

Nos. 22-3750, 22-3751, 22-3753, 22-3841, 22-3843, 22-3844

**In the United States Court of Appeals
for the Sixth Circuit**

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

TRUMBULL COUNTY, OHIO, and LAKE COUNTY, OHIO,
Plaintiffs-Appellees,

v.

PURDUE PHARMA L.P., et al.,
Defendants,

WALGREENS BOOTS ALLIANCE, INC., et al.,
CVS PHARMACY, INC., et al.,
WALMART, INC.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Ohio

**BRIEF OF AMERICAN PUBLIC HEALTH ASSOCIATION AND
NATIONAL ASSOCIATION OF COUNTY AND CITY HEALTH
OFFICIALS AS AMICI CURIAE IN SUPPORT OF APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

As required by Federal Rule of Appellate Procedure 26.1, amici curiae National Association of County and City Health Officials and American Public Health Association hereby state that they are not-for-profit entities and have no parent corporations. No publicly owned or traded corporation owns, in whole or in part, any of the amici.

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INTRODUCTION AND INTEREST OF AMICI CURIAE¹

Amici are not-for-profit organizations whose missions are to advance public health, the interests of state and local health officials, or both. Amici file this brief to explain that the overwhelming public-health consensus supports a basic proposition advanced by the plaintiffs, Lake and Trumbull Counties: The over-dispensing of prescription opioids by pharmacies caused a severe and ongoing misuse and dependency crisis in these hard-hit communities, a continuing public nuisance that can only be appropriately remedied by court-ordered abatement that funds medication-assisted treatment and other measures.

To address this ongoing public nuisance, it isn't enough to simply stop the egregious dispensing of prescription opioids. The pharmacies' conduct has created a cohort of people who will predictably turn to heroin or fentanyl as an alternative, leading to yet more overdoses and deaths, extreme pressures on state and local public-health and medical resources, crime, homelessness, and neonatal abstinence syndrome, among many other effects. Stopping the over-dispensing of opioids doesn't directly abate these harms, just as stopping the release of toxic waste doesn't clean up land that is already polluted.

¹ No party's counsel authored this brief, in whole or in part, and no party or party's counsel, nor anyone other than amici or their counsel, contributed money intended to fund its preparation or submission. All parties have consented to the filing of this brief.

Fortunately, the effects of the opioid crisis in these communities can be ameliorated through established abatement measures, including empowering local government and the public-health infrastructure to provide medication-assisted treatment. Through this brief, amici seek to explain the far-reaching and lasting effects of opioid-use disorder on these communities and how the abatement remedy can and should fund prevention and treatment measures.

The American Public Health Association (APHA) champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 23,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

The National Association of County and City Health Officials (NACCHO) is focused on protecting the interest of local public health and serves 3,000 local health departments. NACCHO's mission is to improve the health of communities by strengthening and advocating for local health departments. NACCHO recognizes prescription and illicit opioid misuse as a significant public health threat and a national emergency, and it supports local health departments in responding to the nation's opioid crisis.

ARGUMENT

I. The over-dispensing of prescription opioids created a severe and ongoing health crisis in Lake and Trumbull Counties.

The opioid crisis is one of the most devastating public health problems of our time. “Prescription opioid overdose increased exponentially in the United States in the past 20 years.” Expert Report of Dr. Katherine Keyes, R. 4219-7, Page ID # 569196 (Keyes Report). Over that period, more than half a million Americans have died from an opioid overdose. Centers for Disease Control and Prevention (CDC), *Understanding the Opioid Overdose Epidemic* (June 1, 2022), <https://perma.cc/EQY3-Z4GZ>. And Ohio “leads the nation in opioid overdose deaths.” Exhibit, R. 4104-19, Page ID # 549434. In “2019, over four in five (83.7%) overdose deaths in Ohio involved an opioid”—an average of one death every three hours. *Id.*; Abatement Plan, R. 4219-1, Page ID # 568365.

Within the state, Lake and Trumbull Counties have faced the worst of it. The counties “have experienced a devastating loss of life due to opioid overdoses.” Abatement Plan, R. 4219-1, Page ID # 568366. “Compared to the national average, Lake and Trumbull Counties have substantially higher rates of drug overdose per capita”—by more than four times. Keyes Report, R. 4219-7, Page ID # 569241. Both are among the counties “in the nation with the highest overdose death rate.” *Id.* at Page ID # 569238.

The crisis is only becoming more dire. The number of drug overdose deaths increased by approximately 31 percent from 2019 to 2020. CDC, *Now is the Time to Stop Drug Overdose Deaths* (Sept. 15, 2022), <https://perma.cc/N89H-FNMY>. From “2004 to 2019, the death rate in Lake County more than sextupled,” while “the rate in Trumbull County more than quintupled.” Keyes Report, R. 4219-7, Page ID # 569241-42. And over the last three years, depression, stress, anxiety, job loss, and financial strain resulting from the COVID-19 pandemic have exacerbated the opioid crisis, driving the surge of fatal drug overdoses even higher. Lauren J. Tanz et al., *A qualitative assessment of circumstances surrounding drug overdose deaths during the early stages of the COVID-19 pandemic*, CDC (Aug. 2, 2022), <https://perma.cc/WX4C-76Q7>. According to the CDC, more than 107,000 lives were lost to overdoses in 2021. CDC, *U.S. Overdose Deaths in 2021 Increased Half as Much as in 2020* (May 11, 2022), <https://perma.cc/PHE2-QMT2>. Some scientists have attributed recent overall declines in U.S. life expectancy—a loss of 26 years’ worth of progress—in part to this rise in overdose deaths. Elizabeth Arias et al., *Provisional Life Expectancy Estimates for 2021*, Nat’l Ctr. For Health Stat. (Aug. 2022), <https://perma.cc/96AL-9M77>; see also Tanya Lewis, *The U.S. Just Lost 26 Years’ Worth of Progress on Life Expectancy*, Scientific American (Oct. 17, 2022), <https://perma.cc/HX2R-SAL7>.

II. The pharmacies' over-dispensing created a public nuisance.

A. The defendants—the largest pharmacy chains in the United States—are directly responsible for the counties' opioid crisis. With 33 pharmacies across Lake and Trumbull Counties, the pharmacies inundated the counties with opioids, dispensing nearly 110 million doses from 2006 to 2019. Trial Tr., R. 4032, Page ID # 544783–84. That quantity is a shocking, inexcusable oversupply for a community with fewer than 500,000 people. Between 2007 and 2015, “there was more than one prescription for *every resident* of Trumbull County” and only slightly fewer for residents of Lake County. Keyes Report, R. 4219-7, Page ID # 569238. For most of this period, “the average number of opioid pills exceeded ... 88 per resident per year in Trumbull County,” and “60 per resident each year” in Lake County. Abatement Plan, R. 4219-1, Page ID # 568365. And up to “five percent of the adult population” of these counties have “reported that they misused prescription opioids within the previous six months.” *Id.* at Page ID # 568366.

Lake and Trumbull Counties have not been experiencing a pain crisis; they have been experiencing an opioid-dependence crisis caused by the defendants' over-dispensing. To be sure, drug manufacturers, distributors, doctors, and policymakers also played key roles in causing and perpetuating the opioid crisis. But their involvement does not negate the central role the pharmacies played in bringing about these harms. “The driving force in increasing opioid-related morbidity and

mortality was, and continues to be, access to and widespread availability of opioids.” Keyes Report, R. 4219-7, Page ID # 569198.

Pharmacists have a “pivotal position in the opioid supply chain.” Trial Tr., R. 4000, Page ID # 541004-07. Pharmacists are trained to identify “red flags” in prescribing practices such as customers who are “doctor shopping” for opioid prescriptions from multiple doctors or “pharmacy shopping” by going from pharmacy to pharmacy to get prescriptions filled multiple times. Trial Tr., R. 4005, Page ID # at 541485-88. But when suspicious prescriptions did come in, the defendants continued to fill them. They repeatedly turned a blind eye to signs of opioid misuse and chose profit over their duty to monitor suspicious prescriptions. And they deprived their customers of the information they needed to effectively guard against diversion. “The expansion of non-medical prescription opioid use would not have occurred without the widespread availability of prescription opioids that were originally ... in greater quantities and doses than needed, leaving a surplus of opioids that could be diverted for non-medical uses.” Keyes Report, R. 4219-7, Page ID # 569197.

B. As a direct result of the defendants’ over-dispensing, an “opioid epidemic currently exists within Lake County and Trumbull County,” Abatement Plan, R. 4219-1, Page ID # 568364—a crisis that is a public nuisance. Ohio courts have repeatedly held that conditions affecting community health can constitute a public

nuisance. *See, e.g., City of Mansfield v. Balliett*, 63 N.E. 86 (Ohio 1902) (pollution of a stream). Under Ohio law, a public nuisance is “an unreasonable interference with a right common to the general public,” including “acts that significantly interfere with public health, safety, peace, comfort, or convenience.” *Cincinnati v. Beretta U.S.A. Corp.*, 768 N.E.2d 1136, 1142 (Ohio 2002). That is what an excess of opioids does to a community: It “significantly interfere[s] with public health,” affecting countless members of a community—not just those who develop opioid-use disorder.

“[P]rescription opioid distribution and the first wave of the opioid epidemic set the stage for all that has followed.” Keyes Report, R. 4219-7, Page ID # 569252. Anyone who takes opioids is at risk of developing a dependency, and the risk increases the higher the dose and the longer a person is taking opioids. Thomas R. Kosten & Tony P. George, *The Neurobiology of Opioid Dependence: Implications for Treatment* at 14, *Sci. & Prac. Persps.* (Jul. 2002). Opioids trigger the same brain processes that “reward people with feelings of pleasure when they engage in activities that promote basic life functions, such as eating and sex.” *Id.* But when opioids activate these reward systems in the absence of significant pain, they can lead people to take the drugs simply to regain that feeling of pleasure. *Id.* And when people are on opioids for a long time, they need more and more to achieve the same effect. *Id.*

When those with opioid dependency can no longer access prescription opioids, they experience crippling withdrawal symptoms. Withdrawal is one of the

most powerful factors driving opioid dependence and misuse. *Id.* Repeated exposure to higher and higher dosages alters the brain’s chemistry so that it functions normally with drugs and abnormally without. *Id.* And withdrawal from prescription drugs often leads those who have become dependent to turn to more dangerous alternatives. *See* National Institute on Drug Abuse, *A subset of people who abuse prescription opioids may progress to heroin use* (Jan. 2018), <https://perma.cc/C4D5-X8XB>; *see also* National Institute on Drug Abuse, *Prescription opioid use is a risk factor for heroin use* (Jan. 2018), <https://perma.cc/2RA4-HGAF>. Following a peak in prescription opioid overdoses in the 2000s, a rise in the use of heroin—a highly addictive illegal opioid—caused a second wave of death in the 2010s. CDC, *Understanding the Opioid Overdose Epidemic* (June 1, 2022), <https://perma.cc/EQY3-Z4GZ>. And since 2013, illicitly manufactured fentanyl, yet a third alternative, has been the leading culprit of overdose deaths. *Id.* The result is devastating: In 2020, 70 percent of overdose deaths involved illicitly manufactured fentanyl. CDC, *U.S. Overdose Deaths in 2021 Increased Half as Much as in 2020*. The “impact of illicit fentanyl has been especially severe” in Lake and Trumbull Counties “relative to other areas in the U.S.” Abatement Plan, R. 4219-1, Page ID # 568365.

Most people don’t start by using illicit drugs like heroin or fentanyl. But that’s where they can end up after getting hooked on prescription opioids. “There is a clear link between non-medical use of prescription opioids and subsequent heroin or illicit

fentanyl use, as heroin and fentanyl are close chemical analogues to prescription opioids.” *Id.* “Several studies estimate that 70-80% of current heroin users report non-medical prescription opioid use prior to initiating heroin.” *Id.* The rate in Ohio is even higher: A “recent study of individuals with [opioid-use disorder] in Ohio found that nearly 90% of participants used prescription opioids prior to initiating heroin.” *Id.* In short, the “evidence indicates that had the prescription opioid epidemic not occurred, there would be no heroin and high-potency synthetic overdose crisis.” Keyes Report, R. 4219-7, Page ID # 569252.

C. Across the country, healthcare and emergency services feel the strain of the opioid crisis. Nearly half a million people with opioid-use disorder are discharged from hospitals in the United States each year. Michael Botticelli et al., *For Hospitals, A Blueprint for Fighting the Opioid Epidemic*, Health Affairs (Dec. 20, 2019), <https://perma.cc/8VTJ-225V>. Opioid-related emergency room visits have risen dramatically, as have the rates of serious infections resulting from injecting opioids—such as endocarditis and hepatitis C. *Id.*

In early 2020, when the COVID-19 pandemic hit the United States, visits to hospital emergency departments plummeted by more than 40 percent. Kristin M. Holland et al., *Trends in US Emergency Department Visits for Mental Health, Overdose, and Violence Outcomes Before and During the COVID-19 Pandemic* at 375–76, JAMA Psychiatry (Feb. 3, 2021). Most people were scared of catching the coronavirus. But the CDC

found that patients experiencing drug-related crises needed help so desperately that they kept coming. *Id.* Out of all reasons for emergency room visits, overdoses were one of the few categories that showed an increase during the pandemic. *Id.* But, while emergency-room physicians are well equipped to treat an overdose, they usually do not have the resources or tools to treat the dependency and misuse at the root of the problem.

At all levels, providers of emergency services get stretched thin when overdoses surge. First responders use the life-saving medication naloxone to reverse an opioid overdose, only to respond again and again to the same house or person after another overdose. Olga Khazan, *The True Cause of the Opioid Epidemic*, *The Atlantic* (Jan. 2, 2022), <https://perma.cc/CX6R-K2XN>. Paramedics and law enforcement who respond to a high volume of overdose calls routinely experience compassion fatigue and burnout. Hope M. Smiley-McDonald, *Perspectives from law enforcement officers who respond to overdose calls for service and administer naloxone*, *Health & Just.* (Feb. 25, 2022), <https://perma.cc/CK28-VJG5>.

Even before the COVID-19 pandemic, there were reports from across the country of morgues running out of space and being unable to keep up with a spike in overdose deaths. *See, e.g.*, Madison Scarpino, *Spike in fentanyl overdoses leads US morgues to run out of space*, *New York Post* (Aug. 24, 2022), <https://perma.cc/ES8G-JQB3>; Katharine Q. Seelye, *As Overdose Deaths Pile Up, a Medical Examiner Quits the Morgue*,

N.Y. Times (Oct. 17, 2017), <https://perma.cc/74TM-LJX7>; Graham Hunter, *Montgomery County morgue overwhelmed by opioid overdoses*, WRTV Indianapolis (Dec. 20, 2017), <https://perma.cc/7SK7-SNF5>. In some states, including Ohio, coroners resorted to asking local funeral homes to temporarily store bodies until space freed up. Kimiko de Freytas-Tamura, *Amid Opioid Overdoses, Ohio Coroner's Office Runs Out of Room for Bodies*, N.Y. Times (Feb. 2, 2017), <https://perma.cc/XUP6-HVR9>.

In Lake and Trumbull Counties, as in much of the country, when opioid use increases, so does the rate of crime in the community. See Tyler Winkleman, et al., *Health, Polysubstance Use, and Criminal Justice Involvement Among Adults With Varying Levels of Opioid Use*, JAMA Network Open (2018). One study found that only 3 percent of people who had not used opioids in the last year reported being recently arrested or on parole or probation. *Id.* By contrast, among people suffering from opioid-use disorder, nearly 20 percent had been arrested. *Id.* Any amount of prescription opioid use was correlated with far more interactions with law enforcement.

Despite efforts to promote recovery and reentry, incarcerated people suffering from opioid-use disorder have a significantly higher risk of overdose and overdose-related death when they are released compared to people who were never incarcerated. Council of State Governments, *Opioid Addiction and the Criminal Justice System*, <https://perma.cc/4WHF-9TYP>. In North Carolina, for example, the risk of suffering from a fatal opioid overdose for someone recently incarcerated was 40 times

higher than for someone who was never incarcerated. *Id.* Yet most detention facilities don't offer medication-assisted treatment for opioid-use disorder. Rhitu Chatterjee, *With More Opioid Use, People Are More Likely To Get Caught Up In The Justice System*, NPR (July 6, 2018), <https://perma.cc/MQY7-UYG5>.

Homelessness is also a major concern for communities heavily impacted by opioid-use disorder. A survey by the United States Conference of Mayors found that substance misuse and dependence was the largest driver of homelessness in 68 percent of cities. National Alliance to End Homelessness, *Opioid Abuse and Homelessness* (Apr. 5, 2016), <https://perma.cc/C95C-ED3G>. In one survey, 25 percent of unhoused people identified drug use as their primary reason for homelessness. *Id.* Overdoses are now the leading cause of death in adults experiencing homelessness *Id.* For veterans, substance use is the leading risk factor for homelessness—even more so than bipolar disorder and schizophrenia. *Id.* And a 2015 study found that veterans suffering from opioid-use disorder were ten times more likely to be experiencing homelessness than the general veteran population. *Id.*

“The collateral damage of the opioid epidemic is experienced throughout Lake and Trumbull Counties, including by children and families of those affected by overdose, who have higher rates of psychiatric disorders and other detrimental health outcomes.” Keyes Report, R. 4219-7, Page ID # 569254. Parental opioid use significantly increases the number of children in the foster care system. Trial Tr., R.

4090, Page ID # 547969. And for some, the harmful consequences of opioids start before they are born: Eight of every 1,000 births involve a newborn experiencing the opioid-withdrawal condition known as neonatal abstinence syndrome. Jennifer Egan, *Children of the Opioid Epidemic*, N.Y. Times (May 9, 2018), <https://perma.cc/QFL7-3WPZ>. Experts estimate that a baby with neonatal abstinence syndrome is born in America every 15 minutes. *Id.* And the rate of the syndrome in Ohio is even higher than in the U.S. as a whole, quadrupling from 2008 to 2018. Keyes Report, R. 4219-7, Page ID # 569244.

Symptoms of withdrawal in newborns range “from relatively benign indicators like yawning, sneezing, mottled skin and a high-pitched cry to more serious problems like diarrhea, difficulty feeding and, very rarely, seizures.” *Id.* And, over time, neonatal abstinence syndrome may lead to longer-term developmental challenges that make demands on local health and education systems. Mary-Margaret A. Fill, et al., *Educational Disabilities Among Children Born With Neonatal Abstinence Syndrome*, *Pediatrics* (Sept. 2018), <https://perma.cc/DBZ5-Z26U>.

Historically, the opioid crisis was thought to mainly affect middle-class white populations. Melba Newsome & Gioncarlo Valentine, *The Opioid Epidemic Is Surging Among Black People Because of Unequal Access to Treatment*, *Scientific American* (Dec. 1, 2022), <https://perma.cc/3KW8-CF22>. But this is no longer entirely true. In recent years, Black and brown communities have also been heavily hit by the crisis. Over

the last decade, opioid-related overdose deaths have increased 575 percent among Black Americans. *Id.* “In 2019 the overall drug overdose death rate among Black people exceeded that of whites for the first time: 36.8 versus 31.6 per 100,000.” *Id.* With the addition of synthetic opioids like heroin and fentanyl, Black men above the age of 55 are dying at a rate four times greater than men of other races in that age group. *Id.*

In the United States, the populations worst hit on a per-capita basis by the opioid crisis are American Indian and Alaskan Native communities. The fatal opioid overdose rate for American Indian and Alaskan Natives is three times as high as for other races. National Indian Health Board, *Addressing the Opioid Epidemic in American Indian and Alaska Native Communities*, <https://perma.cc/7AR6-9E75>. And, as sovereign entities, tribal nations are not necessarily included in statewide public health initiatives such as “prevention and intervention efforts created through the new opioid crisis grants.” *Id.* Overall, data on opioid-related overdose deaths shows concerning disparities. Although overdose death rates have increased for every major demographic, the largest increase has been for Black, American Indian, and Alaskan Native people, with even greater disparities across geographic areas and income inequality. CDC, *Overdose death rates increased significantly for Black, American Indian/Alaska Native people in 2020* (July 19, 2022), <https://perma.cc/6SGH-BUDA>.

III. Abatement with medication-assisted treatment and other measures is an appropriate remedy for the nuisance caused by the pharmacies' oversupply.

A. Early investment in state opioid-data surveillance and monitoring, along with state policies to reduce prescribing, have contributed to fewer opioid prescriptions over time. But “[t]here remains a substantial burden of unmet treatment need in Lake and Trumbull Counties, and a high prevalence of opioid use disorder.” Keyes Report, R. 4219-7, Page ID # 569254. “The consensus among local officials and experts is that while the community provides services for those affected by [opioid-use disorder], they are insufficient because of the magnitude of the public health issue.” *Id.* at Page ID # 569246. “[M]any programs and initiatives are vastly under-resourced, and there are other signs that the epidemic is as active as ever.” Abatement Plan, R. 4219-1, Page ID # 568367.

To address the widespread effects of the pharmacies' conduct in this case—from addiction and diversion to opioid-related crime and overdoses—Lake and Trumbull Counties seek the legal remedy of abatement. “Despite the unprecedented injuries and deaths from the opioid epidemic, there is virtual consensus in the clinical, public health, and health policy communities that the epidemic can be abated.” *Id.* at Page ID # 568368. Simply stopping the over-dispensing of prescription opioids cannot solve the long-term dependence these drugs have left in their wake. Even if the oversupply is stopped, “there are still thousands of individuals

with [opioid-use disorder] in the [counties], many of whom require active treatment and all of whom deserve access to care if and when treatment or recovery services are sought.” *Id.* at Page ID # 568369. Thus, the “proper scope of an abatement remedy must include programs and interventions that will lessen or remove the nuisance condition created by these Defendants.” Order, R. 4611, Page ID # 596667.

“No *single* abatement remedy,” however, “can fully address the oversupply of opioids”—a fact that underscores the importance of a comprehensive abatement strategy. Abatement Plan, R. 4219-1, Page ID # 568369. The counties have therefore proposed a plan that includes a suite of established strategies within three areas: community recovery, innovation, and sustainability. There “is a large evidence base to guide the selection of interventions that should be undertaken,” and a “widespread consensus in both clinical and public health communities that th[ese] abatement measures ... are effective in reversing opioid-related morbidity and mortality.” *Id.* at Page ID # 568364. These measures include medication-assisted treatment; increasing the availability of naloxone and other drugs that treat overdoses; training for and integration of screening and referral programs; supporting the needs of those in the justice system with a substance-use disorder; support for evidence-informed treatment and prevention services for pregnant people with substance-use disorder; identification and support of successful recovery models; school-based prevention programs; expanding the prevention, treatment and recovery needs of youth;

increasing collaboration with first responders; creating or expanding fellowships for addiction specialists; and stigma reduction. The evidence supporting these abatement strategies “is vast, with thousands of peer-reviewed manuscripts” documenting their effectiveness. *Id.*

B. One of the principal ways in which the counties’ proposed abatement plan seeks to address the harmful conditions created by the opioid crisis is through public-health services, such as medication-assisted treatment. Medication-assisted treatment—which the World Health Organization has described as “one of the most effective types of pharmacological therapy of opioid dependence”—how been shown to help those suffering from opioid-use disorder. Jennifer J. Carroll et al., *Evidence-Based Strategies for Preventing Opioid Overdose*, CDC (2018), <https://perma.cc/7EKG-VUAE>. Agonist drugs such as methadone and buprenorphine activate opioid receptors in the brain to prevent symptoms of withdrawal without causing euphoria. *Id.* “[D]ecades of research support the efficacy of opioid agonist medications (methadone and buprenorphine) in preventing overdose.” *Id.*; see also Marc R. Larochelle, et al., *Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association With Mortality: A Cohort Study*, *Annals of Internal Med.* (Aug. 6, 2018), <https://perma.cc/PLF3-4C78>.

The use of medication-assisted treatment can reverse many community and individual negative consequences of opioid oversupply. A report by the National

Institutes of Health shows that medication-assisted treatment decreases opioid use, opioid-related overdose deaths, criminal activity, and infectious disease transmission. National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction* (Nov. 1, 2016), <https://perma.cc/N5ZM-CTUM>. People who take these medications are more likely to stay with their treatment. *Id.* They are also more likely to stay in counseling and overall have better social functioning than patients given other forms of opioid-use disorder treatments. *See, e.g.,* Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose*; National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction*. In criminal-justice settings, providing medication-assisted treatment improves the likelihood that people in incarceration will continue care upon release—decreasing the likelihood of overdose. *Id.* Within one year of initiating medication-assisted treatment, a Rhode Island prison found a 60 percent decrease in fatal overdoses in recently released individuals. Timothy W. Kinlock et al., *A randomized clinical trial of methadone maintenance for prisoners: results at 12 months postrelease*, *J. of Substance Abuse Treatment* (Oct. 2009), <https://perma.cc/MH9D-2SNE>.

Despite its well-established effectiveness, medication-assisted treatment is not widely used or available. Less than half of privately funded substance-use disorder treatment programs offer it. National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction*. Opioid-treatment programs are the only type of healthcare programs that can offer all three FDA-approved medications for opioid-use disorder. Pew

Charitable Research, *Overview of Opioid Treatment Program Regulations by State* (Sept. 19, 2022), <https://perma.cc/UY2K-PRSR>. But for many, opioid-treatment programs are not available in their communities. *Id.* As of 2018, 80 percent of counties in the United States did not have an opioid-treatment facility. *Id.* Other factors also limit access to care, such as limited hours of operation, or requirements to show government-issued ID or undergo urine drug screenings to receive medication. *Id.* Even at facilities that do provide this treatment, only about one-third of patients with opioid dependence receive it. National Institute on Drug Abuse, *Effective Treatments for Opioid Addiction*.

C. The plaintiffs' abatement plan would also expand and support distribution of naloxone, "an opioid antagonist, or 'blocker', that can save lives by safely and rapidly reversing opioid overdoses" but currently has "limited accessibility to those in need." Abatement Plan, R. 4219-1, Page ID # 568402. There is no risk of misuse or dependence with naloxone and the medication has no effect unless there are opioids in someone's system. Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose*.

Targeted naloxone distribution programs give the medication to people at high risk of experiencing or witnessing an overdose. *Id.*; see also Andy Baker-White & Beth Giambrone, *Increasing Naloxone Accessibility to Prevent Opioid Overdoses*, National Institute on Drug Abuse (June 16, 2021), <https://perma.cc/8QJN-L3BQ>. This way, the delay between the onset of an overdose and the delivery of life-saving care can

be reduced from hours to seconds. *Id.* While naloxone does not treat ongoing opioid dependency, it is an extremely effective way to thwart the uptick in overdose deaths that has often accompanied the oversupply of opioids. A study of nearly 2,000 people who received an opioid prescription over two years found that “those individuals who were co-prescribed naloxone along with their opioid prescription had 47% fewer visits to the emergency department in the 6 months after receiving the prescription and 63% fewer emergency department visits after 1 year.” Carroll, *Evidence-Based Strategies for Preventing Opioid Overdose*.

* * *

The pharmacies’ oversupply of prescription opioids into small communities in Ohio has created an ongoing, widespread public nuisance—one that cannot be meaningfully addressed simply by ceasing wrongful conduct in the present. Instead, an abatement remedy is necessary, and that remedy should empower local government officials to provide medical treatments that have been shown to effectively reduce deaths, combat addiction, and ameliorate the many harms associated with this historic crisis.

CONCLUSION

The Court should affirm the district court’s judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4,572 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Baskerville font.

February 21, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Sixth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

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