ARIZONA SUPREME COURT

CVS PHARMACY, INC. and CVS ARIZONA, LLC, Petitioners, v. THE HONORABLE JANET C. BOSTWICK, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of PIMA, Respondent Judge, TUCSON MEDICAL CENTER, Real Party in Interest.	No. CV-20-0120-PR Court of Appeals Division Two No. 2 CA-SA 2020-0012 Pima County Superior Court No. C20184991

AMICUS BRIEF

(Filed with Written Consent of the Parties per Rule 16(b)(1)(A))

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STATEMENT OF INTEREST/INTEREST OF AMICI CURIAE

The American Hospital Association (AHA) represents nearly 5,000 hospitals, healthcare systems, and other healthcare organizations. AHA members are committed to improving the health of the communities they serve and to helping ensure that care is available to and affordable for all Americans. The AHA educates its members on healthcare issues and advocates on their behalf so that their perspectives are considered in formulating health policy. One way in which the AHA promotes the interests of its members is by participating as *amicus curiae* in cases with important and far-ranging consequences for their members.

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. FAH members provide patients and communities with access to high-quality, affordable care across settings in both urban and rural areas. Our members include teaching and non-teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals. They provide a wide range of acute, post-acute, emergency, children's, cancer care, and ambulatory services.

America's Essential Hospitals (AEH) is the national association representing more than 325 hospitals and health systems that provide a disproportionate share of the nation's uncompensated care and are dedicated to providing high-quality care for all, including underserved and low-income populations. AEH members are vital

to their communities, providing primary care through trauma care, mental health services, substance abuse services, disaster response, health professional training, research, public health programs, and other services.

Amici and their member-hospitals have a direct interest in the outcome of this appeal. To understand why, one need not look further than the express language of the two questions on which the Court has granted review. The first question asks whether hospitals can bring suit against third parties. That question, in turn, will require the Court to consider the scope of Arizona's medial lien statute, which this Court has said was passed to "lessen the burden on hospitals and other medical providers imposed by non-paying accident cases." *LaBombard v. Samaritan Health Servs*., 195 Ariz. 543, 548 ¶ 18, 991 P.2d 246, 251 (App.1998) (internal citation omitted). The second question involves the duties of care that certain third-parties owe to hospitals. Given these questions, it should go without saying that the issues presented in this case are of tremendous importance to *amici*'s member-hospitals.

The context in which these questions arise—the opioid crisis— also is vitally important to *amici*. *Amici*'s members are on the frontline of the crisis. Consequently, *amici*'s member-hospitals know better than anyone the burdens that the opioid crisis inflicts year after year—especially the financial burdens it puts on hospitals. Because those burdens are at the heart of this case, *amici* respectfully

submit this brief to provide the Court with information that will aid its consideration of this appeal.

Introduction

Every day, *amici*'s member-hospitals witness the devastating effects of the opioid epidemic on the patients, families, and communities they serve. Prescription opioids can be a safe and necessary element of pain management for those who have experienced trauma or are suffering from diseases that cause debilitating pain. On the other hand, despite assurance from the manufacturers otherwise, we now know that opioids carry significant risk for abuse, addiction, overdose, and death.

Tragically, those risks have been realized in Arizona, as the opioid epidemic has inflicted serious human and economic costs in this State. The morbidity data, on its own, tells a harrowing story. According the Arizona Department of Health Services "real time" opioid tracker, from June 15, 2017 through October 30, 2020, there were 54,106 suspected opioid overdoses in the State.[1] During that same period, there were 7,496 suspected opioid-related deaths.[2] This amounts to roughly six

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[1] *See* Arizona Department of Health Services, Opioid Epidemic, *at* https://www.azdhs.gov/prevention/womens-childrens-health/injury-prevention/opioid-prevention/index.php (last checked Nov. 3, 2020).

[2] *See id*.

suspected deaths each day.[3] Even now, the Arizona Department of Health Services reports that "[m]ore than two people die every day from opioid overdoses in Arizona."[4]

The economic costs are equally staggering. These costs come in many forms. For example, deaths from opioid overdoses impose so-called "mortality costs"—millions of dollars in lost lifetime earnings for each fatality, according to the most recent study by the Council on Economic Advisors.[5] What is more, overdose survivors and other opioid abusers generate a variety of additional economic costs, ranging from criminal justice costs to lost worker productivity costs to child and family assistance costs. Demonstrating the public nature of this health crisis, twenty-nine percent of those costs are borne by federal, state, and local governments.[6]

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[3] *See id*.

[4] *See id*.

[5] *See* The Council of Economic Advisers, The Underestimated Cost of the Opioid Crisis(November2017), *at* https://www.whitehouse.gov/sites/whitehouse.gov/files/images/The%20Underestimated%20Cost%20of%20the%20Opioid%20Crisis.pdf.

[6] *See* Society of Actuaries, Economic Impact of Non-Medical Opioid Use in the United States (October 2019), *at* https://www.soa.org/globalassets/assets/files/resources/research-report/2019/econ-impact-non-medical-opioid-use.pdf; *see also* Douglas L. Leslie, et. al, The Economic Burden of the Opioid Epidemic on States: The Case of Medicaid, American Journal of Managed Care (July 30, 2019), *available at* https://www.ajmc.com/view/the-economic-burden-opioid-epidemic-on-states-case-of-medicaid ("[T]he Medicaid costs associated with OUD increased from more thn

The opioid epidemic also causes sizeable healthcare costs. Independent studies show that *one-third* of the total economic burden of the opioid crisis comes from excess healthcare spending. And unlike other costs borne by the public as a whole (*e.g.*, policing and child assistance), private entities like *amici*'s member-hospitals must absorb a large portion of the bill for these massive opioid-related expenditures. Those costs are the subject of this amicus brief.

Amici recognize that this Court has granted review on two legal questions, and the parties have already addressed those issues. But a greater understanding of the hospital costs that are associated with the opioid epidemic can provide critical context for this Court's review. For instance, the question whether a hospital may assert a direct claim against a third-party, notwithstanding Arizona's Medical Lien Act, may well turn on the nature and breadth of the costs hospitals have suffered as a result of the opioid crisis. At the very least, for example, plaintiff has alleged a range of hospital costs that go far beyond providing medical services to individual patients who might fall within the medical lien statute.[7] More generally, knowing

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$2 billion in 1999 to more than $8 billion in 2013.… OUD imposes considerable financial burden on state Medicaid programs, and the burden is increasing over time.").

[7] *See, e.g.*, Second Amended Complaint ¶977 ("Plaintiff seeks economic losses (direct, incidental, or consequential pecuniary losses) resulting from the negligence of Defendants. They do not seek damages which may have been suffered by individual citizens for wrongful death, physical personal injury, serious emotional distress, or any physical damage to property caused by the actions of Defendants.");

why the experts and state agencies believe that hospital costs associated with opioid abuse have skyrocketed is important to understanding whether the plaintiff's claims in this case seek damages for the hospital's *own* injuries, or instead merely for their *patients'* "underlying damages claim." *Blankenbaker v. Jonovich*, 205 Ariz. 383, 387 ¶ 17, 71 P.3d 910, 914 (2003). In addition, the question whether pharmacies owe a duty of care to hospitals will almost certainly turn on whether "public policy is better served by imposing a duty." *Stanley v. McCarver*, 208 Ariz. 219, 221 (2004); *see Quiroz v. ALCOA Inc*., 243 Ariz. 560, 574, 416 P.3d 824, 838 ¶ 65 (2018) ("changing social conditions require recognition of a duty which extends to innocent third parties"). A more complete appreciation of the economic burdens on hospitals as a result of the opioid epidemic will shed valuable light on the serious public policy considerations at stake here—especially as hospitals across the country face a

id. ¶ 978 ("Plaintiff suffered actual pecuniary damages proximately caused by Defendants concealment of material fact, which include but are not limited to, expending funds on emergency services, emergency response, additional training, additional security, and other services Plaintiff would not have incurred."); Real Party In Interest Tucson Medical Center's Supplemental Brief 4-5 (bullet points listing plaintiff's alleged direct costs, including "forming the 'Southern Arizona Hospital Alliance to address the opioid epidemic in the rural border areas outside of Tucson" and "construction of "an annex within its Neonatal Intensive Care Unit ('NICU') to provide specialized care for the babies and their mothers").

frightening increase in the abuse of opioids[8] and mounting expenses during the COVID-19 pandemic.[9]

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[8] *See e.g.*, Mike Stobbe and Adrian Sainz, US overdose deaths appear to rise amid coronavirus pandemic, Associated Press (Oct. 20, 2020), *at* https://apnews.com/article/virus-outbreak-technology-pandemics-kentucky-22e4c7213a3f5a857cd50b8489325d9a ("National data is incomplete, but available information suggests U.S. drug overdose deaths are on track to reach an all-time high. Addiction experts blame the pandemic, which has left people stressed and isolated, disrupted treatment and recovery programs, and contributed to an increasingly dangerous illicit drug supply. Before the coronavirus even arrived, the U.S. was in the midst of the deadliest drug overdose epidemic in its history, with a record 71,000 overdose deaths last year. This year's tally likely will surpass that, according to preliminary death data from nine states reviewed by The Associated Press and national data on emergency responses to reported drug overdoses.… There's no comprehensive data yet on which drugs were used in 2020 overdose deaths, but fentanyl and methamphetamine — often meth that is laced with fentanyl — are now the most common killers."); Danielle F. Haley and Richard Saltz, The Opioid Epidemic During the COVID-19 Pandemic, JAMA Network (September 18, 2020), *at* https://jamanetwork.com/journals/jama/fullarticle/2770985 ("It is likely that the emergence of coronavirus disease 2019 (COVID-19) and subsequent disruptions in health care and social safety nets combined with social and economic stressors will fuel the opioid epidemic. Reports from national, state, and local media suggest that opioid-related overdoses are increasing."); American Medical Association, Issue Brief: Reports of increases in opioid- and other drug-related overdose and other concerns during COVID pandemic (Oct. 6. 2020), *at* https://www.ama-assn.org/system/files/2020-10/issue-brief-increases-in-opioid-related-overdose.pdf ("In addition to the ongoing challenges presented by the COVID-19 global pandemic, the nation's opioid epidemic has grown into a much more complicated and deadly drug overdose epidemic.… More than 40 states have reported increases in opioid-related mortality as well as ongoing concerns for those with a mental illness or substance use disorder.").

[9] *See, e.g.,* Lauren Coleman-Lochner, Shaky U.S. Hospitals Risk Bankruptcy in Latest Covid Wave, *Bloomberg* (Oct. 14, 2020), *at* https://finance.yahoo.com/news/shaky-u-hospitals-risk-bankruptcy-133423429.html ("A grim reality is setting in across the U.S. hospital sector: a surge in coronavirus infections is encroaching while most facilities are still recovering

Prior to the pandemic, the opioid epidemic had been called the "biggest public health crisis in a generation."[10] It is a crisis that has placed untold burdens on people, public institutions, and private entities. Hospitals throughout Arizona have suffered as a result. As this Court considers the two threshold legal questions on which it has granted review, *amici* respectfully submit that the information about hospital costs provided below can inform its analysis of the issues at issue here.

Argument

A. The Opioid Crisis Has Imposed Astronomical Financial Costs on Arizona Hospitals.

There can be no doubt that hospitals—including hospitals in Arizona—have experienced substantial financial burdens as a result of the opioid crisis. For instance, one recent study found that the total added costs to the U.S. healthcare

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from the onset of the pandemic. The growing number of cases is threatening the very survival of hospitals just when the country needs them most. Hundreds were already in shaky circumstances before the virus remade the world, and the impact of caring for Covid patients has put hundreds more in jeopardy."); Ron Shinkman, Ratings agencies issue foreboding reports on hospital finances as AHA seeks $100B to respond to COVID-19, Health Care Dive (March 20, 2020), *at* https://www.healthcaredive.com/news/ratings-agencies-issue-foreboding-reports-on-hospital-finances-as-aha-seeks/574541/ ("Most U.S. hospitals typically operate on thin margins," and recent financial reporting indicates that "the fiscal fortunes of the nation's hospitals are apparently shrinking.").

[10] German Lopez, How to stop the deadliest drug overdose crisis in American history, *Vox* (Dec. 21, 2017), *at* https://www.vox.com/science-and-health/2017/8/1/15746780/opioid-epidemic-end.

system as a result of hospital expenses for opioid overdose patients is $11.3 billion annually.[11] Notably, this figure captures only costs related to overdoses—patients that hospitals do not turn away.[12] Critically, it does not include the full range of hospital costs associated with opioid misuse. *See infra*, at pp. 3-6. Even so, this $11-billion of opioid-related hospital costs is indisputably enormous.

Arizona data reflects similarly sky-high financial burdens resulting from the opioid crisis. According to the best available information from the Arizona Department of Health Services, the reason for these high costs is simple: "[o]pioids have a significant impact upon Arizona's medical care system due to the *volume of encounters* involving opioids."[13] Put another way, the costs to hospitals are so high because so many patients visit hospitals because of opioid misuse. For example, in

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[11] Opioid Overdoses Costing U.S. Hospitals an Estimated $11 Billion Annually, *at* https://www.premierinc.com/newsroom/press-releases/opioid-overdoses-costing-u-s-hospitals-an-estimated-11-billion-annually (emphasis added).

[12] *See* 42 U.S.C. §§ 1395dd(a), (b) (Emergency Medical Treatment and Active Labor Act); *Thompson v. Sun City Community Hosp., Inc.*, 141 Ariz. 597, 602, 688 P.2d 605, 611 ("[A]s a matter of public policy, licensed hospitals in this state are required to accept and render emergency care to all patients who present themselves in need of such care. The patient may not be transferred until all medically indicated emergency care has been completed. This standard of care has, in effect, been set by statute and regulation embodying a public policy which requires private hospitals to provide emergency care that is 'medically indicated' without consideration of the economic circumstances of the patient in need of such care.").

[13] Arizona Department of Health Services, 2018 Opioid Deaths & Hospitalizations, *at* https://www.azdhs.gov/documents/prevention/health-systems-development/epidamic/2018-opioid-death-hospitalizations.pdf.

2018 alone, there were 52,970 such encounters in Arizona hospitals.[14] Strikingly, those tens of thousands of encounters in 2018 cost Arizona hospitals *$461 million in healthcare costs* (or $8,711 per opioid-related unique encounter).[15]

That nearly half-billion-dollar figure alone demonstrates the severe adverse impact that the opioid epidemic has had on Arizona hospital finances. But the historical trends further prove the point. The chart below further illustrates the sharp increase in overall costs to Arizona hospitals as a result of the opioid epidemic[16]:

Year	Number of Opioid-Related Encounters	Estimated Cost for Opioid-Related Encounters
2008	18,592	$143,639,592
2009	20,365	$151,535,815
2010	23,437	$161,172,385
2011	30,865	$198,374,505
2012	32,751	$226,127,368
2013	32,684	$231,131,469
2014	36,459	$260,725,158
2015	41,434	$305,408,447
2016	51,532	$402,596,263
2017	52,134	$434,285,621
2018	52,970	$461,440,155

In just a decade, the cost to Arizona hospitals from opioid encounters increased by *more than 300%*.

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[14] *See id*.

[15] *See id*.

[16] *See id*.

Critically, these increases did *not* primarily result from rising healthcare costs.[17] Dividing the annual costs by total encounters, between 2008 and 2018, the cost-per-encounter increased by only $1,000 ($7,726 to $8,711). As such, there must be another reason for why costs exploded. According to the Arizona Department of Health Services, there is only one explanation: the massive increase in costs to Arizona hospitals was caused by "the increasing numbers of opioid-related encounters."[18] Whatever the cause of those increased opioid-related encounters, which is a subject of factual dispute in this case, two points are incontestable: 1) hospital costs are increasing because more people visit hospitals after having abused opioids; and 2) that massive increase in opioid abuse has cost hospitals millions upon millions of dollars.

B. Even the Best Available Data on Arizona Hospital Costs Is Likely Underinclusive.

Given the data described above, there is no question that the "impact of this epidemic on the medical community is dramatic," and "[t]his resource drain spreads to emergency rooms and hospitals as they treat these patients."[19] Significantly,

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[17] *See id*.

[18] *See id*.

[19] *See* Madhukar Kasarla, The opioid epidemic and its impact on the health care system, The Hospitalist (Oct. 24, 2017), *at* https://www.the-

however, there is good reason to believe that even the best available data does not capture the complete financial impact of the opioid crisis on hospitals.

To be clear, *amici* have attempted to locate and distill the best information on costs to hospitals as a result of the opioid crisis. Regrettably, particularized studies on hospital costs stemming from opioid abuse are limited, which is one reason why discovery on these issues is especially important. To take just one example, plaintiff alleges that its damages includes costs for "additional training" and "additional security." Second Amended Complaint ¶ 978. But *amici* are not aware of any study that calculates hospital spending on these categories, even though it is reasonable to assume that hospitals across the country and in Arizona have had to spend tens of thousands of dollars to (1) hire and train staff to deal with the exploding number of opioid patients and (2) to increase hospital security in emergency rooms that are increasingly filled with patients engaging in substance abuse. Instead, the available studies are more medical- or patient-focused in nature. They focus on costs related to patient care—not the ancillary, but completely necessary, overhead costs that result from increased opioid encounters at hospitals.

At the same time, studies regarding the downstream health effects of the opioid crisis reveal the under-inclusiveness of existing research on hospital costs.

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hospitalist.org/hospitalist/article/149858/mental-health/opioid-epidemic-and-its-impact-health-care-system.

Most of the available financial information focuses on the direct impact of opioid abuse itself, such as hospital costs related to overdoses, emergency room visits, or inpatient care. These studies typically rely on insurance data, which have specific cost codes for opioid-related treatment.[20] But medical studies also show that opioid abuse is associated with additional comorbidities that likely increase hospital spending, but may not be captured in existing cost studies because they are not deemed an opioid encounter or are not specifically coded as related to opioid abuse.

For example, one study examined what it described as "one of the more serious downstream complications of this epidemic: serious infection."[21] This study observed that while "serious infection is a recognized complication" of opioid abuse, the "incidence and cost of these downstream complications are relatively unexamined."[22] To correct that gap in the research, the study sought to examine

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[20] *See* Healthcare Cost and Utilization Project (HCUP) Statistical Briefs, Table 4: CD-9-CM diagnosis codes defining opioid overuse, *at* https://www.ncbi.nlm.nih.gov/books/NBK246983/table/sb177.t4/ (listing diagnosis codes like "304.01, OPIOID DEPENDENCE-CONTINUOUS," "305.50, OPIOID DEPENDENCE-CONTINUOUS," and "965.09: "POISONING BY OTHER OPIATES AND RELATED NARCOTICS.").

[21] Matthew V. Ronan and Shoshana J. Herzig, Hospitalizations Related to Opioid Abuse/Dependence And Associated Serious Infections Increased Sharply, 2002-2012, *Health Affairs* 35, No. 5 (2016), 832-837, *at* https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2015.1424.

[22] *Id*.

national trends "involving serious infections in patients with opioid abuse/dependence."[23]

Its findings are significant, but not surprising. *First*, the researchers concluded that "the incidence of the selected infections in those with opioid abuse/dependence was more than double the incidence found among hospitalizations without opioid abuse/dependence."[24] *Second*, the study cautioned that the "total charges presented in this analysis reflect only inpatient charges and do not include the cost of postdischarge care, which is likely to be substantial, particularly in patients with infection."[25] In fact, the study noted that the opioid-addicted patients may suffer complications with "prolonged treatment courses of intravenous antibiotics," and they "often require the completion of treatment in a monitored setting."[26] *Third*, the study determined that "the financial burden largely falls on government-funded agencies, patients, *and hospitals* because … only 14 percent of discharges with associated infection were covered by private insurance."[27]

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[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*. (emphasis added).

Studies like this are important for understanding the full measure of hospital costs related to the opioid crisis. Although serious infections are a well-known and foreseeable consequence of the opioid epidemic,[28] there has not been a comprehensive study of the hospital costs related to those encounters (as opposed to opioid-specific encounters). As such, even the best studies on opioid cost likely do not include costs related to the most well-known opioid illnesses. In addition, the comorbidity costs often do not stop at the first visit for infection. This patient population requires additional care for their infections. It is equally unlikely that existing cost studies include money spent on that follow-on care. Finally, this study makes clear that hospitals often treat associated illnesses like serious infection. Taken together, these findings indicate that hospital costs resulting from the opioid epidemic are almost certainly far higher than the already enormous costs that the existing data shows.

Needless to say, serious infection is not the only comorbidity associated with the opioid epidemic. Opioid users are more likely to visit hospitals because of

[28] Blake Farmer, Hospitals Take Shot At Opioid Makers Over Cost Of Treating Uninsured For Addiction, Nashville Public Radio (Oct. 29, 2019), *at* https://khn.org/news/hospitals-lawsuit-opioid-makers-addiction-treatment-uninsured/ ("Just about every emergency room has handled opioid overdoses, which cost hospitals billions of dollars a year, since so many of the patients have no insurance. But that's just the start. There are also uninsured patients, like Traci Grimes of Nashville, who end up spending weeks being treated for serious infections related to their IV drug use.").

hepatitis (A, B, or C), pancreatitis, cirrhosis or chronic liver disease, skin abscesses, burns, sexually transmitted diseases, gastrointestinal diseases, and many other illnesses.[29] As with serious infection, patients with these comorbidities may visit hospitals *without* being deemed an opioid-encounter, which, in turn, will lead to underinclusive cost data. As one study concluded, a "more thorough analysis of the comorbidity profile of opioid abuse patients, including an assessment of the temporal pattern of comorbidities, would be valuable in understanding cost drivers."[30] Unfortunately, researchers have not yet conducted such a study, but discovery and expert testimony in this case could illuminate the full range of costs hospitals incur as a result of the opioid epidemic.

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[29] Alan G. White, et. al, Direct Costs of Opioid Abuse in an Insured Population in the United States, *Journal of Managed Care Pharmacy*, Vol. 11, No. 6 (July/August 2005), *at* https://www.jmcp.org/doi/abs/10.18553/jmcp.2005.11.6.469; *see* Selena Simmons-Duffin, The Real Cost Of The Opioid Epidemic: An Estimated $179 Billion In Just 1 Year, All Things Considered, *NPR* (Oct. 24, 2019), *at* https://www.npr.org/sections/health-shots/2019/10/24/773148861/calculating-the-real-costs-of-the-opioid-epidemic ("Opioid addiction is linked to other health problems. Patients might have chronic pain or mental illness that underlies their addiction; infectious diseases like HIV and hepatitis C can spread among injection drug users; and there can also be higher costs for other conditions like anemia, liver disease and pulmonary heart disease, according to another Milliman analysis from earlier this year.").

[30] Alan G. White, et. al, Direct Costs of Opioid Abuse in an Insured Population in the United States, *Journal of Managed Care Pharmacy*, Vol. 11, No. 6 (July/August 2005), *at* https://www.jmcp.org/doi/abs/10.18553/jmcp.2005.11.6.469.

Finally, data indicates that the opioid crisis has not increased healthcare costs only for opioid abusers. "There are also health costs for people who live in the same household as someone with an opioid use disorder—their lives might be more complicated and their mental and physical health can suffer as a result."[31] One study by the Society of Actuaries attempted to calculate these family-member costs. It found that relatives of opioid abusers experienced more than $500 in added healthcare costs each year.[32] The study further estimated that "that additional health care costs for family members of patients with [opioid use disorder] may contribute another $2.6 billion to $3.3 billion to the total cost of non-medical opioid use in 2019."[33] Notably, this family cost data *excludes* the significant hospital costs for Neonatal Abstinence Syndrome/Neonatal Opioid Withdrawal Syndrome, as well as the longer-term costs to babies who are born with these ailments.[34] As with comorbidities, it is not clear that the Arizona hospital cost data cited above captures

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[31] *See* Selena Simmons-Duffin, The Real Cost Of The Opioid Epidemic: An Estimated $179 Billion In Just 1 Year, All Things Considered, *NPR* (Oct. 24, 2019), *at* https://www.npr.org/sections/health-shots/2019/10/24/773148861/calculating-the-real-costs-of-the-opioid-epidemic.

[32] *See* Society of Actuaries, Economic Impact of Non-Medical Opioid Use in the United States (October 2019), *at* https://www.soa.org/globalassets/assets/files/resources/research-report/2019/econ-impact-non-medical-opioid-use.pdf.

[33] *Id*.

[34] *See id*.

foreseeable downstream costs for treating family members. But these kinds of costs are clearly a predictable part of the overall financial burden that *amici*'s member-hospitals suffer as a result of the opioid epidemic.

Conclusion

Former Secretary of Defense Donald Rumsfeld once famously said: "There are known knowns. There are things we know we know. We also know there are known unknowns. That is to say, we know there are some things we do not know."[35] This adage applies perfectly to the hospital cost information discussed in this brief. There are some hospital costs stemming from the opioid epidemic that we know. And we know that they are huge. There are also some "known unknowns," *i.e.*, costs that we know exist, but do not know exactly how large they are. Interestingly, however, *both* the "known knowns" *and* the "known unknowns" here point in the *same* direction: Arizona hospitals have been forced to spend extraordinary sums as a result of the opioid epidemic.

Because the specific alleged damages in this case are included in an expert report that is currently filed under seal, *amici* can take no position on any particular cost at issue here. That sealing also prevents *amici* from assessing defendant's assertion that "all of [plaintiff's] claimed monetary relief arises from damage

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[35] Michael Shermer, Rumsfeld's Wisdom, Scientific American (Sept. 1, 2005), *at* https://www.scientificamerican.com/article/rumsfelds-wisdom/.

defendants allegedly caused to [plaintiff]'s patients, not [plaintiff]."[36] But one thing is pellucidly clear. As a general matter, all hospitals in Arizona and across the country have suffered direct financial burdens from the opioid crisis—not all of which involves costs associated with the treatment of opioid misusers themselves. As this Court evaluates the two questions on which it granted review, it should bear in mind the size, scope, and source of these significant hospital costs.

Dated: November 4, 2020

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[36] Supplemental Brief of Petitioner 3-4.