

No. 24-1001

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

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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SUPPLEMENTAL BRIEF FOR RESPONDENTS

The Government recommends denying certiorari to allow other courts of appeals to consider petitioners' novel reading of the statute and to allow this case to proceed to final judgment. U.S. Br. 19-21. That recommendation should make clear that petitioners' sky-is-falling claims are baseless: If the Eighth Circuit's decision really had "enterprise-shaping consequences" that would bring the nuclear industry to its knees or cause insurance premiums to skyrocket, Pet. Reply 5, surely the Government would not urge this Court to let the decision stand.

And the Government's brief itself provides still more reason for percolation. The Government conspicuously declines to endorse petitioners' reading of the statute. Instead, the Government offers yet *another* new interpretation—again, one that no court has even considered. U.S. Br. 16-18, 19-21.

This Court should follow the Government's recommendation and deny certiorari.

1. The Government advises this Court to wait before granting review for two separate reasons.

First, the Government explains that "this Court could benefit from further consideration and development of the arguments on both sides of the question presented before it grants review." U.S. Br. 20. Rightly so. The Eighth Circuit was the first to consider the plain language of 42 U.S.C. § 2014(ii) in setting the standard of care for claims like the one at issue in this case. The courts of appeals on the other side of the purported split set the standard of care based on their sense of the correct balance between safety and industry growth. *See* BIO 28-29.

Recognizing that such policy-based reasoning is no longer defensible, petitioners advance a reading of the statute that they did not advance below and that “no court of appeals has addressed.” U.S. Br. 20. And apparently unconvinced by petitioners’ argument, the Government injects yet another brand-new reading of the statute into the mix (plus a third brand-new fallback argument). *Id.* 16-18.

Second, the Government recommends awaiting final judgment in this case so “the Court will be better able to assess the practical significance of the court of appeals’ holding” on this case. U.S. Br. 20. As the Government acknowledges, “respondents’ amended complaint alleges the violation of both federal and state standards of care.” *Id.* Petitioners protest that the federal standards of care allegation is “conclusory.” Pet. Reply 9. But the district court did not accept that argument at the motion-to-dismiss stage. *See* Mot. to Dismiss, ECF No. 59, at 6-9. Moreover, as the Government explains, further proceedings will “clarify whether the federal- and Missouri-law standards of care are actually different.” U.S. Br. 21; *see also* BIO 13 (state-law standard of care may be informed by federal regulations). Finally, only one of the defendants has sought certiorari, and the standard-of-care issue “might be resolved differently” for that defendant than the others, which were not federal licensees. U.S. Br. 21. All of those are powerful reasons not to wade into this case in the present interlocutory posture.

The Government’s recommendation to allow percolation speaks volumes about petitioners’ claim that the decision below will “chill development of nuclear energy.” Pet. 17. After all, the President has

declared that “[i]t is the policy of the United States to . . . [r]establish the United States as the global leader in nuclear energy.” Exec. Order No. 14,300, § 2(a); *see also* U.S. Br. 29-30, *United States v. Cotter Corp.*, No. 25-1127 (Mar. 23, 2026). If the Eighth Circuit’s decision were truly a serious threat to that goal, surely the Government would not have recommended waiting years to consider the question presented.

2. The Government disagrees with respondents on split and on the bottom line of the merits, but its arguments on those issues only provide yet more reason to deny certiorari.

As to the split, the Government acknowledges that the split is shallower than petitioners contend. *See* U.S. Br. 19 & n.3 (conceding that Sixth and Ninth circuits have weighed in only in dicta). For the reasons set forth in the brief in opposition, the split is shallower still, with only one other circuit having squarely weighed in against the Eighth Circuit. *See* BIO 24-28.

On the merits, recall that the question presented is whether state or federal law supplies the standard of care in a so-called “public liability action,” a suit related to nuclear exposure in which, by statute, “the substantive rules for decision . . . shall be derived from the law of the State in which the nuclear incident involved occurs.” 42 U.S.C. § 2014(ii). The Government acknowledges that the statutory term “‘substantive rules for decision’ could literally be read to encompass nuclear-safety standards.” U.S. Br. 16. And it does not even attempt to defend petitioners’ “federal-law-*is*-the-law-of-the-state” reading. *See* Pet. 24; BIO 19-23.

Instead, the Government comes up with yet another brand-new reading of the statutory language specifying that “substantive rules for decision . . . shall be derived from the law of the State”—a reading that no lower court has yet considered. Per the Government, state law would “identify the general theories of liability” and “specify the elements of each of those theories—*e.g.*, duty, breach, causation, and damages.” U.S. Br. 16-17. The Government does not explain what it would mean for state law to “specify” duty and breach without *also* specifying the standard of care. And it provides no theory—let alone one grounded in the text of the statute—as to which elements the Price-Anderson Act incorporates from state law and which ones it discards.

The Government also offers a novel fallback argument. “Even if the term ‘substantive rules for decision’ is construed” to encompass standards of care, the statute does not say that “all state-law ‘rules for decision’ must be applied mechanically and inflexibly in public liability actions.” U.S. Br. 17. Instead, the statute says that the rules in public liability actions “shall be *derived from* the law of the State.” *Id.* (quoting 42 U.S.C. § 2014(ii)). But even if that’s right, it’s hard to see how to get from the law of Missouri to federal regulations. “Derived from” means “[d]rawn, obtained, descended, or deduced” from. Oxford Eng. Dict. (2d ed. 1989). There’s no evidence that the federal regulations were “drawn from” state common-law rules. Quite the opposite: The Nuclear Regulatory Commission bases its regulations on all sorts of information, including its own research, testimony from affected parties, and regulatory proposals from independent advisory bodies. *See* Nuclear Reg. Comm’n, *How We Regulate*, <https://perma.cc/AP67->

7RR2. It doesn't seem to consider state common law, let alone "draw[]" federal regulations from that source.

In any event, the Government is correct about one thing: Further percolation is in order, to allow lower courts to weigh in on the various theories petitioners and the Government have put forward in their effort to justify reading "substantive rules of decision . . . derived from the law of the State" to mean that standards of care must be drawn from federal regulation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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