DISTRICT COURT, PUEBLO COUNTY **STATE OF COLORADO** 501 North Elizabeth Street Pueblo, Colorado 81003	DATE FILED August 22, 2024 10:51 AM CASE NUMBER: 2024CV30274
Plaintiffs: COLORADO HEALTH NETWORK INC., a nonprofit corporation and SOUTHERN COLORADO HARM REDUCTION ASSOCIATION, a nonprofit corporation v. **Defendant:** CITY OF PUEBLO.	▲ COURT USE ONLY ▲ Case No.: 2024CV30274 Division: 406
ORDER RE: DETERMINATION OF THE MERITS OF THE CASE	

THIS MATTER came before the Court on August 13, 2024, for a hearing on the determination of the merits of the case pursuant to C.R.C.P. 65(a)(2). The Court, having considered the arguments and the case file, makes the following findings and orders:

BACKGROUND:

1. On May 13, 2024, the City of Pueblo, a home-rule municipality, by and through its City Council, passed Ordinance No. 10698 (hereinafter "Ordinance") prohibiting the establishment, operation, use or participation in syringe exchange or distribution programs within the City of Pueblo.

2. The Ordinance, which was approved by the Mayor and made effective on May 16, 2024, sought to prohibit the disposal of hypodermic needles being discarded in public thus presenting a threat to health, property, safety and welfare of the public in Pueblo. The Ordinance alleges that needle exchange facilities near public schools, parks and playgrounds have a negative effect due to the disposal of dirty needles, causing an increase in the number of improperly disposed hypodermic needles in public places thus resulting in the congregation of drug users near these public areas. The Ordinance further alleged that the operation of Needle Exchange Programs "increases the risk of overdose and death by facilitating the use of deadly and dangerous synthetic opioids which are difficult

to detect by drug users leading to the unknowing use of drugs containing fentanyl." *See* Pl. Ex. 1, p. 3.

3. Pursuant to the language in the Ordinance, the City of Pueblo's Home Rule power pursuant to Article XX, Section 6 of the Colorado Constitution authorizes the City to adopt the Ordinance, "conducive to the welfare of the people of the City and not inconsistent with the City of Pueblo's Charter," and further authorizes the City to collect fines and pursue penalties for violation of the Ordinance. *Id.*

4. The Ordinance further cites Pueblo Municipal Code, Title VII, Chapter 1, Section 1 which authorizes the City, through City Council to declare certain activities, in this case, the operation and participation in Syringe Exchange or Distribution Programs within the City of Pueblo, as a public nuisance. The same Pueblo Municipal Code sets forth "regulatory, penal, and administrative ordinances to promote and protect the public health, safety, peace, comfort, and general welfare of the City." *Id.* at p. 4.

5. As of the effective date of the Ordinance, May 16, 2024, Plaintiffs ceased operation of clean needle exchanges within the City of Pueblo.

6. On June 4, 2024, Plaintiffs filed a Complaint initiating this action requesting a declaration pursuant to C.R.C.P. 57 that the Ordinance is preempted by state law and a permanent injunction prohibiting the enforcement of the Ordinance.

7. On June 6, 2024, a hearing regarding the issuance of a temporary restraining order was held wherein the Court granted Plaintiffs' request for a temporary restraining order and set the matter for a Preliminary Injunction Hearing on July 10, 2024. *See Order Granting Plaintiffs Request for Temporary Restraining Order.*

8. On June 28, 2024, the Court granted a joint request to vacate and re-set the Preliminary Injunction Hearing. The hearing was re-set for August 13, 2024. The temporary restraining order was continued by the Court. *See Order Granting Joint Motion to Vacate and Reset the Preliminary Injunction Hearing.*

9. On August 5, 2024, the parties filed a *Joint Motion to Consolidate Preliminary Injunction Hearing with Determination of the Merits* citing C.R.C.P 65(a)(2) which the Court granted the same day.

10. On August 13, 2024, the Court heard oral arguments from the parties on the merits of Plaintiffs' preemption claim.

LAW GOVERNING STATE PREMPTION OF LOCAL LAW

11. To determine if a state law preempts a home-rule city's ordinance, the Court must conduct a two-step analysis. *Webb v. City of Black Hawk,* 295 P.3d 480 (Colo. 2013). First, the Court must determine whether the issue the ordinance regulates

is one of local, statewide, or mixed local and statewide concern. If the conclusion is that the issue is of mixed concern, then the court must analyze whether the ordinance conflicts with state law on that issue. *Ryles v. City of Englewood*, 364 P.3d 900, 904 (Colo. 2016).

12. Article XX, section 6 of the Colorado Constitution grants municipalities "home rule authority to govern local and municipal matters." Colo. Const. art XX, §6.

13. When a conflict arises between a state statute and a local ordinance in a matter of statewide concern, the state law preempts and supersedes the local provision. *City of Longmont v. Colorado Oil & Gas Ass'n*, 369 P.3d 573 (Colo. 2016).

14. A court may consider any factors it deems relevant, however, factors that are helpful in making this determination are: (1) the need for statewide uniformity; (2) the extraterritorial impact of the regulation at issue; (3) whether the matter has traditionally been regulated at the state or local level; and (4) whether the Colorado Constitution commits the matter to state or local regulation. *Ryles,* 364 P.3d at 905.

15. If the Court concludes that the issue is of mixed concern, the Court must then determine whether the ordinance conflicts with state law on that issue. *Ryles,* 364 P.3d at 904-905.

16. While both parties stipulated that this issue presents a matter of mixed state and local concern, the Court finds it pertinent to consider the factors in *Ryles* and make a clear determination as to how the matter is regulated.

Step 1: Whether the issue the ordinance regulates is one of local, statewide, or mixed local and statewide concern.

The need for statewide uniformity

17. The Court first considers whether there is a statewide interest in implementing uniform standards of the availability of syringe exchange programs.

18. A need for uniformity exists when it achieves and maintains "specific state goals." *City of Northglenn v. Ibarra*, 62 P.3d 151, 160 (Colo.2003).

19. The Court finds that the state has a strong interest in promoting public health. Public health is defined as, "the prevention of injury, disease, and premature mortality; the promotion of health in the community; and the response to public and environmental health needs and emergencies as is accomplished through the provision of essential public health services." C.R.S. § 25-1-502(5).

20. Pursuant to C.R.S. §25-1-501, the General Assembly has declared that "[e]ach

community in Colorado should provide high-quality public health services regardless of its location." *Id.* § 501(1)(b). " [A] strong public health infrastructure is needed to provide essential public health services," *id.* § 501(1)(d), which further "reduces health care costs by preventing disease and injury, promoting healthy behavior, and reducing incidents of chronic disease and conditions," *id.* § 501(1)(a). State law recognizes that public health is inherently of both local and state interest. *See Id.* §501(e)(stating, "[d]eveloping a strong public health infrastructure requires the coordinated efforts of state and local public health agencies and their public and private sector partners within the public health system").

21. C.R.S. §25-1-520 initially became effective August 11, 2020, wherein the state codified authority for syringe exchange programs under Title 25. Colo. Rev. Stat. Ann. § 25-1-520 (2010). Until 2019, clean syringe exchange programs could only operate via local board approval. The 2019 version of §25-1-520, effective on May 23, 2019, added subsection 2.5 allowing clean syringe programs to operate, "in a hospital licensed or certified by the state department pursuant to section 25-1.5-103(1)(a). Colo. Rev. Stat. Ann. § 25-1-520 (2019). Effective September 14, 2020, the General Assembly expanded §520(2.5)(a-c) to include nonprofit organizations with experience operating a clean exchange program and health facilities licensed or certified by the state, both of which may operate a clean syringe exchange program without prior local approval. Colo. Rev. Stat. Ann. § 25-1-520 (2020).

22. Plaintiff admitted Exhibit 4, a declaration authored by Jose Esquibel, the former Vice Chair of Prevention of the Colorado Substance Abuse Trend and Response Task Force and the Director of the Colorado Consortium for Prescription Drug Abuse Prevention and the Associate Director of the Center for Prescription Drug Abuse Prevention in the Skaggs School of Pharmacy and Pharmaceutical Sciences at the University of Colorado Anschutz Medical Campus. Pursuant to Jose Esquibel's declaration, drug overdoses are a significant public health concern, both nationally and in Colorado. *See also* Pl. Ex. 4 at ¶7.

23. As indicated previously, Plaintiffs operate the two syringe exchange programs in Pueblo, which ceased operating with the passing of the Ordinance: Southern Colorado Harm Reduction Association (hereinafter, "SCHRA") and Colorado Health Network.

24. The overall goal of syringe exchange programs is to provide education and medical services for drug users, overdose reversal medications, and reduce the incidence of blood-borne disease by providing safe injection equipment to drug users. These harm reduction programs are proven to reduce overdose risk and save lives. Pl. Ex. 4 at ¶ 5. Mr. Esquibel's declaration demonstrated that syringe exchange programs do not increase substance abuse or crime. *See* also Pl. Ex. 4 at ¶12.

25. Pursuant to Mr. Vigil's declaration, individuals who engage in and use syringe exchange programs and their services are five times more likely to enter drug treatment than those individuals do no not engage with syringe exchange programs. *See also* Pl. Ex. 3 at ¶ 5.

26. Plaintiffs admitted Exhibit 2, a declaration from Judith Solano, the Co-Founder and Chief Executive Officer of SCHRA. Ms. Solano's declaration demonstrated that Colorado provides funding for their services 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). *See also* Pl. Ex. 2 at ¶ 20. The purpose of the contract between SCHRA and the State is to reduce the spread of HIV throughout Colorado. Pl. Ex. 2 at ¶ 21.

27. The Court finds that within Title 25, the state authorizes clean exchange programs to operate pursuant to the requirements set forth in C.R.S. §25-1-520. As such, the Ordinance's ban on exchanging needles within Pueblo city limits implicates the state's interest in promoting public health through the prevention of disease and injury to reduce incidents of chronic disease and conditions. Therefore, the Ordinance implicates a matter of statewide concern.

Extraterritorial Impact of the Regulation at Issue

28. For an ordinance to create an extraterritorial impact, it must have serious consequences to residents outside the municipality and be more than incidental or *de minimus*. *Ibarra*, 62 P.3d at 161.

29. Mr. Esquibel's declaration demonstrated that the passage of the Ordinance increases the risk of outbreak of infectious disease, increased health care costs and increased overdose deaths. Pursuant to Mr. Esquibel's declaration, the closest syringe exchange program is fifty miles away in Colorado Springs, forcing individuals who reside in Pueblo to travel fifty miles in one direction to receive the wide array of services provided by syringe exchange programs. Pl. Ex. 4 at ¶ 20. Mr. Esquibel's declaration further showed that Colorado Springs is considering passing a similar prohibition on syringe service programs. *Id.*

30. The Court finds that the Ordinance, which is a ban on the exchange of needles by syringe exchange programs within Pueblo's city limits, encourages other cities and municipalities to enact their own needle exchange bans, which could ultimately result in a de facto statewide ban. *See Webb*, 295 P.3d at 491. Likewise, the Ordinance creates serious consequences to residents outside of Pueblo, rising to more than an incidental consequence.

31. The Court finds that a disruption to providing syringes to the public increases the risk of infectious disease among individuals who engage in intravenous drug use, therefore increasing the risk and spread of communicable diseases that have historically been spread via used and non-sterile injection equipment. Such risk transcends local borders.

Whether the matter has been traditionally regulated at the state or local level

32. The Court finds that Colorado has a longstanding tradition of regulating public health for citizens within Colorado's borders.

33. The Court finds that the General Assembly's establishment of the State Board of Health and the expansion of the State Board's powers over time demonstrates that Colorado has traditionally had an interest in regulating public health.

34. The Court further finds that by the location of C.R.S. §25-1-520 within Title 25, the "Public Health and Environment Title", the General Assembly has clearly stated that the state has an interest in regulating syringe exchange programs located within the state.

35. Therefore, the Court finds that Colorado has an interest in regulating public health, including syringe exchange programs.

Whether the Colorado Constitution commits the matter to state or local regulation.

36. The Colorado Constitution neither commits the regulation of needle exchange programs to the state nor does it commit regulation of such programs to local governments.

37. Article XX, Section 6 of the Colorado Constitution allows home rule municipalities, "the power to legislate upon, provide, regulate, conduct, and control . . . the imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter." Colo. Const. art. XX, § 6(h).

38. However, "the authority granted to home rule municipalities in Section 6(a) is not unlimited. *City & Cnty. of Denver v. State*, 788 P.2d 764, 770 (Colo. 1990). The enumeration of Section 6 of matters subject to regulation by home rule municipalities is not dispositive of whether the matter is regulated by state or local government. *Id.*

39. The Court finds that Defendant and the state of Colorado both have authority to establish laws that promote the health, safety and welfare of citizens.

THEREFORE, the Court concludes, based on the foregoing factors, that the Ordinance involves matters of mixed state and local concern.

Step 2: Whether the ordinance conflicts with state law

40. In matters of mixed local and state concern, a home-rule municipal ordinance may coexist with a state statute as long as there is no conflict between the ordinance and the statue, but in the event of a conflict, the state statute supersedes the conflicting provision of the ordinance. *Voss v. Lundval Bros*., 830 P.2d 1061, 1066 (Colo. 1992).

41. The test to determine whether a true conflict exists is whether both the ordinance and the state statute contain conditions, express or implied, that are inconsistent and irreconcilable with one another. *C & M Sand & Gravel v. Board of County Commissioners,* 673 P.2d 1013 (Colo.App.1983).

42. If possible, statutes and ordinances should be reconciled, and effect must be given to both. *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996)

43. There are three forms of preemption when assessing local law in relation to state law: express preemption, implied preemption and operational preemption (or "operational conflict"). *Colo. Mining Ass'n v. Bd. Of Cty. Comm'rs*, 199 P.3d 718, 724 (Colo.2009).

44. Express preemption applies when the express language of a state statute indicates state preemption of all local authority over the subject matter. *Board of County Com'rs, La Plata County v. Bowen/Edwards Associates, Inc*., 830 P.2d 1045, 1056-1057 (Colo.1992).

45. Preemption may be inferred if the state statute "impliedly evinces legislative intent to completely occupy the given field by reason of dominant state interest." *Id.*

46. The third type of conflict, operational conflict, "exists when the effectuation of a local interest would materially impede or destroy a state interest, recognizing that a local ordinance that authorizes what state law forbids or that forbids what state law authorizes." *City of Longmont v. Colorado Oil & Gas Ass'n*, 369 P.3d 573, 583 (Colo.2016).

47. The Court examines two of the more recent Colorado Supreme Court cases involving operational conflict, *City of Longmont,* and *Ryles v. City of Englewood*, 364 P.3d 900 (Colo.2016).

48. In *Ryles*, an Englewood ordinance prohibited registered sex offenders and sexually violent predators from residing within a certain number of feet from a school, park, playground, licensed day care center, recreation center, or public swimming pool. Ryles, a convicted sex offender had previously purchased a home in Englewood. He brought suit against the City of Englewood arguing that the local ordinance was preempted by the Colorado Sex Offender Registration Act (CSORA). On appeal, the Colorado Supreme Court began with the test set forth in *Webb* and ultimately found that the matter was of mixed state and local concern. *Id.* at 907. In determining the question of conflict preemption, the Court asked whether the local ordinance forbids something that the state law authorized*. Id.* at 909. The Court found that the Ordinance did not conflict with state law because nothing in the state law suggested that sex offenders are permitted to live anywhere they wish. Specifically, the Court found, "state approval of a sex offender's application does not imply that a city must also approve it." *Id.* Therefore, implementing the state law amounted to approval but not authorization of residency of a sex offender and as such, the ordinance and state law could coexist. The Court held, "[s]tate law and home-rule ordinances conflict where they 'cannot coexist' and are 'irreconcilable.'" *Id.* at. 910.

49. However, in Justice Hood's dissent, joined by Justice Gabriel, Justice Hood would have found that an operational conflict existed between the ordinance and the state statute because the ordinance was a total ban on sex offender residency within Englewood. *Id.* at 911. In reaching this conclusion, Justice Hood described an operational conflict exists where, "the effectuation of a local interest would materially impede or destroy the state interest." *Id.* In Justice Hood's view, "approval by the state, plus disapproval by a locality, equals conflict." *Id.* at 914. In sum, for a local law to be preempted by state law, the state law needs to only be "comprehensive." *Id.*

50. In *City of Longmont*, the citizens of Longmont voted to enact an amendment to the city's home rule charter that banned hydraulic fracturing and storage or disposal of hydraulic fracturing wastes within the city. 369 P.3d at 577. The Colorado Oil & Gas Association and the Colorado Oil and Gas Conservation Commission responsible for implementing the Oil and Gas Conservation Act challenged the amendment citing that Oil and Gas Conservation Act had set forth rules and regulations over numerous aspects of fracking, thus the local law banning fracking conflicts with state law.

51. Longmont argued that the state and local laws did not conflict. *Id.*

52. The court concluded "that in its operational effect, Article XVI [of the Charter], which bans both fracking and the storage and disposal of fracking waste within Longmont, materially impedes the application of state law, namely, the Oil and Gas Conservation Act and the regulations promulgated thereunder. We therefore hold that state law preempts Article XVI." *Id.* at 585.

53. By this holding, the Colorado Supreme Court clarified the Ryles test for operational conflicts. The Colorado Supreme Court set forth a uniform test in which a court must consider "whether the effectuation of a local interest would materially impede or destroy a state interest, recognizing that a local ordinance that authorizes what state law forbids or that forbids what state law authorizes will necessarily satisfy this standard." *Id.* at 583. Further, to answer this question a court must "assess the interplay between the state and local regulatory schemes." *Id*.

54. Ultimately, the Colorado Supreme Court found that the state's regulations on gas operations were extensive and "pervasive" in determining whether the state has an interest in regulating fracking. Therefore, the city's complete ban on fracking and storage and disposal of fracking waste within Longmont prevents operators from using the fracking process even if they abided by the Commission's rules and regulations. *Id.*

STATE STATUTE GOVERNING CLEAN SYRINGE EXCHANGE PROGRAMS

C.R.S. §25-1-520. Clean syringe exchange programs –operation—approval—reporting requirements.

(1) A county public health agency or district public health agency may request approval from its county board of health or district board of health, referred to in this section as the "board", 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 exchange program. Prior to approving or disapproving any such optional program, the board shall consult with the agency and interested stakeholders concerning the establishment of the clean syringe exchange program. Interested stakeholders must include, but need not be limited to, local law enforcement agencies, district attorneys, substance use disorder treatment providers, persons with a substance use disorder in remission, nonprofit organizations, hepatitis C and HIV advocacy organizations, and members of the community. The board and interested stakeholders shall consider, at a minimum, the following issues:

(a) The scope of the problem being addressed and the population the program would serve;

(b) Concerns of the law enforcement community; and

(c) The parameters of the proposed program, including methods for identifying program workers and volunteers.

(2) Each proposed clean syringe exchange program must, at a minimum, have the ability to:

(a) Provide an injection drug user with the information and the means to protect himself or herself, his or her partner, and his or her family from exposure to blood-borne disease through access to education, sterile injection equipment, voluntary testing for blood-borne diseases, and counseling;

(b) Provide thorough referrals to facilitate entry into substance use disorder treatment programs, including opioid substitution therapy;

(c) Encourage usage of medical care and mental health services as well as social welfare and health promotion;

(d) Provide safety protocols and classes for the proper handling and disposal of injection materials;

(e) Plan and implement the clean syringe exchange program with the clear objective of reducing the transmission of blood-borne diseases within a specific geographic area;

(f) Develop a timeline for the proposed program and for the development of policies and procedures; and

(g) Develop an education program regarding the legal rights under this section and section 18-18-428(1)(b), C.R.S., that encourages participants to always disclose their possession of hypodermic needles or syringes to peace officers or emergency medical technicians or other first responders prior to a search.

(2.5)(a) A nonprofit organization with experience operating a clean syringe exchange program or a health facility licensed or certified by the state may operate a clean syringe exchange program without prior board approval.

(b) Prior to operating a clean syringe exchange program pursuant to this subsection (2.5), a nonprofit organization shall consult with interested stakeholders and discuss the issues described in subsection (1) of this section.

(c) Each nonprofit organization and health facility that operates a clean syringe exchange program pursuant to this subsection (2.5) 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.

(3) The board may approve or disapprove the proposed clean syringe exchange program based on the results of the meetings held pursuant to subsection (1) of this section.

(4) If the board approves a clean syringe exchange program that is operated through a contract with a nonprofit organization, the contract shall be subject to annual review and shall be renewed only if the board approves the contract after consultation with the county or district public health agency and interested stakeholders as described in subsection (1) of this section.

(5) One or more counties represented on a district board of health may at any time opt out of a clean syringe exchange program proposed or approved pursuant to this section.

(6) Repealed by Laws 2010, Ch. 272, § 3, eff. July 1, 2014.

25–1–520. Clean syringe exchange programs—operation—approval—testing supplies. (2.3) A clean syringe exchange program operating pursuant to this section may purchase and distribute other supplies and tools intended to reduce health risks associated with the use of drugs, including, but not limited to, smoking materials.

(4.5) A clean syringe exchange program operating pursuant to this section may acquire and use supplies or devices intended for use in testing controlled substances or controlled substance analogs for potentially dangerous adulterants.

CO LEGIS 458 (2024), 2024 Colo. Legis. Serv. Ch. 458 (H.B. 24-1037) (WEST).

WHETHER THE ORDINANCE CONFLICTS WITH STATE LAW

55. Neither party has argued that state law expressly forbids local governments from banning the exchange of needles via syringe exchange programs. Likewise, neither party argues that the state statue impliedly evinces a legislative intent to preempt the Ordinance, nor are there grounds for a conclusion that state law either expressly or impliedly preempts the Ordinance. Therefore, neither express nor implied preemption apply in this case. Thus, the Court must determine whether an operational conflict between the Ordinance and state statutes exists.

56. Contrary to Defendant's argument in the *Response*, this Court finds that the beyond a reasonable doubt standard is not applicable to the determination of preemption. As stated in Plaintiff's *Reply Brief*, the Colorado Supreme Court in *Longmont* declined to apply the beyond a reasonable doubt standard to preemption claims as preemption is a determination as a matter of law. 369 P.3d at 578.

57. Therefore, the Court must determine whether the Ordinance that prohibits the establishment, operation, use or participation in syringe exchange or distribution programs within the City of Pueblo would materially impede or destroy a state interest that is otherwise authorized by C.R.S. §25-1-520 and/or C.R.S. §12-30-110, recognizing the local ordinance may forbid what state law authorizes. *See Longmont* 396 P.3d at 583.

58. Defendant argues that there is no conflict between the Ordinance and C.R.S. §25-1-520 because the statute permits but does not mandate the establishment of local syringe exchange programs.

59. Defendant argues that C.R.S. §25-1-520 does not mandate that a city or county engage in needle exchange programs; rather, C.R.S. §25-1-520 gives a county or city the option to allow operation of such programs within their territorial limits. Syringe exchange programs may only operate after considering stakeholder interests. There is nothing in the statute prohibiting a municipality from opting out of the county health board's decision. Defendant argues that subsection (1),(2.5) and (5) of §520 sets up a specific collaborative state guided but locally controlled process to decide whether to allow syringe exchange programs.

60. Defendant further argues that §520(2.5) should not be read as obviating §520(5). Defendant argues that §520(2.5) does not shield a syringe exchange program that operates pursuant to §520(2.5) from all regulation by municipalities.

61. Plaintiff argues that §520(5) applies only to those syringe exchange programs the local board previously approved pursuant to §520(1) and not to syringe exchange programs that are able to bypass local county board approval to operate pursuant to the requirements set forth in §520(2.5).

62. Subsection (5) of §520 reads, in full as follows: "One or more counties represented on a district board of health may at any time opt out of a clean syringe exchange program ***proposed or approved*** pursuant to this section." (Emphasis added).

63. C.R.S. §25-1-520 allows two avenues in which a syringe exchange program can operate. Subsection (1) of §520 requires local board approval prior to operating a syringe exchange program within a county, whereas §520(2.5) requires either a non-profit with experience operating a clean syringe exchange program or a health facility licensed or certified by the state to operate a clean syringe program without prior board approval.

64. The Court finds that the "pursuant to this section" language in §520(5) applies to §25-1-520(1). Only §520(1) requires a proposal and subsequent approval from a county or district board of health. It is undisputed that a program operating pursuant to §520(2.5) does not require a proposal and subsequent approval from a county board of health.

65. The Court further finds that §520(5) applies to "counties represented on a district board of health", and not municipalities like Pueblo. Section 520(3) applies to stakeholder meetings convened by local health boards, "pursuant to subsection (1) of this section" meaning county boards of health, not cities like Defendant. While the City Council could be considered a "stakeholder" within the context of §520(3), it does not mean that City Council holds the power to unilaterally opt out of needle exchange programs located within Pueblo.

66. The Court finds that §520(5) is clear and only applies to clean syringe exchange programs proposed or approved pursuant to §520(1).

67. Defendant next argues that the Ordinance is "narrowly targeted to prohibit the free distribution of hypodermic needles and syringes within City limits." *Response* p. 6. Specifically, Defendant argues that the Ordinance does not include within its definition of "syringe service programs," language that prohibits needle exchange programs within Pueblo from providing, "the education and counseling components required by §520, such as referrals to treatment programs and mental health services as well as social welfare and health promotion and safety protocols and classes." *Response* p. 5. In making this argument, Defendant acknowledges that §520(2)(a)-(g) sets forth the minimum requirements that §520 imposes on the operation of any clean syringe exchange program to operate under the statute.

68. The Court finds that C.R.S. §25-1-520(2.5) expressly allows an experienced syringe exchange program or health facility certified by the state to operate these programs without local approval. In fact, the Ordinance itself acknowledges this. *See* Pl. Ex. 1, p. 3.

69. The Court finds that §520(2.5) allows a "nonprofit organization with experience operating a clean syringe exchange program or a health facility licensed or certified by the state," the ability to operate a clean syringe exchange program "without prior board approval." Defendant did not argue - nor does the Court find - that Plaintiffs are not qualified nonprofit organizations that are allowed to operate clean syringe programs pursuant to §520(2.5).

70. The Ordinance prohibits, "the establishment, operation, use or participation in syringe exchange or distribution programs within the City of Pueblo." Specifically, the Ordinance defines "Syringe service program" to mean, "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. 'Syringe services program' does not include any facility, place, or building providing diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation."

71. The Court finds that §520(2)(a)-(g) sets forth the minimum requirements that a proposed clean syringe exchange program must have in order to operate as a needle exchange program, subject to county board of health or district board of health approval.

72. Specifically, subsection (2)(a) states that a clean syringe program must have the ability to, "***Provide an injection drug user with*** the information and the means to protect himself or herself, his or her partner, and his or her family from exposure to blood-borne disease through ***access to*** education, ***sterile injection equipment***, voluntary testing for blood-borne diseases, and counseling." (Emphasis added).

73. H.B. 24-1037 approved on June 6, 2024, also adds subsection (2.3) which allows a clean syringe exchange program to "purchase ***and distribute*** other supplies and tools intended to reduce health risks associated with the use of drugs, including, but not limited to, smoking materials." (Emphasis Added). Additionally, The Act contains a safety clause stating, "The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions."

74. The Court finds that one of the specified minimum requirements a clean syringe exchange program must have to operate under the statute is the ability to provide an injection drug user access to sterile injection equipment. Without this minimum statutory requirement that must be met, a clean syringe exchange program cannot operate as a clean exchange program.

75. As mentioned previously,§ 520 outlines two separate paths for syringe exchange programs to operate: subsection (1) requires county or district board approval and oversight, and subsection (2.5) requires either experience operating a syringe exchange program or state certification.

76. The Court's reading of §520(2.5) is that non-profits with experience operating clean exchange programs or a facility licensed or certified by the state have already met the minimum requirements outlined in §520(2)(a-g) and therefore can bypass approval from a country board of health or district board of health to operate within a city.

77. Therefore, to operate as a clean needle exchange program pursuant to the §25-1-520, **all** clean syringe exchange programs (prior board approval or not) must meet the requirements as set forth in §520(2)(a-g).

78. Defendant further argues that nothing within §520(1)(a) allows "distribution" of needles, rather it allows for syringe exchange programs to provide "access to sterile injection equipment." Defendant argued at the hearing that "access to sterile injection equipment" does not unambiguously require a syringe exchange program to distribute needles. However, when the Court asked Defendant to

provide an example of how a clean syringe exchange program would be able to provide access to sterile injection equipment without distributing needles, Defendant did not provide the Court with an example. Defendant instead argued that state statute and the Ordinance could coexist because the Ordinance allows Plaintiffs to provide treatment and prevention to individuals. However, Defendant was unable to answer the question of how a clean syringe program would be able to abide by the minimum requirement of providing access to sterile injection equipment to individuals without distributing needles. When the Court posed the same question to Plaintiff, Plaintiff agued, "they can't."

79. Like the blanket ban on fracking and disposal of fracking waste in *Longmont,* the Pueblo Ordinance specifically prohibits, "***any and all*** needle and syringe exchange or distribution programs or projects whereby hypodermic needles and/or syringes are exchanged or dispensed." The language of the Ordinance reads as a blanket ban on a syringe exchange program's ability to provide individuals access to syringes. The Court finds that "access to sterile syringe equipment" necessarily means access to sterile needles via distribution. The Court was not presented with any other way a sterile syringe program could meet the minimum requirement of providing access to sterile injection equipment without distributing needles. The only possible way the Court could perceive of a way for syringe exchange programs to provide access to needles without "distributing" or "exchanging needles" is to provide a safe injection site which is not the purpose nor function of a clean syringe exchange program nor have safe injection sites been approved by the General Assembly in Colorado.

80. Providing an injection drug user access to sterile injection equipment is a minimum requirement that all syringe exchange programs must have to operate pursuant to state statute. The Court further finds that leaving the Ordinance in effect would materially impede or destroy the state's clear interest in allowing clean syringe programs to operate without prior board approval. Like in *Longmont*, even if Plaintiffs abide by the state rules and regulations pursuant to statute, Plaintiff's cannot meet the state's minimum requirements to operate because the language of the Ordinance renders C.R.S. §25-1-520 superfluous. *See Longmont*, 369 P.3d at 585.

81. Simply put, Plaintiff's cannot operate a clean needle exchange program without the ability to exchange needles. Approval to operate clean syringe exchange programs by way of C.R.S. §25-1-520, plus disapproval by Pueblo's Ordinance, equals a conflict. *See Ryles* 364 P.2d at 915.

82. The Court's analysis would likely be different if the Ordinance's language was narrowly tailored to place limitations or regulations on a program's ability to exchange needles within Pueblo without creating a total ban on exchanging needles. For example, the Ordinance could have regulated a one for one exchange of needles or could have tailored the language within the Ordinance to prohibit syringe service programs from operating within a certain distance from public schools or parks, to name a few examples. However, that is not the case.

83. The Court finds that the language of the Ordinance is overbroad and is incongruent with C.R.S. §25-1-520. The Ordinance's language is an outright ban on the exchange of needles by Plaintiffs within Pueblo. The Ordinance and C.R.S. §25-1-520 conflict in such a way that the two cannot coexist.

84. Therefore, the Court finds that an operational conflict exists between the C.R.S. §25-1-520 and the Ordinance.

85. Plaintiffs further argue that C.R.S. §12-30-110(1) expressly authorizes harm-reduction organizations like Plaintiffs, to dispense "opioid antagonists" which are defined to include naloxone. Specifically, Plaintiffs argue that because the Ordinance prohibits all distribution of needles and or syringes by syringe exchange programs and authorizes criminal penalties for engaging in such services, it conflicts with C.R.S. §12-30-110. Defendant argues that nothing in the Ordinance bans or criminalizes the administration of naloxone. The Ordinance forbids exchange of needles by syringe exchange programs within the city of Pueblo and does not ban distribution or administration of naloxone at large. In support, Defendant argues that there are a variety of ways naloxone can be administered.

86. However, having found an operational conflict exists between C.R.S. §25-1-520 and the Ordinance, the Court declines to consider whether the Ordinance and C.R.S. §12-30-110 conflict.

THEREFORE, THE COURT ORDERS:

87. Based on the foregoing analysis, and C.R.C.P. 57, this Court Orders that Pueblo Ordinance No. 10698 is preempted by state law, specifically C.R.S. §25-1-520, and is therefore invalid. Defendant is prohibited from enforcing the Ordinance.

DATED: August 22, 2024.

BY THE COURT:

Tayler Thomas

Tayler M. Thomas
District Court Judge