Nos. 19-4097 and 19-4099

In the United States Court of Appeals for the Sixth Circuit

IN RE: NATIONAL PRESCRIPTION OPIATE LEGISLATION

Appeal from the United States District Court for the Northern District of Ohio, No. 1:17-md-02804

BRIEF OF *AMICI* STATES OF ARIZONA, ALASKA, DELAWARE, IDAHO, INDIANA, KANSAS, LOUISIANA, MICHIGAN, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, SOUTH DAKOTA, AND THE DISTRICT OF COLUMBIA SUPPORTING APPELLANTS AND REVERSAL

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INTRODUCTION AND STATEMENT OF *AMICI* INTEREST

This case presents a question that is both mundane and bizarre: Did the District Court err when it certified a "negotiation class" in this multidistrict litigation? The question is mundane because this Court often reviews class-certification decisions. The question is bizarre because the District Court entered its certification order in a multidistrict case that is not—or at least was not—a class action.

This multidistrict litigation involves individual suits from over 2,000 political subdivisions, including at least one from almost every State in America. Those subdivisions are seeking damages for public injuries caused by the opioid crisis. How did thousands of *individual* suits by thousands of *individual* plaintiffs turn into a class action? By decree. The District Court, apparently, concluded that it *could* certify the class because it *had to*. As it explained in an order addressing a separate issue, no other body in America is up for the challenge of addressing the opioid epidemic: "Ordinarily, the resolution of a social epidemic should be the responsibility of our other two branches of government, but these are not ordinary times." Order Denying Recusal, R.2676, PageID#417360.

Consistent with this drastic-times-call-for-drastic-measures approach, the District Court told both sides early on that its "attention and time, candidly, is going to be on facilitating the settlement track." Disqualification Brief, R.2603-1, PageID#414220. Then, relying on the "creative thinking" of the special master ap-

pointed to oversee the litigation, the District Court devised "a new form of class action"—one involving a "negotiation class," which will attempt to negotiate a comprehensive settlement between thousands of parties in the individual cases comprised by this multidistrict litigation. Once the District Court and special master concocted this scheme, they enlisted the plaintiffs' attorneys to submit a motion to certify the class. Not surprisingly, the District Court certified the "negotiation class" that it invented and encouraged. Memorandum Opinion Certifying Negotiation Class ("Op."), R.2590, PageID#413617.

The trouble with this approach is that district courts are bound by the law even when they preside over litigation about important social issues. This Court recently observed that any "power a lower federal court exercises must have some basis in either an act of Congress or the Constitution." *Doe v. Univ. of Mich.*, 936 F.3d 460, 463 (6th Cir. 2019). That lesson applies here. As the appellants show, no grant of legislative or constitutional authority permitted the District Court to certify a negotiation class. Indeed, Rule 23 of the Federal Rules of Civil Procedure *prohibits* certification.

The *amici* States write to highlight one particular concern about the certified class that is of unique interest to them, and that bears on the propriety of the certification order: the proposed class threatens harm to state interests, including state sovereignty. The 2,000 political-subdivision plaintiffs are suing (at least in part) to

vindicate the interests of the public at large. They are, in effect, suing as *parens patriae*. But political subdivisions have no inherent authority to sue in that capacity. Under our Constitution, the States themselves may allocate power within their borders as they see fit—the States themselves, not the federal courts, get to decide what their political subdivisions are empowered to do. *See Columbus v. Ours Garage & Wrecker Serv.*, 536 U.S. 424, 437 (2002). That reality is impossible to square with the certification order, which permits a single, nationwide class of political subdivisions to pursue a settlement *without regard* to whether the subdivisions have state-law authority to bring their claims. By permitting a national class of local governments to settle claims that they have no state-law authority to litigate, the District Court has created an alternative to state government; it has freed the subdivisions from state control and thus invaded state sovereignty.[1] And if the certified class succeeds in reaching a settlement, the class-certification order will have inflicted still more damage on state interests by diverting finite opioid-settlement funds to political subdivisions and away from the States.

The class's negative impacts on state interests make certification improper. The District Court certified the class under Rule 23(b)(3). That rule permits certification only if: (1) "a class action is superior to other available methods for fairly

[1] That some local governmental entities in some specific states are granted statutory authority to bring specific claims like public nuisance, *see, e.g.* Idaho Code Section 52-205, does not mean the district court can certify a class nationwide granting such entities that authority across the board.

and efficiently adjudicating the controversy"; and (2) "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Here, the proposed nationwide class threatens to undermine the States' governing structures, making a class action a significantly *inferior* way of resolving this dispute. The only way to avoid these sovereignty concerns would be to ask, with respect to each subdivision: Does the relevant State's law allow the political subdivision to obtain this relief? The District Court's certification order does not allow for this—political subdivisions will be able to settle their claims without regard to their power to do so. And even if the District Court *were* to conduct this inquiry, investigating the manner in which dozens of States' laws apply to thousands of political subdivisions would cause individualized questions to "predominate" over "questions of law or fact common to class members," and the class would fail Rule 23(b)(3)'s predominance requirement.

Because the District Court improperly certified the negotiation class, this Court should reverse. The States are filing this brief under Rule 29(a)(2) to say so.

ARGUMENT

I. THE CLASS-CERTIFICATION ORDER SEIZES STATE POWER BY IGNORING, AND THUS OVERRIDING, THE STATES' INTERNAL GOVERNING STRUCTURES

The certification order interferes with States' sovereignty by creating a mechanism by which political subdivisions may settle claims that, as a matter of state law, not all of them possess authority to bring.

A. Local Governments Are Mere Agencies Of The States, And Possess Only The Powers That The States Give To Them

The States are sovereign entities. As such, they have an inherent, "quasi-sovereign interest in the health and well-being—both physical and economic—of [their] residents in general." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). When something injures that quasi-sovereign interest, "the State is the proper party" to vindicate it. *Id.* at 604. A State, in other words, may serve as "a representative of the public," and in that capacity sue to right a wrong that "limits the opportunities of her people, shackles her industries, retards her development, and relegates her to an inferior economic position among her sister States." *Georgia v. Pa. R.R. Co.*, 324 U.S. 439, 451 (1945). That is why States may sue to protect "the interests of their citizens in enjoining public nuisances." *Alfred L. Snapp*, 458 U.S. at 603. And it is why States can sue to protect their citizens' economic interests. *Id.* at 607; *Georgia*, 324 U.S. at 451.

Political subdivisions lack this inherent authority. The reason is that political subdivisions exist only "as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607–08 (1991) (internal quotation and alterations omitted). The "soil and the people" in this country "are under the political control of the government of the United States, or of the states of the Union. There exists within the broad domain of sovereignty but these two." *United States v. Kagama*, 118 U.S. 375, 379 (1886). So while there "may be cities, counties, and other organized bodies, with limited legislative functions," such bodies "are all derived from, or exist in, subordination to" either the United States or the government of a particular State. *Id.* The question of "[w]hether and how" a State's political subdivisions may act "is a question central to state self-government." *Ours Garage*, 536 U.S. at 437. "Ours is a '*dual* system of government,'" not a triple system of government, and thus "has no place for sovereign cities." *Cmty. Commc'ns Co. v. Boulder*, 455 U.S. 40, 53 (1982) (citation omitted).

The States thus have "extraordinarily wide latitude … in creating various types of political subdivisions and conferring authority upon them." *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 71 (1978). A State "may give certain powers to cities, later assign the same powers to counties, and even reclaim them for itself."

Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rights & Fight for Equal. By Any Means Necessary (BAMN), 572 U.S. 291, 327–28 (2014) (Scalia, J., concurring in the judgment). It follows that, unless a State has empowered its political subdivisions to sue to vindicate the interest of the public generally, political subdivisions lack the power to vindicate that interest.

B. With The Certification Order, The District Court Seized From The States The Power To Dictate The Rights And Responsibilities Of Political Subdivisions

1. The certification order is impossible to square with the foregoing principles. The order empowers political subdivisions to settle claims not all the States have empowered them to bring. Indeed, the certification order empowers political subdivisions to settle claims even if those claims belong exclusively to a State. That means the certification order aids political subdivisions in absconding with money that belongs exclusively to the States.

All this amounts to a court-ordered reorganization of the States' internal governing structures. Again, the Constitution leaves each State with "near-limitless sovereignty … to design [a] governing structure as it sees fit." *Schuette*, 572 U.S. at 327 (Scalia, J., concurring in the judgment). The certification order seizes that power, effectively modifying the States' governing structures for purposes of this case. It creates what amounts to a confederation of localities, em-

powered to distribute public funds to localities across the country without regard to the States and their laws.

2. To illustrate the problem, consider the situation in Ohio, which is illustrative in light of it being the locus where the underlying actions have been consolidated. In some parts of Ohio, at some times, more people have died of overdoses than of all other causes of death combined. *See* Cameron Knight, *Overdoses Outstrip All Other Deaths in Butler Co.*, Cincinnati Enquirer (June 28, 2017, 1:02 PM), https://tinyurl.com/yxpw34kh. Consider too, in addition to the death toll, the massive burden that opioid addiction imposes on public resources. Experts estimate that the epidemic costs $78.5 billion a year. This figure includes the costs of healthcare, lost productivity, addiction treatment, and the justice system. Curtis Florence, et al., *The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013*, PubMed Central at 6, 13–14 (May 30, 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5975355/.

For those who face the epidemic every day, the problem is even worse than the numbers suggest. One Ohio public-health nurse described her Ohio county as "awash in pain pills." Alan Johnson, *OxyContin, Other Narcotic Pain Pills Still Plentiful in Ohio*, CantonRep.com (Jan. 15, 2017, 8:12 AM), online at https://tinyurl.com/StillPlentiful. These pills, she explained, are "available to everyone." *Id*. And when potentially lethal, addictive pills are available to everyone, the effect on

families is impossible to quantify: kids "lose their parents"; they "live amid trauma and chaos"; they "need crisis counseling and speech therapy and tutoring"; and they "wind up with disabilities and delays and problems that teachers can't fix." Doug Caruso, et al., *Billions of Opioids Shipped To Ohio In Just 7 Years*, Columbus Dispatch (July 21, 2019, 4:48 AM), https://www.dispatch.com/news/20190721/billions-of-opioids-shipped-to-ohio-in-just-7-years.

In the face of this statewide devastation, the Ohio Attorney General filed state-court actions against major opioid manufacturers and distributors, seeking relief on behalf of all Ohio citizens. *State ex rel. Yost v. Purdue Pharma, L.P.*, No. 17 CI 000261 (Ross Cty. Ct. C.P.); *State ex rel. Yost v. McKesson Corp.*, No. CVH 2018055 (Madison Cty. Ct. C.P.). In both suits, Ohio sued as *parens patriae*, seeking to defend its "quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general." *Alfred L. Snapp*, 458 U.S. at 607.

Political subdivisions from around Ohio also sued many of the same defendants. And many of these political subdivisions—including Summit County, whose case the District Court used as a vehicle for its certification order—filed months *after* the Attorney General. *See, e.g.*, *Cty. of Cuyahoga v. Purdue Pharm L.P.*, No. 1:17-op-45004, R.1, PageID#2 (N.D. Ohio Nov. 27, 2017); *Cty. of*

Summit v. Purdue Pharma, L.P., No. 1:18-op-45090, R.1, PageID#4 (N.D. Ohio Jan. 22, 2018).

The political subdivisions' suits are now consolidated in the multidistrict litigation at issue here. They seek relief for many of the same harms as the Attorney General. For example, Summit and Cuyahoga Counties sought damages based on harm to "the public health, welfare, safety, peace, comfort, and convenience," and based on a number of "societal harms." Summit Cty. Second Am. Compl. R.513, PageID#10579, 10892, 10842–43; *accord* Cuyahoga Cty. Compl., R.521, PageID#12818–19, 12845.

The political subdivisions are thus suing as *parens patriae*, just like the State, which presents a problem. Absent state law to the contrary, each Attorney General has "authority as the representative of the State or any of its political subdivisions to 'recover damages … alleged to have been sustained by any such agency or political subdivisions.'" *Nash Cty. Bd. of Ed. v. Biltmore Co.*, 640 F.2d 484, 494 (4th Cir. 1981). And, nothing in Ohio law takes that power from the Attorney General. Nor does anything in Ohio law empower the State's political subdivisions to sue as *parens patriae*. Moreover, the certification order undermines Ohio's sovereignty by giving the political subdivisions direct access to funds that, as a matter of Ohio law, should go to the general fund for distribution by the legislature. *See* Ohio Revised Code § 109.21.

3. Though the foregoing focused on Ohio, one could tell identical stories about the other *amici* States. In fact, thirty-eight Attorneys General informed the District Court that the multidistrict litigation was interfering with the States' ability to resolve their claims. *See* Letter from the National Association of Attorneys General, R.1951, PageID#119886–90; Letter from Ohio Attorney General Dave Yost, R.1973, PageID#209115–19.

The District Court considered the States' role in the process of combatting the opioid epidemic, but drew precisely the wrong lesson. At one hearing regarding certification, the court even called the prospect of "putting money into the state general funds" a "problem" to overcome, rather than an important interest to accommodate. Transcript, R.2147, PageID#288133. And the District Court gave cursory treatment to the sovereignty concerns highlighted above and in the letters from the Attorneys General. Indeed, its opinion on class certification dismissed these concerns in a single sentence: "If the Attorneys General believe they control their local governments' litigation, then they can attempt to foreclose it directly." Op., R.2590, Page#413608. That is non-responsive—even if the Attorneys General could cure the infringement of state sovereignty by obtaining a state-court order stopping the political subdivisions from continuing to litigate in federal court that would have no bearing on the relevant question here, which is *whether* the certification order infringes upon state sovereignty in the first place.

In sum, the certification order will infringe state sovereignty, and the District Court gave no sound argument to the contrary.

* * *

"The Framers split the atom of sovereignty" in two, not three. *U. S. Term Limits v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). "It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other." *Id.* The negotiation class disrespects this design. Indeed, the certification order *is* an "incursion" by the federal government upon the States: a federal court is allowing all political subdivisions to exercise powers that not all States have given them. And the federal court is allowing all this to happen without regard to the fact that the States are already pursuing the same relief in their own courts. However comparatively wise the idea of a negotiation class may be, it must take a back seat to the "genius" idea embodied in our constitutional design.

II. THE CLASS-CERTIFICATION ORDER, IF IT SUCCEEDS IN COERCING A SETTLEMENT, WILL DEPLETE THE FUNDS AVAILABLE TO THE STATES AND FRUSTRATE THEIR ABILITY TO SECURE MEANINGFUL, STATE- AND NATIONWIDE RELIEF

The District Court has been quite explicit about its "encourag[ing] the parties to settle the case." Op., R.2590, PageID#413579. The court crafted its "novel" negotiation class for the express purpose of furthering this goal. *Id.* And the District Court has taken still more steps to tighten the screws on those who might

resist settling. For example, the court fast-tracked a "bellwether" trial, structured so that each defendant would receive only about fourteen hours to present its defense in a case with *$8 billion* in damages on the line. *See* Order, R.2594, PageID#413658–59; Disqualification Brief, R.2603-1, PageID#414190. If the case had gone forward, a jury verdict on liability would have made a useful bargaining chip in facilitating settlement. But rather than risk an adverse ruling, the bellwether parties came together shortly before trial and negotiated a settlement (limited to those parties) of $260 million. *See* Eric Heisig, *Four Drug Companies Reach $260 Million Settlement To Avoid First Federal Opioid Trial In Cleveland*, Cleveland.com (Oct. 21, 2019) https://tinyurl.com/sma8gs6.

The size of the settlement in that bellwether case shows just how massive any settlement agreed to by the negotiation class would have to be to resolve the liability in all (or even many) of the cases pending in the multidistrict litigation. And the certified class creates strong incentives to settle. For many of the political-subdivision class members, settlement would win them money outside the usual channels of their own tax streams or state funding. For defendants, a settlement would buy peace from many individual lawsuits and open the door for preclusion arguments against other plaintiffs, including the States.

All this confirms that any settlement between the States' political subdivisions and the defendants will substantially draw down a limited pool of

money available to satisfy the States' own claims against many of the same defendants. The certified class thus frustrates the ability of Attorneys General to vindicate their States' interests—including the interests of their States' citizens and political subdivisions.

The District Court appeared to acknowledge all this. But once again, it drew the wrong lesson. The court suggested that, instead of (or in addition to) pursuing their own suits, the States should belly up to the negotiating table in the multidistrict litigation and *bargain* with the class of political subdivisions. Transcript, R.2147, PageID#288126-28. That suggestion, if heeded, would exacerbate the hit to the States' sovereignty. Again, political subdivisions have only those powers that the States assign to them. In many States, the political subdivisions have no right to the funds they are seeking. Pressuring such States to negotiate means pressuring them to partially cede their interests in the funds at issue. That amounts, once again, to an intrusion on the States' authority to organize their internal governing structures as they see fit.[2]

* * *

By arrogating to itself responsibility for remediating the opioid epidemic, the District Court undermined the efforts of the parties best positioned to secure mean-

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[2] States may, for a variety of legitimate reasons, choose to work cooperatively with their subdivisions to seek a global resolution of the opioid crisis in their state. But it is improper for the District Court to effectively force them to do so.

ingful, comprehensive relief: the State Attorneys General. If the class "succeeds" in negotiating a settlement, it will cause material injury to the public interest, over and above the threat to state sovereignty.

III. THE CLASS DOES NOT SATISFY THE "PREDOMINANCE" AND "SUPERIORITY" REQUIREMENTS OF RULE 23(b)(3)

The Federal Rules of Civil Procedure recognize three kinds of class actions. Just one is relevant here: A court may certify a Rule 23(b)(3) class if it finds, among other things, "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

Rule 23(b)(3)'s "predominance" and "superiority" requirements are designed to permit certification only in those cases where "a class action would achieve economies of time, effort, and expense, and promote … uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (citation omitted). "To evaluate predominance, a court must first *characterize* the issues in the case as common or individual and then *weigh* which predominate." *Martin v. Behr Dayton Thermal Prods. LLC*, 896 F.3d 405, 413 (6th Cir. 2018). "An individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common

question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof." *Id*. at 414 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)). "The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Id*. (quoting *Tyson Foods*, 136 S. Ct. at 1045). Thus, for example, the predominance test may not be satisfied in cases where resolving the claims of individual class members requires applying substantive law from many different States. *See, e.g.*, *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 946 (6th Cir. 2011); *Johnson v. Nextel Commc'ns. Inc.*, 780 F.3d 128, 147 (2d Cir. 2015).

"Analyzing superiority entails balancing 'the desirability' of class treatment with 'the likely difficulties in managing a class action,' among other things." *Sandusky Wellness Ctr., LLC v. ASD Specialty Healthcare, Inc.*, 863 F.3d 460, 471 (6th Cir. 2017). This entails an open-ended, comparative assessment, in which courts "compare other means of disposing of the suit to determine if a class action is sufficiently effective to justify the expenditure of the judicial time and energy that is necessary to adjudicate a class action and to assume the risk of prejudice to the rights of those who are not directly before the court." *Martin*, 896 F.3d at 415–16 (quoting *Pipefitters Local 636 Ins. Fund v. Blue Cross Blue Shield of Mich.*, 654

F.3d 618, 630–31 (6th Cir. 2011)). Courts should "consider superiority from many viewpoints, including that 'of the public at large.'" *Pipefitters*, 654 F.3d at 632 (quoting *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 760 (3d Cir. 1974)).

The cases addressing superiority reflect the need to consider all relevant circumstances. Take, for example, this Court's decision in *Pipefitters*, which found superiority lacking based largely on the harm a class action posed to the public interest. The class action, if successful, would have deprived a major insurer of "more than $100 million dollars annually." *Id.* And that might have resulted "in higher premium rates for insured customers or in a reduction in Medigap coverage and a dramatic increase in premium rates for Michigan's senior citizens." *Id.* In the face of these risks, the Court held that class litigation was not a superior way of adjudicating the controversy.

The superiority analysis can also overlap with the predominance analysis. That makes sense; a class action is unlikely to be a "superior" method for resolving cases that present a variety of individualized issues. Applying that insight, the Second Circuit vacated a certification order in a case where proceeding as a class would have required "the application of the substantive law of twenty-seven different states." *Johnson*, 780 F.3d at 147. The "variations in state law," the court reasoned, defeated "the predominance of common issues *and* the superiority of trying the case as a class action." *Id.* at 148 (emphasis added).

In light of these principles, the District Court's certification order cannot stand.

As explained above, political subdivisions have no inherent right to sue—they have only those powers that the States give to them. This multidistrict action includes thousands of subdivisions from around the country, including at least one from almost every State. Thus, any effort to stop the political subdivisions from settling claims they have no inherent authority to bring would require "the application of the substantive law of" fifty "different states." *Id*. at 147. And the analysis might not even come out the same way for every political subdivision within a State. For example, counties might have more (or less) power to sue than cities or townships, and charter cities might have more (or less) power than non-charter cities. Such "variations defeat the predominance of common issues and the superiority of trying the case as a class action." *Id*. at 148.

The District Court's certification order evades this problem by ignoring it: the members of the negotiation class will be allowed to collect settlement funds *without regard* to whether their doing so conflicts with state law. That might fix this particular predominance problem, but it drastically worsens the superiority problem. Why? Because, as outlined above, forging ahead without regard to the differences in state law means seizing from the States their sovereign authority to order their internal governing structures as they see fit.

Courts inflict serious damage when they interfere with a sovereign entity's self-governance. That is why injunctions of validly enacted state laws *always* impose "irreparable harm" on the affected States. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers). It is why improper awards of habeas relief are said to "intrude[] on state sovereignty to a degree matched by few exercises of federal judicial authority." *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (quoting *Harris v. Reed*, 489 U.S. 255, 282 (1989) (Kennedy, J., dissenting)). And it is why Supreme Court precedent requires federal courts to abstain in cases that present "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976).

These rules, which arise in vastly different contexts, all reflect the same fundamental insight: all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. The federal courts have no power to tinker with the machinery of state government, except as permitted by law. The certification order violates this principle by seizing, without legal justification, some of each State's "near-limitless sovereignty … to design [a] governing structure as it sees fit." *Schuette*, 572 U.S. at 327 (Scalia, J., concurring in the judgment). No

class action that requires violating so foundational a principle can be fairly described as a "superior" method of adjudication.

The lack of superiority is especially clear here because there is no need to certify a negotiating class of subdivisions. The State Attorneys General throughout the country stand ready and willing to vindicate the interests of *all* their citizens and political subdivisions. Again, each Attorney General may sue, as a "representative of the State or any of its political subdivisions, 'to recover damages … alleged to have been sustained by any political subdivisions.'" *Nash Cty.*, 640 F.2d at 494. As a result, the Attorneys General can efficiently obtain relief for their States—and, working together, the entire Nation—in one fell swoop. This means the Attorneys General are in a far better position than the country's thousands of political subdivisions to equitably redress and remediate the injuries caused by opioids. *Cf. In re Glenn W. Turner Enters. Litig.*, 521 F.2d 775, 779–81 (3d Cir. 1975) (reversing order in a multidistrict class action that interfered with a State Attorney General's litigation against the same defendant).

The Attorneys General have already filed lawsuits seeking to do just that. Given how much easier it is for the Attorneys General to work in coordination with one another than for thousands of political subdivisions to do the same, the Attorneys General may actually be able to negotiate the sort of comprehensive settlement for which the District Court yearns. What is more, the Attorneys General can

do all this by *exercising*, rather than undermining, their States' sovereign authority. In every imaginable way, their *parens patriae* suits offer a superior route for adjudicating and (if appropriate) settling the claims the District Court has set up for class-action resolution.

* * *

The job of the federal courts is to resolve cases and controversies, not policy crises. However well-intentioned the District Court's actions might be, the fact of the matter is that the court, when it certified the negotiation class, exercised power it did not have. This Court should reverse that order, decertifying the class.

CONCLUSION

The Court should reverse the District Court's order certifying a negotiation class.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G) and Fed. R. App. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and Fed. R. App. P. 29(a)(5).

1. This brief is 4,837 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.
2. This brief has been prepared in a proportionally spaced typeface using 14-point Equity font, which complies with Fed. R. App. P. 32(a)(5) and (6).

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CERTIFICATE OF SERVICE

I hereby certify that on this14th day of February, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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