

Rel: April 21, 2023

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# **SUPREME COURT OF ALABAMA**

**OCTOBER TERM, 2022-2023**

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**1210300**

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**Ex parte Walmart Inc. et al.**

**PETITION FOR WRIT OF MANDAMUS**

**(In re: Mobile County Board of Health and Family Oriented  
Primary Health Care Clinic, Inc.)**

**v.**

**Mitchell "Chip" Fisher et al.)**

**(Mobile Circuit Court: CV-19-902806)**

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**1210313**

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1210300 and 1210313

**Mobile County**

v.

**Mobile County Board of Health and Family Oriented Primary  
Health Care Clinic, Inc.**

**Appeal from Mobile Circuit Court  
(CV-19-902806)**

PER CURIAM.

1210300 -- PETITION DENIED. NO OPINION.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and  
Mitchell, JJ., concur.

Sellers, J., dissents, with opinion.

Cook, J., recuses himself.

1210313 -- AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and  
Mitchell, JJ., concur.

Sellers, J., dissents, with opinion.

Cook, J., recuses himself.

1210300 and 1210313

SELLERS, Justice (dissenting).

The Mobile County Board of Health ("the Board") and Family Oriented Primary Health Care Clinic, Inc. ("the Clinic"), commenced an action in the Mobile Circuit Court against various opioid manufacturers, opioid distributors, and pharmacies. The Board and the Clinic sought relief because, they alleged, they had been impacted by an opioid crisis allegedly created by the defendants. In case number 1210300, Walmart Inc. and other defendants seek a writ of mandamus directing the trial court to grant their motion for a judgment on the pleadings because, they assert, Alabama's abatement statute, § 6-5-440, Ala. Code 1975, requires dismissal of the action. Consistent with my dissent in Ex parte Cardinal Health, Inc., [Ms. 1210337, Mar. 17, 2023] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2023) (Sellers, J., dissenting), I respectfully dissent from the Court's decision today to deny the petition for a writ of mandamus. I also dissent from the Court's decision in case number 1210313, an appeal that has been consolidated with the referenced petition for a writ of mandamus, to affirm the trial court's judgment denying Mobile County's motion to intervene in the action. Based on my conclusion regarding the petition for a writ of mandamus and the applicability of the abatement statute, I

1210300 and 1210313

would dismiss Mobile County's appeal as moot.