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.

Supreme Court Case No. 81121

District Court Case No. CV18-01895

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Dillon's Rule provides that cities possess only those powers expressly conferred by the State or necessarily implied by such expressly granted powers. The City of Reno does not even attempt to identify an express or implied legislative authorization for this lawsuit. Accordingly, this lawsuit is *ultra vires* under a straightforward application of Dillon's Rule.

The City urges this Court to carve out a "lawsuit exception" to Dillon's Rule. But the City identifies no support for its theory that Dillon's Rule "does not[] limit a city's ability to initiate litigation." Ans. at 1. No Nevada appellate court, nor any other court in the country to Petitioners' knowledge, has ever recognized such an exception. And it is flatly contrary to longstanding common law articulated by this Court, the plain terms of the Legislature's 2015 codification of that common law, and decisions of two other state high courts applying Dillon's Rule to bar lawsuits.

Nor does this lawsuit fall within the narrow exception to Dillon's Rule for "matters of local concern." The City admits that its lawsuit seeks to address a public health crisis that "has spread throughout the State" and indeed "nationwide." Ans. at 20-21. The City's Answer further underscores that this lawsuit seeks injunctive relief to halt business activities comprehensively regulated by federal agencies, and undermines legislative efforts to impose uniform, statewide standards for the marketing of prescription medications. These undisputed features of the City's

claims squarely foreclose the City from satisfying the strict statutory definition of a "matter of local concern."

Respectfully, the Court should grant the Petition and end the City's *ultra vires* lawsuit. Doing so will avoid disjointed, piecemeal litigation over an obvious matter of statewide concern and allow opioid-related claims to be comprehensively resolved in the statewide suit brought by Nevada's Attorney General rather than through numerous duplicative lawsuits by cities and counties concerning the same alleged conduct.

II. ARGUMENT

A. The City Concedes The Legal Standard For Writ Relief Is Satisfied

The City admits that the Petition raises "an important issue of law need[ing] clarification, the resolution of which would promote judicial economy" in the City's lawsuit and others like it. Ans. at 4 (internal quotation marks omitted). That admission confirms that this Court's interlocutory review is warranted. Pet. at 7, 23-24.

Additionally, as set forth below and in the Petition, writ relief is appropriate because no factual dispute exists and the district court was obligated to dismiss the City's lawsuit under clear Nevada law. *Chur v. Eighth Judicial Dist. Ct.*, 136 Nev. Adv. Op. 7, 458 P.3d 336, 339 (2020).

B. The District Court Should Have Dismissed This Action Under Dillon's Rule

Dillon's Rule has been the law of the land in Nevada for decades and "remains a vital component of Nevada law" by clear pronouncement of the Legislature just five years ago. NRS 268.001(5). Under Dillon's Rule, the City must identify an enumerated grant of power authorizing its lawsuit, and all doubts concerning the existence of such a power are resolved against the City. *See* NRS 268.001(3)-(4). The City's Answer confirms that no such grant of authority exists—indeed, the City does not even attempt to identify one.

1. Dillon's Rule Applies to All Powers a City Might Wish to Exercise, Including the Power to Bring this Lawsuit

Echoing the district court, the City insists that lawsuits are categorically exempt from Dillon's Rule. In the City's view, "Dillon's Rule limits the creation of ordinances and regulations, but not the ability to file lawsuits." Ans. at 11. This is so, the City contends, because "[n]either the history of Dillon's Rule nor the cases in which it is discussed support [the] position that the Rule" applies to lawsuits. *Id.* at 6. The City is wrong, as case law and the controlling statutory text demonstrate.

The City does not cite any case holding that lawsuits are exempt from Dillon's Rule. None exists. The City instead cites a handful of inapposite decisions from outside Nevada addressing localities' attempts to exercise powers *other* than filing

particular lawsuits. Ans. at 5-7.[1] Based on those authorities, the City leaps to the unfounded conclusion that the Rule does not apply to lawsuits. In any event, none of those courts addressed, much less decided, whether lawsuits are exempt from Dillon's Rule; they simply applied the Rule to other powers a locality had attempted to exercise.

By contrast, when this question was squarely presented to the highest courts of Missouri and Colorado, both courts applied Dillon's Rule to dismiss locality lawsuits as *ultra vires*. *Premium Standard Farms, Inc. v. Lincoln Twp. of Putnam Cty.*, 946 S.W.2d 234, 240-41 (Mo. 1997); *Bd. of Cty. Comm'rs of Dolores Cty. v. Love*, 172 Colo. 121, 126-27, 470 P.2d 861, 863 (1970). This result aligns with

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[1] *See Early Estates, Inc. v. Hous. Bd. of Review*, 174 A.2d 117 (R.I. 1961) (addressing whether city had power to require landlord to provide hallway lights and hot water facilities); *Commonwealth v. Cty. Bd. of Arlington Cty.*, 217 Va. 558 (1977) (addressing whether local school boards had power to bargain collectively with labor organizations); *Logie v. Town of Front Royal*, 58 Va. Cir. 527 (Cir. Ct. 2002) (addressing whether town had power to terminate electric service); *Kansas-Lincoln, LC v. Cty. Bd. of Arlington*, 66 Va. Cir. 274 (Cir. Ct. 2004) (addressing whether county board had power to compel site plan applicants to make affordable housing contributions); *Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37 (1994) (addressing whether city had power to impose certain user fees); *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980) (addressing whether county had power to require candidates for local office to disclose campaign contributions). The City also cites a law review article discussing the extent to which "[p]ublic choice theory" might "explain the propriety of Dillon's Rule." Clayton P. Gillette, *In Partial Praise of Dillon's Rule, or, Can Public Choice Theory Justify Local Government Law*, 67 Chicago-Kent L. Rev. 959, 961 (1991). The article does not cite or discuss Nevada law, nor does it advocate for a "lawsuit exception" to Dillon's Rule.

longstanding Nevada law, under which cities are forbidden from "do[ing] *any* act . . . not authorized," and "*[a]ll* acts beyond the scope of the powers granted are void." *Ronnow v. City of Las Vegas*, 57 Nev. 332, 65 P.2d 133, 136 (1937) (quotation source and marks omitted) (emphases added). The City's invitation to create a lawsuit exception collides head-on with this statement of controlling law, especially given that filing lawsuits indisputably falls under the umbrella of "any act."

The Legislature's 2015 codification of Dillon's Rule confirms that the Rule applies to any and all powers a city wishes to exercise, with no exceptions for lawsuits. As the codification states, "Dillon's Rule provides that [cities] possess and may exercise *only* the following powers *and no others*." NRS 268.001(3) (emphases added). The City does not dispute that the statute applies to all powers a city wishes to exercise. Instead, the City asserts there is no such thing as a "power" to file a lawsuit. According to the City, the word "'[p]ower' is used throughout NRS Chapter 268 to refer to the ability of a city to create, regulate, and tax," and on that basis, "'[p]ower' should not be interpreted to reference a city government's ability to file a lawsuit." Ans. at 12. The City offers no case law or other authority to support its reading. In fact, the City ignores that NRS Chapter 268, titled "***Powers*** and Duties Common to Cities and Towns Incorporated Under General or Special Laws," *does* expressly grant cities the power to file *certain* lawsuits. *See, e.g.*, NRS 268.4128(1)(b)(1) (authorizing cities to "file a civil action . . . to seek . . .

money damages . . . from . . . [a]ny member of a criminal gang that is engaging in criminal activities within the city"); *infra* Part II.B.3 & n.2 (other examples). The Legislature's inclusion of certain lawsuits among Chapter 268's "powers and duties" possessed by cities forecloses the City's construction of the word "power." Indeed, the City all but concedes this point later in its brief by arguing "in favor of the City having *the power* to institute the underlying litigation." Ans. at 24 (emphasis added).

In short, there is no legal basis for categorically exempting lawsuits from Dillon's Rule. Doing so would upend this Court's "unwilling[ness] to create an exception to [a] statute when, based on its plain and ordinary meaning, none exists." *Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 40-41, 175 P.3d 906, 909 (2008) (footnote omitted); *see also Canarelli v. Eighth Judicial Dist. Ct.*, 136 Nev. Adv. Op. 29, 464 P.3d 114, 121 (2020) (refusing to "create" an unwritten exception to a statute "by judicial fiat"). It would also create a blueprint for cities and counties to dramatically expand their regulatory powers by achieving through litigation the very ends they are prohibited from achieving through legislation—precisely what the City attempts here. Indeed, the City *admits* that it "would have no business" "pass[ing] an ordinance or a regulation preventing the distribution of prescription opiates in Reno[] or levying a tax against companies that manufacture and distribute opiates within Reno." (XIX PA02724:19-02725:6.)

2. The City Fails to Identify an Express Grant of Power Authorizing Its Lawsuit

Dillon's Rule requires the City to identify an express grant of power authorizing its lawsuit. But the City does not even attempt to do so. Instead it baldly asserts that "NRS Chapter 268"—as a whole—somehow imparts an "implied" power for the City to bring any lawsuit it wants. Ans. at 9. The Court should reject this claim out of hand as incompatible with Dillon's Rule, which requires an "express" grant of power from which implied power might flow, and which commands that "if there is *any* fair or reasonable doubt concerning the existence of a power, that doubt is resolved against" the City. NRS 268.001(3)-(4) (emphasis added).

Premium Standard Farms and *Love* dismiss the notion that generalized grants of power impliedly authorize localities to file any lawsuit they wish. The township in *Premium Standard Farms* possessed the express power (1) to "sue and be sued"; (2) to "impose regulations for the purpose of 'promoting health, safety, morals, comfort or the general welfare of the unincorporated portion of the township, [and] to conserve and protect property and building values'"; and (3) to bring civil actions "to enforce . . . zoning regulations[.]" 946 S.W.2d at 240. Notwithstanding these express grants of power, the state high court held the township could not bring "a public nuisance action" against a hog farm because "[n]o express authority to prosecute a nuisance action has been granted townships," and that power was not

"necessarily or fairly implied in or incident to the powers expressly granted." *Id.* at 240-41. The court emphasized that, under Dillon's Rule, "local governments" like townships "have no inherent powers"; they are strictly limited to those powers granted by the state legislature. *Id.* at 238.

Similarly, in *Love*, a county brought a lawsuit alleging the Board of Equalization had abused its discretion in reviewing property appraisals. 172 Colo. at 124, 470 P.2d at 862. While Colorado law expressly granted the county the power "to sue and be sued," and "to represent the county and have the care of the county property and the management of the business and concerns of the county," the court nonetheless dismissed the suit as *ultra vires*, concluding these powers did not imply "a general power to sue in any and all situations." *Id.* at 125-26, 470 P.2d at 863. So too, here; the City cannot invoke the entirety of "NRS Chapter 268" to fill the void left by the absence of an express grant of power and in its place conjure an implied "power to sue in any and all situations." *See id.* The powers "fairly implied" in NRS Chapter 268 are limited to those "incident to the powers expressly granted," and the City makes no attempt to anchor its proposed implied power to an expressly granted power. *See* NRS 268.0035(1)(b).

That *Premium Standard Farms* and *Love* applied the common-law Dillon's Rule and not "a statute similar to NRS 268.001" strengthens Petitioners' argument. Ans. at 15. If the common-law Rule bars *ultra vires* lawsuits, then that bar applies

a fortiori here because the Legislature has declared the Rule "a vital component of Nevada law." NRS 268.001(5).

3. Express Grants of Power to Cities to Bring Certain Civil Claims Evidence the Legislature's Recognition that Cities Do Not Possess Unbridled Power to Sue

The Legislature has expressly granted cities the power to bring particular types of lawsuits, including certain civil claims for compensatory damages in specified circumstances.[2] If, as the City contends, cities possessed an unfettered power to bring any lawsuit they wish, then all of these statutes would be superfluous. *See Int'l Ass'n of Machinists & Aerospace Workers, Local Lodge 964 v. BF Goodrich Aerospace Aerostructures Grp.*, 387 F.3d 1046, 1057 (9th Cir. 2004) ("[W]e must presume that, '[a]bsent clear congressional intent to the contrary, . . . the legislature did not intend to pass vain or meaningless legislation[]'") (quoting *Coyne & Delany Co. v. Blue Cross & Blue Shield of Va., Inc.*, 102 F.3d 712, 715 (4th Cir. 1996)); *see also Karcher Firestopping v. Meadow Valley Contractors, Inc.*,

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[2] *See, e.g.*, NRS 268.4128(1)(b)(1) (authorizing cities to "file a civil action . . . to seek . . . money damages . . . from . . . [a]ny member of a criminal gang that is engaging in criminal activities within the city"); NRS 268.408(2) (authorizing cities to "bring an action against a person responsible for placing graffiti on the property of the city to recover . . . damages"); NRS 268.4126(1), (2)(c)(1) (authorizing certain cities to "file an action . . . to seek" "money expended" to "[a]bate [an] abandoned nuisance on . . . property"); NRS 268.4124(1), (2)(c) (authorizing cities to "file an action" to "recover money expended for labor and materials used to abate the [chronic nuisance] condition on [a] property"); NRS 266.190(2)(e) (authorizing cities to "institute[]" "legal proceedings" to "[s]ee that all contracts are fully kept and faithfully performed").

125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009) ("This court generally avoids statutory interpretation that renders language meaningless or superfluous." (citation omitted)).

In particular, the Legislature has expressly granted cities the power to bring certain civil claims in other circumstances to recover types of damages the City alleges here: (1) unreimbursed expenses for medical care provided to patients injured by third-party tortfeasors; and (2) expenses of housing inmates in city-owned detention facilities. (*See, e.g.*, II PA00174:21-25 (alleging damages in the form of "ambulatory services, emergency department services, and inpatient hospital services"); II PA00202:15-24 (alleging damages from "opioid-related emergency room hospitalizations"); II PA00212:24-26 (alleging "expenses for . . . corrections . . . services").) But the City has not attempted to plead any claims under those statutes, nor could it.

As to unreimbursed medical care the City allegedly provided, the Legislature (1) granted hospital owners authority to obtain a lien against amounts obtained by patients from tortfeasors "for the reasonable value of the hospitalization rendered"; (2) created a procedure for perfecting those liens; and (3) established a limited right to sue tortfeasors for amounts owed to the hospital. *See* NRS 108.590(1), 108.610, and 108.650(1). As to the City's alleged corrections expenditures, the Legislature granted cities authority to "file a civil action" to "seek reimbursement from a

nonindigent prisoner for expenses incurred" for the "maintenance and support of the prisoner in a . . . city jail or detention facility," including "costs of providing heating, air-conditioning, food, clothing, bedding and medical care." *See* NRS 211.2415 and 211.245. As noted, the City does not assert claims under the hospital lien or prisoner reimbursement statutes, and any attempt to do so would be futile, as the City cannot meet the statutes' basic requirements.[3] Instead, the City asks the Court to find that a city that cannot meet the specific requirements set by the Legislature for recovering such costs nevertheless possesses an unfettered power to recover the same costs through any lawsuit it wants, including one against third parties whose statewide conduct is allegedly tortious. Such a drastic expansion of the limited powers the Legislature granted cities to bring civil lawsuits would plainly run afoul of Dillon's Rule.

[3] Among other things, the hospital lien statutes require the City to (1) identify a specific "injured person" to whom treatment was provided and "*the* person responsible for causing the injury," NRS 108.590(1) (emphasis added); (2) record a notice of lien "containing an itemized statement of the amount claimed," NRS 108.610(1); (3) serve a "certified copy" of the notice of lien on the tortfeasor, NRS 108.610(2); and (4) bring any civil claim against the tortfeasor within 180 days of a "payment" made by the tortfeasor to "the injured person," NRS 108.650(1). The prisoner reimbursement statutes require the City to, among other things, (1) "conduct an investigation of the financial status of the prisoner," NRS 211.242(1); (2) issue a "written demand to the prisoner for reimbursement," NRS 211.244(1); and (3) bring a civil action that "[i]ndicate[s] the date and place of sentencing," the "length of time served by the prisoner," and "the amount of reimbursement that the prisoner owes to the . . . city." NRS 211.245(2)(b), (d), (e).

4. The Court Should Reject the City's Invitation to Rewrite or Ignore Dillon's Rule

The City contends that its claims may proceed so long as they are not "prohibited" by state law and do not "infringe on any state regulations." Ans. at 9. That gets things backwards. The City must identify an affirmative *grant* of authority permitting its action or accept dismissal. *See Ronnow*, 57 Nev. 332, 65 P.2d at 136 ("All acts beyond the scope of the powers granted are void"). Neither the absence of an express prohibition, nor the absence of a direct conflict with state law, may serve as authority for the City's lawsuit.

The City's argument that the Court should ignore Dillon's Rule fares no better. The City claims that *other* jurisdictions have "debate[d] the viability of Dillon's Rule," citing a Utah case "discuss[ing] the problems created by" the Rule. Ans. at 6-7. But Nevada law controls here, and the Nevada Legislature has settled the issue by codifying Dillon's Rule just five years ago as "a vital component of Nevada law." NRS 268.001(5). There is no basis to debate the question here.

C. The "Matter Of Local Concern" Exception To Dillon's Rule Does Not Apply

Unable to satisfy Dillon's Rule, the City relies on the narrow exception to the Rule for "matters of local concern." Yet as with Dillon's Rule, the City fails to satisfy the clear requirements of the applicable statute, and again urges the Court to rewrite or ignore the statute's plain and ordinary meaning. This Court, as the final

authority on the construction of Nevada statutes, must "give th[e] language its ordinary meaning and not go beyond it." *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) (citation omitted). The City cannot overcome the Legislature's precisely defined term—"matter of local concern"—in NRS 268.003(1). Its suit fails under that definition in multiple ways.

1. The City's Lawsuit Fails to Satisfy the Local "Impact" Requirement of NRS 268.003, Subdivision 1(a)

Under the statute's plain language, a matter having "a *significant effect or impact* on" other cities or counties *cannot* be a "matter of local concern." NRS 268.003(1)(a) (emphasis added).

The City's Answer only amplifies the allegations in its pleading that the opioid abuse crisis has "a significant effect or impact on areas located in other cities or counties." NRS 268.003(1)(a); *see* Pet. at 18-19. The City asserts "the opioid epidemic has spread throughout the State" and "is nationwide," and admits that Nevada's Attorney General is pursuing "statewide remedies" for "the same epidemic." Ans. at 3, 20, 21. The City does not dispute that its private lawyers have filed virtually identical opioid suits on behalf of other Nevada localities. Pet. at 3-6, 19 & n.5. It cannot sidestep these dispositive concessions of statewide impact by asserting that its alleged damages "are different than the damages suffered in any other city [or] county." Ans. at 20.

Put differently, the City's plea for this Court to "consider[]" its purportedly "unique" harm (Ans. at 20) "impermissibly seeks to displace the plain meaning of the law in favor of something lying beyond it." *Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731, 1750 (2020). The City's own allegations, accepted as true on a motion to dismiss, preclude it from satisfying this essential element. Indeed, the district court agreed that "the opioid epidemic is not merely a matter of local concern because it has a significant impact or effect on areas located in other cities or counties." (XXI PA03040:10-14.)

The City's assertion that its claims and requested relief differ from those in the Nevada Attorney General's ongoing action is irrelevant. Ans. at 21. Even if the City pleaded unique claims and sought unique relief (it has not and does not), that would not affect whether the City's suit addresses a "matter of local concern" under NRS 268.003(1). And the City's assertion is, in any event, wrong. The City concedes both it and the State plead many of the same tort claims and seek alleged "damages" purportedly flowing from "the same epidemic." Ans. at 21. Every opioid lawsuit filed by the City's private lawyers seeks injunctive relief to alter how opioid medications are marketed, as well as abatement of an alleged public nuisance purportedly caused by the same statewide conduct. (*See* XVI PA02106:12-16, 02142:12-15 (Henderson); XVI PA02197:14-18, 02233:14-17 (Las Vegas); XVII PA02288:17-21, 02324:20-23 (North Las Vegas); XVII PA02381:9-13,

02420:18-21 (Clark County); XIV PA01748:22-27, 01797:24-28 (State of Nevada).) These actions thus create a significant risk of conflicting rulings and obligations. On that score, state attorneys general across the country, including in Nevada, have opposed "patchwork litigation" by political subdivisions to address opioid abuse (IX PA01210), emphasizing "an ineffective piecemeal approach is the only result when various inferior instrumentalities of the State pursue conflicting or overlapping claims." *Amicus* Br. in Supp. of Writ of Mandamus, *In re Nat'l Prescription Opiate Litig.*, No. 19-3827, 2019 WL 4390968, at *14 (6th Cir. Sept. 6, 2019), ECF No. 7.

2. The City's Lawsuit Fails to Satisfy NRS 268.003, Subdivision 1(c)

a. <u>The lawsuit would regulate "business activities that are subject to substantial regulation" by a federal agency</u>

Ignoring its own Complaint, the City asserts that this "lawsuit is not seeking to regulate any sort of activity or behavior." Ans. at 23. To the contrary, the City seeks statewide "injunctive relief" to "stop . . . promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future." (II PA00224:22-25.) The City also seeks to regulate Petitioners' alleged conduct through its request for "damages," Ans. at 23, the imposition of which represents a "potent" form of regulation. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959).

The City cannot brush aside the comprehensive federal regulation of prescription opioid medications by asserting its suit is not "a product defect or failure to warn case." Ans. at 24. The City concedes that its suit targets the "marketing Petitioners engaged in," *id.*, and it does not and cannot dispute that the FDA regulates marketing of approved medications. Pet. at 20-21 & n.7.[4] Even the district court acknowledged "that the manufacture, distribution, sales, and the prescribing and dispensing of opioids is subject to substantial regulation by a federal or state agency." (XXI PA03040:10-14.)

b. <u>The lawsuit concerns an "interest that requires statewide uniformity of regulation"</u>

The City's assertion that its "lawsuit does not interfere with the enforcement of NRS 639's regulations on pharmacies" is a red herring. Ans. at 24. The City concedes that it seeks to regulate the alleged "marketing Petitioners engaged in." *Id.* The Legislature has made clear that "activities associated with manufacturing, compounding, labeling, dispensing and distributing of a drug" are "subject to protection and regulation by the State," NRS 639.213 and 639.0124(1), and has imposed uniform, statewide requirements on pharmaceutical companies to adopt "written marketing code[s] of conduct" that are "based on applicable legal

[4] Although the City broadly refers to "Petitioners" in this regard, it has asserted no factual allegations that the Distributor Defendants misled doctors or the public about the risks or effectiveness of opioid medications.

standards." NRS 639.570(1)(a). The City does not dispute that city-specific regulation of the marketing and distribution of FDA-approved medications (through lawsuits or otherwise) would undermine the State's efforts to "protect[] and regulat[e]" these activities uniformly. NRS 639.213 and 639.0124(1).

The City's assertion that "[t]here cannot be any uniformity in the relief or regulation across the state" is equally misguided. Ans. at 23. As noted, the Legislature has already enacted statutes that promote uniform, statewide regulation of the marketing of opioid medications. To the extent the City claims there can be no "uniformity in the *relief* . . . across the state," *id.* (emphasis added), that assertion is irrelevant to this prong of the statute, which requires the City to show its suit does not concern "[a] state interest that requires statewide uniformity of *regulation*"; the statute does not mention *relief*. NRS 268.003(1)(c)(1) (emphasis added).

3. NRS 268.003, Subsection (2) Does Not Relieve the City of Its Obligation to Satisfy the Elements of Subsection (1)

Relying on NRS 268.003, subdivision 2(a), the City asserts that "matters of public health and safety within a city" are "always . . . matters of local concern." Ans. at 25. Not so. Subsection 2 identifies "illustrative" matters that can *potentially* qualify as "matters of local concern," including "[p]ublic health, safety and welfare in the city." NRS 268.003(2)(a), (3)(a). As the Legislature made clear, the illustrative matters in subsection 2 "[m]ust not be interpreted as . . . expanding the meaning of the term 'matter of local concern' as provided in subsection 1."

NRS 268.003(3)(c). In other words, a matter affecting "[p]ublic health, safety and welfare in the city" cannot be a "matter of local concern" unless subsection 1 is satisfied. And here, it is not.

III. CONCLUSION

For the reasons stated in the Petition and herein, Petitioners respectfully request a writ of mandamus compelling the district court to dismiss this lawsuit in its entirety as *ultra vires* under Dillon's Rule.

RESPECTFULLY SUBMITTED this 23rd day of July, 2020.

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Verification

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Pat Lundvall, 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), NRS 15.010 and NRS 34.170, I am co-counsel for Petitioners Endo Pharmaceuticals Inc. and Endo Health Solutions Inc. I know the contents of this writ petition.

2. The facts stated in this writ petition 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 and therefore are within my knowledge as co-counsel for Petitioners Endo Pharmaceuticals Inc. and Endo Health Solutions Inc.

DATED this 23rd day of July, 2020.

Pat Lundvall

Subscribed and sworn to before me
this 23rd of July, 2020.

Notary Public

MAIRE BUNO
Notary Public, State of Nevada
No. 16-3033-1
My Appt. Exp. June 17, 2024

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 the page-or type-volume limitations of NRAP 32(a)(7). 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 4,406 words.

I further certify that I have read this appellate 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. 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 23rd day of July, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 23rd day of July, 2020, a copy of the foregoing Reply In Support Of Petition for 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 Reply in Support of Petition for Writ of Mandamus was served upon the Honorable Barry Breslow, District Judge via electronic service and email to Christine.Kuhl@washoecourts.us.

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An Employee of McDonald Carano LLP