

CITY OF RENO,)
)
Appellant,)
)
vs.)
)
TEVA PHARMACEUTICALS USA,)
INC.; CEPHALON, INC.; ENDO)
PHARMACEUTICALS, INC.;)
ALLERGAN USA, INC.;)
ALLERGAN FINANCE, LLC K/K/A)
ACTAVIS INC. F/K/A WATSON)
PHARMACEUTICALS, INC.;)
ACTAVIS PHARMACY, INC. F/K/A)
WATSON PHARMA, INC.; AND)
ACTAVIS LLC,)
)
Respondents.)

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NRAP 26.1 DISCLOSURE STATEMENT

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:

No publicly held corporation owns 10% or more of Respondents Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, or Watson Laboratories, Inc.

Attorneys for Hymanson & Hymanson PLLC and Morgan, Lewis & Bockius LLP have, and continue, to represent Respondents Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, and Watson Laboratories, Inc. in the proceeding in this Court as well as the underlying proceeding.

Dated this 5th day of June, 2023.

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CERTIFICATE OF COMPLIANCE

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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.

Dated this 6th day of June, 2023.

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STATEMENT OF ISSUE ON APPEAL

Whether the district court correctly held that Appellant the City of Reno (“City”) lacks statutory authority under Nevada’s modified Dillon’s Rule, NRS 268.003 *et. seq.*, to sue Respondents-pharmaceutical manufacturers (“Manufacturers”) for injunctive relief and damages allegedly caused by Nevada’s opioid abuse crisis because the manufacturing, promotion and distribution of prescription medications impacts communities other than the City, is subject to regulation by state and federal agencies, and implicates statewide interests in uniformity of regulation, and therefore is not “a matter of local concern” subject to regulation by the City.

INTRODUCTION

This appeal arises from the district court’s dismissal of the City’s lawsuit alleging that the wrongful marketing and distribution of opioid medications by Manufacturers and other national pharmaceutical companies contributed to a statewide opioid abuse crisis that, in turn, caused harm to the City and throughout Nevada. In a previous writ proceeding arising from this case, this Court unanimously held that Nevada’s modified version of Dillon’s Rule, NRS 268.003, which limits cities’ authority to act to expressly enumerated powers and “matters of local concern,” applies to the City’s lawsuit. *Endo Health Solutions, Inc. v. Second Jud. Dist. Ct.*, 137 Nev. 390, 391, 492 P.3d 565, 567-68 (2021) (en banc) (“*Endo*”). There, this Court reversed the district court’s erroneous conclusion that the City’s allegations of local impacts caused by the opioid crisis establish a “matter of local concern” and instructed the district court to apply NRS 268.003’s statutory definition of a “matter of local concern” to the City’s claims on remand.

Under that statutory definition, a “matter of local concern” that may be regulated by a city is a “matter” that “[p]rimarily affects or impacts areas located in the incorporated city [and] does not have a significant effect or impact on areas located in other cities or counties,” NRS 268.003(1)(a), and does not concern: (1) “[a] state interest that requires statewide uniformity of regulation,” NRS 268.003(1)(c)(1), or (2) “[t]he regulation of business activities that are subject to

substantial regulation by a federal or state agency. . . .” NRS 268.003(1)(c)(2). On remand, the district court held that the City’s suit does not involve a “matter of local concern” for three independent reasons.¹

First, the district court concluded that the conduct alleged by the City did not *primarily* impact the City because the allegedly wrongful promotion, distribution, and marketing of opioids has impacted the entire State of Nevada (and beyond).² *Second*, the district court found that both the alleged conduct and the relief sought by the City concern a statewide interest requiring uniformity.³ *Third*, the district court found that the alleged conduct involves business activities subject to substantial state and federal regulation, because opioids are Schedule II controlled substances comprehensively regulated by federal and state agencies.⁴ Because the conduct alleged by the City does not meet the statutory definition of a “matter of local concern,” the district court correctly found that the City lacks authority to maintain its action and dismissed the City’s lawsuit.

The district court’s reasoning flows from a straightforward application of the statutory text and this Court’s guidance in *Endo* and should be affirmed. The City argues nothing new on appeal that merits reversal. The City admits that

¹ City App., Vol. 11 at APP01529-01538 (Order Granting Defs.’ Renewed Mot. To Dismiss).

² City App., Vol. 11 at APP01533.

³ City App., Vol. 11 at APP01534.

⁴ City App., Vol. 11 at APP01534-01535.

Manufacturers’ allegedly wrongful conduct did not primarily impact the City and further admits that the manufacture and promotion of opioids are comprehensively regulated by state and federal agencies. City Br. 16, 24. This alone is dispositive. State and federally regulated conduct that allegedly caused harm throughout Nevada is not a “matter of local concern” under any reasonable definition.

The City nevertheless faults the district court for not focusing its “matter of local concern” analysis exclusively on “the fact that the City’s harms and damages must be remedied within the City.” City Br. 25. All of the City’s arguments for reversal rest on this same, flawed contention— that “local impacts” alone can establish a “matter of local concern.” *Id.* at 7-15.

The City’s argument is exactly the same argument that this Court rejected in *Endo*. There, this Court held:

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.***

Endo, 137 Nev. at 396-97 (emphasis added). *Endo*’s rejection of the City’s argument that a “matter of local concern” can be established by looking only to alleged local impacts—and not to the alleged conduct and the full scope of its impacts—fully disposes of the City’s appeal.

Basic statutory construction compels the same conclusion. To determine whether a city has the power to regulate a “matter” under Dillon’s Rule, courts must assess the nature and extent of the impacts caused by the “matter,” including any “local impacts.” NRS 268.003(1)(a). If the court determines that the “matter” the city seeks to regulate “*primarily*” impacts the city, does not substantially impact other cities, and all the other statutory conditions are satisfied, then the “matter” is a “matter of local concern” subject to city regulation. *Id.* It follows from this structure that a “matter” *must* be distinct from the “impacts” caused by the “matter.” The most natural reading, therefore, is that a “matter of local concern” is the conduct that a city seeks to regulate—not the “local impacts” caused by that conduct. The correct interpretation of NRS 268.003 accordingly dooms the City’s only argument because the “local impacts” of the opioid abuse crisis *cannot* be a “matter of local concern.”

The City’s flawed interpretation also must be rejected because it would gut Dillon’s Rule. Under the City’s interpretation, every issue impacting a city is a “matter of local concern” and subject to regulation by the city, even if it involves highly-regulated statewide conduct with broad societal impact. That result would be untenable. Dillon’s Rule “serves an important function in defining the powers of city government and remains a vital component of Nevada law.” NRS 268.001(5). Under Dillon’s Rule, any harms the City allegedly suffered as a result of the *statewide* opioid abuse crisis must be remedied, if at all, by *statewide* action—

whether by legislation or by the ongoing parallel litigation brought by the State against the same Manufacturers. Accordingly, this Court should affirm the district court's determination that Nevada's statutory Dillon's Rule set forth in NRS 268.003 precludes the City's claims.

STATEMENT OF FACTS

A. Statutory Background

Nevada's modified Dillon's Rule, codified at NRS 268.003, "limits an incorporated city's powers to those expressly granted to it, those necessarily implied from an express grant of power, or those necessary or proper to address matters of local concern." *Endo*, 137 Nev. at 391 (internal quotation marks omitted). These limits on local power "serve[] an important function in defining the powers of city government and remain[] a vital component of Nevada law." NRS 268.001(5).

NRS 268.003(1) defines a "matter of local concern" as 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 regulations of the United States or this State to federal or state regulation that preempts local regulation.

NRS 268.003(1).

NRS 268.003(1)'s subdivisions (a) through (c) are conjunctive. Thus, in order to demonstrate that this lawsuit involves a “matter of local concern,” the City must satisfy all three subdivisions: (a), (b), and (c). In addition, subdivision (c)—“[And] [d]oes not concern...”—is phrased in the disjunctive. Thus, if a “matter” *does* concern the subject of any of the three discrete subparts of NRS 268.003(1)(c), that “matter” is *not* one of local concern.

B. The City’s Lawsuit Seeks Remedies For Harms Caused By The Statewide Opioid Abuse Crisis.

The City asserts various tort claims against Manufacturers, as well as other national manufacturers, pharmacies, and distributors of opioid medicines.⁵ The City alleges that Manufacturers “falsely portray[ed] both the risks of addiction and abuse

⁵ City App., Vol. I at APP00001-00058 (Complaint). The City amended its Complaint on two occasions. *See id.* APP00059-00117 (First Am. Compl.); *id.*, Vol. VII at APP00811-00987 (Second Am. Compl.). The allegations in each complaint are substantially identical. Manufacturers’ brief references the City’s Second Amended Complaint (“SAC”). The remaining defendants named in the SAC have been dismissed via stipulation. *See* Manuf. App., Vol. V at Supp.App.700-735 (district court docket sheet).

and the safety and benefits of long-term use” of their opioid medications⁶ and failed to “halt suspicious orders.”⁷

The City asserts that opioid abuse is “a widespread problem in the State of Nevada” that “has had far-reaching financial, social, and deadly consequences . . . throughout Nevada” and “across our country.”⁸ The City further asserts that Manufacturers’ alleged conduct—the supposed improper marketing of prescription opioid medicines and purported lax monitoring for suspicious orders—did not vary by jurisdiction but, rather, was both statewide and nationwide in scope.⁹ In addition to seeking compensatory and punitive damages, the City seeks statewide “injunctive relief” to “stop . . . promotion and marketing of opioids for inappropriate uses in Nevada, currently and in the future.”¹⁰

⁶ City App., Vol. VII at APP00814 (SAC ¶ 8).

⁷ City App., Vol. VII at APP00894 (SAC ¶ 322).

⁸ City App., Vol. VII at APP00812 (SAC ¶¶ 1-2), APP00814 (SAC ¶ 17), APP00814 (SAC ¶ 23); *see also, e.g., id.* at APP00813 (SAC ¶ 13) (asserting that alleged misconduct impacted “millions of people who are now addicted”), APP00813 (SAC ¶¶ 4-6) (basing allegations on statewide statistics concerning all “Nevadans”).

⁹ *See* City App., Vol. VII at APP00812 (SAC ¶¶ 1-3) (“Opioid addiction and overdose in the United States as a result of prescription opioid use has reached epidemic levels over the past decade. . . . The abuse of opioids is a widespread problem in the State of Nevada. . . .”), APP00814 (SAC ¶ 23) (alleging opioids present “a healthcare crisis . . . throughout Nevada”), APP00815 (SAC ¶¶ 25-26) (allegations of drug companies’ “marketing campaign” involving “common messages” disseminated nationwide).

¹⁰ City App., Vol. VII at APP00981 (SAC, Prayer for Relief, ¶ 8); *see also* APP00818 (SAC ¶ 40) (invoking district court’s equitable authority).

C. The Alleged Conduct At Issue Is Regulated By The State And Federal Governments.

Federal and state authorities extensively regulate the manufacture, marketing, and distribution of opioid medicines, as well as their prescribing and dispensation.¹¹

Manufacture. Under the federal Food, Drug, and Cosmetic Act (“FDCA”), the Food and Drug Administration (“FDA”) determines whether to approve an opioid medicine for sale and marketing, after assessing whether its “probable therapeutic benefits . . . outweigh its risk of harm.” *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 476 (2013); 21 U.S.C. § 355(a)-(d).

The Drug Enforcement Administration (“DEA”) also regulates the manufacture of opioid medicines under the federal Controlled Substances Act (“CSA”). The DEA “establish[es] production quotas . . . [for quantities] to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States” 21 U.S.C. § 826(a); *see also* 21 C.F.R., part 1303 (DEA quota-establishment procedures).

¹¹ *See, e.g.*, City App., Vol. VII at APP00825 (SAC ¶ 64) (describing disciplinary actions taken against distributors by federal drug-enforcement authorities); APP00855:3-12 (SAC ¶ 185) (federal approval and conditions thereon for OxyContin); APP00866 (SAC ¶ 227) (“Branded advertising is also subject to FDA review for consistency with the drug’s FDA-approved label.”); APP00871 (SAC ¶ 246) (physician and medical practice “were investigated by the DEA for overprescribing opioids after twenty patients died from overdoses”); APP00904 (SAC ¶ 367) (“Pursuant to NAC 453.400, Distributor Defendants must establish and maintain effective controls and procedures to prevent or guard against theft and misuse of controlled substances.”).

Marketing. The FDA regulates the marketing of prescription medicines, including prescription opioids. *See* 21 U.S.C. § 352 (misbranding), 355(b)(1)(A) (empowering FDA to “tak[e] appropriate action on the marketing of regulated products”). The promotion of drugs in Nevada is also regulated by the Nevada State Board of Pharmacy. *See* NRS 639.070(1); NAC 639.010 *et seq.*

Distribution. Under the CSA, every party authorized to handle controlled substances, including manufacturers, distributors, and pharmacies, must register with the DEA annually. 21 U.S.C. § 822(a). The DEA evaluates all registrants to ensure they are “consistent with the public interest.” 21 U.S.C. § 823(a). The CSA also requires registrants to report sales of prescription opioids. 21 U.S.C. § 827(d)(1).

The CSA’s registration system is mirrored at the state level through Nevada’s Uniform Controlled Substances Act (“Nevada Uniform CSA”), which requires that “[a]ny person, including a wholesaler or manufacturer, who engages in the business of wholesale distribution or furnishing controlled substances . . . [as defined by] by federal law . . . shall obtain a license [with the Nevada State Board of Pharmacy].” NRS § 639.233. The Nevada State Board of Pharmacy oversees the safety, integrity, and propriety of any wholesale transactions involving prescription drugs. NRS 639.540(1); NAC 639.607(1).

Prescribing and Dispensing. Under the CSA, all prescriptions for Schedule II controlled substances must be in writing. 21 U.S.C. § 829(a). The person writing the prescription must be registered with the DEA and must be authorized to prescribe the controlled substance in question in accordance with state law. 21 C.F.R. § 1306.03(a). While the “proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, [] a corresponding responsibility [also] rests with the pharmacist who fills the prescription.” 21 C.F.R. § 1306.04(a). The Nevada State Board of Pharmacy extensively regulates pharmacies in Nevada. *See* NRS 639.070(1); NAC 639.010 *et seq.*

D. The State And Other Political Subdivisions Have Brought Nearly Identical Actions Against Manufacturers.

The City’s “lawsuit is not unique, as governmental entities throughout the country, including the State of Nevada itself and other cities throughout the state, have filed lawsuits alleging similar claims.” *Endo*, 137 Nev. at 392. The State of Nevada brought its own opioid lawsuit in 2019. *See Nevada v. McKesson Corp. et al*, case No. A-19-796755-B (Clark Cnty.).¹² The State’s lawsuit alleges essentially the same conduct alleged by the City here and against largely the same group of national pharmaceutical manufacturers, distributors, and pharmacies, including

¹² Manuf. App., Vols. III-IV at Supp.App.373-699 (State of Nevada Second Am. Compl.); *see also* City App., Vol. XI at APP01533:15-16 (district court order noting “similar claims” by the “State of Nevada itself” “against the manufacturer Defendants named in this lawsuit”).

Manufacturers. Like the City, the State alleges that the “widespread use of” opioid medications “has resulted in a national epidemic,” which “Nevada has been greatly impacted by,” and seeks statewide injunctive relief.¹³

Twenty-four other cities and counties in Nevada also have sought to recover for harms allegedly caused by Nevada’s opioid crisis.¹⁴ These political-subdivision suits similarly allege that opioid abuse is a matter of statewide concern throughout Nevada. Indeed, every city and county similarly alleges: “In Nevada, the opioid epidemic is widespread, not localized to any particular city or county.”¹⁵ Each of these suits also seeks injunctive relief to alter the marketing of opioid medications, as well as abatement of an alleged public nuisance purportedly caused by the same statewide conduct.¹⁶

¹³ Manuf. App., Vol. III at Supp.App.385. ¶ 3; *id.* Vol. IV at Supp.App.608, ¶ 887 (injunctive relief); Supp.App.617, ¶ 918 (same); Supp.App.690. ¶ 1257 (same).

¹⁴ City App., Vol. VII at APP01533:12-22.

¹⁵ *See, e.g.*, Manuf. App., Vol. I at Supp.App.046 (Third Am. Compl. and Demand for Jury Trial Case No. A-17-76828-C, ¶ 205 (Clark Cnty.)); *id.* at Supp.App.141 (Compl., Case No. A-19-800695-B, ¶ 200 (Henderson Cnty.)); *id.* Vol. 2 at Supp.App.233 (Compl., Case No. A-19-800697-B, ¶ 200 (Las Vegas)); *id.* at Supp.App.324 (Compl. Case No. A-19-800699-B, ¶ 200 (North Las Vegas)).

¹⁶ *See, e.g.*, Manuf. App., Vol. I at Supp.App.056 (Third Am. Compl. and Demand for Jury Trial Case No. A-17-76828-C, ¶ 259 (Clark Cnty.)); *id.* at Supp.App.103-Supp.App.110 (Compl., Case No. A-19-800695-B, ¶¶ 24-50 (Henderson Cnty.)); *id.* Vol. II at Supp.App.243 (Compl., Case No. A-19-800697-B, ¶ 255 (Las Vegas)); *id.* at Supp.App.334 (Compl. Case No. A-19-800699-B, ¶ 255 (North Las Vegas)).

Additionally, in 2021, the State of Nevada, “along with all Nevada counties, and cities that [then had] active litigation against opioid companies, came to an agreement on the intrastate allocation of funds from opioid-related recoveries.”¹⁷ This “One Nevada” agreement—which the City of Reno also has signed—states in its recitals that “the State of Nevada and its Local Governments share a common desire to remediate and alleviate the impacts of the opioid epidemic throughout the State of Nevada” and references “an opioid epidemic both nationally and within the State of Nevada.”¹⁸

E. This Court Previously Granted Mandamus Relief And Held That Dillon’s Rule Applies To The City’s Claims.

In March 2019, Manufacturers moved to dismiss the City’s complaint under Dillon’s Rule.¹⁹ Manufacturers argued that the City’s suit does not fall within NRS 268.003’s statutory definition of “matter of local concern.”²⁰ The district court denied Manufacturers’ motion, reasoning that the City “state[ed] 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

¹⁷ See City App., Vol. XI at APP01451 (press release); *see also id.* at APP0138556-01422 (One Nevada Agreement on Allocation of Opioid Recoveries).

¹⁸ City App., Vol. XI at APP01385.

¹⁹ City App., Vol. I at APP00118-00155.

²⁰ City App., Vol. I at APP00118-00155.

social services.”²¹ Manufacturers thereafter sought mandamus review and this Court granted their writ petition.²²

On review, this Court unanimously reversed the district court’s decision. *Endo*, 137 Nev. at 391. This Court held that the district court’s decision was erroneous because it concluded that the alleged local impacts of Nevada’s opioid abuse crisis on the City established a “matter of local concern” instead of following the statutory definition. *Id.* at 567. Because the district court’s erroneous conclusion was based on its “own definition” of a “matter of local concern,” rather than the definition provided by NRS 268.003, this Court reversed and remanded with instructions to the district court 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.” *Id.*

F. The District Court Dismissed The City’s Lawsuit On Remand.

Upon remand, the district court strictly applied the statutory definition of a “matter of local concern” as directed by this Court and granted Manufacturers’ motion to dismiss.²³ The district court ruled that the City’s lawsuit fails to meet the

²¹ City App., Vol. VII at APP00799 (Omnibus Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss; and Granting Leave to Amend).

²² The Defendants filed a petition for writ of mandamus on May 4, 2020. Manuf. App., Vol. V at Supp.App.70 (notice of writ).

²³ City App., Vol. XI at APP01529 (Order Granting Defendants’ Renewed Motion to Dismiss)..

statutory definition of “matter of local concern” “because it [did] not satisfy all three of the subsections in NRS 268.003(1).”²⁴ The district court based its decision on three independent grounds.

First, the district court held that the City’s lawsuit does not relate to a “matter of local concern” because the allegedly wrongful conduct the City alleges “does not primarily impact the City of Reno and . . . has significant impact on other areas outside of Reno.”²⁵ Based upon the City’s own allegations, the district court reasoned that Manufacturers’ alleged conduct has had “ha[d] a significant impact on other areas in the State of Nevada and throughout our nation.”²⁶ As a result, the City’s lawsuit “fails to satisfy the first aspect of the definition of matter of local concern” under the statute.²⁷

Second, the district court held that the lawsuit “concerns . . . a state interest that requires statewide uniformity” and therefore fails to satisfy NRS 268.003(1)(c)(1).²⁸ The district court reasoned that the City seeks equitable relief to stop Manufacturers’ alleged improper conduct, including the marketing of opioids for inappropriate uses in Nevada, and therefore implicates state interests because it

²⁴ City App., Vol. XI at APP01532.

²⁵ City App., Vol. XI at APP01533.

²⁶ City App., Vol. XI at APP01533 (citing First. Am. Compl. (“FAC”) ¶¶ 2, 17, 23).

²⁷ City App., Vol. XI at APP01533.

²⁸ City App., Vol. XI at APP01534.

involves the statewide manufacturing, marketing, and distribution of opioid medicines.²⁹ The district court further reasoned that because the City seeks statewide relief, and because the alleged conduct falls under the “purview of the Nevada State Board of Pharmacy,” the City’s claim does not raise a “matter of local concern.”³⁰

Finally, the district court held that the lawsuit does not constitute a “matter of local concern” under NRS 268.003(1)(c)(2), because the manufacture, marketing, and distribution of prescription opioid medicines “are subject to substantial regulation by both federal and state agencies.”³¹ The district court reasoned that “the entire field of opioid manufacturing, distribution and prescription is substantially regulated by the federal government,” including the FDA and DEA.³² It further reasoned that the Nevada State Board of Pharmacy “is also substantially involved in the regulation of opioid medications.”³³ The district court thus found that the “alleged wrongful conduct does concern business activities substantially regulated by multiple federal agencies and a state agency.”³⁴

²⁹ City App., Vol. XI at APP01534.

³⁰ City App., Vol. XI at APP01534.

³¹ City App., Vol. XI at APP01533-01534.

³² City App., Vol. XI at APP01535.

³³ City App., Vol. XI at APP01535.

³⁴ City App., Vol. XI at APP01535.

As set forth below, this case does not involve a “matter of local concern” for each of the three reasons set forth by the district court. Accordingly, the district court’s well-reasoned dismissal order should be affirmed.

ARGUMENT

A. *Endo* Rejected the City’s Argument That The “Local Impact” Of The Statewide Opioid Abuse Crisis Establishes A “Matter of Local Concern.”

In *Endo*, this Court held that the district court’s conclusion that the City established a “matter of local concern” based solely on the “impact the alleged conduct” had on the City was “erroneous.” *Endo*, 137 Nev. at 396-97. On remand, the district court correctly found that *Endo* foreclosed the City’s argument that the alleged local impact of the opioid abuse crisis on the City meets the definition of a “matter of local concern,” but gave the City an opportunity to present an alternative argument using the correct statutory definition in supplemental briefing.³⁵ The City did not do so. As the City admits, its only argument is that “the opioid epidemic’s unique impact on the City is a matter of local concern.” City Br. 9. That is the same argument this Court rejected in *Endo*. City Br. 9.

The City nevertheless labors to reinterpret *Endo* to escape this Court’s rejection of its only argument. To that end, the City contends that the district court misread *Endo* and, as a result, “went beyond [this Court’s] mandate” and

³⁵ City App., Vol. XI at APP01535.

“predetermined that the City’s harms and damages” could not be considered a “matter of local concern.” City Br. 13. According to the City, the district court’s only error in *Endo* was inventing its own definition of “matter of local concern,” and while this Court required the district court to apply the statutory definition on remand, it did not reject the notion that local impacts alone may establish a “matter of local concern.” *Id.* at 15. As the City sees it, 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 would have ruled as such.” *Id.* at 9.

This Court ***did rule as such***. *Endo*, 137 Nev. at 396-97. *Endo* held that the district court’s invented definition of a “matter of local concern” was wrong precisely because the district court replaced the statutory test with its own conclusion that a “matter of local concern” can be shown “by virtue of the impact of the alleged conduct” on the City. *Id.* at 571. If this Court had agreed that local impacts alone, without any consideration of the conduct that caused the local impacts or whether that conduct caused impacts more broadly, could establish a “matter of local concern,” then it would have *affirmed*—notwithstanding the district court’s failure to follow the statutory definition. *See LVCVA v. Secretary of State*, 124 Nev. 669, 689 n. 58, 191 P.3d 1138, 1151 n. 58 (2008) (“[W]e will affirm the district court if it reaches the right result, even when it does so for the wrong reason.”). That this Court *did not affirm* means that the district court *did not reach the correct result*.

To be sure, this Court found that “[t]he subject matter of the City’s lawsuit *may constitute* a matter of local concern.” *Endo*, 137 Nev. at 319 (emphasis added). But that does not mean that the district court was free to commit the same error on remand by focusing exclusively on the local impact of state-wide conduct. The remand for further proceedings gave the City an opportunity to present a different “matter of local concern” argument that this Court had not already rejected and permitted the trial court to apply the correct statutory test to the “subject matter of the City’s lawsuit,” *i.e.*, to Manufacturers’ allegedly wrongful marketing and manufacturing of opioids. *Id.*

The City declined that opportunity, however, and merely recycled the same rejected argument that “the unique impact of the opioid epidemic on the City of Reno” is a “matter of local concern.” Accordingly, the district court properly ruled against the City and dismissed its complaint under Dillon’s Rule.

B. The Text of Dillon’s Rule Forecloses the City’s Argument.

Even if this Court had not rejected the City’s argument in *Endo*, interpreting the plain text of NRS 268.003 compels the same conclusion. “In interpreting a statute, this court looks to the plain language of the statute, and if that language is clear, this court does not go beyond it.” *Valenti v. State, Dep’t of Motor Vehicles*, 131 Nev. 875, 879, 362 P.3d 83, 85 (2015). But “when the Legislature has addressed a matter with imperfect clarity, it becomes this court’s responsibility to discern the

law,” and the Court will “resolve any doubts as to the Legislature’s intent in favor of what is reasonable.” *Pankopf v. Peterson*, 124 Nev. 43, 46, 175 P.3d 910, 912 (2008).

This Court further “interpret[s] statutory provisions to avoid unreasonable or absurd results,” *Artmor Invs., LLC v. Nye Cnty.*, 138 Nev. Adv. Op. 53, 512 P.3d 1249, 1250 (2022), and, in construing a statute’s text, gives “its terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.” *S. Nev. Homebuilders Ass’n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (internal quotation marks omitted).

All of the City’s arguments are founded on its faulty interpretation that the “unique harms it suffered as a result of the opioid epidemic within the City” by themselves “meet the definition of ‘matter of local concern’ contained in NRS 268.003.” City Br. 16. The City’s interpretation is incompatible with the plain text of NRS 268.003 and must be rejected.

A “matter of local concern” is “any matter” that “primarily affects or impacts” a city and that satisfies NRS 268.003’s other conditions. *Id.* To determine whether a city has the power to regulate a “matter” therefore requires courts to assess the full scope of the impacts *caused by the “matter.”* Courts must consider whether the “matter” the city seeks to regulate: (i) “[p]rimarily affects or impacts” persons or

areas within the city; and (ii) “does not have a significant effect or impact on areas located in other cities or counties.” NRS 268.003(1)(a). If either condition is unmet, then the “matter” is not a “matter of local concern” and beyond the city’s power to regulate. *Cf. State Dep’t of Emp., Training & Rehabilitation, Emp. Security Div. v. Reliable Health Care Servs. of S. Nevada, Inc.*, 115 Nev. 253, 257–58, 983 P.2d 414, 417 (1999). It necessarily follows from this structure that a “matter” must be distinct from its “impacts,” including any “local impacts” the “matter” causes. Otherwise, the definition would be nonsensically circular.

The remaining sections of NRS 268.003 further support that construction. For example, as discussed above, a city may regulate a “matter” if it *primarily* impacts the city and does not substantially impact any other city or county. NRS 268.003. But even where a “matter” *primarily* impacts a city, the “matter” nevertheless still may not be a “matter of local concern”—if, for example, it is a business activity substantially regulated by a state or federal agency. *See* NRS 268.003(c)(2). In that circumstance, the local impacts of the “matter” on the city are irrelevant.

For another example, NRS 268.003(2)(a) identifies “[p]ublic health, safety and welfare in the city” as an “illustrative” example of a “matter of local concern.” NRS 268.003(3) makes clear, however, that the reference to “public health” neither limits nor expands the definition of “matter of local concern” in NRS 268.003(1). A city therefore has the power to regulate a public health “matter” of only if it primarily

impacts the city, does not substantially impact other cities, does not require statewide uniformity, and does not concern the regulation of business activities subject to substantial state and federal regulations. That there are local public health impacts within the city is a part of the analysis, but it is not dispositive.

In these ways, the text and structure of NRS 268.003 conclusively establish that local impacts caused by a “matter” are *necessary* to find a “matter of local concern,” but contrary to the City’s argument, local impacts alone cannot be *sufficient* to find a “matter of local concern.”

As a matter of straightforward statutory construction, therefore, the City’s repetitive assertion that the local impacts of the State’s opioid abuse crisis are “unique” is irrelevant. *E.g.*, City Br. at 18-22. The word “unique” does not appear in NRS 268.003, and nothing in the statute creates a separate category of “unique local impacts” that supersede the statutory requirements and are a “matter of local concern.” Nor does the City cite any authority (there being none) that supports its “unique local impacts” argument.

Adopting the City’s flawed construction of NRS 268.003 should also be rejected because it would produce absurd results and destroy the effectiveness of Nevada’s modified Dillon’s Rule. As the City acknowledges, “no two cities have been impacted by the opioid epidemic in the same way and cities will not have the same damages.” City Br. 19. In other words, the City contends that all “local

impacts” are *unique* because they occur in different places. This point illustrates exactly why the City’s interpretation must be wrong. If the City were correct that “unique local impacts” satisfy the definition of a “matter of local concern,” Dillon’s Rule would have no force or effect because every city in Nevada would be empowered to regulate any “matter” that caused local impacts in the city, irrespective of statewide interests, statewide conduct, and statewide regulation. That scenario is exactly what Dillon’s Rule exists to prevent. *See* NRS 268.001 (“Dillon’s Rule serves an important function in defining the powers of city government and remains a vital component of Nevada law.”).

C. The District Court Correctly Held That Allegedly Wrongful Promotion and Manufacturing of Opioids Does Not Primarily Impact the City and Significantly Impacts Other Localities in the State.

For all the reasons discussed above, the district court correctly understood NRS 268.003’s term “matter” as referring to the conduct or activity that a city seeks to regulate.³⁶ With that understanding, the district court easily concluded from the City’s own pleadings that the “matter” alleged by the City—the allegedly wrongful production and promotion of opioids in the State—did not primarily impact the City, had wide effects across the State, and therefore is not a “matter of local concern.”

³⁶ City App., Vol. XI at APP01532 (finding that “Defendants’ promotion, distribution, and marketing of opioids in the State of Nevada ... is not a matter of local concern.”).

The City argues that the district court erred because it “disregarded the City’s arguments based on its local harms” and “only considered the City’s allegations regarding [Manufacturers’] alleged wrongdoing and their business activities,” but this is untrue. City Br. 11-12. Neither the district court nor Manufacturers ever contended that it would be “erroneous for the district court to consider the City’s harms when determining” whether the City’s litigation raises a “matter of local concern.” *Id.* at 11. To the contrary, as discussed above, when courts assess whether a city has the power to regulate a “matter,” NRS 268.003 expressly *requires* courts to consider the “matter’s” local impacts. However, as established, that is only one part of the analysis. Courts also must assess the full nature and scope of the impacts of the “matter,” including whether the impacts go beyond the confines of the city.

On remand, the district court properly considered Nevada’s arguments about its purportedly “unique” local harms as required by NRS 268.003(1)(a), and correctly found that the City’s local harms resulted from a “matter” that did not primarily impact the City and that significantly impacted other communities across the State. Contrary to the City’s mischaracterizations that the district court “refused to entertain the City’s argument” and “predetermined that the City’s harms and damages could not be considered,” City Br. 13, the district court carefully considered the City’s arguments about its local harms and found them compelling. The district

court nevertheless correctly found it was constrained by NRS 268.003 to conclude that the City’s lawsuit does not involve a “matter of local concern.”³⁷

D. The District Court Correctly Held That The City’s Action Implicates Business Activity That Is Substantially Regulated By State And Federal Agencies.

The City admits that it is “seeking to recover damages caused by [Manufacturers] when they violated regulations related to opioid marketing and opioid sales.” City Br. 25. The “regulations” to which the City refers are comprehensive regulations enforced by the State and federal governments that control the manufacturing, sale, marketing, and distribution of opioids. The district court accordingly found that the City’s suit does not raise a “matter of local concern” because it necessarily concerns the “regulation of business activities that are subject to substantial regulation by a federal or state agency.” NRS 268.003(1)(c)(2).³⁸ All of the City’s arguments for reversal of the district court’s straightforward ruling are demonstrably wrong.

First, the City argues that it does not seek to regulate Manufacturers’ business activities because it is “not asking this Court to stop [Manufacturers] from manufacturing or marketing opioids within the State of Nevada.” City Br. at 25. Regulation is not limited to stopping a business activity entirely; regulation means

³⁷ City App., Vol. XI at APP01535.

³⁸ City App., Vol. XI at APP01532-01534.

controlling the manner in which a business activity is conducted. And that, in fact, is *exactly* what the City seeks to do—the City’s complaint expressly states that the City seeks “to stop [Manufacturers’] promotion and marketing of opioids *for inappropriate uses*.”³⁹ This is prohibited “regulation of business activities that are subject to substantial regulation by a federal or state agency” because deciding whether uses of opioids are appropriate or inappropriate and how opioids should be marketed are matters regulated by state and federal agencies—not by the City (or by the courts). NRS 268.003(1)(c)(2).

Second, the City similarly argues that Dillon’s Rule is inapplicable because the City primarily (though not exclusively) seeks damages to remedy the harms caused by the opioid abuse crisis rather than to regulate Manufacturers’ conduct. City Br. 25. But this argument was rejected in *Endo* when this Court held that Dillon’s Rule applies to “a city’s power to bring lawsuits” to the same extent as passing regulations. *Endo*, 137 Nev. at 392, 395. The City’s argument also rests on the false premise that suing for damages is not a form of regulation. In fact, “regulation can be as effectively exerted through an award of damages,” and the “obligation to pay compensation can be, indeed is designed to be, a potent method

³⁹ City App., Vol. VII at APP00981 (Second. Am. Compl. (“SAC”), Prayer for Relief, ¶ 8) (emphasis added).

of governing conduct and controlling policy.” *San Diego Bldg. Trades Council, Millmen’s Un., Local 2020 v. Garmon*, 359 U.S. 236, 247 (1959).

Third, the City’s assertion that “there is no federal or state regulation dictating how the City must address its opioid-related harms” is misplaced. City Br. at 25. State or federal regulations governing *the City’s* conduct are not the issue. Dillon’s Rule precludes the City from filing lawsuits targeting “business activities” subject to “substantial regulation by a federal or state agency.” NRS 268.003(1)(c)(2). That is the case here.

Finally, the City argues that the district court erroneously “focus[ed] on the Manufacturers’ business activities [and] ignore[d] the fact that the City’s harms and damages must be remedied within the City.” City Br. at 25. The district court correctly focused on Manufacturers’ “business activities” because that is what the statute requires—it states that a “matter” is not one of “local concern” if it involves the “regulation of *business activities* that are subject to substantial regulation by a federal or state agency.” NRS 268.003(1)(c)(2) (emphasis added). The section says nothing about considering a city’s “harms and damages” and to do so would have been error.

The district court correctly found that this case “concern[s] business activities substantially regulated by multiple federal agencies and a state agency.” NRS

268.003(1)(c)(2).⁴⁰ The judgment of dismissal should be affirmed for this reason alone.

E. The District Court Correctly Held That The City’s Suit Is Not A “Matter of Local Concern” Because It Implicates A State Interest Requiring “Statewide Uniformity”

Under NRS 268.003(1)(c)(1), any “matter” that implicates interests in “statewide uniformity of regulation” is not a “matter of local concern.” The district court correctly concluded that the City’s lawsuit falls within that exclusion because Manufacturers’ allegedly wrongful conduct “falls under the purview of the Nevada State Board of Pharmacy.”⁴¹

The State, through the Nevada State Board of Pharmacy, “protect[s] and regulat[es]” all “activities associated with [the] manufacturing, compounding, labeling, dispensing and distributing of a drug.” NRS 639.213, 639.0124(1). The Board not only regulates the distribution and dispensing of controlled substances in the State, but also is charged with ensuring that pharmaceutical manufacturers, like Manufacturers here, “[a]dopt” and comply with “a written marketing code of conduct” “based on applicable legal standards.” NRS 639.570(1)-(2).

While the City “does not dispute that the State of Nevada regulates the practice of pharmacy,” it nevertheless argues that such regulation “is not at issue in

⁴⁰ City App., Vol. XI at APP01535.

⁴¹ City App., Vol. XI at APP01534.

the City’s litigation.” City Br. at 24. The City argues that its litigation instead concerns only “unique issues related to its determination of how best to remedy the harms caused by the opioid epidemic within the City.” City Br. at 24. As shown above, this argument fails because this Court rejected it in *Endo* and because it conflicts with the text of NRS 268.003. Simply put, the “harms caused by the opioid epidemic within the City” are not a “matter of local concern,” as defined by statute.

The City’s pleadings also undercut its argument. The City alleges that Manufacturers created a public health crisis by misleadingly marketing and improperly distributing prescription opioid medications throughout the State.⁴² These are precisely the activities that the Nevada State Board of Pharmacy regulates. *See* NRS 639.213, 639.0124(1). The City further requests a *statewide* remedy for the harms allegedly caused by this *statewide* conduct.⁴³

The City asserts that the “One Nevada” Agreement shows that Manufacturers’ alleged conduct “impacted each jurisdiction differently, and therefore there is not a single uniform approach to handling opioid recoveries that would work for every

⁴² *See, e.g.*, City App., Vol. VII at APP00818, ¶ 36 (“After creating a public health crisis, Defendants have not pulled their opioid products from the market”); *id.* at APP00818, ¶ 37 (“Consequently, public health and safety have been significantly and negatively impacted due to the misrepresentations and omissions by Defendants regarding the appropriate uses and risks of opioids”).

⁴³ City App., Vol. VII at APP00981, Prayer for Relief (requesting “injunctive relief . . . to stop Defendants’ promotion and marketing of opioid for inappropriate uses *in Nevada* . . .”) (emphasis added).

jurisdiction.” City Br. at 24. But this argument fundamentally misunderstands the purpose of the “One Nevada” Agreement, which—as its title suggests—is to achieve a uniform, statewide solution to the State’s opioid abuse crisis.⁴⁴ Any other approach would frustrate the Legislature’s declaration that the practice of pharmacy “affect[s] public safety and welfare . . . and is therefore subject to protection and regulation by the State.” NRS 639.213.

Accordingly, the district court correctly concluded that the City’s lawsuit does not qualify as a matter of local concern under NRS 268.003(1)(c)(1) because it implicates a state interest requiring statewide uniformity. The judgment below should be affirmed on this independent basis, too.

CONCLUSION

For all the foregoing reasons, the judgment of the district court dismissing the City’s complaint should be affirmed.

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Respectfully Submitted,

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⁴⁴ See City App., Vol. XI at APP01385 (stating that “the State of Nevada and its Local Governments share a common desire to remediate and alleviate the impacts of the opioid epidemic throughout the State of Nevada”).

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