UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
CASE NO. 19-3827

ON PETITION FOR WRIT OF MANDAMUS FROM
THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
CASE NOS. 1:18-OP-45090, 1:17-OP-45004
(UNDER LEAD CASE NO. 1:17-MD-02804)

IN RE STATE OF OHIO

BRIEF OF AMANDA HANLON AND AMY GARDNER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER STATE OF OHIO

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RULE 26.1 DISCLOSURE STATEMENT

Amici Curiae Amanda Hanlon and Amy Gardner are individual persons, not corporations.

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INTEREST OF AMICI CURIAE

Ms. Hanlon and Ms. Gardner are individuals who have asserted class-action claims against numerous defendants in the prescription-opioid supply chain. They do so on behalf of women and babies seeking to address a national health crisis: *in utero* opiate addiction leading to the birth of babies afflicted with neonatal abstinence syndrome ("NAS"). Their claims were consolidated into the underlying multidistrict litigation ("MDL") and assigned Case No. 1:19-op-45206.

Ms. Hanlon and Ms. Gardner are real people with real standing to seek real relief on behalf of those directly injured by opioid abuse. But the district court, pointing to its "limited resources" (Order, RE 8 in Case No. 1:19-op-45206, PageID # 1448), has allowed Ms. Hanlon's and Ms. Gardner's claims to languish, choosing instead to devote its limited resources to the claims of the "cities, counties, and Native American tribes" that dominate the underlying multidistrict litigation ("MDL"). *See In re Nat'l Prescription Opiate Litig.*, 927 F.3d 919, 923 (6th Cir. 2019). The district court has forbidden Ms. Hanlon and Ms. Gardner from even moving for preliminary-injunctive relief, as Fed. R. Civ. P. 65(a) authorizes them to do. They have had no due process—indeed, no process at all—because political subdivisions that lack

standing have consumed all the district court's time. So, the class of women and babies they seek to represent go unprotected, and more NAS babies are born every day.

Ms. Hanlon and Ms. Gardner have appealed from the district court's effective denial of their requested injunctive relief (Case No. 19-3398). They file here, in support the State of Ohio's request for a writ of mandamus, not to duplicate their arguments on appeal, but instead to urge the Court to cabin the misuse of the federal judicial system by political subdivisions that do not assert justiciable claims. Clearing the district-court docket of claims that do not belong in federal court will leave the district court free to devote its resources to the claims of plaintiffs directly affected by the opioid crisis—including Ms. Hanlon, Ms. Gardner, and the class they seek to represent.

RULE 29(a)(4)(E) STATEMENT

Ms. Hanlon and Ms. Gardner certify, under Fed. R. App. P. 29(a)(4)(E), that: (a) no party's counsel in this mandamus action authored this brief in whole or in part; (b) no party or party's counsel in this mandamus action contributed money that was intended to fund preparing or submitting this brief; and (c) no person (other than Ms. Hanlon, Ms. Gardner, or their counsel) contributed money that was intended to fund the cost of preparing

or submitting this brief.

ARGUMENT

I. THE DISTRICT COURT, CONSUMED WITH THE POLITICAL SUBDIVISIONS' CLAIMS, HAS REFUSED TO CONSIDER THE IMMEDIATE RELIEF NEEDED TO PREVENT NEONATAL OPIOID ADDICTION.

Ms. Hanlon and Ms. Gardner wish to seek immediate relief from the district court, in the form of a preliminary injunction, designed to reduce the incidence of opioid related NAS. But the district court, citing its "limited resources," placed a "moratorium" on filings other than those the court has expressly authorized. (Order, RE 8 in Case No. 1:19-op-45206, PageID # 1448.) And it has refused to authorize Ms. Hanlon and Ms. Gardner to move for a preliminary injunction, choosing instead to dedicate its time to the cases brought by political subdivisions. Two of those political-subdivision cases are scheduled for a bellwether trial on October 21, 2019, which prompted the State of Ohio to seek mandamus. Ms. Hanlon and Ms. Gardner explain these issues in more detail below.

A. The Irreparable Harm that Ms. Hanlon and Ms. Gardner Have Sued to Prevent.

Thirty-two thousand American babies were born with NAS in 2014, a

staggering five-fold increase over the number only ten years earlier.[1] The growth trend is tragic but not surprising; the overall epidemic has had a particularly disproportionate impact on women,[2] so the increased use of opioids has naturally extended to pregnant women—including those who do not realize they are pregnant when they consume the drugs.[3] And pregnant women who ingest opioids pass the dangerous narcotic into the fetal bloodstream through the placenta.[4]

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[1] National Institute on Drug Abuse, Dramatic Increases in Maternal Opioid Use and Neonatal Abstinence Syndrome, https://tinyurl.com/z936x7x (last visited Sept. 20, 2019) [hereinafter "Dramatic Increases"]; *see also* Centers for Disease Control and Prevention, Jean Y. Ko, Sara Wolicki, Wanda D. Barfield, Stephen W. Patrick, Cheryl S. Broussard, Kimberly A. Yonkers, Rebecca Naimon, and John Iskander, CDC Grand Rounds: Public Health Burden of Neonatal Abstinence Syndrome, Mar. 10, 2017, https://tinyurl.com/yc8652lb (last visited Sept. 20, 2019) [hereinafter "Public Health Burden"].

[2] Mishka Terplan, American Society for Reproductive Medicine, Women and the Opioid Crisis: Historical Context and Public Health Solutions, Aug. 2017, https://www.fertstert.org/article/S0015-0282(17)30431-4/abstract (last visited Sept. 20, 2019).

[3] As an example, "[t]he percentage of Medicaid-enrolled women who filled at least one opioid prescription during pregnancy increased 23% during 2000–2010, from 18.5% to 22.8%." Public Health Burden, *supra* note 1.

[4] Centers for Disease Control and Prevention, Jean Y. Ko, Sara Wolicki, Wanda D. Barfield, Stephen W. Patrick, Cheryl S. Broussard, Kimberly A. Yonkers, Rebecca Naimon, John Iskander, CDC Grand Rounds: Public Health Strategies to Prevent Neonatal Abstinence Syndrome, Mar. 10, 2017,

The problems that NAS-afflicted babies suffer are costly to address and often irreparable.[5] Opioid exposure *in utero* disrupts fetal brain development and increases the risk of Sudden Infant Death Syndrome.[6] "[I]nfants with NAS require specialized care that typically results in longer and more complicated and costly hospital stays."[7] A recent study from the Tennessee Department of Health found that babies born with NAS were significantly more likely to be referred for disability evaluations, to meet disability-diagnosis criteria, and to require classroom therapies or services.[8]

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https://www.cdc.gov/mmwr/volumes/66/wr/mm6609a2.htm (last visited Sept. 20, 2019).

[5] *See generally* 3/27/19 Decl. of Dr. Kanwaljett S. Anand, RE 6-10 in Case No. 1:19-op-45206, Page ID ## 917-18 [hereinafter "Anand Decl."].

[6] *Id*. at PAGE ID # 917.

[7] U.S. Government Accountability Office, Newborn Health: Federal Action Needed to Address Neonatal Abstinence Syndrome, Oct. 4, 2017, at 1-2, https://www.gao.gov/assets/690/687580.pdf (last visited Sept. 20, 2019).

[8] *See* Mary-Margaret A. Fill, Angela M. Miller, Rachel H. Wilkinson, Michael D. Warren, John R. Dunn, William Schaffner, & Timothy F. Jones, Educational Disabilities Among Children Born with Neonatal Abstinence Syndrome, Pediatrics, Sept. 2018, https://tinyurl.com/y4wp9prf (last visited Sept. 20, 2019); *see also* Centers for Disease Control and Prevention, Key Findings: Children Born with Neonatal Abstinence Syndrome (NAS) May Have Educational Disabilities, https://tinyurl.com/y4q6m4ay (last visited Sept. 20, 2019).

While the long-term effects of NAS are not yet fully known, its innocent victims are at far-higher risk for both preschool[9] and school-age[10] problems that may well endure through adulthood.

The full magnitude of the problem remains unclear precisely because there has been no adequate, comprehensive response to it. Despite the well-documented constellation of symptoms, there has been no nationwide longitudinal morbidity study that has followed and documented these children's plight. In fact, only six states mandate hospital reporting of NAS in newborns.[11] So even if post-birth treatment were effective in eradicating

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[9] Anand Decl., *supra* note 5, at PageID # 917 (identifying "mental and motor deficits, cognitive delays, hyperactivity, impulsivity, attention deficit disorder, behavior disorder, aggressiveness, poor social engagement, failure to thrive (socially), and short stature").

[10] *Id*. at PageID # 918 (identifying "verbal impaired performance, impaired reading and arithmetic skills, for mental and motor development, memory and perception problems, attention deficit hyperactivity disorder, developmental delays, speech problems, language disorders, impaired self-regulation, school absence, reduced executive functions and behavioral regulation, abnormal responses to stressful situations, poorly developed confidence or efficacy, impaired task performance, depressive disorder, and substance abuse disorder").

[11] Centers for Disease Control and Prevention, Shahla M. Jilani, Meghan T. Frey, Dawn Pepin, Tracey Jewell, Melissa Jordan, Angela M. Miller, Meagan Robinson, Tomi St. Mars, Michael Bryan, Jean Y. Ko, Elizabeth C. Ailes, Russell F. McCord, Julie Gilchrist, Sarah Foster, Jennifer N. Lind, Lindsay

the problems caused by NAS (and all indications are that it is not), such treatment has not yet become standard practice.[12] For now at least, prevention is the only truly effective weapon, which is precisely the genesis of Ms. Hanlon's and Ms. Gardner's claims.

B. Ms. Hanlon's and Ms. Gardner's Claims.

There can be no serious dispute that the harm from NAS is irreparable, so the lack of coordinated response reflects a societal failure that will only worsen. And in that light, preventing that harm on the front end—before another baby is born with opioid-related NAS—should be one of our highest priorities as society.

Ms. Hanlon and Ms. Gardner brought this action to prevent opioid

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Culp, Matthew S. Penn, Jennita Reefhuis, Evaluation Of State-Mandated Reporting Of Neonatal Abstinence Syndrome—Six States, 2013–2017, Jan. 11, 2019, https://tinyurl.Com/Y4ormmqc (last visited Sept. 20, 2019).

[12] In January 2019, Department of Health and Human Services officials reported to the Government Accountability Office that its Behavior Health Coordinating Council was "still finalizing an implementation plan" to address NAS in babies of opioid-using mothers. U.S. Government Accountability Office, Comments to Newborn Health: Federal Action Needed to Address Neonatal Abstinence Syndrome, https://tinyurl.com/yxmxxjc4 (last visited Sept. 20, 2019).

ingestion during pregnancy.[13] On their own behalves and on behalf of a class of similarly situated women of child-bearing age, they seek to enjoin the Defendants[14] from dispensing any "opioid prescription to any woman capable of becoming pregnant without first receiving notice/proof of a negative pregnancy test, dispensing only a seven-day supply, and if additional opioids are prescribed after those seven days, that there be another negative pregnancy test before dispensing the prescription." (Motion for Preliminary Injunction, RE 2-1 in Case No. 1:19-op-45206, PageID # 44.)

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[13] *See* 3/26/19 Declaration of Amanda Hanlon, RE 7-17 in Case No. 1:19-op-45206, PageID ## 1445-46.

[14] "Defendants" refers to the named defendants in Case No. 1:19-op-45206: Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals Usa, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-Mcneil-Janssen Pharmaceuticals, Inc., n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutical Inc., n/k/a Janssen Pharmaceuticals, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Allergan PLC, f/k/a Actavis PLC; Watson Pharmaceuticals, Inc., n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis LLC; and Actavis Pharma, Inc., f/k/a Watson Pharma, Inc. Ms. Hanlon and Ms. Gardner also pleaded claims against Purdue Pharma L.P., Purdue Pharma, Inc., and The Purdue Frederick Company, Inc.; these claims are stayed under 11 U.S.C. § 362(a). (*See* Notice of Suggestion of Bankruptcy and Automatic Stay of Proceedings, RE 2609 in Case No. 1:17-CV-2804, PageID # 41491.)

C. The District Court's Decision to Prioritize the Actions Brought by Political Subdivisions.

The district court issued a sweeping, MDL-wide case-management order that forbid the filing of "any motion not expressly authorized by this Order absent further Order of this Court or express agreement of the parties." (Case Mgmt. Order One, RE 232 in Case No. 1:17-CV-2804, PageID # 1094.) This filing "moratorium" (*see* Order, RE 8 in Case No. 1:19-op-45206, PageID # 1448) effectively stayed Ms. Hanlon's and Ms. Gardner's action indefinitely.

In compliance with the district court's case-management order, Ms. Hanlon and Ms. Gardner moved for leave to file a motion for preliminary injunction. (Motion for Leave, RE 2 in Case No. 1:19-op-45206, PageID ## 39-42.) They accompanied their motion for leave with the proposed substantive, the proposed supporting memorandum, and extensive supporting evidence establishing every element of the test for a preliminary injunction.[15] The exhibits included numerous peer-reviewed

[15] Ms. Hanlon and Ms. Gardner filed the following proposed materials in Case No. 1:19-op-45206: Mot. for Prelim. Injunction, RE 2-1, PageID ## 39-42; Mem. in Support of Mot. for Prelim. Injunction, RE 2-2, PageID ## 47-60; Statement of Undisputed Material Facts, RE 2-3, PageID ## 61-75;

studies, legislative history, and declarations both from Ms. Hanlon (RE 7-17 in Case No. 1:19-op-45026, PageID ## 1440-47) and from an expert in pediatric medicine. (RE 6-10 in Case No. 1:19-op-45026, PageID ## 915-18.)

The district court denied the motion for leave, effectively denying the preliminary injunction. (Order, RE 8 in Case No. 1:19-op-45026, PageID # 1448.) It relied entirely on the "moratorium" it had placed on unauthorized MDL filings and the district court's own "limited resources." (*Id.*) The District Court appears to have ignored the extensive evidence of irreparable harm that the motion for preliminary injunction was crafted to prevent; it simply concluded that it would "not consider additional motions at this time." (*Id.*)

II. THE POLITICAL-SUBDIVISION PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE.

The political subdivisions seeking relief from the pharmaceutical industry have monopolized the district court's resources with nonjusticiable claims that do not belong in federal court. Their novel theories of aggregate

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Supporting Exhibit List, RE 2-4, PageID ## 76-83; First Mot. for Leave to Supplement with Exhibits, RE 4, PageID ## 97-384; Second Mot. for Leave to Supplement with Exhibits, RE 5, PageID ## 387-701; Third Mot. for Leave to Supplement with Exhibits, RE 6, PageID ## 702-1202; Fourth Mot. for Leave to Supplement with Exhibits, RE 7, PageID ## 1203-1447.

liability should not stand in the way of the adjudication asserted by parties with legitimate claims, like Ms. Hanlon and Ms. Gardner.

The two plaintiffs proceeding to trial in October 2019—the County of Cuyahoga and the County of Summit—seek both damages and equitable relief stemming from misconduct at all levels of the opioid supply chain. (*See generally* Sec. Am. Compl., RE 35 in Case No. 18-op-45004; Corr. Sec. Am. Compl., RE 24 in Case No. 18-op-45090.) Neither category of relief is justiciable in federal court.

A. Plaintiffs Have No Standing to Seek Monetary Damages.

Plaintiffs' claims for monetary damages have no place in federal court. Those claims seek to replenish the counties' coffers for expenses incurred in responding to the opioid crisis, including increased cost for first responders and increased burdens on the local court system. (*See generally* Sec. Am. Compl., RE 35 in Case No. 18-op-45004, PageId ## 2209-24; Corr. Sec. Am. Compl., RE 24 in Case No. 18-op-45090, PageID ## 1970-71.) Essentially, these Ohio counties want the Defendants to reimburse them for the costs of providing local-government services. But under constitutional principles of standing and justiciability, federal courts have no role in requiring tortfeasors to reimburse local governments. Instead, they leave it to the

political process to determine how to replenish the public treasure under the "free public services" doctrine. *See, e.g., County of Erie, N.Y. v. Colgan Air, Inc.*, No. 0–CV–157S, 2012 WL 1029542, at *2 (W.D.N.Y. Mar. 26, 2012).

Under the free-public-services doctrine, "the cost of public services for protection from fire or safety hazards is to be borne by the public as a whole, not assessed against the tortfeasor whose negligence creates the need for the service." *City of Flagstaff v. Atchison, Topeka and Santa Fe Railway Co.*., 719 F.2d 322, 323 (9th Cir.1983). The D.C. Circuit has explained that the doctrine forbids the federal judiciary from supplanting the political process of raising and appropriating tax revenues:

> We are especially reluctant to reallocate risks where a governmental entity is the injured party. It is critically important to recognize that the government's decision to provide tax-supported services is a legislative policy determination. It is not the place of the courts to modify such decisions. Furthermore, it is within the power of the government to protect itself from extraordinary emergency expenses by passing statutes or regulations that permit recovery from negligent parties. In other words, the city clearly has recourse to legislative initiative to eliminate or reduce the economic burdens of [tortious conduct].

Dist. of Columbia v. Air Fla., Inc., 750 F.2d 1077, 1080 (D.C. Cir. 1984). A Connecticut court has applied this concept to the opioid litigation and dismissed claims for reimbursement of the cost of providing municipal

services. *See generally City of New Haven v. Purdue Pharma, L.P.*, No. X07 HHD CV 17 6086134 S, 2019 WL 423990 (Conn. Super. Ct. Jan. 8, 2019).

To amici's knowledge, no federal-court case directly articulates the connection between free public services and federal subject-matter jurisdiction. But a plaintiff lacks the requisite Article III standing if its injury is not "'fairly traceable to the challenged action . . . .'" *Clapper v. Amnesty Int'l. USA*, 568 U.S. 398, 409 (2013) (quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010)). And the requirement of a "fairly traceable" injury precludes the political subdivisions from recovering for all manner of public expenditures that were authorized under their discretionary (and inherently political) appropriations process. Thus, "[t]he line of causation" for standing purposes "is attenuated at best." *Allen v. Wright*, 468 U.S. 737, 757 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014); *see also City of New Haven*, 2019 WL 423990, at *4 (finding similar claims "too attenuated" to confer standing).

Local-government expenditures reflect "unfettered choices made by independent actors." *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989). Those unfettered choices cannot, in keeping with constitutional standing limitations, be the subject of after-the-fact damages claims under tort

theories, at least not in federal court. That is precisely the reason the free-public-services doctrine leaves it to tax authorities, not the judiciary, to fund those services and to use the deterrent nature of taxes to achieve whatever social objective may underlie an assessment. *See*, *e.g.*, Diane L. Fahey, *Can Tax Policy Stop Human Trafficking*, 40 Geo. J. Int'l L. 345, 348 (2009) ("Although the primary purpose of taxation is to raise revenue to fund government, taxation is also used for social policy purposes--to encourage or discourage behavior.").

Similarly, the Supreme Court has been clear that federal courts should decline to decide a case involving a political question—meaning, among other things, a case with "'a lack of judicially discoverable and manageable standards for resolving it.'" *Nixon v. United States*, 506 U.S. 224, 228 (1993) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)); *see also Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1427 (2012). Here, there is no way a federal court can discover and manage the standards for the recovery of revenue to reimburse the Ohio counties for providing public services; as the district court noted, such claims makes this MDL the "most complex constellation of cases that have ever been filed." (*See* Tr., RE 1732 in Case No. 1:17MD2804, PageID # 51681.). The district court acknowledged that

"developing solutions to combat a social crisis such as the opioid epidemic should not be the task of the judicial branch . . . ." (*Id*. at PageID # 51683.)

Yet the district court has bent over backwards precisely to accomplish this nonjudicial task. As example, the court recently certified a novel type of class action—a "negotiation class," nowhere referenced in Fed. R. Civ. P. 23—acknowledging it was a "novel procedure" (Mem. Op., RE 2590 in Case No. 1:17-md-2804, PageID # 413580) and over the objection of several states, including Ohio. (*See* Letter from Attys. General, RE 1951 in Case No. 1:17MD2804, Page ID ## 119886-97.) Now, 34,000 local governments (*see* Mem. Op. Certifying Negotiation Class, RE 2590 in Case No. 1:17MD2804, Page ID # 413607) must decide whether or not to remain in or opt out of this novel procedure, with no idea what the amount of any eventual settlement may be or whether, given the deviation from settled class-action principles, it would survive appellate scrutiny.

Despite these serious justiciability concerns, the district court rejected the free-public-services doctrine in this case, relying on an exception articulated by the Ohio Supreme Court for "ongoing and persistent" conduct. *See In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-2804, 2019 WL 4254608, at *4 (N.D. Ohio Sept. 9, 2019) (quoting *City of Cincinnati v. Berretta*

U.S.A., Corp., 768 N.E.2d 1136, 1149 (Ohio 2002)). But the substantive law in Ohio, whatever relief it may permit a plaintiff to pursue in Ohio state court, does not answer the question of federal justiciability. *See Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1022 (9th Cir. 2004) (federal standing requirements apply regardless of remedies available in state court). The attenuated nature of the political subdivisions' money damages and the inherently political decisions involved in assessing taxes should require a federal court to stand down and leave taxing decisions to the appropriate taxing authorities.

B. Plaintiffs Have No Standing to Seek Equitable Relief.

The political-subdivision plaintiffs have also asserted a right to pursue equitable relief against the pharmaceutical industry, most notably in connection with claims of public nuisance. (*See generally* Sec. Am. Compl., RE 35 in Case No. 18-op-45004, PageID # 2299-303; Corr. Sec. Am. Compl., RE 24 in Case No. 18-op-45090, PageID # 1985-89.) But they have no standing to pursue public-nuisance claims, because such claims cannot depend (as they do here) on the aggregation of claims that belong to private individuals. "A public right is one common to all members of the general public. It is collective in nature and ***not like the individual right that everyone has not***

to be . . . injured." Restatement (Second) of Torts § 821B, cmt. g (1979) (emphasis added).

In this case, the right not to be injured by the various members of the opioid supply chain belongs to the individuals injured or in danger of injury, like the individuals Ms. Hanlon and Ms. Gardner seek to represent. They do not belong to the public at large, most of whom have suffered no direct injury from opioids. The political subdivisions have no greater right to pursue relief on behalf of their residents than they have to pursue relief for any other tortious conduct that affects particular individuals. Their choice to extend government services to meet those individuals' needs is, again, a political question. *See Dist. of Columbia*, 750 F.2d at 1080.

III. THE COURT SHOULD GRANT THE STATE OF OHIO'S PETITION FOR A WRIT OF MANDAMUS.

In the last few decades, the federal judiciary has witnessed an "explosive growth" in the number of cases consolidated into MDLs. *See* Andrew S. Pollis, *The Need for Non-Discretionary Interlocutory Appellate Review in Multidistrict Litigation*, 79 Fordham L. Rev. 1643, 1665 (2011). But there is no MDL-specific right to appellate review of interlocutory orders, even though "the increasing consolidation ratchets up the risk and consequences

of legal error." *See id*. at 1663.

This case presents a good example. The magnitude of the potential liability is staggering, perhaps billions of dollars in just the two cases set for trial. But the normal appellate process affords no opportunity to subject the district court's numerous pretrial legal rulings, including those affecting its very jurisdiction to hear the case. Indeed, Ms. Hanlon and Ms. Gardner believe their direct appeal in Case No. 19-3398 falls well within the Court's jurisdiction, but the Court called for jurisdictional briefing and has not determined whether to hear the case on its merits.

The State of Ohio has invoked this Court's mandamus jurisdiction to address one aspect of the political subdivisions' standing to sue. Ms. Hanlon and Ms. Gardner believe that the Court should grant mandamus because, for the additional reasons expressed above, the political subdivisions' claims are not justiciable. And those nonjusticiable claims have siphoned the district court's resources away from legitimate claims, like Ms. Hanlon's and Ms. Gardner's, that the district court has unquestionable jurisdiction to hear and that demand immediate attention.

CONCLUSION

No "rational legal system" can accommodate claims such as those that

prompted the State of Ohio to seek mandamus. *See New Haven*, 2019 WL 423990, at *2. The Court should grant the State of Ohio's petition for a writ of mandamus.

Dated: September 25, 2019

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 3,896 words, as determined by the word-count function of Microsoft Word 2016, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Book Antiqua font.

/s/ Scott R. Bickford
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 25th day of September, 2019, by email to:

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