

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO,

Appellant,

vs.

TEVA PHARMACEUTICALS USA,
INC.; 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.;
ACTAVIS PHARMACY, INC. F/K/A
WATSON PHARMA, INC.; AND
ACTAVIS LLC,

Respondents.

Supreme Court No. 85412

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District Court Case No.:

CV18-01895

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to NRAP 3A(b)(1) because the district court's August 26, 2022 Order, electronically served on the same date, is a final order resolving all claims between all parties. The Notice of Appeal was timely filed on September 26, 2022 pursuant to NRAP 4(a).

ROUTING STATEMENT

This case falls into the category of NRAP 17(a)(11) and NRAP 17(a)(12) as a case of first impression where a decision by the Court may expressly determine whether a city's litigation meets the definition of "matter of local concern" contained within NRS 268.003, such that the city has the authority pursuant to NRS 268.001 to initiate and maintain such litigation.

STATEMENT OF ISSUES ON APPEAL

Whether the district court erroneously concluded that the local impact of the opioid epidemic on the City of Reno and the City of Reno's harms cannot be a "matter of local concern" pursuant to NRS 268.003.

STATEMENT OF THE CASE

This appeal arises out of the City of Reno's lawsuit against Respondent opioid manufacturers in which the City seeks to recover damages associated with the harms it incurred as a result of the opioid epidemic. In its lawsuit, the City of Reno alleges that Respondents engaged in deceptive marketing of its opioid products and failed to monitor and stop suspicious opioid orders. The City alleges that Respondents' conduct was a substantial contributing factor in the creation and continuation of the opioid epidemic that uniquely impacted the City and caused the City significant harms. This is an appeal from the district court's order granting the Respondents' Renewed Motion to Dismiss on the grounds that the City of Reno's litigation does not involve a "matter of local concern" as defined in NRS 268.003, thus depriving the City of the power to pursue the litigation.

STATEMENT OF RELEVANT FACTS

The City of Reno filed its original Complaint on September 18, 2018, seeking recovery for the substantial costs it incurred due to Respondents' conduct. Vol. 1, APP00001-00058. On December 3, 2018, the City of Reno filed its First Amended Complaint ("FAC"), including the following causes of action against the Respondents: public nuisance, common law public nuisance, negligence, and negligent misrepresentation. Vol. 1, APP00059-00117. As with the original

Complaint, the FAC contains numerous allegations against Respondents regarding their conduct that led to the creation and continuation of the opioid epidemic, which caused significant harm to the City. Vol. 1, APP00059-00117. The City of Reno seeks to hold Respondents accountable for the “misrepresentations and the harms caused to the City of Reno as well as its residents thus giving rise to this lawsuit.” Vol. 1, APP00097:6-7.

Respondents, along with the other manufacturer defendants, filed a Motion to Dismiss the FAC on March 4, 2019, arguing in relevant part that the opioid epidemic, and its resulting harms, are not a “matter of local concern,” as that term is defined in NRS 268.003. Vol. 1, APP00128:5-00130:11. Respondents further argued that pursuant to NRS 268.001, the City of Reno lacks the authority to initiate and maintain litigation related to the opioid epidemic and its resulting harms because they are not “matters of local concern.” *Id.* The City of Reno opposed the Respondents’ Motion to Dismiss and a hearing was held on January 7, 2020. Vol. 2-3, APP00156-00478.

The district court took the matter under advisement and entered an Order on February 14, 2020, which contained two (2) rulings regarding NRS 268.001’s application: first, the district court found that the common law Dillon’s Rule, which was codified in NRS 268.001, “does not contemplate, and therefore does not limit, the City’s ability to litigate;” and second, that the City of Reno stated “a cognizable

local concern by virtue of the impact the alleged conduct has had on its citizens' health, safety and welfare, including the concomitant stress placed on its police, fire, and social services." Vol. 7, APP00799:5-13.

Respondents filed a Petition for Writ of Mandamus on the portion of the district court's February 14, 2020 ruling addressing NRS 268.001, NRS 268.003, and Dillon's Rule. PETITIONERS' PETITION FOR WRIT OF MANDAMUS, *Teva Pharmaceuticals USA, Inc., et al. v. Second Judicial District Court of the State of Nevada*, Case No. 81121 ("Case No. 81121"), Doc. No. 20-16735. The City of Reno filed an Answer to the Writ, Respondents filed a Reply as well as a Supplemental Reply, and argument was heard on January 5, 2021. CITY OF RENO'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-23597; PETITIONERS' REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-26950; PETITIONERS' SUPPLEMENTAL REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-34461. After oral argument, the Nevada Supreme Court requested supplemental briefing, which the Parties completed in March 2021. PETITIONERS' SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 21-04571; CITY OF RENO'S RESPONSE TO SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 21-06746; PETITIONERS' SUPPLEMENTAL

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, Case No. 81121,
Doc. No. 21-07514.

On July 29, 2021, the Nevada Supreme Court issued an Opinion granting the Petition for Writ of Mandamus in Part and Denying in Part. *Endo Health Sols. Inc. v. Second Jud. Dist. Ct.*, 492 P.3d 565, 137 Nev. Adv. Rep. 39 (2021) (Case No. 81121). After determining that Dillon’s Rule applies to a City’s ability to pursue litigation, the Court considered whether the district court erred in finding that the City of Reno’s opioid litigation addressed matters of local concern. *Id.* at 570. This Court stated:

The district court concluded that the City’s lawsuit was a matter of local concern but did so based upon its own definition of that term, not NRS 268.003’s definition. The district court reasoned that “Reno states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety and welfare, including the concomitant stress placed on its police, fire, and social services.” We conclude that this was erroneous. The district court was required to strictly apply the statutory definition of “matter of local concern” as set forth in NRS 268.003 to determine if the City’s lawsuit meets that definition. If the lawsuit does not meet that definition, then the City does not have the authority to maintain the underlying action.

Id. at 571.

Accordingly, the Court granted the Petition in part and directed the district court to “reconsider the motion to dismiss and, in so doing, apply the definition of a ‘matter of local concern,’ as set forth in NRS 268.003, to the City’s claims.” *Id.* The Court denied the Petitioners’ request for a writ of mandamus compelling the district

court to dismiss the lawsuit in its entirety. *Id.*, PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-16735.

After remand, the District Court asked the parties for supplemental briefing regarding whether the City of Reno's opioid litigation raised matters of local concern pursuant to the definition set forth in NRS 268.003. Respondents submitted their brief on November 29, 2021, the City of Reno submitted its briefing on January 13, 2022¹, and Respondents' reply was filed on February 14, 2022. Vol. 11, APP01433-01449; Vol. 11, APP01453-01464; Vol. 11, APP01465-01477. The district court heard oral argument on August 2, 2022. On August 26, 2022, the district court entered an Order dismissing the City of Reno's complaint stating:

While the Court is cognizant of Plaintiff's passionate argument that the financial impact of the opioid epidemic on the City of Reno is unique – a position which resonated with the Court in advance of entry of its initial Order – the higher court decision leaves no doubt that this analysis was flawed.

Vol. 11, APP01535:19-22.

The City of Reno timely filed its Notice of Appeal on September 26, 2022. Vol. 11, APP01539-01545. Specifically, the City of Reno appeals the district court's application of this Court's ruling on the Petition for Writ of Mandamus and the application of NRS 268.003 on the facts of the underlying litigation.

¹ Exhibit 1 to the City's Supplemental Brief, the One Nevada Agreement, is not attached with the supplemental brief. The Agreement is attached as its own exhibit. *See* Vol. 11, APP01385-01442.

SUMMARY OF THE ARGUMENT

The district court erroneously concluded that this Court's Ruling in *Endo Health Sols. Inc. v. Second Jud. Dist. Ct.*, 492 P.3d 565, 137 Nev. Adv. Rep. 39 (2021) (Case No. 81121) expressly rejected the City of Reno's argument that its unique harms and damages resulting from the opioid epidemic are "matters of local concern," pursuant to NRS 268.003. Further, the district court erred in rejecting the City of Reno's arguments regarding its unique local harms and damages and, therefore, committed an error when it dismissed the City of Reno's lawsuit for failing to allege a "matter of local concern" as defined in NRS 268.003.

ARGUMENT

I. STANDARD OF REVIEW.

This Court reviews de novo an order granting an NRCP 12(b)(5) motion to dismiss, accepting all factual allegations in the complaint as true and drawing all inferences in the appellant's favor. *Luckett v. Brother Mfg. Corp.*, 128 Nev. 914, 381 P.3d 636 (2012). In *Conway v. Circus Circus Casinos, Inc.*, the Court explained,

The standard of review for dismissal under NRCP 12(b)(5) is rigorous as this court "must construe the pleading liberally and draw every fair intendment in favor of the [non-moving party]." In doing so, we accept all factual allegations contained in the Complaint as true. We will not affirm a district court's dismissal of a complaint for failure to state a claim "**unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief.**"

116 Nev. 870, 874, 8 P.3d 837, 839 (2000) (internal citations omitted) (emphasis added). Like the district court, this Court must accept all facts alleged by Plaintiffs as true and draw all inferences in favor of the Plaintiffs. *See Fitzgerald v. Mobile Billboards, LLC*, 134 Nev. 231, 231, 416 P.3d 209, 210 (2018).

Similarly, the question of whether a district court complied with this Court's mandate on remand is a question of law reviewed de novo. *State Eng'r v. Eureka Cty.*, 133 Nev. 557, 559, 402 P.3d 1249, 1251 (2017) (citing *Wheeler Springs Plaza v. Beemon*, 119 Nev. 260, 263, 71 P.3d 1258, 1260 (2003)). "[W]here an appellate court deciding an appeal states a principal or rule of law, necessary to the decision, the principal or rule of law becomes the law of the case and must be adhered to throughout its subsequent progress." *Lo Bue v. State*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976). District courts must "proceed in accordance with the mandate and the law of the case as established on appeal," and commits error if its subsequent orders contradict the directions from the appellate court. *State Eng'r v. Eureka Cty.*, 133 Nev. at 559, 402 P.3d at 1251.

II. THE DISTRICT COURT ERRED IN ITS INTERPRETATION AND APPLICATION OF THIS COURT'S 2021 RULING ON THE PETITION FOR WRIT OF MANDAMUS.

In the district court's February 14, 2020 Order Granting in Part and Denying in Part the Motions to Dismiss, the court considered whether Dillon's Rule applied

to a city's authority to maintain litigation, and, if so, whether the City's litigation addressed a "matter of local concern." Vol. 7, APP00795-00799. Importantly, the district court first concluded that neither the common law Dillon's Rule nor the modified Dillon's Rule contained in NRS 268.001 applies to a city's authority to pursue litigation. Vol. 7, APP00799:15-16. If NRS 268.001 does not apply to bar litigation, as the district court previously determined, then it was not necessary for the district court to engage in a lengthy analysis of whether the City's lawsuit involved a matter of local concern pursuant to NRS 268.003.

Nevertheless, the district court included the following statement in its February 2020 Order: "the City of Reno is not seeking relief on behalf of the State, and further, the relief sought by the State addresses alleged wrongs, theories, and damages not pursued in this case." *Id.* at APP00799:9-11. The district court continued, "Rather, Reno states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens' health, safety and welfare, including the concomitant stress placed on its police, fire, and social services." *Id.* at APP00799:11-13. Thus, the court ruled that the City of Reno's litigation could proceed notwithstanding common law Dillon's Rule and NRS 268.001. *Id.* at APP00799:15-16.

In the 2021 ruling granting Respondents' Petition for Writ of Mandamus in Part and Denying it in Part, this Court held that "the modified Dillons' Rule applies

to a city's power to bring lawsuits, and the district court's conclusion to the contrary was erroneous." *Endo Health Sols., Inc. v. Second Jud. Dist. Ct.*, 492 P.3d 565, 570, 137 Nev. Adv. Rep. 39 (2021) (Case No. 81121) ("*Endo*"). Next, this Court stated it must "determine whether the City has demonstrated that it has the power to bring the lawsuit." *Id.* After determining that the City had not identified any express or implied power granting it the authority to initiate the subject litigation, "[t]he question remains, then, whether the City's lawsuit falls within the definition of a 'matter of local concern.'" *Id.*

Critically, this Court is aware of the City's arguments that the opioid epidemic's unique impact on the City is a matter of local concern. The City of Reno's argument on this matter has been consistent since the briefing on the motions to dismiss. In fact, the City raised the same argument in its Answer to the Petition for Writ of Mandamus and argued the issue before this Court on January 5, 2021. CITY OF RENO'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-23597, at p. 2; Vol. 8, APP01022:4-11. If this Court did not believe that the unique impact of the opioid epidemic on the City of Reno could be a "matter of local concern," this Court could have ruled as such.

Respondents' requested relief in their 2020 Petition was for a writ of mandamus compelling the district court to dismiss the City of Reno's lawsuit "in its entirety as *ultra vires* under Dillon's Rule." PETITIONERS' REPLY IN SUPPORT OF

PETITION FOR WRIT OF MANDAMUS, Case No. 81121, Doc. No. 20-26950, at p. xi. This Court denied Respondents’ request for such a writ, recognizing that “[t]he subject matter of the City’s lawsuit may constitute a matter of local concern.” *Endo*, 492 P.3d at 570. Though this Court could have compelled the district court to dismiss the City’s lawsuit because the City had not, and could not, allege a “matter of local concern,” it determined that the issue of local concern was still an open question. *Id.*

This Court did not make any statement regarding whether the City’s unique harms could be a matter of local concern. Instead, this Court ruled:

The district court concluded that the City’s lawsuit was a matter of local concern but did so based upon its own definition of that term, not NRS 268.003’s definition. The district court reasoned that ‘Reno states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety and welfare, including the concomitant stress placed on its police, fire, and social services.’ We conclude that this was erroneous. The district court was required to strictly apply the statutory definition of ‘matter of local concern’ as set forth in NRS 268.003 to determine if the City’s lawsuit meets that definition.

Endo, 492 P.3d at 571 (2021) (Case No. 81121).

Reading this Court’s opinion as written, the error this Court identified was not in the district court’s finding that the City’s harms are a matter of local concern. *Id.* The district court’s error was in its failure to “strictly apply the statutory definition of ‘matter of local concern’ as set forth in NRS 268.003.” *Id.*

A. The District Court Disregarded the City’s Arguments Based on its Local Harms Based on its Faulty Interpretation of this Court’s Ruling.

The district court, however, reached a different conclusion. After the matter was remanded, the district court directed the parties to provide supplemental briefing focusing on the definition of “matter of local concern,” contained in NRS 268.003.

Respondents argued in the Reply in Support of their Supplemental Brief:

Although the City asserts that the Supreme Court ‘state[d] that this Court may consider damages and local impact so long as it applies the statutory test,’ . . . the Supreme Court ‘conclude[d] that [it] was erroneous’ for this Court to ‘reason[] that ‘Reno states a cognizable local concern by virtue of the impact the alleged conduct has had on its citizens’ health, safety, and welfare, including the concomitant stress placed on its police, fire, and social services.’ *Endo*, 492 P.3d at 571. The only logical interpretation of that statement is that the nature of the City’s alleged damages is not a proper consideration in applying the local ‘impact’ requirement of NRS 268.003(1)(a).

Vol. 11, APP01468:8-15 (emphasis added).

By rearranging the sentences, Respondents changed the meaning of this Court’s 2021 ruling. This Court did not rule that it was erroneous for the district court to consider the City’s harms when determining that the litigation raised issues of local concern. It concluded that it was erroneous for the district court to utilize its own definition of “matter of local concern” instead of utilizing the statutory definition. *Endo*, 492 P.3d at 565.

The district court adopted this erroneous interpretation of this Court’s 2021 ruling, stating: “[h]aving reviewed the matter anew considering the Nevada Supreme Court’s directive, this Court is now convinced the alleged wrongdoing in Plaintiff’s Complaint fails to meet the definition of local concern as contemplated by Nevada’s modified Dillon’s Rule.” Vol. 11, APP01532:11-15 (emphasis added). In so doing, the district court only considered the City’s allegations regarding the Respondents’ alleged wrongdoing and their business activities. *See e.g. id.* at APP01532:18-19 (“[t]his conduct is not a matter of local concern.”), APP01533:12 (“Plaintiff’s claims are not unique.”), APP01533:23-24 (“the alleged wrongful conduct in Plaintiff’s lawsuit fails to satisfy the first aspect of the definition of mater [sic] of local concern as defined in NRS 268.003(1)(a).”), APP01534:15, 20-21 (references to the “alleged wrongful conduct.”).

Any doubt as to the district court’s interpretation of this Court’s 2021 ruling on Respondents’ Petition for Writ of Mandamus is resolved by the district court’s conclusion in its August 26, 2022 Order. The district court concludes:

While the court is cognizant of Plaintiff’s passionate argument that the financial impact of the opioid epidemic on the City of Reno is unique – a position which resonated with the Court in advance of entry of its initial Order – the higher court decision leaves no doubt that this analysis was flawed.

Vol. 11, APP01535:19-22 (emphasis added). The district court’s prior ruling was flawed only because the district court created its own definition of “matter of local

concern,” rather than apply the statutory definition of that term. This Court did not suggest that the district court’s initial conclusion was incorrect. Thus, the district court acted in error when it predetermined that the City’s harms and damages could not be considered a “matter of local concern,” and thus refused to entertain the City’s arguments regarding the same.

B. The District Court Went Beyond the Mandates on Remand.

District courts faced with an order on remand “can take only such proceedings as conform to the judgment of the appellate tribunal.” *Lo Bue v. State*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976) (internal citations omitted). Thus, district courts may only consider those issues specifically remanded by the higher court for further ruling or review. For example, in a water rights case, this Court determined that the party seeking the permit failed to show that the State Engineer had authority to make certain findings regarding permitting and that there was a lack of sufficient evidence supporting the permit. *State Eng’r v. Eureka Cty.*, 133 Nev. 557, 558, 402 P.3d 1249, 1250 (2017). This Court remanded “for proceedings consistent with the opinion.” *Id.* at 558-559, 1250. The party seeking the permit insisted that the remand required the district court to allow the State Engineer to conduct further fact-finding, while the opposing party contended that the remand required the district court to vacate the permits. *Id.* at 559, 1250-1251. The district court declined to allow additional fact-finding, a decision that this Court determined was appropriate:

At no point did we direct the district court to remand to the State Engineer for additional fact-finding. Because (1) the State Engineer relied on insufficient facts before granting KVR's applications, (2) we gave no order to remand to the State Engineer, and (3) KVR is not entitled to a do-over after failing to provide substantial mitigation evidence, we conclude that the district court acted consistently with the [remand order].

Id. at 559 - 560, 1251 (italics in original).

This Court recognizes that its orders request remand on limited issues and for particular purposes. *Lo Bue v. State*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976) ("it is abundantly clear that the only question to be decided on remand was the amount of damages, if any, owed to Lo Bue by the State. The cause was remanded but for a single purpose. Under the doctrine of the law of the case the district court erred in permitting the jury to decide whether a contract had been entered into between [the parties] and whether it had been breached."), *Wheeler Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003) ("On remand, the district court redetermined and awarded Wheeler Springs damages, but refused to award Wheeler Springs interest, costs, and attorney fees . . . however, we specifically instructed the district court to award Wheeler Springs 'rent and other charges due to Wheeler Springs under the various lease agreements' with the Tenants . . . we conclude that the district court erred in its failure to provide Wheeler Springs this Relief.")

Here, this Court issued an order on remand directing the district court to consider whether the City of Reno alleged a “matter of local concern,” according to the statutory definition in NRS 268.003. The Order does not require dismissal of the case nor does it require the district court to reverse its prior determination that the City’s unique harms are a matter of local concern. Instead, it requires the district court to conduct its analysis while following NRS 268.003. The district court’s conclusion that this Court’s 2021 rendered the City’s unique harms meaningless for purposes of an NRS 268.003 analysis is erroneous and contradicts Nevada law.

III. THE OPIOID EPIDEMIC’S UNIQUE FINANCIAL IMPACT ON THE CITY OF RENO IS A “MATTER OF LOCAL CONCERN” PURSUANT TO NRS 268.003.

A “matter of local concern” is defined as any matter 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 regulations of the United States or this State to federal or state regulation that preempts local regulation.

NRS 268.003(1).

The City of Reno is cognizant of the impact that the opioid epidemic has had on the entire United States. For that reason, the City never claimed that it is the only jurisdiction impacted by Respondents' alleged wrongful conduct. However, no other jurisdiction can claim to have been affected by the opioid epidemic in the same way as the City of Reno or that they have suffered the same damages as the City of Reno.

Evaluating NRS Chapter 268 as a whole, the Legislature intended to permit cities to take the action necessary to protect their inhabitants and to promote the public health, safety, and welfare of those residing within the City. It is therefore 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). The City of Reno seeks to remedy the unique harms it suffered as a result of the opioid epidemic within the City. Such harms meet the definition of “matter of local concern” contained in NRS 268.003.

A. NRS 268.003(2)(a) Specifically Lists “Issues of Public Health” as Matters of Local Concern.

Pursuant to NRS 268.003(2)(a), “[t]he term [matter of local concern] includes, without limitation, any of the following matters of local concern: (a) Public health,

safety and welfare in the city.” (Emphasis added.) The effects of the opioid epidemic are unquestionably issues of public health. Despite the fact that the City addressed NRS 268.003(2)(a) in its supplemental briefing and oral argument at the district court level, that court did not include any mention of the particular subsection in its August 26, 2022 Order. Vol. 11, APP01461:1-8; Vol. 11, APP01499:23-01500:8; Vol. 11, APP01529-01538.

District courts must follow this Court’s mandates on remand. This Court’s 2021 ruling required the district court to apply the definition of “matter of local concern” contained within NRS 268.003. *Endo Health Sols. Inc. v. Second Jud. Dist. Ct.*, 492 P.3d 565, 571, 137 Nev. Adv. Rep. 39 (2021) (Case No. 81121). Nothing in the 2021 ruling limited the remand considerations to only NRS 268.003(1). The district court was required to consider the City’s arguments in light of the entirety of NRS 268.003. *See Lo Bue v. State*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976) (internal citations omitted), *State Eng’r v. Eureka Cty.*, 133 Nev. 557, 558, 402 P.3d 1249, 1250 (2017).

While NRS 268.003(2)(a) does not expand the definition of “matter of local concern” set forth in NRS 268.003(1), it certainly provides guidance as to the types of matters the Legislature considers matters of local concern. Courts must interpret statutes according to their plain language “unless doing so would provide an absurd result.” *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 546,

331 P.3d 850, 854 (2014). By ignoring NRS 268.003(2)(a) in its Order, the district court rendered that portion of the statute meaningless, which directly contradicts Nevada’s law regarding statutory interpretation. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) (“statutory interpretation should not render any part of a statute meaningless”).

There is no question that the opioid epidemic is a public health crisis that wreaked havoc upon the City of Reno causing damages that only the City can address. However, the district court was so convinced that this Court’s ruling barred consideration of the City’s unique harms as the “matter of local concern,” that it failed to consider NRS 268.003(2)(a). The district court erred in both failing to consider the entirety of NRS 268.003, and ignoring the language of the applicable statute, therefore rendering it meaningless.

B. The City of Reno’s Harms and Damages are Unique to the City.

A matter of local concern must “primarily affect[] or impact [] the areas located in the incorporated city,” or the people residing therein, and may not have a significant impact on other cities or counties. NRS 268.003(1)(a). Throughout the underlying litigation, Respondents argued that the City cannot demonstrate that the opioid epidemic is a matter of local concern because of the impact the epidemic has had across the State and country. However, Respondents’ analysis fails to consider the unique impact of the opioid epidemic in the various jurisdictions.

The damages the City of Reno suffered as a result of the opioid epidemic are different than the damages suffered in any other city, county, or the State. Addiction, drug abuse, opioid-related deaths, and opioid-related crimes within the City of Reno primarily affect the City, its residents, and its local programs. The City makes its own decisions regarding how to handle the effects of the opioid epidemic, which requires the use of City resources, City funding, City agencies, and City programs.

No two cities have been impacted by the opioid epidemic in the same way and cities will not have the same damages. The impact of the opioid epidemic varies in type (i.e., some areas may have a greater rate of opioid-related crime while others may see a rise in opioid-related deaths), volume (i.e., the number of prescriptions written, the number of arrests, the number of deaths), the city's approach to handling the crisis, and the costs associated with addressing the crisis.

Additionally, the State of Nevada's opioid litigation varies greatly from the City's litigation. This is evident from the different causes of action, claims, and defendants in both cases. The City is alleging tort and nuisance claims made and based upon Respondents' conduct that impacted the City, the City's harms, and the City's damages. Vol. 1, APP00097:8-00114:17. 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. Vol. 9-10, APP01288:21-01382:7.

Moreover, the State's damages are vastly different from those the City is seeking. The State is seeking an injunction to cease deceptive practices; future abatement costs; fines and penalties related to the alleged violations of the Deceptive Trade Practices and False Claims Act; damages related to Medicaid claims; and punitive damages. *Id.* at APP01382:7-01383:9. Meanwhile, the City is seeking past damages related to the costs the City has incurred in addressing the harm done to the public health and safety within the City. Vol. 1, APP00114:19-00115:27.

In the supplemental briefing to the district court, the Respondents pointed to the One Nevada Agreement on Allocation of Opioid Recoveries ("Agreement") as proof that the City's claims do not address matters of local concern. Vol. 11, APP01440:7-16; Vol. 11, APP01385-01422. When, in fact, the opposite is true. The Agreement recognizes that the jurisdictions across the State of Nevada, as well as the State itself, all suffered unique damages that cannot be handled through one, uniform response. The Agreement only relates to scenarios in which money is recovered, either through settlement with any Defendant(s) or through bankruptcy proceedings for any Defendant, that is intended to cover the damages suffered by the State *and* the damages incurred by individual local governments who are signatories to the Agreement. Vol. 11, APP01387-01391.

Indeed, the Agreement demonstrates that the State of Nevada cannot recover all funds and dictate how the funds should be spent to address the opioid epidemic in every city, county, or other governmental subdivision covered by the Agreement. Each local government eligible to receive funding individually evaluated and reviewed the Agreement prior to signing the Agreement. Vol. 11, APP01393. Once the funds are received, the individual signatories to the Agreement have the discretion to use the funds as needed to remediate the specific opioid-related harms that the signatory suffered. Vol. 11, APP01385-01387.

Moreover, the past settlements with the Opioid Distributors and Johnson & Johnson were only finalized after the local governments agreed to participate in the settlement. Vol. 11, APP01451. The settlements are further evidence that each local government must be treated individually, and each local government must individually consider the settlements, just as they evaluated the Agreement individually. The entire purpose of the Agreement is to recognize the differences in damages the opioid epidemic caused in each jurisdiction and to allow each jurisdiction to remedy those harms as appropriate for their residents and to meet their needs.

Review of the district court's August 26, 2022 Order reveals, however, that the district court did not consider any of City's arguments regarding the significant impact of the opioid epidemic on the City. The district court once again relied upon

its faulty interpretation of this Court’s 2021 Ruling and, thus, failed to consider any argument related to the impact of the opioid epidemic on the City, the City’s harms, or the City’s damages when it made its decision following remand. Instead, the district court focused on the claims alleged in opioid cases around the state, the defendants involved, and the alleged wrongful conduct. *See* Vol. 11, APP01533:6-25.

The district court concluded that “the alleged wrongful conduct in Plaintiff’s lawsuit fails to satisfy the first aspect of the definition of mater [sic] of local concern as defined in NRS 268.003(1)(a). This reason alone would bar Plaintiff from maintaining the underlying action.” *Id.* at APP01533:23-25. Respondents’ conduct is not the only issue to consider when determining whether the City’s lawsuit addresses a matter of local concern. The district court should have considered that every governmental entity – whether it be city, county, or State –suffered its own unique harms as a result of the opioid epidemic. The City of Reno has been uniquely impacted by the opioid epidemic and, thus, the City’s claims satisfy the requirement of NRS 268.003(1)(a).²

² NRS 268.003(1)(b) has never been at issue in the underlying litigation as there is no debate that the City of Reno’s litigation does not fall within the exclusive jurisdiction of another governmental entity.”

C. The City of Reno’s Litigation Does Not Concern any of the Three Areas Listed in NRS 268.003(1)(c).

Upon satisfying NRS 268.003(1)(a), the next requirement is that the City of Reno’s litigation must not fall into the three categories listed in NRS 268.003(1)(c). The Statute provides that a matter is not one of local concern if it concerns: “(1) [a] state interest that requires statewide uniformity of regulation; (2) [t]he regulation of business activities that are subject to substantial regulation by a federal or state agency;” or, (3) federal or state interests that are encompassed by the Constitutions of either the United States or Nevada or any federal or state regulation that preempts local regulation. NRS 268.003(1)(c). Respondents have never argued that the City’s litigation fits within the third subsection of NRS 268.003(1)(c). Accordingly, this Court need only consider NRS 268.003(1)(c)(1) and (2) in its analysis.

1. The City of Reno’s Harms Cannot be Addressed through Uniform Regulation.

The district court erred in finding that the City’s lawsuit raises issues that can only be addressed through uniform regulation or “statewide uniformity.” Once again, the district court focused only on the Respondents’ alleged wrongful conduct rather than considering the City’s unique harms and damages. As detailed above, the City’s damages are unique to the City of Reno and cannot be handled through statewide regulations. In its August 26, 2022 order, the district court fell back on the

State's regulation of the practice of pharmacy to reach the conclusion that the City's lawsuit "concern[s] a state interest that implicates statewide uniformity." Vol. 11, APP01534:9-17.

The City does not dispute that the State of Nevada regulates the practice of pharmacy within the State. But that state function does not negate or address the opioid-related harms to the City's residents and local resources. Moreover, the State's regulation of the practice of pharmacy is not at issue in the City's litigation. The City of Reno is not seeking to create any regulations or to enact any laws that would interfere with those created by the State Legislature.

This fact is highlighted by the Agreement which provides each participating jurisdiction with its own funds to remediate its own harms caused by the opioid epidemic as it sees fit. The State and local governments recognize that the opioid epidemic impacted each jurisdiction differently, and therefore there is not a single uniform approach to handling opioid recoveries that would work for every jurisdiction. Accordingly, it was necessary to provide each local government with the opportunity to use the funds as needed to address their unique harms.

Thus, the City's litigation raises unique issues related to its determination of how best to remedy the harms caused by the opioid epidemic within the City. Such harms cannot be addressed through uniformed regulation or a single remediation plan. The district court's erroneous ruling is based on its narrow interpretation of

this Court's 2021 Ruling and fails to consider all pieces of the City's litigation. Accordingly, the City's litigation raises issues related to the impact of the opioid epidemic that cannot be handled through uniform regulations.

2. The City of Reno is Not Seeking to Regulate Business Activities.

A matter is not one of local concern if it encroaches upon an area substantially regulated by federal and state agencies. The City of Reno is seeking to recover damages caused by Respondents when they violated regulations related to opioid marketing and opioid sales. Contrary to Respondents' arguments below, the City is not asking this Court to stop Respondents from manufacturing or marketing opioids within the State of Nevada.

Here again, under the impression that this Court had instructed the district court not to consider the City's unique damages, the district court determined that the City's case is not one of local concern because the Respondents' wrongful conduct are "business activities subject to substantial regulation by the State of Nevada and the Federal Government." Vol. 11, APP01534:20-22. The district court's focus on the Respondents' business activities ignores the fact that the City's harms and damages must be remedied within the City. Moreover, there is no federal or state regulation dictating how the City must address its opioid-related harms. Indeed, only the City knows how any recovery can be allocated to adequately remediate the harms the City experienced.

At the district court level, Respondents pointed to paragraph 8 of the City's Second Amended Complaint as evidence that the City's requested relief imposes on areas regulated by the federal or state government. The prayer for relief requests "such other and further extraordinary equitable, declaratory and/or injunctive relief as permitted by law as necessary to assure that the Plaintiff has an effective remedy and to stop Defendants' promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future." *See* Vol. 7, APP00981:20-23 (emphasis added). The City is not seeking to regulate Respondents' business activities, especially as its primary focus is to recover funds expended to address the decades of harm caused by Respondents.

IV. CONCLUSION.

The City of Reno's underlying litigation raises "matters of local concern" in the form of the City's unique damages and harms resulting from the opioid epidemic. This Court previously issued a writ of mandamus to the district court instructing it to determine whether the City's case addresses matters of local concern pursuant NRS 268.003.

As set forth above, City of Reno's litigation specifically addresses matters of local concern as that term is defined in NRS 268.003:

1. The City of Reno's litigation addresses the unique harms caused by the opioid epidemic and resulting harm and, thus, the matters

at issue primarily affect or impact the City, its residents, and its agencies. *See* NRS 268.003(1)(a).

2. The City of Reno’s litigation does not concern:

- A state interest requiring uniformity of regulation because the City of Reno is not impeding or interfering with any State regulation and because the City of Reno’s damages may only be addressed by the City. *See* NRS 268.003(1)(c)(1).
- The regulation of business activities that are subject to regulation by a federal or state agency because the City of Reno is not trying to regulate Defendants’ business activities or interfere with any regulations already in place. *See* NRS 268.003(1)(c)(2).

3. The City of Reno’s litigation involves an issue critical to the public health and, thus, is a matter of local concern. *See* NRS 268.003(2).

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Based on the foregoing, the City of Reno respectfully requests this Honorable Court reverse the district court's determination that the City's unique harms do not, and cannot, satisfy the requirements of NRS 268.003, and remand the case for reconsideration incorporating a review of all arguments and pursuant to the definition of "matter of local concern" set forth in NRS 268.003.

DATED this 15th day of April, 2023.

By: /s/ Robert T. Eglet

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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 7,301 words.

I further certify that I have read this Opening 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.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of April 2023, I served a true and correct copy of the foregoing **APPELLANT’S OPENING BRIEF** upon each of the parties by electronic service through the E-Flex rules of service.

By: /s/ Jennifer Lopez
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