No.

In the Supreme Court of the United States

WILLIAMS ALASKA PETROLEUM, INC.;
THE WILLIAMS COMPANIES, INC.,
PETITIONERS

v.

STATE OF ALASKA; FLINT HILLS RESOURCES, LLC;
FLINT HILLS RESOURCES ALASKA, LLC

ON PETITION FOR A WRIT OF CERTIORARI TO THE ALASKA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Alaska law imposes strict liability on facility owners for the unpermitted release of any "hazardous substance," defined to mean "an element or compound" that "presents an imminent and substantial danger to the public health or welfare." Alaska Stat. § 46.03.826(5)(A).

In the decision below, the Alaska Supreme Court imposed strict liability on petitioners, the former owners of an oil refinery in North Pole, Alaska, after a solvent called sulfolane was found in low levels in local groundwater wells. The court recognized that the definition of the phrase "hazardous substance" can be vague in application and that, while petitioners owned and operated the oil refinery, Alaska's environmental regulator expressly told them that the agency was not regulating sulfolane as a "hazardous substance." Indeed, to this day, the agency has not listed sulfolane in the regulatory table of cleanup levels for regulated hazardous substances. The court nevertheless held that petitioners had fair notice that sulfolane constituted a "hazardous substance." It then imposed over $100 million in total liability, including over $50 million for the expansion of North Pole's piped-water system. The questions presented are:

1. Whether the Alaska Supreme Court's imposition of strict liability violated petitioners' right to due process, when the State had taken the position, while petitioners owned and operated the refinery, that sulfolane was not regulated as a "hazardous substance."

2. Whether the award of costs for the expansion of North Pole's water system violated petitioners' right to due process and amounted to an unconstitutional taking, where no drinking well in North Pole had a level of sulfolane shown to be harmful, and where there had been no showing that the expansion was necessary to prevent harm from the release of sulfolane.

CORPORATE DISCLOSURE STATEMENT

Petitioner Williams Alaska Petroleum, Inc., is a wholly owned subsidiary of Williams Express LLC, which is a wholly owned subsidiary of petitioner The Williams Companies, Inc.

Petitioner The Williams Companies, Inc., has no parent corporation, and no publicly held company holds 10% or more of its stock.

RELATED PROCEEDINGS

Alaska Superior Court, Fourth Judicial District:

State of Alaska v. *Williams Alaska Petroleum, Inc., et al.*, No. 4FA-14-01544 CI (Mar. 23, 2020)

Alaska Supreme Court:

Williams Alaska Petroleum, Inc., et al. v. *State of Alaska, et al.*, No. S-17772 (May 26, 2023)

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Williams Alaska Petroleum, Inc., and The Williams Companies, Inc., respectfully petition for a writ of certiorari to review the judgment of the Alaska Supreme Court in this case.

OPINIONS BELOW

The opinion of the Alaska Supreme Court (App., *infra*, 1a-100a) is reported at 529 P.3d 1160. The opinions of the state trial court (App., *infra*, 101a-139a, 140a-337a) are unreported.

JURISDICTION

The judgment of the Alaska Supreme Court was entered on May 26, 2023. On August 14, 2023, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 25, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Takings Clause of the Fifth Amendment to the United States Constitution provides:

> [P]rivate property [shall not] be taken for public use, without just compensation.

Section 1 of the Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall * * * deprive any person of life, liberty, or property, without due process of law[.]

Section 46.03.822(a) of the Alaska Statutes provides in relevant part:

> [T]he following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

> (1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;
>
> (2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance[.]

Section 46.03.826(5)(A) of the Alaska Statutes provides in relevant part:

> "[H]azardous substance" means * * * an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found[.]

STATEMENT

In this case, petitioners were required to pay over $100 million, including over $50 million for upgrades to a municipal water system, because of their unintentional release of a chemical that was not regulated as hazardous at the time of release and in the absence of any finding that the upgraded water system was necessary to protect public health or welfare. That severe liability was imposed in the context of an enforcement action brought by the State of Alaska after state regulators decided to classify the chemical as hazardous, without ever listing the chemical on the regulatory table setting forth the cleanup levels for regulated hazardous substances. The questions presented are whether the imposition of that liability violates the constitutional requirement of fair notice, as well as the

constitutional prohibitions on the arbitrary and irrational imposition of retroactive liability.

Petitioners are the former owners of an oil refinery located in North Pole, Alaska; respondents are the State of Alaska and the subsequent operators of the refinery. When petitioners owned and operated the refinery, they discovered the presence of sulfolane, a solvent used in the refining process, in samples of groundwater taken at the refinery. Petitioners reported that fact to the Alaska Department of Environmental Conservation (Department), which informed petitioners that sulfolane was not regulated as a "hazardous substance" under the Alaska Environmental Conservation Act.

After petitioners sold the refinery in 2004, the Department reversed course, concluding that sulfolane was a "hazardous substance" and undertaking remediation efforts to address the presence of low levels of sulfolane in local groundwater wells. To this day, however, the Department has not placed sulfolane on its list of hazardous substances or set a cleanup level, and the federal Environmental Protection Agency has not determined that sulfolane is a hazardous substance. The State nevertheless brought an enforcement action against petitioners and others, seeking to impose strict liability on petitioners for the State's damages and remediation costs. While the litigation was pending, respondents (as part of a settlement agreement) agreed to expand the City of North Pole's piped-water system as a permanent solution to the presence of sulfolane in the groundwater, at a cost of approximately $72 million. At the time of construction, no drinking well in North Pole had a level of sulfolane shown to be harmful to public health or welfare.

The trial court held petitioners strictly liable for the release of sulfolane and ordered them to pay over $100 million, including their equitable share (75%) of the $72

million expansion of the water system. The Alaska Supreme Court affirmed. The court rejected petitioners' argument that they lacked fair notice that sulfolane qualified as hazardous in light of the State's earlier position that sulfolane was not regulated as a hazardous substance. It also held that it could impose the cost of the upgraded water system on petitioners even in the absence of a showing that the levels of sulfolane in local drinking-water wells were hazardous to public health or welfare.

The Alaska Supreme Court's decision was erroneous. It cannot be reconciled with this Court's precedents holding that, as a matter of due process, a regulated party must be on fair notice of what conduct the law prohibits before being subjected to severe civil liability. The decision is also inconsistent with the decisions of lower courts applying the principle of fair notice.

Above and beyond that error, the imposition of the cost of the expanded water system on petitioners, in the absence of any showing that the system was necessary to protect public health or welfare, violated due process and effectuated a judicial taking. This Court's intervention is necessary to correct the decision below and to provide guidance to federal and state courts on the constitutional limits on strict liability. The petition for a writ of certiorari should be granted.

A. Background

1. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). That "requirement of clarity in regulation is essential to the protections provided by" the Due Process Clauses of the Fifth and Fourteenth Amendments. *Ibid.*; see *State Farm Mutual Automobile Insurance Co.* v. *Campbell*,

538 U.S. 408, 416-418 (2003). A law violates that requirement if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited" or "is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States* v. *Williams*, 553 U.S. 285, 304 (2008).

The fair-notice principle applies not only to statutes, but also to regulations and other agency actions. For example, an agency cannot make an "abrupt" change in policy, and attempt to impose retroactive liability for the violation of that policy, when existing regulations do not provide notice of the potential liability. See *Fox Television Stations*, 567 U.S. at 254. Although agencies are permitted to engage in retroactive adjudication in some circumstances, see, *e.g.*, *SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947), they cannot seek to impose criminal penalties or severe civil liability without "fair warning * * * to the world[,] in language that the common world will understand, of what the law intends to do if a certain line is passed." *Bittner* v. *United States*, 598 U.S. 85, 102 (2023) (citation omitted).

In related fashion, both the Due Process Clause and the Takings Clause, as incorporated through the Fourteenth Amendment, prevent a State from imposing severe retroactive liability in a way that is "arbitrary and irrational" or that a regulated party "could not have anticipated." *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 528-529, 537 (1998) (plurality opinion) (internal quotation marks and citation omitted); see *id.* at 547 (Kennedy, J., concurring in the judgment and dissenting in part). That remains true even where the State has the authority to enact similar legislation on a prospective basis. See *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 (1976).

2. Enacted in 1971, the Alaska Environmental Conservation Act seeks to preserve the State's natural

resources. See Alaska Stat. §§ 46.03.010-46.03.900. The Alaska Department of Environmental Conservation is charged with administering the Act. See *id.* § 46.03.020.

Under the Act, no person may "cause or permit the release of a hazardous substance" into the environment. Alaska Stat. § 46.03.745. The Act defines the phrase "hazardous substance" to mean "an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found." *Id.* § 46.03.826(5)(A); see *id.* § 46.09.900(4)(A). Oil and substances classified as hazardous under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14), 9602, also qualify as hazardous substances under Alaska law. See *id.* §§ 46.03.826(5)(B)-(C), 46.09.900(4)(A).

The Act delegates authority to the Department to implement the Act's provisions. See Alaska Stat. § 46.03.020 (10). Pursuant to that authority, the Department has promulgated regulations concerning the cleanup of hazardous substances released into the soil or water. See Alaska Admin. Code tit. 18, §§ 75.360-75.396. The Department's regulations include a comprehensive table that lists hazardous substances regulated by the Department and establishes the levels of those substances a site must achieve in order to be considered remediated. See *id.* § 75.345(b)(1).[1]

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[1] In 2015, after this litigation commenced, the Department amended its regulations to permit it to deviate from the listed cleanup levels in certain circumstances and to allow it to order a responsible party to provide an alternative source of drinking water "[w]here the

The Act authorizes the State to file a civil enforcement action for damages against any party that releases a hazardous substance into the environment. See Alaska Stat. § 46.03.760(d). The Act further imposes strict liability on the owner or operator of the facility that released the hazardous substance, for, *inter alia*, "the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village." *Id.* § 46.03.822(a).

B. Facts And Procedural History

1. Petitioners are Williams Alaska Petroleum, Inc., and The Williams Companies, Inc. Respondents are the State of Alaska; Flint Hills Resources, LLC; and Flint Hills Resources Alaska, LLC.

From 1977 to 2004, petitioners owned and operated an oil refinery in North Pole, Alaska, a small city near Fairbanks. In 2004, petitioners sold the refinery to the Flint Hills respondents (hereafter "Flint Hills"), which operated the refinery until 2014. App., *infra*, 4a-5a, 140a, 145a.

In 1985, petitioners began to use a purifying solvent known as sulfolane in the refining process. At the time, the Department did not list sulfolane as a hazardous substance or otherwise require a permit for its use. Petitioners recycled the sulfolane to the extent possible, but some dissolved sulfolane passed into the facility's wastewater. The City of North Pole placed a limit of 100,000 parts per billion (ppb) of sulfolane on discharges of wastewater

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[D]epartment determines that toxicity information is insufficient to establish a cleanup level for a hazardous substance." Alaska Admin. Code tit. 18, § 75.345(c) & (d); see Alaska Department of Environmental Conservation, *Notice of Proposal to Update Regulations Dealing With Cleanup Levels for Soil and Groundwater and How They Are Used for Contaminated Sites* (Aug. 26, 2015) <tinyurl.com/akcleanupnotice>.

from the plant into the public sewer system. App., *infra*, 3a-4a, 166a.

In 1996, petitioners discovered sulfolane in groundwater samples taken at the refinery. Petitioners reported the presence of sulfolane to the Department in 2001, in connection with the development of a required regulatory site plan. App., *infra*, 3a.

The Department initially had a "casual attitude toward sulfolane, especially when it was first reported in the groundwater." App., *infra*, 167a. Because state regulations require site plans to address the presence of "hazardous substance[s]," Alaska Admin. Code tit. 18, § 75.335 (a), (b)(2)(A)-(C), petitioners asked the Department in 2001 whether to include sulfolane in its site plan. See App., *infra*, 105a; Alaska S. Ct. E.R. ("E.R.") 17-19, 22-25. In 2002, the Department expressly told petitioners that sulfolane is "not considered [a] regulated contaminant[] at this time due to the lack of * * * reviewed toxicity data" from the federal Environmental Protection Agency (EPA). E.R. 19; App., *infra*, 184a-185a. The Department did not instruct petitioners to take any action other than to continue sampling for sulfolane in order to determine the source of its migration into the groundwater. App., *infra*, 176a-177a, 184a-185a.

The Department first stated that it would regulate sulfolane as a hazardous substance in 2004, after petitioners had sold the refinery to Flint Hills. That statement, sent by letter to Flint Hills, was not accompanied by any explanation as to why sulfolane satisfied the statutory definition of "hazardous substance." The Department later announced a groundwater cleanup level for the refinery of 350 ppb of sulfolane. Flint Hills took little action until 2008, when it began to install additional monitoring wells, including three wells beyond the refinery boundary. App., *infra*, 167a, 177a-178a; E.R. 178-179.

In 2009, sulfolane was detected in the offsite wells and in the City of North Pole's public drinking-water wells. Flint Hills provided alternative water sources for affected individuals and installed new wells for the City outside the contaminated area. Further studies detected at least some presence of sulfolane in approximately half of the drinking-water wells in the area. App., *infra*, 186a-187a, 192a, 254a-257a; Trial Tr. 3717-3719.

In light of the discovery of sulfolane in groundwater outside the refinery, the Department commissioned studies to determine whether the groundwater in North Pole was potable. A 2012 study conducted by the Alaska Department of Health and Social Services concluded that there were no likely adverse health effects from the levels of sulfolane in North Pole's groundwater. The agency also found no evidence of an increase in cancer rates or birth defects in the North Pole area compared to the rest of the State. E.R. 625-627.

Separately, the Department began to reassess the cleanup level of 350 ppb of sulfolane it had set for the refinery in 2004. The Department consulted with the Agency for Toxic Substances and Disease Registry (part of the federal Department of Health and Human Services), which concluded in 2010 that sulfolane is "acutely toxic" in doses of over 200,000 ppb and set an advisory exposure recommendation of no more than 20 ppb for infants, 32 ppb for children, and 70 ppb for adults. App., *infra*, 167a, 190a. Separately, while EPA set a regional screening level of 16 ppb, it did not set a maximum contaminant level under the Safe Drinking Water Act for public drinking-water systems. *Id.* at 190a, 191a.

The Department initially set a revised cleanup level of 14 ppb in 2013, but it was vacated on administrative appeal. App., *infra*, 192a-193a. The Department then en-

gaged an outside panel of experts to determine an appropriate cleanup level; the panel recommended a level of 362 ppb. The Department, however, did not adopt that recommendation. In 2015, EPA advised the Department not to take any action until certain national toxicology studies were completed. The Department followed that advice, and neither EPA nor the Department has since established a cleanup level for sulfolane. *Id.* at 169a-170a, 194a.

As of 2018, there were 86 groundwater wells in the North Pole area with sulfolane levels of between 20 ppb and 198 ppb, and only one non-drinking well with a level above 198 ppb. Despite those relatively low levels, the State and Flint Hills agreed to share the cost of expanding the City of North Pole's piped-water system, at a total cost of approximately $72 million. Construction began in 2018, while this litigation was pending, and was completed before trial in 2019. App., *infra*, 180a-181a, 189a, 255a-257a; Trial Tr. 3719.

2. On March 6, 2014, the State of Alaska filed suit against petitioners and Flint Hills in Alaska state court. The complaint alleged that sulfolane constitutes a "hazardous substance" under the Alaska Environmental Conservation Act and that petitioners and Flint Hills were jointly and severally liable for damages and costs from its release. The State also sought injunctive and declaratory relief. Petitioners and Flint Hills filed certain counterclaims against the State and cross-claims against each other. App., *infra*, 10a-11a, 144a, 152a.[2]

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[2] Other lawsuits were filed against petitioners and Flint Hills in Alaska state court, one by the City of North Pole and one by a North Pole landowner. The landowner's case settled. The City's case was initially consolidated with this case but was deconsolidated for trial. App., *infra*, 157a, 162a. In addition, Flint Hills filed cross-claims against petitioners for the release of certain perfluorochemicals at the

After several years of discovery and motion practice, respondents settled their claims against each other. Under the settlement agreement, respondents agreed jointly to fund the extension of the City of North Pole's piped-water system, as discussed above. But respondents maintained their claims against petitioners and additionally sought to recover the construction costs for the expansion. After further motions practice, the district court granted summary judgment to the State on petitioners' counterclaims. App., *infra*, 12a-13a, 157a, 161a-162a, 272a, 309a-310a.

3. Petitioners moved for summary judgment on the State's claims. See App., *infra*, 101a-139a. As is relevant here, petitioners argued that the imposition of strict liability for the release of sulfolane would violate the principle of fair notice embodied in the Due Process Clause. Petitioners focused on the vagueness of the definition of "hazardous substance" under the Environmental Conservation Act, the vagueness of the statute as applied to sulfolane, and the fact that the department "notified [petitioners] that sulfolane was not a regulated substance" in "email correspondence in 2002." *Id.* at 136a. The trial court rejected that argument on the ground that, because the relevant communications did not constitute "regulations or adjudication," they were "not subject to the fair notice doctrine." *Id.* at 137a.

4. The case proceeded to a bench trial on the State's strict-liability claims against petitioners and the cross-claims between Flint Hills and petitioners. After a 16-day trial, the court held petitioners strictly liable for the release of sulfolane. See App., *infra*, 140a-337a. The court allocated to petitioners 75% of the responsibility for off-

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refinery. *Id.* at 152a. This petition concerns only the State's claims against petitioners for the release of sulfolane.

refinery costs, including 75% of the $72 million expansion of the City of North Pole's water system, as well as 75% of the State's future costs related to the water system and certain oversight functions. The court also awarded certain damages to Flint Hills and entered injunctive and declaratory relief against petitioners. Overall, the court imposed over $100 million in liability on petitioners. See *id.* at 13a-14a, 316a-317a, 328a-334a, 338a-344a.

Of particular relevance here, the trial court concluded that sulfolane constituted a "hazardous substance" under Section 46.03.822 of the Environmental Conservation Act. App., *infra*, 290a. The court first determined that the Department's decision to classify sulfolane as a hazardous substance in 2004 "should be accorded deference" under state law, despite the agency's decision not to regulate sulfolane as a hazardous substance while petitioners owned and operated the refinery. *Id.* at 292a-294a. The court then determined for itself that sulfolane presents an "imminent and substantial danger to the public health" under Section 46.03.826(5)(A). *Id.* at 294a.

In making that determination, the court primarily relied on animal studies. App., *infra*, 297a, 298a-299a. The court noted that, in some of those studies, test animals experienced serious harm, including death. *Id.* at 297a-298a. The animals, however, had received doses of sulfolane hundreds or even thousands of times higher than the low sulfolane levels detectable in drinking wells in North Pole. E.R. 2010. The court also noted that petitioners had warned their employees that exposure to *pure* sulfolane could cause health problems. App., *infra*, 298a. The court further attached weight to the fact that petitioners' initial answer to the complaint admitted an allegation that sulfolane was hazardous, although petitioners' amended an-

swer clarified that whether sulfolane qualified as a "hazardous substance" constituted a legal question. *Id.* at 290a-292a; E.R. 793, 1202.[3]

In ordering petitioners to pay over $50 million for the cost of the City of North Pole's expanded water system, the court rejected petitioners' argument that the system was unnecessary in light of the low levels of sulfolane detected in drinking wells in North Pole. The court reasoned that respondents' decision to expand the piped-water system was "reasonable" as a "permanent replacement for the damaged aquifer," because other, less permanent measures required more ongoing work. App., *infra*, 309a-310a, 313a.

5. The Alaska Supreme Court affirmed. App., *infra*, 1a-100a. As is relevant here, the court first concluded that sulfolane qualified as a "hazardous substance" for purposes of Section 46.03.822. The court agreed that the animal studies cited by the trial court supported that classification. The court also gave weight to petitioners' internal warnings about exposure to pure sulfolane and the purported evidentiary admission in petitioners' initial answer. *Id.* at 30a-32a.

The Alaska Supreme Court then rejected petitioners' argument that it should not be required to pay for an unnecessary expansion of North Pole's piped-water system. App., *infra*, 36a-37a. In the Alaska Supreme Court's view, it was irrelevant that the trial court "had not made findings that piped water was necessary for human or envi-

[3] The trial court separately determined that the release of sulfolane harmed public welfare because it had a "negative impact" on the residents of North Pole, "including the people being very upset and concerned." App., *infra*, 300a. The court observed that studies had demonstrated the toxicity of sulfolane to the environment at "relevant concentrations." *Ibid.*

ronmental health" and that the Department "had not established a cleanup level required to make the groundwater safe for human consumption." *Id.* at 36a. The Alaska Supreme Court also cited the regulation that allows the Department to "require a responsible person to provide alternative water sources when toxicity information is insufficient to establish a cleanup level for a hazardous substance," even though the Department did not promulgate that regulation until 2015—over a decade after petitioners had sold the refinery. *Ibid.* (internal quotation marks omitted); see pp. 7-8 n.1, *supra*; Alaska Admin. Code tit. 18, § 75.345(d).

The Alaska Supreme Court next held that the imposition of strict liability did not deprive petitioners of fair notice. App., *infra*, 59a-67a. The Court treated petitioners' "potential multi-million dollar liability and remediation duties" as "serious civil penalties" for purposes of due process, and it conceded that Section 46.03.822 "could be vague in some instances." *Id.* at 60a, 64a. But the court determined that petitioners were "on notice of the potential for liability" because sulfolane was clearly "hazardous," given the trial court's findings and petitioners' internal treatment of the chemical in its pure form. *Id.* at 64a.

With respect to the Department's previous position that sulfolane was not regulated as a "hazardous substance," the Alaska Supreme Court explained that the Department's decision initially not to regulate sulfolane or pursue an enforcement action against petitioners were not actions on which petitioners were entitled to rely. App., *infra*, 64a-65a. According to the court, the Department was not taking a position on whether sulfolane was in fact hazardous; instead, it was merely stating that it had not yet decided one way or the other. *Id.* at 5a. The court reasoned that the Department was "free to create and change policies" and then seek retroactive liability once

"it decided to regulate sulfolane and treat [petitioners] as * * * responsible part[ies]." *Id.* at 66a.

The Alaska Supreme Court also rejected petitioners' argument that the imposition of liability for the release of sulfolane constituted a judicial taking. App., *infra*, 67a-68a. The court similarly reasoned that no taking had occurred because there had been no "change in the law." *Id.* at 67a.

REASONS FOR GRANTING THE PETITION

The decision below flies in the face of the fundamental principles of due process with which a State must comply before imposing severe civil liability on a regulated party. The Alaska Supreme Court candidly acknowledged that the definition of the phrase "hazardous substance" in the Alaska Environmental Conservation Act could be vague in application. It also recognized that, in 2002, the Alaska Department of Environmental Conservation expressly informed petitioners that it was not regulating sulfolane as a "hazardous substance" under the Act. The court nevertheless held petitioners strictly liable for the release of sulfolane from the North Pole refinery.

Making matters worse, the Alaska Supreme Court then required petitioners to pay for the cost of an expanded water system in North Pole, without any showing that the expansion was necessary to protect public health or welfare. Indeed, neither the trial court nor the Alaska Supreme Court found that the levels of sulfolane in local drinking wells in 2018, when construction of the expanded water system began, were harmful. Yet the Alaska Supreme Court held that petitioners were responsible for the cost of the expansion based on the mere fact that *some* sulfolane was released from the North Pole refinery.

The decision below runs roughshod over this Court's precedents on fair notice; it conflicts with the approach

other lower courts have taken in similar cases; and it effectuates a judicial taking. Given the importance of establishing guardrails on the imposition of retroactive liability, as well as the severe nature of the liability imposed here, this case warrants the Court's review. The petition for a writ of certiorari should be granted.

A. The Decision Below Is Irreconcilable With This Court's Precedents on Fair Notice

This Court has long held that due process forbids the imposition of severe liability if the defendant lacks fair notice of the scope of prohibited conduct and the nature of the liability for engaging in that conduct. In the decision below, however, the Alaska Supreme Court held petitioners liable for the release of a chemical that state regulators had expressly declined to regulate as a hazardous substance during the time that petitioners owned and operated the refinery. That imposition of severe civil liability cannot be reconciled with this Courts' precedents.

1. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC* v. *Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). That requirement serves two critical purposes: it ensures that "a person of ordinary intelligence [has] fair notice of what is prohibited," and it prevents the application of any law that "is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States* v. *Williams*, 553 U.S. 285, 304 (2008). The principle of fair notice applies not only in criminal matters but also in civil matters involving the imposition of significant liability. See, *e.g.*, *United States Trust Co.* v. *New Jersey*, 431 U.S. 1, 17 n.13 (1977).

The decision of the Alaska Supreme Court cannot be reconciled with those precedents. The Alaska Environmental Conservation Act imposes strict liability for the release of any "hazardous substance," defined as any "element or compound" that "presents an imminent and substantial danger to the public health or welfare." Alaska Stat. § 46.03.826(5)(A); see *id.* at § 46.03.822(a). As the Alaska Supreme Court recognized, that language "could be vague in some instances"; indeed, the court noted that the "undefined use of 'imminent' in statutes and treaties, across diverse subject areas, has plagued legal scholars for decades." App., *infra*, 28a, 64a. Petitioners thus appropriately relied on administrative guidance to determine whether sulfolane qualified as a "hazardous substance."

During the time that petitioners owned and operated the oil refinery, however, the actions and communications of the Department of Environmental Conservation gave petitioners no notice that sulfolane qualified as a hazardous substance. In 2001, petitioners disclosed to the Department that sulfolane had been detected on the property and sought the agency's guidance on whether it should be included in petitioners' 2002 corrective-action plan. See p. 9, *supra*. As the trial court noted, however, "[w]hen sulfolane was first reported, [the Department] was uncertain whether it should be regulated as a hazardous substance." App., *infra*, 184a. Accordingly, the Department told petitioners that it was not regulating sulfolane as a hazardous substance and that sulfolane need not be addressed in the site plan, even though Department regulations require site plans to address all hazardous substances that are present on the premises. *Id.* at 184a-185a; see Alaska Admin. Code tit. 18, § 75.335(a), (b)(2)(A)-(C). In short, the Department had a "casual attitude toward sulfolane" until after petitioners' sale of the

refinery in 2004, when it first classified sulfolane as hazardous. App., *infra*, 167a.

Even then, the Department did not go through the ordinary rulemaking process to amend its regulatory table to list sulfolane as a hazardous substance and establish a cleanup level. See Alaska Admin. Code tit. 18, § 75.345(b). Instead, the Department simply "advised" Flint Hills that sulfolane was a hazardous substance and that the Department would be adopting a cleanup level, without explaining how sulfolane satisfied the statutory standard. See App., *infra*, 185a. When the Department later attempted to adopt a cleanup level, it again did so only by sending Flint Hills a letter. *Id.* at 192a.

If the Department had informed petitioners in 2002 that it viewed sulfolane as a hazardous substance under the Environmental Conservation Act, petitioners could have taken immediate steps to prevent the further spread of sulfolane into the groundwater. Yet the Department told petitioners that sulfolane was not regulated, and it declared sulfolane to be hazardous only subsequently (and only through an informal process without developing a final cleanup level). Those actions failed to provide fair notice that the State would later bring an enforcement action to recover the costs of remediating the presence of sulfolane in drinking-water wells; if anything, the Department's actions indicate that, to this day, it has not concluded that the levels of sulfolane in drinking-water wells is unsafe. The Alaska Supreme Court's decision nevertheless to impose severe civil liability on petitioners for the State's remediation costs deprived petitioners of their right to fair notice.

2. In rejecting petitioners' fair-notice argument, the Alaska Supreme Court noted that the Department had not previously taken a firm position on the hazardousness of sulfolane in "legal briefs, regulations, or adjudications."

App., *infra*, 65a. But that is not the relevant question. Instead, it is whether the Department, through its enforcement action in state court, was seeking to "impose potentially massive liability on [petitioners] for conduct that occurred well before [its new position] *was announced*." *Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142, 155-156 (2012) (emphasis added).

That is the case here. Even if the Department had not previously stated expressly that sulfolane did *not* qualify as a hazardous substance, its words and actions had the same effect. Under the Department's regulations, petitioners were required to address the presence of any hazardous substance in their 2002 site plan. See Alaska Admin. Code tit. 18, § 75.335(a), (b)(2)(A)-(C). By stating that petitioners did not need to include sulfolane in the site plan, the Department was necessarily taking the position that sulfolane did not qualify as a hazardous substance at that time.

It is true, of course, that "[a]gencies are free to create and change policies for matters within their purview." App., *infra*, 66a. And petitioners do not here challenge the Alaska Supreme Court's determination that the Department "reasonably determined sulfolane to be a 'hazardous substance'" under state law. *Ibid.* But even when an agency's interpretation is permissible, retroactive liability without fair notice is not. If the agency's earlier actions were "unclear" in that they failed to "warn a party about what is expected of it," "a regulated party is not 'on notice'" of the agency's later interpretation of the relevant law simply because that interpretation is a reasonable one. *General Electric Co.* v. *EPA*, 53 F.3d 1324, 1328, 1334 (D.C. Cir. 1995). Accordingly, even if the Department's current position on sulfolane is permissible, petitioners lacked fair notice that sulfolane was a hazardous substance when they owned and operated the refinery.

B. The Alaska Supreme Court's Decision Is Inconsistent With The Decisions Of Other Lower Courts

The Alaska Supreme Court's decision stands in stark contrast with the decisions of other lower courts. When faced with analogous situations, other courts have declined to apply a new agency interpretation of a statute or regulation retroactively where, in light of the statutory or regulatory text and the implementing agency's previous actions, the regulated party could not have anticipated the new interpretation with "ascertainable certainty." *General Electric*, 53 F.3d at 1329 (citation omitted). The decision below is inconsistent with those decisions and threatens to erode the fair-notice doctrine. This Court's review is necessary to prevent that result.

1. The District of Columbia Circuit applied the principle of fair notice in *General Electric*, *supra*, which concerned a fine imposed by the Environmental Protection Agency for a violation of regulations governing the processing of polychlorinated biphenyls (PCBs). Under those regulations, processors of equipment that used PCBs were required to treat the equipment with a solvent and then incinerate it. See 53 F.3d at 1326. The processor in *General Electric*, however, did not immediately incinerate the solvent after its use; instead, it would distill the solvent to separate out the PCBs, allowing it to reuse some of the solvent while incinerating only the part with concentrated PCBs. See *id.* at 1326-1327. EPA interpreted its regulations not to permit that distillation process and fined the processor $25,000. See *id.* at 1327.

While accepting that EPA's interpretation of its regulations was permissible, see 53 F.3d at 1328, the D.C. Circuit proceeded to ask whether, "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with

which the agency expect[ed] parties to conform." *Id.* at 1329 (internal quotation marks and citation omitted). The court noted that the text of EPA's regulations "reveal[ed] no rule or combination of rules providing fair notice that they prohibit pre-disposal processes such as distillation." *Id.* at 1330. The agency's public statements about distillation also failed to give clear guidance on the issue. See *id.* at 1332-1333.

The D.C. Circuit thus concluded that the processor lacked fair warning of EPA's interpretation of the regulations and vacated the fine. See 53 F.3d at 1333-1334. As the court explained, fair notice is absent where "the regulations and other policy statements are unclear, where the petitioner's interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements." *Ibid.*; cf. *Trinity Broadcasting of Florida, Inc.* v. *FCC*, 211 F.3d 618, 628-632 (D.C. Cir. 2000) (deferring to an agency's interpretation of its own regulation but vacating a regulatory sanction based on that interpretation due to lack of fair notice); *Rollins Environmental Service (NJ) Inc.* v. *EPA*, 937 F.2d 649, 654 (D.C. Cir. 1991) (similar); *Gates & Fox Co., Inc.* v. *OSHRC*, 790 F.2d 154, 156-157 (D.C. Cir. 1986) (Scalia, then-J.) (similar).

2. The Fourth Circuit took the same approach and reached a similar result in *United States* v. *Hoechst Celanese Corp.*, 128 F.3d 216 (1997), a case concerning civil penalties for violations of EPA's benzene regulations. Under those regulations, industrial plants designed to "use" less than 1,000 megagrams of benzene per year were exempt from regulatory requirements governing the use of benzene. See *id.* at 219-220. The defendant concluded that one of its plants was exempt because, by recycling the benzene it used, the plant's total consumption, and thus "use," of benzene fell below the regulatory

threshold. See *id.* at 220. The defendant had taken the same position with respect to two other plants in a different State, and the EPA-appointed state regulator had granted those plants an exemption from the regulations. See *id.* at 225-226. EPA had notice of those exemptions, but "it took no action to rescind or invalidate the[m]." *Id.* at 225.

EPA eventually sent a letter informing the defendant that the agency interpreted the term "use" to include "utilization, employment, or putting in place," rather than just "consumption," which would render the relevant plant subject to the benzene regulations. 128 F.3d at 220. The government then commenced an enforcement action against the defendant, seeking civil penalties for the plant's failure to comply with the benzene regulations both before and after EPA sent the letter. See *id.* at 219.

The Fourth Circuit explained that, while EPA's interpretation of the benzene regulations warranted deference, the defendant still lacked fair notice of that interpretation until it received EPA's letter "unequivocally setting forth the agency's interpretation." 128 F.3d at 228. The court observed that, although "nothing in the [regulation] itself or the rulemaking record foreclose[d] EPA's interpretation of the exemption, at the same time nothing mandate[d] it." *Id.* at 225. The court also noted EPA's failure to act in response to the decision of the state agency to grant the exemption to two other plants owned by the defendant. See *id.* at 225-226. Based on those facts, the Fourth Circuit determined that the defendant lacked fair notice of EPA's interpretation of the benzene regulations until EPA sent the letter clearly setting forth its position. See *id.* at 226.

3. Although *General Electric* and *Hoechst Celanese* involved agencies' interpretations of their own regulations, the "same principle" of fair notice applies where "an

agency's interpretation of an ambiguous statute unfairly surprises a regulated party." *Employer Solutions Staffing Group II, L.L.C.* v. *Office of Chief Administrative Hearing Officer*, 833 F.3d 480, 489 (5th Cir. 2016). In *Employer Solutions Staffing Group*, the Fifth Circuit reviewed a fine imposed by Immigration and Customs Enforcement (ICE) on an employer for failing to complete the employment-verification process required by the Immigration and Nationality Act (INA). See *id.* at 483. In ICE's view, the INA required that a single employee review an applicant's original documentation and sign the applicant's I-9 form. See *id.* at 485. The business, however, had one employee copy the original documentation and another employee located elsewhere review the copy and sign the I-9 form. See *id.* at 483.

The Fifth Circuit vacated the fine imposed by ICE. See 833 F.3d at 491. In determining whether the business's verification process was permissible, the court first concluded that neither the statutory text nor ICE's implementing regulations and adjudications clarified whether in-person verification and attestation was required. See *id.* at 485-486. The court proceeded to hold that it could not defer to ICE's current interpretation of the INA. See *id.* at 486-487. The court reasoned that, even if deference were otherwise warranted, the business "lacked fair notice" of ICE's interpretation of the INA. *Id.* at 489. In the court's view, that fact "alter[ed] the deference owed." *Ibid.* The court ultimately concluded that the business's interpretation of the INA was "the most reasonable interpretation." *Id.* at 491.[4]

[4] The D.C., Fourth, and Fifth Circuits are not alone in recognizing that the imposition of severe civil liability based on a reasonable interpretation of a statute or regulation can nevertheless violate a regulated party's right to fair notice. Other federal courts of appeals

4. The decision below cannot be reconciled with the foregoing decisions. The Alaska Environmental Conservation Act defines the phrase "hazardous substance" to mean "an element or compound" that "presents an imminent and substantial danger to the public health or welfare." Alaska Stat. § 46.03.826(5)(A). That definition does not clearly provide that sulfolane qualifies as a hazardous substance, and the Alaska Supreme Court recognized that the definition "could be vague in some instances." App., *infra*, 64a. But the Alaska Supreme Court concluded that the trial court's "findings about sulfolane," as well as petitioners' treatment of sulfolane, showed that sulfolane falls within the "hard core" of the definition of a "hazardous substance." *Ibid.*

The Alaska Supreme Court did not explain what was in the "hard core" portion of the definition of "hazardous substance"; how petitioners had "fair notice" of what constituted the "hard core" portion; or how sulfolane fell within that portion. The court then discounted the Department's previous position that sulfolane was not regulated as a hazardous substance, reasoning that the Department was not expressing an "ultimate[] conclu[sion]" that sulfolane "was not hazardous." App., *infra*, 65a.

None of the Alaska Supreme Court's rationales demonstrates that, from 1985 to 2004, petitioners could have determined with "ascertainable certainty," *General Electric*, 53 F.3d at 1329 (citation omitted), that sulfolane

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have recognized as much even when rejecting fair-notice challenges. See, *e.g.*, *United States* v. *Richter*, 796 F.3d 1173, 1189-1191 (10th Cir. 2015); *United States* v. *Lachman*, 387 F.3d 42, 57 (1st Cir. 2004). Multiple state courts have done the same. See, *e.g.*, *Lanai Co.* v. *Land Use Commission*, 97 P.3d 372, 390 (Haw. 2004); *Kerman Telephone Co.* v. *Public Utilities Commission*, No. F083940, 2023 WL 5445535, at *7 (Cal. Ct. App. Aug. 7, 2023) (to be published); *Delhaize America, Inc.* v. *Lay*, 731 S.E.2d 486, 496-498 (N.C. App. 2012).

qualified as hazardous. As already explained, see p. 20, even if the Department was not expressing an "ultimate[] conclu[sion]" about sulfolane in its communications to petitioners, App., *infra*, 65a, its decision not to require petitioners' site plan to address sulfolane necessarily meant that it did not consider sulfolane hazardous at the time. And the fact that a court determined that sulfolane was hazardous after a trial in 2019, based on testimony and data that postdated petitioners' ownership of the refinery, does not establish that petitioners had fair notice many years earlier that sulfolane posed an "imminent and substantial danger" to the public health or welfare. See *id.* at 66a. In the face of the regulatory guidance that petitioners were given at the time—that sulfolane was not regulated as a hazardous substance—no reasonable person would have concluded that petitioners would later be liable for over $100 million in civil liability. Petitioners simply had no notice that leaving the sulfolane in the ground would subject them to such harsh civil liability.

It is true that petitioners advised its employees in 2002 that the inhalation and ingestion of *pure* sulfolane could be harmful. See App., *infra*, 20a, 235a-236a. But that does not mean that petitioners were on notice that they would be held strictly liable for the presence of *any* amount of sulfolane in the groundwater, even at low levels that have not been shown to pose a threat to human health. See pp. 27-30, *infra*.

In sum, petitioners could not have known with "ascertainable certainty" at the relevant time that the Department would treat sulfolane as a hazardous substance and pursue severe civil liability in an enforcement action for its release. The Alaska Supreme Court's holding that petitioners nevertheless had fair notice of such liability cannot be reconciled with the decisions of this Court and

other lower courts. The Court should grant review to avoid the irony of uncertainty in the law of fair notice.

C. The Award Of Costs For North Pole's Expanded Water System Violates Due Process And Effectuates A Judicial Taking

After holding that petitioners had fair notice that sulfolane qualified as a hazardous substance, the Alaska Supreme Court doubled down by requiring petitioners to pay for 75% of the $72 million expansion of the City of North Pole's water system, without any showing that the expansion was necessary to protect public health or welfare. The imposition of that liability violated due process and amounted to a judicial taking.

1. As this Court has explained, the fact that Congress can legislate prospectively on a matter does not mean that it can also legislate retrospectively on the same matter. See *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976). "The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." *Id.* at 17. The ultimate question for purposes of due process is whether the imposition of retroactive liability under the statute is "arbitrary and irrational." *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 537 (1998) (plurality opinion) (citation omitted); see *id.* at 547 (Kennedy, J., concurring in the judgment and dissenting in part).

In related fashion, the Takings Clause (as applicable to the States through the Fourteenth Amendment) prohibits the imposition of "severe retroactive liability on a limited class of parties that could not have anticipated the liability," where "the extent of that liability is substantially disproportionate to the parties' experience." *Eastern Enterprises*, 524 U.S. at 528-529 (plurality opinion). That principle applies not only to legislation, but also to

the application of law by a court. See *Stop the Beach Renourishment, Inc.* v. *Florida Department of Environmental Protection*, 560 U.S. 702, 713 (2010). To determine whether the imposition of retroactive liability effectuates a taking, the Court balances factors such as "the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action." *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063, 2072 (2021); see *Eastern Enterprises*, 524 U.S. at 529 (plurality opinion).

2. Under those precedents, the decision below violated petitioners' right to due process and effectuated a judicial taking. On the front end of its decision, the Alaska Supreme Court treated the determination of whether a substance is "hazardous" as independent from its concentrations in the environment. See App., *infra*, 28a-30a. The court thereby concluded that the release of even one drop of sulfolane violated the statute. Then, on the back end, the court reasoned that it need not determine whether the levels of sulfolane in the groundwater "have caused adverse health effects" or whether the expansion of the piped-water system "was necessary" before requiring petitioners to pay over $50 million for the expansion. *Id.* at 36a.

That interpretation of Alaska law results in "severe retroactive liability" that petitioners "could not have anticipated" and that is "arbitrary and irrational" in nature. *Eastern Enterprises*, 524 U.S. at 528-529, 537 (plurality opinion). Under the decision below, the release of even one drop of a hazardous substance triggers strict liability, and the releasing party must then pay for remediation costs even if those costs do not further the ultimate purpose of the Environmental Conservation Act: namely, "to enhance the health, safety, and welfare of the people of the [S]tate." Alaska Stat. § 46.03.010(a). If Alaska law

allows the imposition of one-drop strict liability, it cannot simultaneously authorize the Department to recover for whatever remedial measures the Department wishes to take, regardless of the risks posed to public health and welfare.[5] Such a result is quintessentially arbitrary and drastically interferes with the investment-backed expectations that any reasonable business owner would have.[6]

The fact that applicable regulations require the Department's remedial measures to be "reasonably attributable" to the source of the hazardous substance does not solve the problem. See Alaska Admin. Code tit. 18, § 75.910(b). Under the decision below, response costs can be "reasonabl[e]" even in the absence of a finding that the level of a hazardous substance in the groundwater threatens public health or welfare. The reasonableness requirement thus does not prevent a court from imposing significant and arbitrary remediation costs that violate due process and effectuate a taking.

Because of the retroactive classification of sulfolane as a hazardous substance, petitioners are being required to pay tens of millions of dollars for conduct occurring decades earlier. There can be no greater interference with reasonable investment-backed expectations than imposing liability after a change in the law, especially where, as here, there was a clear reliance interest in the prior law

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[5] Cf. *In re Bell Petroleum Services*, 3 F.3d 889, 906 (5th Cir. 1993) (holding, under CERCLA, that EPA's decision to furnish an alternative water source in response to groundwater contamination was "arbitrary and capricious, as well as a waste of money," where there was no evidence that anyone in the relevant area was drinking contaminated water).

[6] Notably, petitioners sold the refinery to Flint Hills in 2004 for approximately $125 million. See E.R. 62. The imposition of over $100 million in total liability thus consumed the vast majority of value petitioners received for the refinery.

because of agency action. "Indeed, a paradigmatic regulatory taking occurs when a change in the law results in the immediate impairment of property rights, leaving the property owner no options to avoid the loss." *Meriden Trust & Safe Deposit Co.* v. *FDIC*, 62 F.3d 449, 454 (7th Cir. 1995). The Alaska Supreme Court's decision thus warrants further review on this ground as well.

D. The Court's Review Is Warranted

The Court's intervention is necessary here. The decision below is incorrect and authorizes the imposition of severe liability under a sweeping application of state environmental law that no regulated party could have foreseen. This case provides an excellent vehicle for the Court to establish guardrails on the imposition of strict liability.

1. As this Court has long said, a law that is "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). Fair notice is thus "a fundamental principle in our legal system," *Fox Television Stations*, 567 U.S. at 253, as is the principle that the government may not impose "arbitrary and irrational" liability for prior conduct, *Eastern Enterprises*, 524 U.S. at 537 (plurality opinion). This Court has emphasized the need to scrutinize laws closely in order to protect against "the kind of unfair surprise against which [its] cases have long warned." *Christopher*, 567 U.S. at 156 (internal quotation marks and citation omitted).

In recent years, this Court has reiterated the importance of those principles. Time and again, the Court has held that laws must be clear enough to inform "ordinary people" about the "conduct [they] punish[]" and to prevent "arbitrary enforcement." *Johnson* v. *United States*, 576 U.S. 591, 595 (2015); see, *e.g.*, *Bittner* v. *United*

States, 598 U.S. 85, 102 (2023); *United States* v. *Davis*, 139 S. Ct. 2319, 2325 (2019); *Sessions* v. *Dimaya*, 138 S. Ct. 1204, 1212 (2018); *Fox Television Stations*, 567 U.S. at 253.

The foregoing principles are especially important in the context of the myriad federal and state environmental laws, such as the Alaska law at issue here. "A complicated regulatory regime like CERCLA or the [Clean Water Act] cannot function effectively unless citizens are given fair notice of their obligations." *Massachusetts* v. *Blackstone Valley Electric Company*, 67 F.3d 981, 991 (1st Cir. 1995). Such "regime[s] of strict liability" can produce "crushing" consequences for a party that unwittingly violates a regulator's unspoken understanding of the law. *County of Maui* v. *Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1489 (2020) (Alito, J., dissenting). That problem is amplified when a court orders a party to pay for the cost of remediation projects that are not in fact necessary to remediate the harm caused by a violation of environmental regulations.

If allowed to stand, the decision below will provide a roadmap for States to impose crushing and unforeseeable liability on regulated parties. According to the Alaska Supreme Court, a State can impose strict liability for the release of even one drop of a hazardous substance and then require the regulated party to pay for any remediation projects the State sees fit—even if those projects are entirely unnecessary to protect human health or welfare. The federal and state governments could thereby use strict liability as a pretext for forcing a private party to upgrade state infrastructure, even where the upgrade bears only the loosest connection to any harm caused by the legal violation. That is precisely the sort of arbitrary government action the Constitution is designed to protect against.

2. This case is an ideal vehicle to clarify the permissible scope of strict environmental liability under federal and state law. Petitioners raised their due-process and takings arguments in the proceedings below, and the Alaska Supreme Court passed upon those arguments. See App., *infra*, 59a-68a. Nor are there any impediments to review; although the Alaska Supreme Court interpreted the Environmental Conservation Act as a matter of state law, petitioners' federal constitutional arguments take that interpretation as a given.

The decision below is a paradigmatic example of strict liability run wild. The statutory definition of the phrase "hazardous substance" under Alaska law does not clearly provide that sulfolane qualifies, and the Department took the position that sulfolane was not regulated as a hazardous substance. The Alaska Supreme Court nevertheless required petitioners to pay for a multimillion-dollar expansion of the City of North Pole's water system, without any finding that the low levels of sulfolane in the local drinking wells posed any danger to public health or welfare.

That result is illogical and cannot stand. The Court should grant certiorari and provide much-needed guidance to lower courts on the limits of strict liability under environmental statutes.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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