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Abating Economic Disaster: A Call to Reform Oklahoma's Public Nuisance Statute - Summary*

In *Oklahoma v. Johnson and Johnson*, a Cleveland County district court held that Johnson and Johnson was liable for creating a public nuisance, in the form of the opioid crisis. The court ordered the corporation to "abate" the "nuisance" without considering whether physicians, patients, criminals, or other opioid makers may have contributed to its existence. Along the way, it ignored every protection historically used to limit public nuisance to those instances where it can be justly applied.

Public nuisance is a legal doctrine intended to require remediation of a harm to the general public, where no single individual, in most instances, suffers more than inconvenience, usually as related to land use. A defendant found liable is simply told to fix what is negatively affecting others and not to do it again. Oklahoma's attorney general and its courts in the case against Johnson and Johnson have dangerously turned public nuisance into a general tort with a huge payoff to government and bureaucracy.

Legal deficiencies of the district court opinion:

- Fails to adequately analyze causation;
- Rewards the wrong party with the wrong remedy;
- Fails to put companies on notice as to what activities will lead to future liability.

Likely economic effects:

- Obliterates legal certainty, meaning companies will be reluctant to do business in Oklahoma;
- Oklahoma companies will flee the state;
- Progressive states will use Oklahoma precedent to bankrupt fossil fuel producers.

The legislature has the power to correct these legal infirmities and avoid the catastrophic economic effects. Legislative reform should:

- Restore traditional limits on public nuisance law, including:
 - Defining public right as a right held in common by the entire public - multiple individual rights do not add up to a public right;
 - Requiring a connection to land use;
 - Reiterating that plaintiff must show that the defendant has control over the instrumentality - the thing causing the nuisance - before abatement can be ordered;
- Ensure that, as was traditionally the case, abatement of public nuisance does not include any form monetary payment.