ARIZONA SUPREME COURT

No. CV-21-0011-PR

ALLERGAN PLC, ET AL.,

Petitioners,

VS.

THE HONORABLE ROGER E. BRODMAN, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF MARICOPA,

Respondent Judge,

CITY OF GLENDALE, ET AL.,

Real Parties in Interest

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN TORT REFORM ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONERS

FILED WITH WRITTEN CONSENT OF THE PARTIES

DENTONS US LLP
Karl M. Tilleman
Douglas D. Janicik
2398 East Camelback Road, Ste. 850
Phoenix, Arizona 85016-9007
Telephone: (602) 508-3900
Facsimile: (602) 508-3914
karl.tilleman@dentons.com
doug.janicik@dentons.com

Attorneys for Chamber of Commerce of the United States of America and the American Tort Reform Association

TABLE OF CONTENTS

TABLE OF CITATIONS ii

STATEMENT OF INTEREST 1

ARGUMENT 3

I. The superior court jettisoned the traditional limitations on nuisance law that have long provided predictability in the business community. 3

A. Nuisance liability has always been limited to the use of real property. 3

B. The Legislature codified the common law-limits on public nuisance liability. 6

II. Review is needed to ensure Arizona does not become a hotbed for public-nuisance lawsuits that target lawful products businesses make available to its citizens. 10

CONCLUSION 15

TABLE OF CITATIONS

Page(s)

Cases

Am. Elec. Power Co. v. Connecticut,
564 U.S. 410 (2011).....14

Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs. of Ariz.,
148 Ariz. 1 (1985).....4, 5, 7

Cactus Corp. v. State,
14 Ariz. App. 38 (1971).....6

City of Chi. v. Beretta U.S.A. Corp.,
821 N.E.2d 1099 (Ill. 2004).....13

City of Milwaukee v. NL Industries,
691 N.W.2d 888 (Wis. Ct. App. 2004).....12

City of Phoenix v. Johnson,
51 Ariz. 115 (1938).....3, 4, 8

City of St. Louis v. Benjamin Moore & Co.,
226 S.W.3d 110 (Mo. 2007).....13

CVS Pharmacy, Inc. v. Tucson Medical,
CV-20-120-PR (Dec. 8, 2020).....13

Detroit Bd. of Educ. v. Celotex Corp.,
493 N.W.2d 513 (Mich. Ct. App. 1992).....12

Engle v. Scott,
53 Ariz. 458 (1939).....8

Engle v. Scott,
57 Ariz. 383 (1941).....5, 6

Hislop v. Rodgers,
54 Ariz. 101 (1939).....7

Hopi Tribe v. Ariz. Snowbowl Resort Ltd. P'ship,
245 Ariz. 397 (2018).....4, 10

In re Lead Paint Litig.,
924 A.2d 484 (N.J. 2007) 12

Local 266, IBEW v. Salt River Project Agric. Improvement & Power Dist.,
78 Ariz. 30 (1954).....3

MacDonald v. Perry,
32 Ariz. 39 (1927).....4, 5, 8

Masury & Son v. Bisbee Lumber Co.,
49 Ariz. 443 (1937).....7

McCulloch v. Western Land & Cattle Co.,
27 Ariz. 154 (1924).....10

Modisette v. Apple Inc.,
30 Cal.App.5th 136 (2018) 11

Mutschler v. City of Phoenix,
212 Ariz. 160 (App. 2006).....6

People v. ConAgra Grocery Prods,
2018 Cal. LEXIS 1277 (2018).....12

People v. ConAgra Grocery Prods,
17 Cal.App.5th 51 (2017) 12

Pleak v. Entrada Prop. Owners Ass'n,
207 Ariz. 418 (2004).....9

Rhode Island v. Lead Indus. Ass'n,
951 A.2d 428 (R.I. 2008).....13

San Mateo Cnty. v. Chevron Corp.,
294 F.Supp.3d 934 (N.D. Cal. 2018).....10

Spur Indus. v. Del E. Webb. Dev.,
108 Ariz. 178 (1972).....4

State Bd. of Dental Exmr's v. Hyder,
114 Ariz. 544 (1977).....6

State v. Cardon,
112 Ariz. 548 (1976).....10

Sullivan v. Phoenix Sav. Bank & Trust,
68 Ariz. 42 (1948).....8

Tioga Pub. Sch. Dist. v. U.S. Gypsum Co.,
984 F.2d 915 (8th Cir. 1993).....11, 12

United Bank of Ariz. v. Mesa N.O. Nelson Co.,
121 Ariz. 438 (1979).....9

Statutes & Rules

A.R.S. § 13-2917.....5, 6, 8, 9, 10

Ariz. Rev. Code 1928, § 4693.....8

Ariz. Penal Code 1913, § 383.....8

Former A.R.S. § 43-4603.....9

Arizona Rule of Civil Appellate Procedure 16(d).....1

Other Authorities

W. Page Keeton et al., *Prosser & Keeton on the Law on Torts* § 86
(5th ed. 1984).....10

Donald G. Gifford, *Mass Prods. Liability Tort*, 71 U. CIN. L. REV.
741, 793, 800 (2003).....7, 8

Restatement (Second) of Torts §821B (1979).....5, 7, 8, 9

STATEMENT OF INTEREST

The United States Chamber of Commerce ("Chamber") and the American Tort Reform Association ("ATRA") submit this amici brief in accordance with Arizona Rule of Civil Appellate Procedure 16(d).

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region in the country, including Arizona. An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases involving issues of national concern to the business community.

ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases involving important liability issues.

This is one of those cases. The Chamber and ATRA have an interest in ensuring that, contrary to the decision below, Arizona's tort system is predictable and does not expose businesses to liability for harms they did not cause.

Since its inception, public nuisance has played a circumscribed role in Arizona—indeed, American—jurisprudence. It originated in the common law as a property-based tort used to remedy invasions of public lands or shared resources like highways and waterways. The superior court in this case ignored that history, transforming public nuisance into a super-tort that exposes Arizona businesses to massive liability for a broad array of public issues far removed from traditional public nuisances.

If the superior court's ruling stands, it could chill business activity throughout the State for fear that any product linked to a perceived social problem may lead to years of costly litigation. The State or other localities, or even enterprising individuals with their lawyers, could use the public nuisance statute to sue a fast food restaurant for an alleged obesity epidemic or to pressure an energy company to cover the costs of climate change. Obesity and climate change, like opioid abuse, are complicated public issues that demand policy-driven solutions by elected officials through the democratic process, in which the potential consequences of expanding traditional nuisance law can be studied and debated.

This Court should grant review before this case goes any further. Otherwise, nuisance lawsuits against Arizona businesses could proliferate quickly, as they have done in another state where a trial judge issued a similar ruling. And the costs could be huge: settlement pressure alone would likely prevent timely appellate

review of this critical issue, leaving businesses in Arizona uncertain about their potential liabilities for the products they provide every day to Arizonians.

ARGUMENT

Opioid addiction is a serious problem that demands serious policy-based solutions. It calls for a legislative response, not a judicial one. *See Local 266, IBEW v. Salt River Project Agric. Improvement & Power Dist.*, 78 Ariz. 30, 40-41 (1954) ("statements of public policy must be made by the people through the legislature"). What happened in the superior court represents the worst possible outcome: a ruling that is judicial in form but legislative in substance.

I. The superior court jettisoned the traditional limitations on nuisance law that have long provided predictability in the business community.

The decision below represents a clean break from nuisance law's longstanding common-law, property-based foundation. Indeed, the superior court read Arizona's nuisance statute in a manner that creates a new tort, which is impervious to traditional legal requirements like causation and is, in a word, unprecedented.

A. Nuisance liability has always been limited to the use of real property.

From the outset, this Court made clear that the public-nuisance tort is premised on a defendant's unreasonable use of his land. *City of Phoenix v. Johnson*, 51 Ariz. 115, 123 (1938) (nuisance "is a class of wrongs which arises from an unreasonable, unwarranted, or unlawful use by a person *of his own*

property" (emphasis added)); *MacDonald v. Perry*, 32 Ariz. 39, 50 (1927) ("What amount of annoyance or inconvenience caused by others in the *lawful use of their property* will constitute a nuisance depends upon varying circumstances and cannot be precisely defined." (emphasis added)). Not surprisingly, then, public-nuisance cases in Arizona all involve the use of real property. *E.g.*, *Hopi Tribe v. Ariz. Snowbowl Resort Ltd. P'ship*, 245 Ariz. 397, 399, ¶4 (2018) (suit to enjoin use of reclaimed wastewater to make snow at ski resort); *Spur Indus. v. Del E. Webb. Dev.*, 108 Ariz. 178 (1972) (enjoining cattle feeding as a public nuisance due to flies and odor it generated); *Phoenix*, 51 Ariz. at 120 (odor from sewer plant constructed within 2,000 feet of plaintiffs' property).

Moreover, this Court's focus on the impact of defendant's activities on his *neighbor* puts the public-nuisance tort in its proper context: use of real property. *Armory Park Neighborhood Ass'n v. Episcopal Cmty. Servs.*, 148 Ariz. 1, 7 (1985) ("the law requires our neighbors to keep their activities within the limits of what is tolerable by a reasonable person"); *Phoenix*, 51 Ariz. at 123 ("'nuisance' signifies in law such a use of property or such a course of conduct, irrespective of actual trespass against others, … which transgresses the just restrictions upon use or conduct which the *proximity of other persons or property* in civilized communities imposes upon what would otherwise be rightful freedom." (emphasis added)). *Armory Park* itself, which the superior court cited, involved a church's use of a facility to provide free meals to indigent persons. 148 Ariz. at 3 (citing

MacDonald's "use of property" passage, *supra*, 32 Ariz. at 50, and noting complaint alleged transients "frequently trespassed onto residents' yards").

Against that backdrop, the superior court focused on the wrong thing. It focused on the public rights *affected* by the alleged nuisance, concluding they need not be "property" rights in the traditional sense. (APP-0175 ("Nor is [§ 13-2917] limited to nuisances directly affecting land. By its express terms, the statute applies to problems 'injurious to health.").) True enough, but that puts the cart before the horse: the preliminary inquiry is the nature of the *defendant's* offensive conduct. *E.g.*, *Armory Park*, 148 Ariz. at 8 (courts "should look at the utility and reasonableness of the conduct and balance these factors against the extent of harm inflicted and the nature of the affected neighborhood"). And under centuries-old nuisance law, the conduct or activity being judged (which focuses on the defendant)—as opposed to the rights *affected* by that conduct or activity (which focuses on the plaintiff)—necessarily involves the use of one's property.[1]

The only *potential* exception is for those few disturbances that, because of their nature, at all times and "irrespective of their location and results," constitute a "nuisance per se." *Engle v. Scott*, 57 Ariz. 383, 389 (1941). Even then, most

[1] The Restatement passage quoted below is consistent with this distinction. *Restatement (Second) of Torts* §821B, cmt. h (1979) ("a public nuisance does not necessarily involve interference with use and enjoyment of land"). That says nothing about the nature of *defendant's* conduct causing the harm.

nuisances per se are connected to real property. Examples include an obstruction of a highway, § 13-2917(A)(2), (B), or other things "in derogation of public morals and decency," like maintaining a gambling establishment, *Engle*, 57 Ariz. at 389-90, operating a live sex act club, *Mutschler v. City of Phoenix*, 212 Ariz. 160 (App. 2006), or showing pornographic movies at a drive-in theater, *Cactus Corp. v. State*, 14 Ariz. App. 38 (1971). No one contends that marketing FDA-approved prescription opioids—an appropriate therapeutic treatment in various circumstances—constitutes a nuisance per se.[2]

B. The Legislature codified the common law-limits on public nuisance liability.

According to the superior court, A.R.S. § 13-2917 is "broad," and the word "anything" in the phrase "'anything … injurious to health'" could include "the misuse of legal products." (APP-0175.) This expansive interpretation of the public-nuisance statute completely negates the Legislature's intent in enacting § 13-2917.

Arizona's nuisance statute codifies the common law. *Engle*, 57 Ariz. at 388-89 (definition of public nuisance "was inserted in our Code [to cover] any act which, *under the common law*, was construed as a public nuisance" (emphasis added)); *Hislop v. Rodgers*, 54 Ariz. 101, 113 (1939) (municipalities' power "is

[2] Certain activities are designated a nuisance through legislation. *E.g.*, *State Bd. of Dental Exmr's v. Hyder*, 114 Ariz. 544, 546 (1977) (unauthorized practice of dentistry). There is no Arizona statute designating the marketing of FDA-approved prescription opioids as a nuisance per se.

limited to such things as the common law declares to be nuisances"). Historically, public nuisance law was a mechanism for the English Crown to abate conditions that impeded royal property or public roads and waterways. *Armory Park*, 148 Ariz. at 4; *Restatement* §821B cmt. a.[3] Originally a criminal remedy in the hands of the Crown, public-nuisance law eventually evolved so that a private individual who had suffered an injury differing from that sustained by the public at large (i.e., an interference with a "public right") could bring a civil action. *See* Donald G. Gifford, *Public Nuisance as a Mass Prods. Liability Tort*, 71 U. CIN. L. REV. 741, 793, 800 (2003).

As it entered the American legal system, the focus of this new tort was attacks on conduct that interfered with the

- "public health," such as "keeping diseased animals or the maintenance of a pond breeding malarial mosquitoes,"
- "public safety, as in the case of the storage of explosives in the midst of a city,"
- "public morals, as in the case of houses of prostitution,"
- "public peace, as by loud and disturbing noises,"
- "public comfort, as in the case of widely disseminated bad odors, dust and smoke," and
- "public convenience, as by the obstruction of a public highway or a navigable stream."

[3] "Common law" includes English common law, except as such rules are modified by statute. *Masury & Son v. Bisbee Lumber*, 49 Ariz. 443, 463-64 (1937).

Restatement §821B cmt. b.[4] That list covers "a large, miscellaneous and diversified group of minor criminal offenses," *id*.; *see* Gifford, *supra*, at n.428, but all flow from, or at least involve, the use of real property or are nuisances per se.

Section 13-2917 is rooted in this early history of public nuisance law. As this Court explained, "[t]he old definition given by Blackstone as 'anything that worketh hurt, inconvenience or damage' means substantially the same as our statute, though the latter uses a much greater number of words to reach the same result." *Engle v. Scott*, 53 Ariz. 458, 465 (1939). Thus, as early as 1913, the Legislature defined a public nuisance as "[a]nything which is injurious to health, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life, or property by an entire community or neighborhood, or by any considerable number of persons." *MacDonald*, 32 Ariz. at 45 (quoting Pen. Code 1913, § 383).

Over the following decades, the public-nuisance statute remained largely unchanged, and it included the very same "injurious to health" language. *Phoenix*, 51 Ariz. 124 (citing § 4693 of Rev. Code 1928); *Sullivan v. Phoenix Sav. Bank &*

[4] *See also* Gifford, *supra*, at 800-01 (noting that "[t]he early American cases of what would now be regarded as public nuisance fell into two categories," i.e., (i) "the obstruction of either public highways or navigable waterways" or (ii) "[l]ess common," a "loose amalgamation of minor offenses involving public morals or the public welfare," such as "gambling and wagering, keeping a disorderly house or tavern, enabling prostitution, and using profane language").

Trust, 68 Ariz. 42, 45 (1948) (citing former A.R.S. § 43-4603). In 1978, the Legislature carried the same language forward into § 13-2917. All the while, this Court confirmed that the statute's fundamental purpose was to regulate property uses offensive to neighbors and the community. *Supra* at 3-6.

It is inconceivable that, by tracking the language of the 1913 statute *nearly verbatim*, and with this Court's prior decisions in the books, the Legislature in 1978 intended to make a sea change in tort law and dramatically expand the public-nuisance statute beyond its use-of-real-property/nuisance-per-se origins. As Restatement §821B explains, "[i]f the common law crimes for public nuisance have been supplanted or supplemented by a broad general statute, the situation has not been changed in any material respect, and the common law rules are generally still applicable to both criminal and civil liability." *Id*., cmt. d. In fact, there is nothing suggesting the Legislature intended § 13-2917 to expose businesses to outsized monetary liability for conduct untethered to Arizona's developed body of nuisance law. *Pleak v. Entrada Prop. Owners Ass'n*, 207 Ariz. 418, 422, ¶12 (2004) ("Absent a clear manifestation of legislative intent to abrogate the common law, we interpret statutes with every intendment in favor of consistency with the common law.").

That was the fatal flaw in the superior court's ruling—it read § 13-2917 in isolation, without regard to this Court's precedent that gives meaning to the very terms used therein. *United Bank of Ariz. v. Mesa N.O. Nelson Co*., 121 Ariz. 438,

442 (1979) ("[s]tatutes should be construed consistent with the common law"). Thus, § 13-2917, which "us[es] words having definite and well-known meaning at common law," should be "construed in such sense." *McCulloch v. Western Land & Cattle Co*., 27 Ariz. 154 (1924); *see State v. Cardon*, 112 Ariz. 548, 551 (1976) (public nuisance suit; "the words 'public highway' in [§]18-209 must be read in the light of what a public highway was at the common law").

This Court should grant review to ensure the long-settled expectations of the business community are not upset with the introduction of a new, dangerously overbroad, nuisance tort.[5]

II. Review is needed to ensure Arizona does not become a hotbed for public-nuisance lawsuits that target lawful products businesses make available to its citizens.

If the superior court's decision stands, the consequences could be devastating to businesses operating in Arizona. Energy companies may soon face nuisance claims seeking to extract compensation for the effects of climate change.[6]

---

[5] This Court recently reaffirmed other traditional limits on public nuisance. In *Hopi Tribe*, *supra* at 5, alleged interference with a group's use and enjoyment of a place of religious importance did not establish the required "special injury" for standing to sue. 245 Ariz. at 401, ¶15 ("[T]he only public nuisance cases in which we have recognized special injury involved property or pecuniary interests not present here."). Citing Prosser and Keeton's (*Law on Torts*) criticism that nuisance law "has been applied indiscriminately as a substitute for any analysis of a problem," this Court noted its holding "helps prevent the erosion of any semblance of doctrinal consistency in the common law of nuisance." *Id*. at 404, ¶24.

[6] *San Mateo Cnty. v. Chevron*, 294 F.Supp.3d 934, 937 (N.D. Cal. 2018).

Or the State may sue smartphone manufacturers or social media companies, alleging that their products created a generation of distracted drivers and addicted children who drove up the need for emergency and mental health services.[7] As reimagined below, public-nuisance law offers businesses no way to predict when they may face liability in Arizona.

This Court should heed the warnings from states whose concerns over runaway nuisance liability led them to reject nuisance theories like those embraced below. For example, in the 1980s, plaintiffs pressed public-nuisance claims against manufacturers of building materials containing asbestos. Although courts sustained asbestos claims on alternative theories, "[a]ll of the courts that ... considered the issue ... rejected nuisance as a theory of recovery." *Tioga Pub. Sch. Dist. v. U.S. Gypsum Co.*, 984 F.2d 915, 920 (8th Cir. 1993). In doing so, courts looked to the "limitations of traditional common law nuisance doctrine," including that, as a general matter, nuisance claims "arise in the classic context of a landowner or other person in control of *property* conducting an activity *on his land* in such a manner as to interfere with the property rights of a *neighbor*." *Id.* (emphasis added). Without precedent supporting a broader application, courts refused to expand the doctrine beyond its traditional foundations. *Id.* ("the absence of analogous cases supports an inference that the statute was neither intended nor has it been

[7] *Modisette v. Apple Inc.*, 30 Cal.App.5th 136, 141-42 (2018).

understood to extend to cases such as [this one]"); *see Detroit Bd. of Educ. v. Celotex Corp.*, 493 N.W.2d 513, 521 (Mich. Ct. App. 1992) (allowing a nuisance claim "would significantly expand, with unpredictable consequences, the remedies already available to persons injured by products, and not merely asbestos products").

In suits against lead-based paint manufacturers, courts again refused to expand public nuisance liability beyond its historical roots.[8] The New Jersey Supreme Court, for instance, traced the tort's development "through the centuries" and concluded that "permit[ing] these complaints to proceed ... would stretch the concept of public nuisance far beyond recognition and would create a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort." *In re Lead Paint Litig.*, 924 A.2d 484, 494–95 (N.J. 2007) ("essential to the concept of a public nuisance tort ... is the fact that it has historically been linked to *the use of land* by the one creating the nuisance" (emphasis added)).

[8] *City of Milwaukee v. NL Industries*, 691 N.W.2d 888, 890 (Wis. Ct. App. 2004), reversed the dismissal of public nuisance claims against lead-paint manufacturers. The Wisconsin Supreme Court never weighed in. 2005 WI 136 (2005) (review dismissed); 2009 WI 34 (2009) (review denied). A similar outlier decision is *People v. ConAgra Grocery Prods.*, 17 Cal.App.5th 51 (2017), 2018 Cal. LEXIS 1277 (2018) (declining review).

The Rhode Island Supreme Court likewise observed that "[a] common feature of public nuisance is the occurrence of a dangerous condition at a specific location" and that all nuisance actions were "related to *land*." *Rhode Island v. Lead Indus. Ass'n*, 951 A.2d 428, 452, 455 (R.I. 2008) (refusing to recognize "a new and entirely unbounded tort" that ignored the "inherent theoretical limitations of the tort of public nuisance"); *see also City of St. Louis v. Benjamin Moore & Co.*, 226 S.W.3d 110, 116 (Mo. 2007) (rejecting city's attempt to sidestep traditional causation standards under the guise of a "uniquely public" and "widespread health hazard").

And in a municipality's nuisance suit against a gunmaker, upon reviewing the historical underpinnings of the "public right" requirement, the Illinois Supreme Court held "there is [no] public right to be free from the threat that some individuals may use an otherwise legal product (be it a gun, liquor, a car, a cell phone, or some other instrumentality) in a manner that may create a risk of harm to another." *City of Chi. v. Beretta U.S.A. Corp.*, 821 N.E.2d 1099, 1116 (Ill. 2004).

The Court should follow these lead decisions. If Arizona embraces this new super-tort, it could become ground zero for seemingly limitless public-nuisance litigation. This Court already heard argument in *CVS Pharmacy, Inc. v. Tucson Medical*, CV-20-120-PR (Dec. 8, 2020), a related case in which a hospital sued prescription drug manufacturers and local pharmacies and alleged it had suffered tens of millions of dollars in losses because of the opioid crisis. There's another

opioid case out of Kingman.[9] In Oklahoma, after a trial court recently allowed "a misuse of legal product" nuisance claim to go forward, at least six other similar lawsuits have been filed.[10]

Traditional limitations on liability place public policy decisions where they should be—the political branches, not the judiciary:

> [J]udges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order . . . [including] commission[ing] scientific studies or conven[ing] groups of experts for advice, or issu[ing] rules under notice-and-comment procedures ….

Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 428 (2011). Case in point: allowing Plaintiff's "misuse of legal product" nuisance claim to go forward would be tantamount to a judge making decisions on the prescribing or availability of opioid medications and determining the shape and funding sources for the response to this statewide crisis. That job belongs to the legislature, which can balance the many competing policy factors and study the consequences of remaking nuisance law.

---

[9] *Kingman Hosp., Inc. v. Purdue Pharma, L.P.*, CV-2019-00563 (Mohave Cnty.).

[10] *Cherokee Nation v. Juul Labs.*, CJ-20-114 (Sequoyah Cnty. Sept. 3, 2020); *Citizen Potawatomi Nation v. McKinsey & Co.*, CJ-20-378 (Pottawatomie Cnty. Nov. 3, 2020); *State v. McKesson Corp.*, CJ-20-84 (Bryan Cnty. May 1, 2020); *State v. AmerisourceBergen Corp.*, CJ-20-85 (Bryan Cnty. May 1, 2020); *State v. Cardinal Health Inc.*, CJ-20-86 (Bryan Cnty. May 1, 2020); *Randle v. Tulsa*, CV-20-1179 (Tulsa Cnty. Sept. 1, 2020).

CONCLUSION

The superior court's expansion of public nuisance law promises devastating consequences for the Arizona business community. This Court should grant special action review and hold that the traditional limits on public-nuisance claims still apply in Arizona.

RESPECTFULLY SUBMITTED this 26th day of March, 2021.

DENTONS US LLP

By s/ Karl. M. Tilleman
Karl M. Tilleman
Douglas D. Janicik

Attorneys for Chamber of Commerce of the United States of America and the American Tort Reform Association