

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TEVA PHARMACEUTICALS USA, INC.,  
MCKESSON CORPORATION,  
AMERISOURCEBERGEN DRUG  
CORPORATION, CARDINAL HEALTH,  
INC., CARDINAL HEALTH 6 INC.,  
CARDINAL HEALTH TECHNOLOGIES  
LLC, CARDINAL HEALTH 108 LLC d/b/a  
METRO MEDICAL SUPPLY,  
CEPHALON, INC., ENDO HEALTH  
SOLUTIONS INC., ENDO  
PHARMACEUTICALS INC., ALLERGAN  
USA, INC., ALLERGAN FINANCE, LLC  
f/k/a ACTAVIS, INC. f/k/a WATSON  
PHARMACEUTICALS, INC., WATSON  
LABORATORIES, INC., ACTAVIS  
PHARMA, INC. f/k/a WATSON  
PHARMA, INC., ACTAVIS LLC, and  
MALLINCKRODT, LLC,

Petitioners,

v.

SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, in and for  
the County of Washoe, and the  
HONORABLE BARRY L. BRESLOW,  
DISTRICT JUDGE,

Respondents,

and

CITY OF RENO,

Real Party in Interest.

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District Court Case No.

CV18-01895

**REAL PARTY IN INTEREST CITY OF RENO'S ANSWER TO THE  
PETITION FOR THE WRIT OF MANDAMUS**

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## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Real Party in Interest, CITY OF RENO, has been represented by the law firm EGLET ADAMS and the law firm of BRADLEY, DRENDEL & JEANNEY.

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## **Table of Contents**

TABLE OF AUTHORITIES.....	v
NRAP 21(A)(3) STATEMENT OF ISSUES PRESENTED .....	ix
I. INTRODUCTION .....	1
II. RESPONSE TO PETITIONERS’ STATEMENT OF FACTS.....	2
A. The City of Reno’s Lawsuit Seeks Recovery of Damages Suffered by the City of Reno.....	2
B. Nevada’s Attorney General Seeks Specific Statewide Remedies That Do Not Conflict With The Remedies Sought By The City of Reno.....	3
III. STATEMENT REGARDING WHETHER THE WRIT SHOULD ISSUE...4	
IV. NEVADA’S STATUTES DO NOT PREVENT THE CITY OF RENO FROM BRINGING THIS LAWSUIT. ....	5
A. Nevada’s Modified Dillon’s Rule Does Not Prevent the City from Initiating Litigation.....	8
B. Interpreting NRS 268.001. ....	10
C. The City’s Lawsuit is not Equivalent to Creating Regulations, Ordinances, or Laws. ....	13
D. The Law Does Not Support Applying Dillon’s Rule and NRS 268.001 to Prohibit the City’s Litigation.....	15
V. THE CITY OF RENO’S CLAIMS FALL WITHIN THE DEFINITION OF “MATTER OF LOCAL CONCERN.” .....	16
A. The Opioid Epidemic Uniquely Impacts the City of Reno. ....	20
B. The City of Reno’s Claims are not Excluded as Matters of Local Concern under NRS 268.003(1)(c). ....	22
C. Issues of Public Health, Safety, and Welfare are Matters of Local Concern. ....	25
VI. CONCLUSION.....	26
VERIFICATION .....	28
CERTIFICATE OF COMPLIANCE .....	29
CERTIFICATE OF SERVICE .....	31

## **Table of Authorities**

### **Cases**

<i>BMW v. Gore</i> , 517 US 559 (1996).....	13
<i>Board of Comm’rs v. Love</i> , 470 P.2d 861, 172 Colo 121 (1970) .....	15, 16
<i>Chur v. Eighth Judicial Dist. Ct.</i> , 136 Nev. Adv. Op. 7, 458 P.3d 336 (2020).....	5
<i>Cippolone v. Ligget</i> , 505 US 504 (1992) .....	14
<i>Commonwealth v. County Bd.</i> , 217 Va. 558 (Va. Sup. Ct. 1977) .....	7
<i>Cote H. v. Eighth Judicial Dist. Ct.</i> , 124 Nev. 36, 175 P.3d 906 (2008) .....	10
<i>Early Estates v. Housing Bd. of Review</i> , 174 A.2d 117 (R.I. 1961).....	6
<i>Flores v. Las Vegas-Clark Cty. Library Dist.</i> , 432 P.3d 173 (Nev. 2018) .....	7
<i>Homebuilders Ass’n v. City of Charlotte</i> , 336 N.C. 37 (N.C. Sup. Ct. 1994).....	7
<i>Int’l Game Tech., Inc. v. Second Judicial Dist. Ct.</i> , 124 Nev. 193, 179 P.3d 556 (2008) .....	11
<i>Kansas-Lincoln, L.C. v. Arlington County Bd.</i> , 66 Va. Cir. 274 (Va. Cir. 2004).....	7
<i>Leven v. Frey</i> , 123 Nev. 399, 168 P.3d 712 (2007) .....	11
<i>Logie v. Town of Front Royal</i> , 58 Va. Cir. 527 (Va. Cir. 2002).....	7
<i>McKay v. Bd. of Supervisors</i> , 102 Nev. 644, 730 P.3d 438 (1986) .....	11
<i>New York Times v. Sullivan</i> , 376 U.S. 254 (1964) .....	13
<i>Premium Standard Farms v. Lincoln Twp.</i> , 946 S.W.2d 234 (Mo. 1997) .....	15

<i>Richardson Constr., Inc. v. Clark County Sch. Dist.</i> , 123 Nev. 61, 156 P.3d 21 (2007)	
.....	19
<i>Ronnow v. City of Las Vegas</i> 57 Nev. 332, 65 P.2d 133 (1937) .....	9, 10
<i>San Diego Building Trades Council v. Garmon</i> , 359 US 236 (1959) .....	13
<i>State Dep’t of Personnel v. Colorado State Personnel Bd.</i> 722 P.2d 1012 (1986).	15

## **Statutes**

268.001(5), (6) .....	10
268.001(6)(b) .....	23
268.003(2) .....	30
268.0957 .....	15
NRS 266.190(2)(e) .....	17
NRS 268.001 .....	passim
NRS 268.001(1) .....	14
NRS 268.001(4), (6)(b) .....	10
NRS 268.001(5) .....	21
NRS 268.001(6) .....	14
NRS 268.003 .....	21
NRS 268.0035 .....	10
NRS 268.0035(3) .....	11, 14
NRS 268.008 .....	14

NRS 268.018 .....	14
NRS 268.019 .....	14
NRS 268.0191 .....	15
NRS 268.088 .....	15
NRS 268.090 .....	15
NRS 268.095 .....	15
NRS 268.098 – 268.105 .....	15
NRS 268.4415 .....	15
NRS 268.442 .....	15
NRS 268.525 – 268.530 .....	15
NRS 353.249 .....	25
NRS 268.003(2) .....	30

## **Treatises**

Clayton P. Gillette, IN PARTIAL PRAISE OF DILLON’S RULE, OR, CAN PUBLIC CHOICE THEORY JUSTIFY LOCAL GOVERNMENT LAW, 67 Chi.-Kent L. Rev. 959, 963 (1991) .....	5, 6
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## **Other Authorities**

Reno City Charter, Chapter 661, Statutes of Nevada 1971, Article I, Section 1.010

..... 14, 18

Reno City Charter, Chapter 661, Statutes of Nevada 1971, Article I, Section 1.019

.....18



**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW PURSUANT  
TO NRAP 21(a)(3)(C)**

The Writ raises the issue of whether NRS 268.001 and the common law doctrine on which it is based can be used to prevent the City of Reno from initiating and maintaining litigation to recover damages caused by the wrongdoing of others.

If NRS 268.001 can be utilized to deny the City of Reno the ability to pursue litigation for damages suffered by the City, the secondary issue is whether the impact of the opioid epidemic on the City of Reno can be considered a “matter of local concern” as that term is used in NRS 268.001, NRS 268.003, and 268.0035 thereby granting the City of Reno the power necessary to initiate and maintain the litigation currently proceeding in the Second Judicial District Court.

## **I. INTRODUCTION**

The City of Reno filed its lawsuit in the Second Judicial District Court against Petitioners to recover damages caused by Petitioners. Petitioners continue to argue that they can only be subject to such litigation initiated by the Nevada Attorney General. This argument was rejected by the Second Judicial District Court.<sup>1 2</sup> Petitioners' argument is based on an assumption that NRS 268.001 and Dillon's Rule were created to prevent a city from suing for damages the city has suffered as the result of another's wrongdoing. This assumption disregards the history of Dillon's Rule, the statutes at issue, and the language of statutes within the same chapter.

Dillon's Rule was not intended to, and does not, limit a city's ability to initiate litigation. Nevada's statutes and the Reno City Charter grant the City the power to create programs and expend funds as necessary to further the operation of the government and benefit the City's residents. It is only reasonable that the City would have the power to initiate litigation to recover damages caused to those very programs and agencies.

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<sup>1</sup> *See* Omnibus Order Granting in Part and Denying in Part Defendants' Motions to Dismiss; and Granting Leave to Amend. Pet. App., Vol. XXI, PA03035-PA03052.

<sup>2</sup> These arguments were raised by the same Petitioners in, and were rejected by, the Eighth Judicial District. *See* RPI App., Vol. I at RPI0001-RPI0010; *see also* RPI App., Vol. I at RPI0011 – RPI0019.

Even assuming that Dillon’s Rule and NRS 268.001 could be applied to bar the City’s litigation, it would fall into the “local concern” exception contained within the statute. Although the opioid epidemic is nationwide, its impact on the City of Reno is unique to the City.

The Second Judicial District Court conducted a complete and thorough review of Dillon’s Rule, the applicable statutes, the Reno City Charter, and properly evaluated all arguments pursuant to a motion to dismiss standard. Petitioners have not demonstrated that they are entitled to the relief sought in their Writ. Thus, the City of Reno respectfully requests that this Honorable Court deny Petitioners’ Writ and affirm the ruling of the Second Judicial District Court.

## **II. RESPONSE TO PETITIONERS’ STATEMENT OF FACTS.**

### **A. The City of Reno’s Lawsuit Seeks Recovery of Damages Suffered by the City of Reno.**

The opioid lawsuits filed in the State of Nevada differ in three (3) significant ways. First, the defendants implicated are different in every case. Second, the agencies and programs that have been impacted by the opioid epidemic differ for each governmental entity that brings a lawsuit. Third, each governmental entity has incurred its own, unique damages.

In its Complaint, the City of Reno seeks recovery for the substantial costs it incurred due to Petitioners’ actions. *See* Pet. App., Vol. II, at PA00175-00176. The

City seeks only to hold Petitioners accountable for the “misrepresentations and the harms *caused to the City of Reno* as well as *its residents* thus giving rise to this lawsuit.” *Id.* at PA00206 (italics added).<sup>3</sup> No other entity is better situated to bring these claims on the City’s behalf as no other entity has been burdened with the City’s increased costs. The law does not support preventing the City from recovering these costs. The City’s claims against Petitioners and the damages caused by Petitioners are the only matters at issue here. These legal claims and damages are not a state interest nor are they the interest of any other governmental entity. The City of Reno should be permitted to pursue its litigation.

**B. Nevada’s Attorney General Seeks Specific Statewide Remedies That Do Not Conflict With The Remedies Sought By The City of Reno.**

On June 17, 2019, Attorney General Ford announced that the State of Nevada filed an expanded complaint on behalf of the State against the multiple conspirators of the opioid crisis. *See* RPI App., Vol. I at RPI0020-RPI0022. The Attorney General explicitly acknowledged that other Nevada entities have and will pursue similar litigation, stating “[w]hile each has its own distinct damages and needs,

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<sup>3</sup> The City of Reno filed a Second Amended Complaint on May 14, 2020, which includes additional factual allegations against the named defendants, but contains the same claims for damages as set forth in the First Amended Complaint. *See* RPI App., Vol. I at RPI0023-RPI0199.

entities across the state are united in seeking justice for those who have suffered at the hands of defendants.” *See* RPI App., Vol. I at RPI0020-RPI0022. The State seeks an injunction against Petitioners, as well as fines, penalties, future costs, punitive damages, and other relief related to the State’s unique claims for violation of the Nevada Deceptive Trade Practices Act and the Nevada False Claims Act. As Reno Mayor Hillary Schieve stated, “Today we stand united as a state in our goal to stop harm in our communities.” *See* RPI App., Vol. I at RPI0021. The State’s case does not conflict with the City’s litigation.

Based on the City of Reno’s arguments forwarded at the lower court, the District Court Judge’s order, and the arguments contained herein, Real Party in Interest, City of Reno, respectfully requests that this Court deny Petitioners’ Writ.

### **III. STATEMENT REGARDING WHETHER THE WRIT SHOULD ISSUE.**

The District Court Judge properly denied Petitioners’ motion to dismiss. However, the City recognizes that the issue presented in the Writ regarding Dillon’s Rule and NRS 268.001 is one of first impression and, thus, is “an important issue of law need[ing] clarification,” the resolution of which would promote judicial economy in the City’s case, as well as those filed by other governmental entities in the state. *Chur v. Eighth Judicial Dist. Ct.*, 136 Nev. Adv. Op. 7, 458 P.3d 336, 339

(2020) The City understands why this Court would review this Petition for Writ of Mandamus, but respectfully requests that upon such review, the Writ be denied.

#### **IV. NEVADA’S STATUTES DO NOT PREVENT THE CITY OF RENO FROM BRINGING THIS LAWSUIT.**

Petitioners’ Writ centers around the question of whether NRS 268.001 authorizes the City to pursue its case against Petitioners. Petitioners’ arguments are premised on an assumption that NRS 268.001 was intended to grant or limit a city’s power to file lawsuits. This assumption is unsupported by the historical application of Dillon’s Rule on which NRS 268.001 is based. Dillon’s Rule, which originated in the 1870s, “limits localities to the exercise of those powers expressly delegated to them by the state legislature or necessary to implement or necessarily implied from express legislative grants.” Clayton P. Gillette, *IN PARTIAL PRAISE OF DILLON’S RULE, OR, CAN PUBLIC CHOICE THEORY JUSTIFY LOCAL GOVERNMENT LAW*, 67 Chi.-Kent L. Rev. 959, 963 (1991) (available at <http://scholarship.kentlaw.iit.edu/cklawreview/vol67/iss3/14>, accessed on June 15, 2020).

Dillon’s Rule arose in a time where there were no legal constraints on municipalities, leading them to incur “substantial debts for the questionable public function of financing railroad companies and other public improvements that

subsequently failed, leaving taxpayers in fiscal straits.” Gillette, *IN PARTIAL PRAISE OF DILLON’S RULE*, at 963. As of 1991,

[C]ourts [had] invoked the doctrine of limited municipal powers to achieve results as widespread as invalidation of municipal contracts to purchase energy capacity in a decision that led to the largest default of municipal bonds in history, nullification of an ordinance requiring bottle deposits, and invalidation of municipal restrictions on the sale of condominium units.

*Id.* at 964-965. Jurisdictions debate the viability of Dillon’s Rule, particularly as it has become the job of the courts to determine whether there has been an express or implied grant of power to a municipality. *Id.* at 966; *see Early Estates v. Housing Bd. of Review*, 174 A.2d 117 (R.I. 1961) (in which the court interpreted the same statute to allow a city council to require hallway lights in a condominium building, but could not require that hot water be provided).

Dillon’s Rule has been invoked in cases arising out of ordinances, regulations, and laws created by local governments. Neither the history of Dillon’s Rule nor the cases in which it is discussed support Petitioners’ position that the Rule denies a city the ability to bring a lawsuit to recoup damages caused by a third-party. In Virginia, a strict Dillon’s Rule jurisdiction, the court concluded that absent express statutory authority, a local government could not recognize a labor organization as the exclusive representative of a group of public employees or enter into binding

contracts regarding employment terms with the organization. *Commonwealth v. County Bd.*, 217 Va. 558, 559, 576-577 (Va. Sup. Ct. 1977), *but see Logie v. Town of Front Royal*, 58 Va. Cir. 527, 535 (Va. Cir. 2002) (a local government can use any reasonable method it deems appropriate to implement a power conferred by statute).<sup>4</sup>

Nevada's Supreme Court has not issued an opinion relying on Dillon's Rule to find that a governmental entity lacked authority to file a lawsuit to recover damages it incurred. The Court has recognized that "under Dillon's Rule, a local government can exercise powers that are necessarily or fairly implied in or incident to the powers expressly granted by the Legislature." *Flores v. Las Vegas-Clark Cty. Library Dist.*, 432 P.3d 173, 178 n.7 (Nev. 2018).

The Utah Supreme Court discussed the problems created by a strict construction of Dillon's Rule concerning the validity of a county created ordinance. *See State v. Hutchinson*, 624 P.2d 1116 (Ut. Sup. Ct. 1980). In its opinion, the court analyzed the history of Dillon's Rule and the growing criticism concerning the Rule.

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<sup>4</sup> *See also Kansas-Lincoln, L.C. v. Arlington County Bd.*, 66 Va. Cir. 274 (Va. Cir. 2004) (the plaintiff requested declaratory judgment against the County Board, declaring that amendments made by the board to a General Land Use Plan were invalid and unenforceable under Dillon's Rule); *Homebuilders Ass'n v. City of Charlotte*, 336 N.C. 37, 38 (N.C. Sup. Ct. 1994) (the homebuilders association requested an order declaring the city's imposition of user fees invalid because the city had not been explicitly granted the power to impose such fees and, thus, under Dillon's Rule, the fees were improper).



The court stated, “once valid policy reasons supporting the rule . . . have largely lost their force and that effective local self-government, as an important constituent part of our system of government, must have sufficient power to deal effectively with the problems with which it must deal.” *Id.* at 1120.

The court continued, “[t]he wide diversity of problems encountered by county and municipal governments are not all, and cannot realistically be, effectively dealt with by a state legislature which sits for sixty days every two years to deal with matters of general importance.” *Id.* at 1122. It also concluded that neither the state nor the courts should interfere with any ordinance enacted by a local government so long as it is not arbitrary and is not directly prohibited by, or inconsistent with, state or federal laws. *Id.* at 1126.

**A. Nevada’s Modified Dillon’s Rule Does Not Prevent the City from Initiating Litigation.**

In 2015, Nevada’s Legislature codified Dillon’s Rule in NRS 268.001, with important modifications necessitated by the problems associated with a strict construction of the Rule. For example, NRS 268.001(5) and (6) provide the governing body of a city “with the appropriate authority to address matters of local concern for the effective operation of city government.” Any doubt as to whether the city government has the power to address a matter of local concern, is resolved in favor of the city government barring the existence of contrary Legislative intent,

which is the opposite of the presumption under a strict application of Dillon's Rule. NRS 268.001(4), (6)(b). The same language is embodied in NRS 268.0035, which sets forth the powers of the governing body; the methods by which the governing body can exercise its powers; and the prohibitions on a city government's powers.

Moreover, NRS 268.0035(3) describes that a city government "shall not:" 1) condition or limit its own civil liability unless agreed upon in a contract; 2) prescribe the law governing civil actions between private persons or entities; 3) impose duties on other governmental entities absent an agreement; 4) impose a tax; or 5) order or conduct an election. NRS 268.0035(3). The Legislature did not prohibit cities from filing lawsuits to recover their damages.

Dillon's Rule and NRS 268.001 do not hinder a city's ability to file a lawsuit such as the one at issue here. Rather, the right of a city to bring a lawsuit to protect city inhabitants, agencies, and programs is "fairly implied" in NRS Chapter 268. *See Flores*, 432 P.3d at n.7. So long as the City's litigation does not fit into one of the prohibited forms of action identified in NRS 268.0035(3) and does not otherwise infringe on any state regulations, there is no reason to prevent the City from moving forward with this litigation.

Petitioners cite to *Ronnow v. City of Las Vegas* in support of their interpretation of Dillon's Rule. *See* Petition for Writ, p. 8; *Ronnow v. City of Las Vegas* 57 Nev. 332, 65 P.2d 133 (1937). *Ronnow*, however, did not involve a city's

attempt to bring litigation to recover damages. 57 Nev. at 334, 65 P.2d at 135. Instead, *Ronnow* involved a lawsuit by a Las Vegas resident to enjoin a bond issued by the City to acquire and/or construct a municipal power distribution system. *Id.* at 341, 136. The Court found that the city had the power to issue the bonds because the statutes allowed cities to provide and establish public utilities to provide electricity to residents. *Id.* at 345-352, 137-140. The *Ronnow* Court did not consider whether Dillon’s Rule limits the ability of a city to file litigation. Additionally, the opinion was issued 78 years before NRS 268.001 was enacted.

**B. Interpreting NRS 268.001.**

The language of NRS 268.001 is not unambiguous as Petitioners claim in their brief. Petitioners argue that the plain language of NRS 268.001 prevents a city from instituting litigation. *See* Petition for Writ, at p. 10-11. In support of the argument, Petitioners cite to *Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 40-41, 175 P.3d 906, 909 (2008) wherein the Court considered whether “person” as used in sexual assault statutes would include a minor. However, in *Cote*, the relevant statutes defined “person,” while the word at issue here – “power” - is not defined in NRS 268 or elsewhere in Nevada’s statutes.

Ambiguous statutory language is interpreted by “examining the context and spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and policy may be involved as an interpretive aid.” *Leven v. Frey*,

123 Nev. 399, 405, 168 P.3d 712, 716 (2007), quoting *McKay v. Bd. of Supervisors*, 102 Nev. 644, 650-651, 730 P.3d 438, 443 (1986). A statute should not be interpreted in such a way to lead to an unreasonable result where another, alternative interpretation would produce a reasonable result. *Int'l Game Tech., Inc. v. Second Judicial Dist. Ct.*, 124 Nev. 193, 202, 179 P.3d 556, 561 (2008).

Dillon's Rule was created to prevent city and municipal governments from taking actions contradictory to state or federal law. A city's ability to bring a lawsuit to recover its damages is not discussed in the historical texts regarding Dillon's Rule. Similarly, in Nevada, there have been no cases in which a city was prevented from initiating litigation based on Dillon's Rule.

The Legislature specifically referenced Dillon's Rule in NRS 268.001(1) as well as "treatises on the law governing local governments," which set forth the "common-law rule defining and limiting powers of local governments." Thus, when the Legislature enacted NRS 268.001, it was under the historical context for the creation and application of Dillon's Rule, which does not address the authority to initiate litigation. The Legislature specifically expanded Dillon's Rule to grant cities the power to address matters of local concern by adopting ordinances and implementing city programs and functions. NRS 268.001(6)(a). NRS 268's language supports the City's position that Dillon's Rule limits the creation of ordinances and regulations, but not the ability to file lawsuits. Moreover, a city's

ability to file a lawsuit is not contained within the enumerated list of prohibited city action in NRS 268.0035(3).

“Power” is used throughout NRS Chapter 268. The “general powers” of a city include having and using a seal; purchasing property; selling property; determining what are public uses; acquiring, owning, and operating a public transit system; and receiving gifts and donations of property. NRS 268.008. NRS 268.018 describes the power to establish misdemeanors by ordinance; NRS 268.019 describes the power to impose civil liability instead of criminal sanctions; NRS 268.0191 describes the power to use certain land for community gardening; and NRS 268.088 describes the power of a city to impose terms and conditions on franchises. Additionally, NRS 268.090 grants cities the power to license and regulate the sale of liquor. Cities are also granted the power to require licenses, impose license taxes, and require quarterly reports from businesses and occupations. *See* NRS 268.095 and 268.0957.<sup>5</sup>

“Power” is used throughout NRS Chapter 268 to refer to the ability of a city to create, regulate, and tax. “Power” should not be interpreted to reference a city government’s ability to file a lawsuit. Such an interpretation is contradictory to the

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<sup>5</sup> Other uses of “power” in NRS Chapter 268: subordinate land use power (NRS 268.098 – 268.105); powers related to preserving endangered species (NRS 268.4415); powers related to the creation of transportation districts (NRS 268.442); exercise of powers by cities as it relates to city economic development revenue bond law (NRS 268.525 – 268.530).

meaning of “power” throughout NRS Chapter 268 and is inconsistent with the historical application of Dillon’s Rule.

**C. The City’s Lawsuit is not Equivalent to Creating Regulations, Ordinances, or Laws.**

Relying on dicta from two (2) United State Supreme Court cases that do not discuss Dillon’s Rule or powers of local governments, Petitioners argue that the City’s lawsuit is akin to the City creating regulations. In *BMW v. Gore*, 517 US 559 (1996), the Court considered the constitutionality of a punitive damages award in a case regarding fraud in the sale of a vehicle. The Court concluded that the plaintiff’s punitive damage award violated the Due Process Clause of the 14th Amendment and could not be used to punish the defendant’s lawful conduct in other states. *BMW*, 517 US at 568, 572.

Petitioners rely on a footnote in the *BMW* case discussing a state exercising power through a jury’s application of state law, which refers to the plaintiff’s attempt to change BMW’s policies nationwide through one state case. See Petition for Writ, at p. 11. The two cases relied upon by the *BMW* Court in the footnote are also unrelated to the issues presented here. One, *New York Times v. Sullivan*, 376 U.S. 254 (1964), considered the constitutionality of the lower court’s decision with regard to free speech, and the other, *San Diego Building Trades Council v. Garmon*, 359 US 236 (1959), considered issues of federal preemption. Similarly, the *Cippolone*

*v. Ligget*, 505 US 504 (1992), case cited by Petitioners addressed an issue of federal preemption as it related to states making laws regarding tobacco advertising, which was specifically barred by the federal Act at issue. *Cippolone*, 505 US at 515. Each of these cases, *BMW*, *New York Times*, *Garmon*, and *Cippolone*, considered the impact of a state court's decision on the laws of other states, federal laws, and the Constitution. None of the cases considered the viability of a lawsuit filed by a city or the application of Dillon's Rule.

Petitioners further take issue with the District Court's reliance on NRS 266.190(2)(e), which permits a mayor to initiate litigation to enforce a city contract. *See* Petition for Writ, at p. 13-14. While the City understands the District Court's reasoning for citing to NRS 266.190(2)(e), that statute does not apply to the City. The provisions of Chapter 266 do not apply to "incorporated cities in the State of Nevada organized and existing under the provisions of any legislative act or special charter." NRS 266.005. In fact, the Reno City Charter specifically states that NRS Chapter 266 does not apply to the City. *See* Reno City Charter, Chapter 661, Statutes of Nevada 1971, Article I, Section 1.010(2). Accordingly, the reference to NRS 266.190(2)(e) is not relevant in the consideration of the application of Dillon's Rule in the City of Reno's litigation.

**D. The Law Does Not Support Applying Dillon's Rule and NRS  
268.001 to Prohibit the City's Litigation.**

Finally, Petitioners cite to cases from Missouri and Colorado to support their interpretation of Dillon's Rule, neither of which reference a statute similar to NRS 268.001. In *Premium Standard Farms v. Lincoln Twp.*, the township created zoning regulations, which were challenged by Premium Standard Farms. 946 S.W.2d 234, 235-236 (Mo. 1997). The township counterclaimed to enforce the regulations it had created and asserted a public nuisance cause of action. *Id.* at 236. The court concluded that the township did not have the authority to create the regulations at issue and, thus, could not enforce those regulations against Premium. *Id.* at 240. Additionally, the court found that the township lacked authority to bring the nuisance action because Missouri's legislature had specifically granted counties, cities, towns, and villages the power to assert nuisance claims, but had not granted townships such authority. *Id.* A similar conclusion is not warranted here and is not supported by Nevada law.

The *Board of Comm'rs v. Love*, 470 P.2d 861, 172 Colo 121 (1970) (superseded by statute in *State Dep't of Personnel v. Colorado State Personnel Bd.* 722 P.2d 1012 (1986)), involved a lawsuit between the Board of County Commissioners and the State Board of Equalization and the County Tax Commission. The Board of Commissioners sought to challenge, in court, the



findings and orders of the State Tax Commission and the State Board of Equalization. *Love*, 470 P.2d at 863. The court concluded that the statute only permitted “persons” to challenge decisions made by the State Tax Commission, and the Board of Commissioners was not a “person.” *Id.* at 864. *Love* involved county entities initiating a lawsuit against state entities. Moreover, the state statutes at issue in *Love* specifically outline who could challenge state agency decisions. Like *Premium Farms*, *Love* shares no similarities with the City’s case against Petitioners.

Dillon’s Rule was created to limit the ability of city and county governments to create regulations, ordinances, limitations, and other laws, not to prevent a city from initiating a lawsuit to recover damages the city incurred. Similarly, NRS Chapter 268 does not contain any language barring the City from proceeding with its lawsuit. The District Court correctly ruled that Dillon’s Rule cannot be applied to prevent the City from pursuing its litigation.

#### **V. THE CITY OF RENO’S CLAIMS FALL WITHIN THE DEFINITION OF “MATTER OF LOCAL CONCERN.”**

Even if Dillon’s Rule prohibits a city from initiating litigation, it would not bar the litigation at issue here. In 2015, the Nevada Legislature expressed concern that existing Nevada law “unnecessarily restrict[ed]” the governing body of an incorporated city from acting with regard to matters of local concern. *See* NRS 268.001(5). To address this undue restriction on the cities, the Legislature expressly

modified Dillon's Rule to give cities *more authority* to take action on their own behalf,

The Legislature hereby finds and declares that:

[W]ith regard to matters of local concern, a strict interpretation and application of Dillon's Rule **unnecessarily restricts** the governing body of an incorporated city from taking appropriate actions that are necessary or proper **to address matters of local concern for the effective operation of city government and thereby impedes the governing body from responding to and serving the needs of local citizens diligently, decisively and effectively.**

...

To provide the governing body of an incorporated city with the appropriate authority **to address matters of local concern for the effective operation of city government**, the provisions of NRS 268.001 to 268.0035, inclusive:

(a) Expressly grant and delegate the governing body of an incorporated city **all powers necessary or proper to address matters of local concern** so that the governing body may adopt city ordinances and implement and carry out city programs and functions for the effective operation of city government; and

(b) Modify Dillon's Rule as applied to the governing body of an incorporated city so that **if there is any fair or reasonable doubt concerning the existence of a power of the governing body to address a matter of local concern, it must be presumed that the governing body has the power** unless the presumption is rebutted by evidence of a contrary intent by the Legislature.

*See* NRS 268.001 (bold added); *see also* NRS 268.003.

Nevada's Legislature granted cities the power to implement and carry out programs for the effective operation of the city government as they relate to matters of local concern. NRS 268.001(6)(a). Moreover, the Reno City Charter was created

to “provide for the orderly government of the City of Reno and the general welfare of its citizens.” Reno City Charter, Article I, Section 1.010(1). The City Charter is:

[N]ecessary to secure and preserve the **health**, safety, prosperity, security, comfort, convenience, general welfare and property of the residents of the City, [and therefore] it is expressly declared that it is the intent of the Legislature that each of the provisions of this Charter be **liberally construed** to effect the purposes and objects for which this Charter is intended, and the specific mention of particular powers **must not** be construed as limiting in any way the general powers which are necessary to carry out the purposes of objects of this Charter.

Reno City Charter, Chapter 661, Statutes of Nevada 1971, Article I, Section 1.019(2) (bold added).

Additionally, the Legislature chose to provide cities with more authority, by changing the presumption *against* finding that a city has power to act to a presumption *in favor of* finding such power. In doing so, it highlighted the City’s need to take action to address, “matters of local concern for the effective operation of city government” and the “needs of local citizens.” NRS 268.001(6)(a). This presumption can only be rebutted “by evidence of a contrary intent by the Legislature.” NRS 268.001(6)(b).

Matters of local concern include damages the City has suffered as a result of the opioid epidemic because those damages impacted City programs and functions implemented to benefit the citizens of Reno and the City itself. It is appropriate to “examine the statute in the context of the entire statutory scheme, reason, and public

policy to effect a construction that reflects the Legislature’s intent.” *Richardson Constr., Inc. v. Clark County Sch. Dist.*, 123 Nev. 61, 64, 156 P.3d 21, 23 (2007). Throughout NRS 268 and the Reno City Charter, the Legislature demonstrated its intent to permit cities to take the action necessary to protect their inhabitants and to promote the public health, safety, and welfare within the City. Such concerns include protecting city residents from harms caused by the opioid epidemic and instituting programs to remedy those harms. Petitioners’ interpretations of NRS 268.001 and 268.003 are inconsistent with the Legislative intent embodied within the statutory scheme.

A “matter of local concern” is one that:

(a) Primarily affects or impacts areas located in the incorporated city, or persons who reside, work, visit or are otherwise present in areas located in the city, and does not have a significant effect or impact on areas located in other cities or counties;

(b) Is not within the exclusive jurisdiction of another governmental entity; **and**

(c) Does not concern:

(1) A state interest that requires statewide uniformity of regulation;

(2) The regulation of business activities that are subject to substantial regulation by a federal or state agency; **or**

(3) Any other federal or state interest that is committed by the Constitution, statutes or regulation of the United States or this State to federal or state regulation that preempts local regulation.

NRS 268.003(1)(a)-(c) (emphasis added).

Contrary to the Petitioners’ arguments, the opioid epidemic’s impact on the

City of Reno is a matter of “local concern” to be addressed by the City as it deems necessary and appropriate, including seeking to recover damages through litigation.

**A. The Opioid Epidemic Uniquely Impacts the City of Reno.**

The City has never denied that the opioid epidemic is nationwide. However, that cannot end the analysis under NRS 268.003 (1)(a). There must be a consideration of the unique claims and damages alleged by the City of Reno. The damages the City of Reno has suffered are different than the damages suffered in any other city, county, or the State.<sup>6</sup> The spread of addiction, abuse, deaths, and related crimes within the City primarily affect or impact the City’s residents and programs. The use of City resources to cope with the epidemic is an issue primarily affecting the City.<sup>7</sup> Each city may choose to implement different programs, create health districts, and enforce regulations.

No two (2) cities have been impacted by the opioid epidemic in the same way and they will not have the same damages. Each city has suffered different damages as a result of the opioid epidemic. These differences are not just in the dollar

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<sup>6</sup> Moreover, if Petitioners are successful, the resulting litigation will be unduly burdensome on the State of Nevada and impractical as it would be forced to include city and, possibly, county specific allegations, as well as location specific defendants and damages. This would cause confusion in discovery and at the time of trial. It is more practical for each city and county bring their own litigation for their unique damages.

<sup>7</sup> Furthermore, any money recovered in a lawsuit brought by the state, is required to be deposited in the State Treasury and credited to the State General Fund. NRS 353.249.

amount, but also in the type of damages and the areas in which the damages were incurred. Cities cannot be viewed as a monolith. The fact that the opioid epidemic has spread throughout the State does not negate the fact that its impact in each city is an issue of local concern.

Additionally, the State of Nevada's opioid lawsuit has no bearing on whether the City's case addresses matters of local concern. The City is alleging tort and nuisance claims as the bases for its claim for damages all of which are unique to the City. *See generally* Pet. App., Vol. II, PA00168-00226. The State of Nevada's lawsuit, on the other hand, alleges public nuisance; violations of Nevada's Deceptive Trade Practices Act; violations of Nevada's Racketeering Act; violations of Nevada's False Claims Act; negligence; negligence per se; and violations of the 2007 consent judgment between the State of Nevada and Purdue. *See generally* Pet. App. Vol. XI at PA01286 – Vol. XII at PA01535. The State of Nevada seeks damages that are vastly different from those sought by the City such as an injunction to cease deceptive practices; future abatement costs; fines and penalties for the violations of the Deceptive Trade Practices Act and False Claims Act; and damages related to money wrongfully paid for opioids through government-funded insurance; as well as punitive damages. *Id.*

The cases filed by the State and the City may relate to the same epidemic, but they each seek different damages based upon different harms. Noticeably absent

from Petitioners' brief is any mention of the current Attorney General's view and statements regarding the State's approach to its opioid lawsuit and its intent to work as a united front with cities and counties.<sup>8</sup> Attorney General Aaron Ford acknowledged that counties and cities will be bringing their own lawsuits and approved of those lawsuits because "each [entity] has its own distinct damages and needs." *See* RPI App., Vol. I at RPI0021. Contrary to Petitioners' representations, Attorney General Ford supports the counties and cities in their individual quests to remedy the damages caused by Petitioners.<sup>9</sup>

**B. The City of Reno's Claims are not Excluded as Matters of Local Concern under NRS 268.003(1)(c).**

A matter is not one of local concern if it involves:

- (1) A state interest that requires statewide uniformity of regulation;
- (2) The regulation of business activities that are subject to substantial regulation by a federal or state agency; or
- (3) Any other federal or state interest that is

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<sup>8</sup> Instead, Petitioners continue to rely upon a letter from former Attorney General Adam Laxalt, in which he informed Reno Mayor Hillary Schieve that he believed it would better serve everyone if the City committed to battle the opioid crisis with the State. *See* Pet. App. Vol. IX at 01208-01210. Not only is the letter outdated and drafted by the former Attorney General, it also does not state anywhere that the City is legally prohibited from initiating its own lawsuit related to the opioid crisis. *Id.* It was nothing more than a request that the City consider teaming up with the State. There is no reference to any of the statutes at issue here or Dillon's Rule. In short, it is irrelevant and lacks any persuasive value.

<sup>9</sup> Petitioners did not address NRS 268.003(1)(b) in their Writ. Accordingly, Petitioners must concede that the allegations within the City's complaint are not within the "exclusive jurisdiction of another governmental entity."

committed by the Constitution, statutes or regulations of the United States or this State to federal or state regulation that preempts local regulation.

NRS 268.003(1)(c). Petitioners' arguments focus on subsections (1) and (2) cited above.

First, the City's lawsuit is not seeking to regulate any sort of activity or behavior. Rather, the City seeks damages arising from the Petitioners' creation of the opioid epidemic and the establishment of funds to address the harms caused by the opioid epidemic. *See* Pet. App., Vol. II, PA00223-00225. The City seeks relief that would address the specific harms it has suffered. For example, the City of Reno asks for "restitution and reimbursement to cover all prescription costs the City has incurred as a result of [Petitioners'] wrongful conduct." *Id.* at PA00224:13-15. The City's request for injunctive relief is premised on the expectation that any such relief must specifically provide the City with an effective remedy against Petitioners' wrongdoing. *Id.* at PA00224:22-25.

Each Nevada city has different programs employed to address the opioid epidemic. Some may be limited due to their rural location and low population. Moreover, the damages incurred and the relief sought in each city will differ because of the unique harm caused and the programs impacted by the opioid epidemic. There cannot be any uniformity in the relief or regulation across the state. Accordingly, NRS 268.003(1)(c)(1) does not apply to the City's lawsuit.



Second, the City is not seeking to regulate any business activity that would infringe on federal opioid regulations. This is not a product defect or failure to warn case so the federal laws Petitioners reference in their brief are irrelevant. *See* Petitioners' Writ of Mandamus, pg. 21, FN 7. Rather, the litigation relates to the deceptive marketing Petitioners engaged in within the City, which led to the creation of a public nuisance in the form of the opioid epidemic. *See* Pet. App., Vol. II, PA00168-00226. Additionally, the City alleges that the Petitioners' deception breached a duty owed to the City, thereby causing damages. The federal regulations pertaining to opioid labelling do not prohibit the City of Reno from seeking damages arising out of Petitioners' wrongdoings.

Third, Nevada's statutory regulations regarding pharmacies do not bar the City from filing a lawsuit for its damages arising out of the opioid epidemic. The City of Reno is not asking to impose any regulations on the pharmacies in the State. The City's lawsuit does not interfere with the enforcement of NRS 639's regulations on pharmacies in Nevada. Accordingly, NRS 268.003(1)(c)(2) does not prohibit the City from continuing with this litigation.

The pleadings, motions, and arguments in this case all support the conclusion that the City has alleged a matter of local concern in its action against Petitioners. Pursuant to NRS 268.001(5) and (6), the presumption is in favor of the City having the power to institute the underlying litigation against Petitioners. Petitioners have

not offered any evidence of a contrary Legislative intent to rebut the presumption of the City's authority to proceed with its case. The matters of concern are the City's alone and pursuing this lawsuit is clearly with the aim to "proper[ly] address matters of local concern for the effective operation of city government" as is expressly permitted by statute. NRS 268.001.

**C. Issues of Public Health, Safety, and Welfare are Matters of Local Concern.**

Nevada law also empowers the City to adopt and enforce local health and safety measures. The Legislature expressly defined the term "local concern" as including "without limitation . . . Public health, safety and welfare in the city." *See* NRS 268.003(2)(a). This lawsuit directly addresses matters related to the public health, safety and welfare of the City and its citizens, as well as the ongoing nuisance created by the Petitioners in the City.

The use of the term "without limitation" indicates that the Legislature considers matters of public health and safety within a city to always be matters of local concern. This interpretation does not expand the definition contained in NRS 268.003(2), instead, it makes clear that there are certain types of concerns that are always "local." Moreover, this section is consistent with the entire statutory scheme of Chapter 268 and the Reno City Charter, which repeatedly grant the City the power to address matters affecting public health, safety, and welfare. Petitioners'

wrongdoing has caused substantial damage throughout the City of Reno and, thus, the City must act appropriately to remedy that damage so that it can ensure the health, safety, and welfare of its inhabitants.

## **VI. CONCLUSION**

Dillon's Rule was not intended to deny the City of Reno, or any other City, the ability to initiate litigation seeking damages incurred as a result of Petitioners' misconduct. Petitioners' proposed application of Dillon's Rule expands that Rule far beyond its historical application. In the event this Honorable Court determines that Dillon's Rule may be applied as Petitioners suggest, the City of Reno's case is still appropriate under the law. The opioid epidemic in the City of Reno and its impact on the City is a matter of local concern. The damages caused to the City are different than those suffered in any other city, county, or suffered by the State of Nevada.

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The record supports the Second Judicial District Court's findings that Dillon's Rule and NRS 268.001 do not prevent the City of Reno from initiating litigation to recover its damages. It also supports the secondary finding that, if Dillon's Rule can be applied to bar such litigation, the City's lawsuit is appropriate as it addresses a matter of local concern and, thus satisfies NRS 268.001(5). Accordingly, the City of Reno respectfully requests that the Petition for Writ of Mandamus be denied and the order of the Second Judicial District Court be affirmed.

Dated this 25th Day of June, 2020.

/s/ Robert T. Eglet, Esq.

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**VERIFICATION**

STATE OF NEVADA    )  
                                  ) ss.  
COUNTY OF CLARK    )

ROBERT T. EGLET, being first duly sworn, deposes and says:

1.     I am over the age of 18 years and am personally familiar with the facts stated in this verification. Pursuant to NRAP 21(a)(5) and NRS 15.010, I am counsel for Real Party in Interest City of Reno. I know the contents of this Answer to the Petition for Writ of Mandamus.

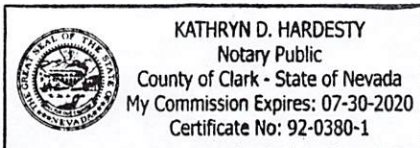
2.     The facts stated in this Answer are true and correct to the best of my knowledge or based on information and belief. The relevant facts are largely procedural and drawn from the proceedings before the district court or drawn from the publicly accessible state and federal court records, and publications from the Office of the Attorney General.

DATED this 25th day of June, 2020.

  
\_\_\_\_\_  
ROBERT T. EGLET

Subscribed and sworn to before me  
this 25th day of June, 2020.

  
\_\_\_\_\_  
NOTARY PUBLIC



## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14-point, double-spaced Times New Roman font. I further certify that this brief complies with type-volume limitations of NRAP 21(d). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,605 words.

I further certify that I have read this Answering Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED this 25th day of June, 2020.

/s/ Robert T. Eglet, Esq.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of EGLET ADAMS, and that on this 25<sup>th</sup> day of June, 2020, a copy of the foregoing REAL PARTY IN INTEREST CITY OF RENO'S ANSWER TO THE PETITION FOR THE WRIT OF MANDAMUS was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex) and served via U.S. Mail, postage prepaid, on the following individuals:

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In addition, in compliance with NRAP 21(a)(1) and Administrative Order 2020-05, a copy of this REAL PARTY IN INTEREST CITY OF RENO'S ANSWER TO THE PETITION FOR THE WRIT OF MANDAMUS was served

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upon the Honorable Barry Breslow, District Judge via electronic service and email to Christine.Kuhl@washoecourts.us.

/s/ *Makaela Otto*  
An Employee of EGLET ADAMS