration training, agency policies and procedures, harm reduction philosophy, safe injecting practices, syringe disposal and safety, overdose prevention, cultural inclusiveness, [and] outreach safety.”

55. To meet this goal, the CHAPP contract requires that Plaintiffs “shall complete Syringe Access Services” and “shall distribute naloxone” to people who use drugs and “develop criteria for evaluating syringe access delivery.” CHAPP also requires that “CDPHE will provide syringes at no cost to” Plaintiffs.

56. Pursuant to its contract, SCHRA must “deliver Syringe Access Services to 2500 [people who inject drugs]” and deliver “a minimum of 250,000 syringes to PWID [people who inject drugs], at no cost to the individual, through a SAP.”

57. Pursuant to its contract, CHN must “deliver Syringe Access Services to 2000 [people who inject drugs]” and deliver “a minimum of 1,000,000 syringes to PWID [people who inject drugs], at no cost to the individual, through a SAP.”

58. Plaintiffs receive funding directly from CDPHE to support their SEPs. Between 2020 and 2024, SCHRA received more than \$1.5 million from the CDPHE. Between 2022 and 2024, CHN received nearly \$1 million from the CDPHE.

59. CHN also receives funding from the Centers for Disease Control and Prevention to create the Drug User Health Hub. The purpose of the Health Hub program is “increasing access to culturally responsive care for serving PWID [people who inject drugs], reducing viral hepatitis cases within the PWID community in Colorado, and decreasing injection drug use-associated infections and overdoses.” The funds are distributed by CDPHE and CDPHE is responsible for oversight of the project. From August 15, 2022 through April 30, 2024, CHN received \$441,840.45 from CDPHE for the Health Hub program.

60. Both Plaintiffs receive their overdose prevention supplies, including naloxone, from the state’s Opiate Antagonist Bulk Purchase Fund pursuant to C.R.S. § 25-20.5-1001(2). To apply for the fund, Plaintiffs obtained a standing order from the Chief Medical Officer of the CDPHE.

Pueblo Passes Unlawful Ordinance That Impedes State Regulation of Public Health

61. On April 22, 2024, the Pueblo City Council set for first presentation Ordinance No. 10698 prohibiting the establishment, operation, use, or participation in SEPs within the City.

62. The Ordinance amends Pueblo Municipal Code Title XI, Chapter 1, Section 405 to define “syringe services program” as “any and all needle and syringe exchange or distribution programs or projects whereby hypodermic needles and/or syringes are exchanged or dispensed such that persons participating in and/or operating such programs are exempted from criminal prosecution for acts related to the possession of needles and/or syringes.”

63. The Ordinance further provides that “the creation, establishment, operation, or participation in a syringe services program within the City of Pueblo” is a “specific nuisance” that is “expressly deemed to be detrimental to the health or safety of the inhabitants of this City.” Pursuant to the Ordinance, Plaintiffs and their staff are subject to criminal penalties for continuing to operate their SEPs.

64. During the council meeting on April 22, the council heard public comment from several Pueblo residents and local public health workers in opposition to the Ordinance.

65. On May 1, 2024, in response to the introduction of the Ordinance, Dr. Ned Calonge, Chief Medical Officer for the State of Colorado (through CDPHE), submitted a letter to Pueblo Mayor Graham and Members of the Pueblo City Council, explaining why SEPs provide important public health benefits for the State. The letter identified CDPHE’s historical funding of SEPs over more than a decade and the “benefits provided by the implementation of these services across Colorado.”

66. The CDPHE letter further explained that SEPs “do not increase illegal substance use or crime.” To the contrary, CDPHE noted that “new users of SEPs are five times more likely to enter drug treatment and three times more likely to reduce and/or stop using drugs than those who don’t use the programs.”

67. The CDPHE statement further noted that “SEPS reduce overdose risk and ultimately saves lives.” The state touted the fact that SEPs “provide resources to address the social determinants of health that play a role in the well-being of both individuals and communities” in addition to “preventing transmission of infectious disease.” It further explained that “[p]rohibiting syringe access in the city of Pueblo could potentially lead to outbreaks of infectious disease, increased healthcare and emergency costs, overdose deaths and service interruption for the hundreds of individuals who rely on the multitude of services provided by these organizations.”

68. The CDPHE statement also explained that “studies have shown an eight-fold increase in improperly discarded syringes in communities without SEPs compared to those with SEPs.”

69. Despite strong opposition from the community, public health experts, and the State’s Chief Medical Officer, the Pueblo City Council passed the Ordinance on or about May 13, 2024. It went into effect on or about May 16, 2024.

70. In response to the passage of the Ordinance and in fear of suffering criminal charges, both Plaintiffs ceased all SEP services. This includes the provision of pre-filled syringes of naloxone or sterile syringes with vials of naloxone that are provided to Plaintiffs through the State’s Opiate Antagonist Bulk Purchasing Fund.

71. Neither Plaintiff is able to fulfill its requirements to provide syringe access or cost-effective injectable forms of naloxone to people who inject drugs pursuant to their respective contracts with CDPHE.

72. Since the Ordinance went into effect and Plaintiffs ceased their SEP services, both Plaintiffs have noticed a marked decline in individuals utilizing their other services. Over the past two weeks, CHN has seen an almost 50% reduction in participant visits to Access Point and SCHRA has seen a 40% decline in participant visits.

73. The passage of the Ordinance is likely to have impact beyond the City’s borders, including increasing risk of outbreak of infectious disease such as HIV and Hepatitis C in Pueblo and other jurisdictions where participant travel from to obtain services in Pueblo. The prohibition of SEP services in Pueblo will also increase health care costs, increase overdose deaths, and result in fewer people entering treatment programs, both in Pueblo and adjacent jurisdictions. The lack of SEPs in Pueblo will also lead to an increase in improperly discarded syringes in the community.

74. The next closest SEP to Pueblo that is available to the hundreds of Pueblo citizens who utilize Plaintiffs’ services each week is almost 50 miles away in Colorado Springs. Colorado Springs is already considering its own prohibitions in light of Pueblo’s Ordinance, putting the continuation of SEP services in the closest jurisdiction to Pueblo in jeopardy. If Colorado Springs successfully passes a similar prohibition, individuals—many of whom have little to no access to transportation—would be forced to find a way to travel as far as Denver to obtain the services or forgo access.

CLAIM FOR RELIEF

75. Article XX, Section 6 of the Colorado Constitution grants home-rule municipalities the full right of self-government in local and municipal matters. Colo. Const. XX, § 6. However, “when a home-rule ordinance conflicts with state law in a matter of either statewide or mixed state and local concern, the state law supersedes that conflicting ordinance.” *City of Longmont v. Colorado Oil & Gas Ass’n*, 2016 CO 29, ¶ 18, 369 P.3d at 579.

76. The operation of SEPs is a matter of statewide concern, or at a minimum, a matter of mixed state and local concern.

- a. Statewide availability of harm reduction services is crucial to Colorado’s public health scheme. Since 2010, the Colorado legislature has passed multiple state measures to expand access to SEPs and naloxone across Colorado. Plaintiffs both operate under these state measures and receive funding from CDPHE to administer programs intended to benefit all Coloradans.
- b. As reflected in the Colorado Revised Statutes, Colorado has a profound interest in public health, which includes preventing the transmission of HIV, Hepatitis C and other blood-borne diseases throughout the state of Colorado and reducing the number of overdose episodes.
- c. The Ordinance increases the risk of health care and emergency costs, outbreaks of infectious disease, and overdose deaths. The Ordinance will also strain other SEPs by sending an influx of individuals seeking sterile syringes to SEPs outside Pueblo which would decrease the available supply of the opioid reversal drugs like naloxone in those areas.
- d. The State has a clear tradition of regulating public health.
- e. The State may regulate SEPs, as part of its broader health scheme, through its police powers, which it derives from the Colorado Constitution.

77. Colorado law expressly authorizes any qualified “nonprofit organization” to “operate a clean syringe exchange program.” C.R.S. § 25-1-520. Pueblo Ordinance No. 10698 purports to prohibit “the establishment, operation, use, or participation” in such programs within the city. In other words, the Ordinance criminalizes the exact same activity that the General Assembly authorizes.

78. In addition, state law expressly allows harm reduction organizations like Plaintiffs to possess, provide, and administer injectable naloxone and similar opiate antagonists. The Ordinance forbids them from doing so.

79. Because the operation of SEPs and their provision of opiate antagonists is a matter of statewide concern, or at a minimum, a matter of mixed state and local concern, and because the Pueblo Ordinance conflicts operationally with the statewide regulation of public health, the Pueblo Ordinance is preempted by State law.

80. Pursuant to the Colorado Uniform Declaratory Judgments Law, C.R.S. § 13-51-101 *et seq.*, and C.R.C.P. 57, Plaintiffs are entitled to a declaration that the Pueblo Ordinance is preempted by State law because it legislates on a matter of statewide or mixed concern and conflicts with State law.

81. Pursuant to Colorado Rule of Civil Procedure 65, this Court should issue an injunction prohibiting enforcement of the Pueblo Ordinance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- a. Declare the Ordinance is preempted by State law and is, therefore, invalid;
- b. Enter a temporary injunction prohibiting enforcement of the Ordinance;
- c. Enter a permanent injunction prohibiting enforcement of the Ordinance;
- d. Award attorneys' fees and costs;
- e. Award such other relief as may be just and proper.

Respectfully submitted this 4th day of June, 2024.

/s/ Al Kelly

Timothy Macdonald, No. 29180
Sara R. Neel, No. 36904
Anna I. Kurtz, No. 51525
Lindsey M. Floyd, No. 56870
American Civil Liberties Union Foundation of
Colorado
303 East 17th Avenue, Suite 350
Denver, Colorado 80203
tmacdonald@aclu-co.org
sneel@aclu-co.org
akurtz@aclu-co.org
lfloyd@aclu-co.org
P: (720) 402-3114 | F: (303) 777-1773

Christine Ranney, No. 55398
Al Kelly, No. 55112
John P. Harrison, No. 57988
Gibson, Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
cranney@gibsondunn.com
akelly@gibsondunn.com
jharrison2@gibsondunn.com
P: (303) 298-5700 | F: (303) 298-5907

Attorneys for Plaintiffs