No.

In the Supreme Court of the United States

COTTER CORPORATION; COMMONWEALTH EDISON COMPANY,
PETITIONERS,

v.

NIKKI STEINER MAZZOCCHIO; ANGELA STEINER KRAUS,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Atomic Energy Act (AEA), private persons may possess, use, and dispose of specific nuclear materials only if authorized by federal statute or regulation. Handlers of these nuclear materials must comply with comprehensive safety regulations, including federal limits on the radioactive material they may release and the levels of radiation to which they may expose the public. For decades, these federal requirements have been understood to preempt state regulation of nuclear safety. *See Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212 (1983).

As amended by the Price-Anderson Act (PAA), the AEA also provides a federal cause of action for "public liability action[s]," including torts arising out of a statutorily-defined "nuclear incident." 42 U.S.C. § 2014(ii). Because of federal field preemption, the federal courts of appeals have long uniformly held that federal nuclear safety regulations provide the standard of care in such actions. In the decision below, however, the Eighth Circuit created a circuit split, expressly rejecting the other circuits' view and holding that state standards of care, as determined by local juries, serve as the standard of liability in actions under the PAA. The question presented is:

Whether federal nuclear safety regulations preempt state tort standards of care in public liability actions.

PARTIES TO THE PROCEEDING

Petitioners Cotter Corporation (N.S.L.) and Commonwealth Edison Company were defendants in the district court and appellants in the Eighth Circuit. St. Louis Airport Authority was a defendant in the district court and an appellant in the Eighth Circuit. DJR Holdings, Inc., f/k/a Futura Coatings, Inc., was also a defendant in the district court but was not a party on appeal. Respondents Nikki Steiner Mazzocchio and Angela Steiner Kraus were plaintiffs in the district court and appellees in the Eighth Circuit.

CORPORATE DISCLOSURE STATEMENT

Petitioner Cotter Corporation (N.S.L.) is a wholly owned subsidiary of General Atomics Uranium Resources, LLC. No publicly held corporation owns 10% or more of Cotter Corporation (N.S.L.)'s stock.

Commonwealth Edison Company is a wholly owned subsidiary of Exelon Energy Delivery Company, LLC. No publicly held corporation owns 10% or more of Commonwealth Edison Company's stock.

RELATED PROCEEDINGS

There are no proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii) except as follows:

- *Mazzocchio v. Cotter Corp.*, No. 4:22-cv-292, E.D. Mo. (Sept. 8, 2023) (denying defendants' motions to dismiss on the basis of federal preemption)

- *Mazzocchio v. Cotter Corp.*, No. 4:22-cv-292, E.D. Mo. (Nov. 1, 2023) (granting motion certifying appeal)

- *Mazzocchio v. Cotter Corp.*, No. 23-3709, 8th Cir. (Oct. 30, 2024) (affirming the denial of the motions to dismiss)

- *Mazzocchio v. Cotter Corp.*, No. 23-3709, 8th Cir. (Dec. 18, 2024) (denying petition for rehearing en banc and panel rehearing)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Cotter Corporation (N.S.L.) and Commonwealth Edison Company respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is available at 120 F.4th 565. Pet.App.3a-11a. The opinion of the district court is available at 2023 WL 5831960. Pet.App.20a-47a.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 2024. A timely petition for rehearing en banc

and for panel rehearing was denied on December 18, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., art. VI, cl. 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

42 U.S.C. § 2014(ii) provides:

> The term "public liability action", as used in section 2210 of this title, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 2210 of this title, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

42 U.S.C. § 2014 is reproduced in full, *infra*, Pet.App.48a.

42 U.S.C. § 2210 is reproduced in full, *infra*, Pet.App.60a.

STATEMENT

In the decision below, the Eighth Circuit openly broke ranks with five courts of appeals and upset the long-settled and uniform rule on an issue of enormous and recurring national importance: the standard of liability in tort suits arising from nuclear incidents. Five circuits hold

that federal law provides the standard of care in such suits. The Eighth Circuit recognized this consensus, but decided to "take a path different from [its] sister circuits," and held that state standards of care govern. Pet.App.10a-11a. That enormously consequential holding shatters the predictable and uniform liability regime for the nuclear industry that has existed for decades.

Ever since the federal government relinquished its monopoly over fissionable material in 1954, the federal government has maintained exclusive control over the regulation of nuclear safety. As this Court has long held, "the federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." *Pacific Gas & Elec. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212 (1983).

Thus, when it comes to tort liability stemming from nuclear activities, the uniform view across every court of appeals to confront the question—the Third, Sixth, Seventh, Ninth, and Eleventh Circuits—had been that "federal law determines the standard of care and preempts state tort law." *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1553 (6th Cir. 1997). The nuclear industry has for decades operated on the basis of this stable, predictable rule that so long as companies comply with federal regulations, no liability will result.

That uniform regime ended with the decision below. The Eighth Circuit recognized that if a state had attempted to regulate petitioners' activity in this case via "nuclear safety statutes or regulations," such statutes or regulations would be preempted. Pet.App.7a (cleaned up). And the Eighth Circuit "recognize[d] that other circuits have held that federal law preempts state standards of

care" in suits like this one. Pet.App.10a. The Eighth Circuit nonetheless "disagree[d]" with those circuits and held that juries applying state standards of care in case-by-case adjudications will determine the standards by which the nuclear industry must abide. Pet.App.10a.

The question presented is critically important. Absent this Court's intervention, disuniform liability regimes will govern the nation's 18,000 radioactive materials licensees and the operators of our 94 nuclear reactors that power tens of millions of homes, not to mention the federal contractors and others who handle radioactive materials at the government's behest. Congress has long understood that federally calibrated regulation of nuclear safety is critical to achieve both public safety and robust nuclear development, both of which implicate bedrock national interests. Yet under the decision below, nuclear operators in the Eighth Circuit—home to seven nuclear reactors—must now go forward with "no real guidance" about how to avoid liability under a regime that "allow[s] juries to fix the standard case by case and plant by plant." *In re TMI* ("*TMI II*"), 67 F.3d 1103, 1115 (3d Cir. 1995). Instead of a uniform federal standard, lay juries will impose liability based on their hindsight view of what safety measures companies should have utilized decades ago—as in this case, where the alleged misconduct occurred over 50 years ago. The Eighth Circuit's rule also opens the door to strict liability for even safe operations that met the strictest federal safety standards.

This Court's intervention is especially needed now, given our increasing reliance on nuclear energy and nuclear defense. Development may be chilled or become cost-prohibitive if operators "acting in the utmost good faith and diligence could still find [themselves] liable for

failing to meet such an elusive and undeterminable standard," *see id.*, or are unsure what standard their operations must meet because it will be determined only in hindsight by a jury.

This case presents an ideal vehicle for review. The issue is cleanly presented and was dispositive below. As the district court explained, applying the other circuits' rule "would lead to the dismissal of [this] action." Pet.App.15a. Moreover, the Eighth Circuit denied rehearing en banc. And the five other circuits are exceedingly unlikely to all overrule their decades-old precedents anytime soon. Only this Court can restore uniformity to this vitally important area of the law.

A. Legal Background

1. "Until 1954, the use, control, and ownership of all nuclear technology remained a federal monopoly." *English v. Gen. Elec. Co.*, 496 U.S. 72, 80 (1990). But seeking to encourage nuclear development, Congress passed the Atomic Energy Act of 1954, which allowed the Atomic Energy Commission (AEC) to license private nuclear energy providers, subject to "strict supervision by the … Commission." *See Duke Power Co. v. Carolina Envt'l Study Grp., Inc.*, 438 U.S. 59, 63 (1978).

In authorizing the private use of nuclear materials, Congress has always emphasized two crucially important and mutually reinforcing goals: encouraging nuclear development, which is "vital to the common defense and security," and ensuring that nuclear development does not endanger "the health and safety of the public." 42 U.S.C. § 2012(a), (d). To that end, Congress vested the NRC, the successor to the AEC, with authority to create the "standards … to govern" nuclear material, and has instructed

the NRC to do so in line with those twin goals of development and safety. *Id.* § 2201(b).

As part of the regulatory regime, Congress prohibited persons from transferring, delivering, or taking title to "source," "byproduct," or "special nuclear" material without a license. 42 U.S.C. §§ 2077(a), 2092, 2111(a). "Source material" includes uranium. *Id.* § 2014(z). Companies licensed to possess, utilize, or transport source, byproduct, or special nuclear material are subject to 10 C.F.R. Part 20, which sets standards for handling, storing, and disposing of such material, and sets associated monitoring and reporting requirements. *See, e.g.*, 10 C.F.R. §§ 20.1101, 20.1801, 20.2001, 20.2202.

Part 20 also sets strict federal radiation dosage limits. *See, e.g.*, *id.* §§ 20.1201-1302. These are the levels of radiation to which workers and members of the public can be exposed as a result of licensed activities, over and above the background radiation that individuals naturally experience in their day-to-day lives. *See, e.g.*, *id.* § 20.1301(a). "These regulations represent the considered judgment of the relevant regulatory bodies—the Federal Radiation Council, EPA, AEC, and NRC—on the appropriate levels of radiation to which the general public may be exposed." *TMI II*, 67 F.3d at 1113-14.

2. The federal government unsurprisingly has always been in charge of setting these uniform and predictable regulatory standards of care. Indeed, as this Court recognized 40 years ago, "the federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." *Pacific Gas*, 461 U.S. at 212.

The preemptive sweep of federal nuclear safety regulation is recognized throughout the AEA. For instance,

through § 2021, Congress (with numerous caveats and safeguards) authorized states "to regulate" certain nuclear materials "for the protection of the public health and safety from radiation hazards," but only if the state first enters into an agreement with the NRC. Any state regulation must also be "coordinated and compatible" with federal standards. 42 U.S.C. § 2021(g).

Congress also maintains control of liability stemming from injuries caused by nuclear incidents. A few years after Congress passed the AEA, Congress recognized that the nation's nuclear power industry was struggling to get on its feet, as fear of ruinous liability dissuaded private companies from entering the market. In response, Congress passed the Price-Anderson Act. Pub. L. No. 85-256, 71 Stat. 576 (1957). The PAA creates an indemnification scheme for NRC commercial licensees, federal contractors, and third parties to reduce the burden of civil liability related to nuclear incidents. Nuclear licensees can be required to carry a certain amount of private insurance, but the government will indemnify licensees for liability above that amount. *See* 42 U.S.C. § 2210(a), (c). This scheme was designed to "encourage[] the development of the [private] atomic energy industry." *Duke Power Co.*, 438 U.S. at 64 (quoting 42 U.S.C. § 2012(i)).

In 1988, Congress amended the PAA to create a nationally uniform federal cause of action for injuries related to certain nuclear activity. The Act gives district courts jurisdiction over any "public liability action," which is "any suit asserting public liability." 42 U.S.C. § 2014(ii). "Public liability" is defined as "*any* legal liability arising out of or resulting from a nuclear incident." *Id.* § 2014(w) (emphasis added). And a "nuclear incident" is

> any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material.

Id. § 2014(q). In other words, a public liability action is any legal action claiming that the hazardous properties of federally regulated nuclear material caused injury to a person or property.

Notably, this cause of action "aris[es] under" § 2210, and is therefore always federal. *Id.* § 2014(ii). The PAA thus "transforms into a federal action" any public liability action, regardless of the substantive law underlying the complaint. *El Paso Nat. Gas Co. v. Neztsosie*, 526 U.S. 473, 484 & n.6 (1999). The PAA thus "resembles" "complete preemption" of any state causes of action arising from a nuclear incident. *Id.*

The PAA further provides that "the substantive rules for decision" in a public liability action "shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of [§ 2210]," the core provision of the PAA. 42 U.S.C. § 2014(ii). Section 2014(ii) layers onto statutory provisions that displace any state law that regulates nuclear safety, absent federal agreement to the contrary. *See, e.g.*, *id.* § 2021(b) (providing that states "shall have authority to regulate the materials covered … for … safety from radiation hazards" *if* they enter a consent agreement with the NRC). And § 2210, among other things, limits punitive damage awards that could be imposed under state law. *Id.* § 2210(s).

B. Factual Background

1. Like the AEA itself, this case traces its origins back to the Manhattan Project. During World War II, the government contracted with Mallinckrodt to process uranium in St. Louis. Pet.App.4a, 22a-23a. As part of its operations, Mallinckrodt transported radioactive source material to a storage site near the St. Louis Airport. Pet.App.4a-5a, 23a. That source material was then transported to another site one mile away known as "Latty Avenue." Pet.App.5a, 23a.

This case arises out of Cotter's handling of those source materials from 1969-1973. In 1969, the AEC licensed Cotter to possess and use the source material at Latty Avenue. *See* Pet.App.23a; Am. Compl. ¶¶ 44-45, No. 4:22-cv-292 (E.D. Mo. Feb. 7, 2023), ECF No. 44 ("Compl."). Cotter allegedly dried out most of the material (to make it lighter and easier to transport), loaded it onto railcars, and shipped it to Cotter's plant in Colorado. *See* Pet.App.5a; Compl. ¶ 50. This process was substantially completed in 1973, and Cotter allegedly transported the remaining material, mixed with other soil, to a local landfill. Pet.App.5a; Compl. ¶ 50. Between 1969 and 1973, Cotter was an AEC licensee and subject to the then-existing AEC regulations, including the radiation dosage caps and specific limitations on the release of radioactive material. *See* 10 C.F.R. §§ 20.105, 20.106(a) (1970).

Five decades later, in 2022, two plaintiffs sued Cotter (along with three other defendants) in Missouri state court, asserting a variety of state law claims, including negligence, negligence per se, and strict liability. Compl. ¶ 1. The complaint alleges that in the process of drying, loading, and disposing of the material, Cotter released radioactive material into Coldwater Creek—which ran along

the Latty Avenue site. Pet.App.5a. The particles allegedly travelled into a St. Louis-area floodplain, contaminating plaintiffs' nearby properties and giving plaintiffs cancer. Pet.App.23a; Compl. ¶¶ 21-22, 47, 75-76. Yet plaintiffs do not allege that federal regulators ever cited Cotter for violating the applicable radiation limits for public areas during the relevant period.

2. Cotter removed to federal court because Cotter's alleged activity constituted a "nuclear incident" under the PAA, and therefore plaintiffs' claims were properly a public liability action. *See In re Cotter Corp., (N.S.L.)*, 22 F.4th 788, 793 (8th Cir. 2022). Petitioners then moved to dismiss, arguing that federal regulations established the exclusive standard of care, and the complaint lacked any allegations raising a plausible inference that federal regulations had been violated during the relevant period. *See* Pet.App.4a, 20a-21a.

The district court acknowledged that "every circuit court to consider this issue has held federal law preempts state law standards of care." Pet.App.43a. The district court nevertheless denied the motions to dismiss. Because the court could not identify a provision in § 2210 indicating that state standards of care were preempted, the court perceived a congressional intent to allow states to "regulate in this area." Pet.App.36a-38a.

After denying the motions to dismiss, the district court certified the issue for appeal. Pet.App.12a-19a. The court noted that "the question of law is controlling because … the potential imposition of Defendants' proposed [federal] standard [of care], would lead to the dismissal of the action." Pet.App.15a. The Eighth Circuit took jurisdiction under 28 U.S.C. § 1292(b).

3. The Eighth Circuit affirmed. The court acknowledged that under longstanding authority, states cannot enact and enforce statutes and regulations governing the conduct at issue in this case. Pet.App.7a (citing *Cook v. Rockwell Int'l Corp.*, 790 F.3d 1088, 1098 (10th Cir. 2015) (Gorsuch, J.)). The court, however, held that such preemption does not extend to state standards of care applied in "after-the-fact" tort suits. Pet.App.10a (quoting *Cook*, 790 F.3d at 1098). In doing so, the court conceded that it was taking "a path different from [its] sister circuits," which have uniformly "held that federal law preempts state standards of care in a public liability action." Pet.App.10a-11a.

4. The Eighth Circuit denied rehearing en banc on December 18, 2024. Pet.App.2a.

REASONS FOR GRANTING THE PETITION

This case presents an acknowledged circuit split on a critically important legal issue: the standard of liability in tort suits arising from nuclear incidents. In the opinion below, the Eighth Circuit held that liability in PAA public liability actions is determined by state tort standards of care. In reaching that result, the Eighth Circuit admitted that it was breaking the consensus—shared among the Third, Sixth, Seventh, Ninth, and Eleventh Circuits—that federal law displaces state tort standards of care in such actions.

The question presented is important, recurring, squarely presented, and demands a national resolution. The Eighth Circuit's decision upends the longstanding liability rule for nuclear handlers in seven states—home to seven nuclear power reactors—exposing them to liability based on amorphous state standards of care applied by jurors after the fact. Handlers of radioactive materials

could thus be forced to choose between practices that will appease hindsight-driven local juries and practices that best comply with exacting federal requirements—and may even be forced to abandon the nuclear energy and defense industries altogether. The Eighth Circuit's rule is untenable and risks thwarting Congress' efforts to ensure adequate nuclear safety and adequate nuclear development.

Only this Court can restore uniformity and ensure that nuclear handlers near Minneapolis, Minnesota, and Jefferson City, Missouri, are subject to the same liability rules as handlers near Philadelphia, Pennsylvania, or Moline, Illinois. This case is an ideal vehicle in which to resolve the split: The issue is squarely presented and outcome-determinative on paradigmatic facts. The petition should be granted.

I. The Decision Below Expressly Created a 5-1 Split Over the Standard of Care in Public Liability Actions

There is a clear and acknowledged circuit split on the question presented. "[F]ive … circuits have concluded federal nuclear safety standards control in a PAA action, rather than traditional state tort standards of care." *Cook v. Rockwell Int'l Corp.*, 618 F.3d 1127, 1144 n.19 (10th Cir. 2010). The Eighth Circuit below became the first circuit to hold the opposite. And the Eighth Circuit doubled-down on that holding by denying rehearing en banc. Absent this Court's intervention, this split will undermine predictability and result in grossly disparate consequences for the nuclear industry based on the happenstance of where an alleged nuclear incident occurred.

1. The majority view—entrenched for nearly thirty years—is that federal nuclear safety regulations provide the exclusive standard of care in public liability actions.

The Third Circuit was the first to reach this conclusion, holding that "the duty the defendants owe the plaintiffs in tort" in a public liability action "is dictated by federal law." *In re TMI Litig. Cases Consol. II* ("*TMI I*"), 940 F.2d 832, 858 (3d Cir. 1991). The issue originally arose in litigation involving nearly two thousand plaintiffs suing for injuries related to the nuclear accident and associated radiation leak at the Three Mile Island facility. *Id.* at 836. The Third Circuit explained that this Court has held that "the safety of nuclear technology [is] the exclusive business of the Federal Government, and … Congress, by permitting the states to regulate for purposes other than for protection against radiation hazards, reemphasized the state and federal governments' respective spheres." *Id.* at 858 (cleaned up). The court therefore concluded that "states are preempted from imposing a non-federal duty in tort, because any state duty would infringe upon pervasive federal regulation in the field of nuclear safety, and thus would conflict with federal law." *Id.* at 859.

The Third Circuit also emphasized the importance of federal field preemption related to nuclear safety. If "the state adopts … stricter safety standards[,] … the state will create a disincentive to nuclear power that is in conflict with federal law. If more lenient standards are imposed, the state will undercut federal safety efforts." *Id.* at 860 n.22. Thus, the Third Circuit concluded "the plaintiffs' rights will necessarily be determined … by reference to federal law, namely the federal statutes and regulations governing the safety and operation of nuclear facilities." *TMI I*, 940 F.2d at 860. That holding was reaffirmed in the Third Circuit as recently as 2017. *See McMunn v. Babcock & Wilcox Power Gen. Grp.*, 869 F.3d 246, 263 (3d Cir. 2017).

The Seventh Circuit reached the same conclusion: "[F]ederal regulations *must* provide the sole measure of the defendants' duty in a public liability cause of action." *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090, 1105 (7th Cir. 1994) (emphasis added). In that case, a pipefitter sued an Illinois nuclear facility, claiming that he had negligently been exposed to excessive radiation while working and that the state standard of care applied. *Id.* at 1093, 1103. But the court disagreed. "[T]he field of nuclear safety has been occupied by federal regulation," the court emphasized; "there is no room for state law." *Id.* at 1105. A "non-federal duty in tort" would effectively regulate nuclear safety and therefore "conflict with federal law." *Id.* (citation omitted). It would also be "inconsistent with the Price-Anderson scheme" to impose additional state standards on nuclear operators, as the PAA was meant to foster and encourage the private development of nuclear energy. *Id.*

When the Sixth Circuit confronted the question, it adopted the reasoning of the Third and Seventh Circuits. *Nieman*, 108 F.3d at 1553. In *Nieman*, a property owner sued a nuclear processing facility over an alleged uranium leak. *Id.* at 1547. The court "agree[d] with the [Seventh and Third Circuit's] analyses of preemption in *O'Conner* and *TMI II*," that "federal law determines the standard of care and preempts state tort law." *Id.* at 1553.

The Eleventh Circuit's rule is the same: "[F]ederal regulations must provide the sole measure of the defendants' duty in a public liability cause of action." *Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1308 (11th Cir. 1998) (quoting *O'Conner*, 13 F.3d at 1105). In so holding, the court acknowledged it was joining "virtually every federal court to consider the issue." *Id.* The Eleventh Circuit

applied that rule to dismiss a public liability action claiming that a Florida nuclear power plant gave a plaintiff cancer, because there were no allegations that the plant breached the maximum federal dosage requirements. *Id.* at 1307-08. As the Eleventh Circuit recently reiterated, "[i]t is beyond dispute that Congress intended for the federal government, and not the states, to have control over issues of nuclear injury." *Pinares v. United Techs. Corp.*, 973 F.3d 1254, 1263 (11th Cir. 2020).

The Ninth Circuit rounds out the consensus of circuit courts, holding that "federal law preempts states from imposing a more stringent standard of care than federal safety standards" in public liability actions. *In re Hanford Nuclear Reserv. Litig.*, 534 F.3d 986, 1003 (2008). In *Hanford*, thousands of plaintiffs alleged that emissions from a World War II-era plutonium-production facility gave them cancer and other diseases. *Id.* at 995. The plaintiffs insisted that the facility was strictly liable under state law, even if the plant complied with applicable federal dosage regulations. *Id.* at 996. The Ninth Circuit disagreed. "To allow a jury to decide on the basis of a state's reasonableness standard of care would 'put juries in charge of deciding the permissible levels of radiation exposure and, more generally, the adequacy of safety procedures at nuclear plants—issues that have explicitly been reserved to the federal government.'" *Id.* (quoting *TMI II*, 67 F.3d at 1115). The Ninth Circuit also recognized that "the clear weight of authority"—including "[e]very federal circuit"—agreed. *Id.* at 1003.

2. The Eighth Circuit expressly rejected this consensus. The court below "recognize[d] that other circuits have held that federal law preempts state standards of care in a public liability action." Pet.App.10a (citing *Hanford*, 534 F.3d at 1003). But it "disagreed" with each of

those courts, finding no "persuasive reason" to conclude that state tort standards of care are preempted. *Id.*

This case manifestly would have come out differently in most other circuits: The district court expressly acknowledged that applying the rule from the other circuits "would lead to the dismissal of the action." Pet.App.15a. Thus, had Cotter dried and shipped source material in New Jersey instead of Missouri, this case would have been dismissed. Instead, Cotter risks liability based on what a lay jury deems tortious. Only this Court can restore uniformity.

II. The Question Presented is Important, Recurring, and Squarely Presented

It is difficult to overstate the importance of the question presented. 94 nuclear reactors across 28 states power tens of millions of homes and avoid hundreds of millions of metric tons of carbon emissions yearly.[1] Meanwhile, over 18,000 entities and individuals have licenses from the NRC (or a § 2021(b) agreement) to transfer, use, and possess source, byproduct, or special nuclear materials.[2] The nuclear industry has operated for decades on the basis of the stable consensus rule that so long as federal regulations are followed, no liability will result. The decision below upended that consensus.

1. The decision below effects a startling expansion of liability within the Eighth Circuit—home to seven nuclear

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[1] Nuclear Energy Inst., *U.S. Nuclear Plants*, https://tinyurl.com/552jkajn.

[2] NRC, *Nuclear Materials*, https://tinyurl.com/3ur5phtk.

reactors and many spent nuclear fuel and other Manhattan Project sites.[3] Public liability under the PAA is already broad—it encompasses "*any* suit asserting" "*any* legal liability arising out of or resulting from a nuclear incident." 42 U.S.C. § 2014(w), (ii) (emphases added). In the Eighth Circuit, however, handlers of nuclear materials will now be subject to unpredictable, disparate, case-by-case standards of care. This new regulation-by-adjudication regime would "give no real guidance to operators and would allow juries to fix the standard case by case and plant by plant. An operator acting in the utmost good faith and diligence could still find itself liable for failing to meet such an elusive and undeterminable standard." *TMI II*, 67 F.3d at 1115. Liability would turn on modern-day lay jurors' perception of whether a handler of radioactive materials acted reasonably, potentially decades after the events in question. This expansion of civil liability would chill development of nuclear energy, the very thing the AEA and PAA were created to promote, and it would foster unlimited and unpredictable liability, the very thing the public liability action was created to eliminate.

The Eighth Circuit's rule could also place nuclear operators in an impossible situation, forcing them to conform to procedures and practices that lay juries perceive as reasonable, even if such procedures are inconsistent with—or outright contradict—federal safety standards and the applicable license. For instance, a jury applying state tort law might conclude that state law requires intense involvement of personnel (exposing more workers to radiation) or

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[3] *See* NRC, *List of Power Reactor Units* (Feb. 21, 2025), https://tinyurl.com/2v3uzpb8; Lance N. Larson, Cong. Rsch. Serv., IF11201, Nuclear Waste Storage Sites in the United States 2 (Apr. 13, 2020); Atomic Heritage Found., *Project Sites*, https://tinyurl.com/3ytje2m2.

more disruptive handling or inspections of hazardous materials (risking the spread of particulate matter). Jurors may also conclude that nuclear handlers should remove or relocate stored or deposited material, even where the safest solution for the public is to leave the material in place. The end result would be to require nuclear material handlers to shift investment away from the proven federal safety standards and toward ill-advised requirements crafted by plaintiffs and juries, defeating Congress' goal to protect the "health and safety of the public." 42 U.S.C. § 2013(d). Juries applying state law might also decide to impose strict liability for the handling of nuclear material. Such a dramatic expansion of liability could force companies to end operations that are safe by any regulatory measure.

Permitting state common law to dictate nuclear safety operations in this way will also undermine the careful measures that Congress and the regulatory agencies have chosen to maximize public safety, development, and the myriad federal policy interests implicated by nuclear activity. Unlike juries, the federal government must consider a variety of factors when setting nuclear safety standards, including the role that nuclear technologies play in American foreign policy and national security. *See, e.g.*, Tim Echols, *Why Nuclear Energy is a Matter of National Security*, Pub. Utils. Fort., Sept. 2017, at 54, 66, https://tinyurl.com/5n6k647c. The United States has also entered into treaties "for the control of special nuclear materials and atomic weapons." 42 U.S.C. § 2013(c); *see also* NRC, *Treaties and Conventions*, https://tinyurl.com/3amvfsmx (Nov. 6, 2023). And the restrictions placed on domestic handlers of nuclear materials are central to such treaty obligations. Leaving the standard of liability in the hands of jurors applying state law threatens

the regulatory architecture that the federal government has crafted over the last century.

The Eighth Circuit's rule also threatens to disrupt critical government contractors. The Department of Energy contracts with many private companies to handle radioactive materials, including defense contractors involved with the development, production, and upkeep of America's nuclear arsenal. *See* Dep't of Energy, *Locations*, https://tinyurl.com/3x7rz6at. These contractors continue to store and dispose of radioactive waste leftover from the Manhattan project—a task which, even if all nuclear development stopped tomorrow, would continue indefinitely. Dep't of Energy, *Radioactive Waste*, https://tinyurl.com/4vwpr293. Exposing these contractors to public liability actions based on state tort law instead of federal regulatory standards of care would mark a historic expansion of liability.

The United States has consistently argued to this Court that all state regulations of nuclear safety are preempted by the AEA. *See, e.g.*, Brief for the United States as Amicus Curiae at 11, *Nielson v. Priv. Fuel Storage, L.L.C.* (No. 04-575) ("Congress has preempted the field of nuclear safety regulation."); Brief for the United States as Amicus Curiae Supporting Petitioners at 14, *Va. Uranium, Inc. v. Warren*, 587 U.S. 761 (2019) (No. 16-1275) (same); Brief for the United States as Amicus Curiae, *English v. Gen. Elec. Co.*, 496 U.S. 72 (1990) (No. 89-152), 1989 WL 1128199, at *12 (calling the rule "well established"). Yet the decision below threatens to impose a shadow body of regulation, not announced in advance, and crafted by lay jurors.

2. Cases involving the standard for liability under the PAA also recur frequently. Cotter alone has been sued by more than 500 plaintiffs since 2012, and continues to face

at least two other pending putative class actions relating to its activity at Latty Avenue. These cases—seeking many millions in liability—would be judged under the Eighth Circuit's erroneous rule. More broadly, there were 243 alleged "nuclear incidents" under the statute between 1957 and 2018. NRC, *The Price-Anderson Act: 2021 Report to Congress* xx (Dec. 2021), https://tinyurl.com/4bcr5ktd. Liability associated with these cases has been expensive—in the same time period, insurers paid approximately $522 million in losses and expenses (not adjusted for inflation). *Id.* at xx, 1-2 & n.4. If the Eighth Circuit's rule is allowed to stand, more plaintiffs who develop illnesses or injuries may try their hand at a public liability action in the hopes of winning in front of a sympathetic jury under a malleable state standard of care.

Moreover, PAA liability is not only forward looking. Many states toll the statute of limitations in a tort suit until a plaintiff is capable of ascertaining his or her injury. *See, e.g.*, Mo. Rev. Stat. § 516.100. In such cases, if a plaintiff develops cancer later in life and alleges it was caused by a radiation exposure as a child, a handler of nuclear materials could be liable decades in the future. This case illustrates the point: The actions at issue in this case occurred between 1969 and 1973. Pet.App.23a. Yet the Eighth Circuit's rule would permit jurors today—who will inevitably Monday morning quarterback those decades-old safety decisions—to judge the lawfulness of those actions.

And the question presented grows in importance by the year as nuclear energy becomes a more integral part of the national economy. Just last month, the new Secretary of Energy used his opening remarks to the Department to set goals of "[m]oderniz[ing] America's nuclear stockpile" and "unleash[ing] commercial nuclear power."

Dep't of Energy, *Secretary Chris Wright Delivers Welcome Remarks to DOE Staff* (Feb. 5, 2025), https://tinyurl.com/4x2tuznm. In addition, electricity demands related to artificial intelligence and cloud computing have caused large tech companies to expand nuclear energy development. *See, e.g.*, Ryan Browne, *Why Big Tech is turning to nuclear to power its energy-intensive AI ambitions*, CNBC (Oct. 16, 2024), https://tinyurl.com/2a5ejaz3. And the NRC has proposed regulations that would clarify the licensing process for certain advanced nuclear reactors. *See* Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors, 89 Fed. Reg. 86,918 (Oct. 31, 2024). The Eighth Circuit's rule stands squarely in the way of these kinds of developments.

3. This case is also an ideal vehicle to address the split. The decision below was narrowly focused on the legal question of whether federal law provides the standard of care in a public liability action. And the holding on the question presented was outcome-determinative. As the district court noted in its order certifying an appeal, "the question of law is controlling because resolution of the standard of care, and the potential imposition of Defendants' proposed standard, would lead to the dismissal of the action." Pet.App.15a. Indeed, the issue was dispositive in most cases in the circuit split discussed above. *See Roberts*, 146 F.3d at 1308; *O'Conner*, 13 F.3d at 1094, 1105, 1107; *see also TMI I*, 940 F.2d at 859-60.

III. The Decision Below is Incorrect

Review is also warranted because the Eighth Circuit erred in holding that state tort law provides the standard of care in PAA public liability actions like this one. Just as federal law preempts formal state regulation of the activity at issue in this case, federal law likewise preempts state standards of care governing the same.

1. In PAA public liability actions, federal nuclear safety regulations provide the standard of care. This Court, the Eighth Circuit, and every other federal court of appeals to confront the question has held that direct state regulation of nuclear safety is preempted by federal law. This Court made that abundantly clear in 1983, explaining "the federal government has occupied the entire field of nuclear safety concerns." *Pacific Gas*, 461 U.S. at 212. And the Court has reiterated ever since that "states are precluded from regulating the safety aspects of nuclear energy." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. at 238, 240-41 (1984).

That conclusion was firmly rooted in the statutory history and structure. *See supra* pp. 6-7. Until 1959, "no significant role was contemplated for the States" regarding the "national security, public health, and safety" aspects of nuclear materials. *English*, 496 U.S. at 81 (cleaned up). Then, in 1959, when Congress amended the AEA to "increase the States' role," Congress did so narrowly. *Id.* Through § 2021(b), Congress authorized states (with numerous caveats and safeguards) "to regulate" the nuclear materials that give rise to public liability actions, including "[s]ource materials," "for the protection of the public health and safety from radiation hazards." But a state may do so only if the state first enters into an agreement with the NRC specifically allowing such regulation, and so long as the state regulation is "coordinated and compatible" with the NRC's regulations. 42 U.S.C. § 2021(b), (g).

It is therefore well settled that without such an agreement, states generally have no authority to regulate the safety of those nuclear materials within federal regulatory jurisdiction. *See Pacific Gas*, 461 U.S. at 210-12 & n.25 (citing 42 U.S.C. § 2021). As every member of the Court

recently agreed, states cannot "regulate the activities discussed in § 2021" in order to "regulat[e] nuclear safety" "without an NRC agreement." *Va. Uranium v. Warren*, 587 U.S. 761, 770 (2019) (opinion of Gorsuch, J.); *id.* at 787-88 (opinion of Ginsburg, J.); *id.* at 795-96 (Roberts, C.J., dissenting).

But that is exactly what the Eighth Circuit's rule allows. Here, plaintiffs allege that Cotter mishandled radioactive source material and that the ensuing spread of radiation caused them to develop cancer. Plaintiffs further contend that Cotter's alleged mishandling of that source material violated various state-law standards of care, even though the NRC never authorized such standards. Thus, by permitting plaintiffs' claim to proceed, the Eighth Circuit has held that state law imposes the standard that Cotter had to follow (and the steps others must take in the future) to avoid liability stemming from radiological safety hazards when undertaking § 2021 activities concerning § 2021 materials—despite Missouri and others never having been authorized by the NRC to regulate nuclear safety. As every member of the Court explained in *Virginia Uranium*, that is precisely the kind of state-law regulation of nuclear safety that federal law does not permit.

2. The Eighth Circuit correctly recognized that "absent an agreement between the NRC and a state," a state cannot regulate the activities at issue in this case via "nuclear safety statutes or regulations." Pet.App.7a (cleaned up). Thus, the Eighth Circuit acknowledged that Missouri could not have attempted to regulate Cotter's activity in this case by statute or formal regulation, given federal preemption. *See* Pet.App.7a. The court erred in not applying that same conclusion to state tort standards of care.

a. The Eighth Circuit relied primarily on the definition of "public liability action" in 42 U.S.C. § 2014(ii). Under that provision, Congress provided that "the substantive rules for decision in" public liability actions "shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of [42 U.S.C. § 2210]." The Eighth Circuit reasoned that because § 2014(ii) provides that the "law of the State" applies "unless such law is inconsistent with the provisions of [§ 2210]," state standards of care apply unless § 2210 itself directly preempts them. Pet.App.8a-9a. That is incorrect.

The Eighth Circuit erred by skipping over a key question: what is "the law of the State" for purposes of a public liability action? With respect to state laws regulating nuclear safety, this Court has already provided the answer: When federal law "occup[ies] the entire field … to the exclusion of state regulation," federal law displaces any overlapping state standard within the preempted field. *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012) (cleaned up). In other words, federal law *is* "the law of the State" where, as here, federal law speaks to the issue the State is attempting to regulate. There is "no exception for state common-law duties and standards of care." *Id.* This is true under any theory of preemption. *See, e.g.*, *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 872 (2000). After all, "[s]tate tort law that requires" defendants "to be safer … than the model the [federal agency] has approved disrupts the federal scheme no less than state regulatory law to the same effect." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 325 (2008). Accordingly, where federal law sets the standard of care, that standard "may not be supplemented by laws enacted by the States." *United States v. Locke*, 529 U.S. 89, 114 (2000).

State law still has an important role to play in public liability actions. State law may generally fill gaps not provided by federal law, such as the statute of limitations or the substantive law for other elements of the tort claim, such as damages. *See, e.g.*, *Nieman*, 108 F.3d at 1559-60 (applying state law limitations in a public liability action); 42 U.S.C. § 2210(s) (limiting but not supplanting state law damage awards). But "Congress recognized that state law would operate in the context of a complex federal scheme which would mold and shape any cause of action grounded in state law." *O'Conner*, 13 F.3d at 1100. Because Congress has preempted state tort standards of care by preempting all state regulation of the conduct at issue in these suits, the "law of the State" when it comes to the standard of care is dictated by federal law.

b. The Eighth Circuit resisted this conclusion under the rationale that the federal preemption of state regulations and statutes here does not extend to tort standards of care. Citing a Tenth Circuit opinion by then-Judge Gorsuch, the Eighth Circuit reasoned that Congress often "entrusts before-the-fact regulation to a federal agency while leaving at least some room for after-the-fact state law tort suits." Pet.App.10a (quoting *Cook*, 790 F.3d at 1098). But there is no textual basis for distinguishing between these two kinds of state regulation. Under the Eighth Circuit's interpretation of § 2014, direct state regulation of nuclear safety would be "the law of the State," and thus not preempted in a public liability action.

Furthermore, the fact that there is "some room" for tort suits does not mean that state law sets the standard of care in those suits. After all, this is not a garden variety tort suit—it is a federal cause of action that Congress specifically designed to provide uniform and predictable resolution to claims arising from nuclear incidents. *See TMI*

I, 940 F.2d at 857. When injured plaintiffs sue under this provision, states are not free to impose whatever standard of liability they choose in such suits given the extremely pervasive scheme of federal safety regulation involved. Instead, as explained above, this Court's precedents make clear that when federal law preempts the field, it is the uniform federal law, not the varying laws of 50 States, that sets the standard.

This case well illustrates the reasons for that rule. The federal scheme advances the twin goals of development and safety. *See supra* p. 5. And interference by juries applying state-law standards of care after the fact, no less than interference by state agencies or legislators, threatens to undermine those objectives. In fact, this Court has recognized that "tort law, applied by juries under a negligence or strict-liability standard, is *less* deserving of preservation" than a "state statute, or a regulation adopted by a state agency," given that state lawmakers and regulators can "at least be expected to apply [a] cost-benefit analysis" in promulgating such statutes and regulations. *Riegel*, 552 U.S. at 325 (emphasis added). Lay juries, in contrast, are free to impose liability based on any number of considerations, even if they are directly contrary to national policy and interests. State standards of care in this realm, as much as state regulations, could create direct conflicts with federal requirements and may sometimes render it impossible to comply with federal requirements while avoiding liability under state standards. *See, e.g.*, 10 C.F.R. § 20.1301; 10 C.F.R. §§ 20.105, 20.106 (1970).

c. Finally, the Eighth Circuit read *Silkwood* for the proposition that "state tort law would apply" in these cases. Pet.App.7a (quoting *Silkwood*, 464 U.S. at 252). But, as courts of appeals have explained, *Silkwood* had

nothing to do with the appropriate standard of care in these suits.[4] *Silkwood* was about *remedies*, holding that then-existing federal law did not preempt state punitive damages remedies. 464 U.S. at 258. The petitioner in that case sought review only of the court of appeals' "ruling with respect to the punitive damages award," not the standard of care applied. *Id.* at 246. Nor did the standard of care matter in *Silkwood*, given that "Silkwood's exposure to radiation … was two and one-half times the amount permitted by federal regulations." *Roberts*, 146 F.3d at 1308 n.5. And even *Silkwood*'s narrow remedial holding was swiftly abrogated by statute. *See* Pub. L. No. 100-408, 102 Stat. 1066, 1078 (1988).

On top of that, *Silkwood* was decided four years before Congress passed the 1988 PAA amendments that federalized public liability actions. That timing is all the more significant given that *Silkwood*'s reasoning was driven by the Court's reading of the then-existing legislative history. *See* 464 U.S. at 251-56. Subsequent legislative history, including for the 1988 amendments, suggests that federal law preempts state standards of care. *See, e.g.*, H.R. Rep. No. 100-104, pt. 1, at 18 (1987). In any event, Congress' subsequent legislation in this area—which includes ratification of a binding international nuclear treaty based on Congress' finding that the PAA "provides a predictable legal framework," *see* 42 U.S.C. § 17373—was against the backdrop of the uniform view of the courts of appeals that federal law would provide the standard of care in these suits, and ratified that view.

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[4] *See, e.g.*, *Abdullah v. Am. Airlines, Inc.*, 181 F.3d 363, 375 (3d Cir. 1999); *Gilstrap v. United Air Lines*, 709 F.3d 995, 1006 (9th Cir. 2013); *Roberts*, 146 F.3d at 1308 n.5.

CONCLUSION

The petition for a writ of certiorari should be granted.

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