No. 25-_____

IN THE
Supreme Court of the United States

SHELBY COUNTY, IOWA; STORY COUNTY, IOWA; SHELBY COUNTY BOARD OF SUPERVISORS; STORY COUNTY BOARD OF SUPERVISORS; STEVE KENKEL, IN HIS OFFICIAL CAPACITY AS A SHELBY COUNTY SUPERVISOR; CHARLES PARKHURST, IN HIS OFFICIAL CAPACITY AS A SHELBY COUNTY SUPERVISOR; DARIN HAAKE, IN HIS OFFICIAL CAPACITY AS A SHELBY COUNTY SUPERVISOR; LATIDAH FAISAL, IN HER OFFICIAL CAPACITY AS A STORY COUNTY SUPERVISOR; LINDA MURKEN, IN HER OFFICIAL CAPACITY AS A STORY COUNTY SUPERVISOR; AND LISA HEDDENS, IN HER OFFICIAL CAPACITY AS A STORY COUNTY SUPERVISOR,
Petitioners,

v.

WILLIAM COUSER AND SUMMIT CARBON SOLUTIONS, LLC,
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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October 3, 2025

QUESTION PRESENTED

This case presents an entrenched circuit conflict over the scope of federal preemption under the Pipeline Safety Act—an issue that affects the authority of tens of thousands of state and local governments over millions of miles of pipelines.

The PSA preempts state and local "safety standards" covering technical matters such as the "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance" of interstate pipelines. 49 U.S.C. §§ 60104(c), 60102(a)(2)(B). But it withholds federal authority over "the location or routing of" such pipelines, preserving that power for state and local governments. *Id.* § 60104(e).

The circuits are divided on how to apply the PSA's preemption and preservation provisions. The Fourth and Fifth Circuits focus on the "effect" of a challenged state or local law: they uphold measures that govern where a pipeline may go, but strike down ones that control how to safely design, install, inspect, operate, and maintain a pipeline. The Eighth Circuit, by contrast, focuses on the "primary motivation" behind a challenged state or local rule: if a state or locality expressed too much concern about safety when regulating a pipeline's location or routing, that court treats the enactment as a preempted "safety standard."

The question presented is:

Whether a state or local law regulating the location or routing of an interstate pipeline is a preempted "safety standard" under the Pipeline Safety Act when a court concludes that the law was primarily motivated by safety concerns.

PARTIES TO THE PROCEEDINGS

Petitioners Shelby County, Iowa; Shelby County Board of Supervisors; Steve Kenkel, in his official capacity as a Shelby County Supervisor; Charles Parkhurst, in his official capacity as a Shelby County Supervisor; and Darin Haake, in his official capacity as a Shelby County Supervisor, were defendants in the district court proceedings and the appellants in the court of appeals proceedings in No. 23-3758.

Petitioners Story County, Iowa; Story County Board of Supervisors; Latidah Faisal, in her official capacity as a Story County Supervisor; Linda Murken, in her official capacity as a Story County Supervisor; and Lisa Heddens, in her official capacity as a Story County Supervisor, were defendants in the district court proceedings and the appellants in the court of appeals proceedings in No. 23-3760.

Respondents William Couser and Summit Carbon Solutions, LLC were the plaintiffs in the district court proceedings and the appellees in the court of appeals proceedings.

RELATED CASES

Decisions Under Review

Couser, et al. v. Shelby Cnty., et al., 139 F.4th 664 (8th Cir. June 5, 2025) (Nos. 23-3758 & 23-3760) (affirming district court in No. 23-3758; affirming in part, vacating in part, and remanding in No. 23-3760)

Couser, et al. v. Shelby Cnty., et al., 704 F. Supp. 3d 941 (S.D. Iowa Dec. 4, 2023) (No. 1:22-cv-00020-SMR-SBJ) (order on cross-motions for summary judgment; entering permanent injunction)

Couser, et al. v. Story Cnty., et al., 704 F. Supp. 3d 917 (S.D. Iowa Dec. 4, 2023) (No. 4:22-cv-00383-SMR-SBJ) (order on cross-motions for summary judgment; entering permanent injunction)

Couser, et al. v. Shelby Cnty., et al., 2025 WL 2105647 (8th Cir. July 28, 2025) (Nos. 23-3758 & 23-3760) (denying rehearing)

Other Related Decisions

Couser, et al. v. Shelby Cnty., et al., 2024 WL 440768 (8th Cir. Jan. 16, 2024) (No. 23-2818) (dismissing appeal as moot)

Couser, et al. v. Shelby Cnty., et al., 681 F. Supp. 3d 920 (S.D. Iowa July 10, 2023) (No. 1:22-cv-00020-SMR-SBJ) (entering preliminary injunction)

Couser, et al. v. Shelby Cnty., et al., 2023 WL 8375677 (S.D. Iowa July 27, 2023) (No. 1:22-cv-00020-SMR-SBJ) (denying motion to certify questions to Iowa Supreme Court)

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OPINIONS BELOW

The opinion of the court of appeals (App. 1a-23a) is reported at 139 F.4th 664. The orders of the district court (App. 24a-32a, 33a-73a) are reported at 704 F. Supp. 3d 941 and 704 F. Supp. 3d 947, respectively.

JURISDICTION

The Eighth Circuit entered judgment on June 5, 2025, and denied a petition for rehearing on July 28, 2025. App. 74a-75a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTION, STATUTES, AND ORDINANCES INVOLVED

The Supremacy Clause of the United States Constitution, art. VI, cl. 2; relevant provisions of the Pipeline Safety Act; Shelby County, Iowa Ordinance 2022-4; and Story County, Iowa Ordinance 311 are reproduced at App. 76a-134a.

INTRODUCTION

This case presents a square conflict over what counts as a preempted "safety standard" under the Pipeline Safety Act. The PSA preempts state and local "safety standards for interstate pipeline facilities," but preserves those governments' authority "to prescribe the location or routing of a pipeline facility." 49 U.S.C. § 60104(c), (e). When Congress listed the subjects that

federal safety rules may cover—"design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance"—it focused on technical matters of engineering and operation, not where a pipeline may be placed. *Id.* § 60102(a)(2)(B).

The courts of appeals have adopted conflicting legal rules for applying the PSA's preemption and preservation provisions. In the Fourth and Fifth Circuits, the analysis turns on a challenged law's *effect*: if it governs a pipeline's location or routing, it is within the local authority Congress preserved; if it intrudes into the federal domain of pipeline installation, operation, and maintenance, it is a preempted safety standard. The Eighth Circuit, by contrast, looks to the *motive* behind a challenged state or local government action. If the court infers that the government's "primary motivation" was protecting safety, App. 9a, it classifies the measure as a preempted "safety standard"—even when the challenged law governs only where a pipeline may sit.

That conflict was outcome-determinative in this case. Two Iowa counties—Shelby and Story—adopted zoning ordinances requiring respondent Summit Carbon Solutions, LLC to construct its proposed carbon dioxide pipeline a minimum distance away from city centers, hospitals, homes, and schools. A majority of the Eighth Circuit panel held that the PSA preempted these setback provisions because the counties had expressed concern about their residents' safety. The dissenting judge criticized that motivation-based analysis, observing that local governments necessarily balance economic, environmental, and safety concerns when enacting zoning laws. Drawing on the Fourth and Fifth Circuit cases on the other side of the split,

she would have upheld the setbacks because their effects—regulating pipeline location and routing—were not within the sphere Congress reserved for the federal government.

The Eighth Circuit erred in striking down the counties' ordinances. The PSA's text, context, and history show that Congress did not intend to preempt local land-use regulations like the setback provisions. The Eighth Circuit's contrary conclusion—that those provisions are preempted safety standards because the counties were "motivat[ed]" by safety when enacting them—conflicts with this Court's preemption precedents, which generally accord local-government motive no weight. And it conflicts with the PSA, which preserves local zoning laws in § 60104(e).

The stakes of the Eighth Circuit's decision are enormous. It would strip tens of thousands of state and local governments of authority over millions of miles of pipelines, even as carbon dioxide systems like Summit's are proliferating rapidly. No federal agency claims power to regulate pipeline location or routing, but under the Eighth Circuit's rule no state or local government may do so either. The result is a dangerous regulatory vacuum in which no government can control where pipelines can go.

This petition is an ideal vehicle to address that issue and resolve the split. The question presented was dispositive below. The record is developed, and there are no factual disputes. Only this Court can restore the balance Congress struck between federal authority over safety standards for interstate pipelines and state and local authority over those pipelines' location and routing.

STATEMENT

A. Legal Background

1. A series of deadly accidents in the 1960s exposed the lack of uniform safety standards for interstate pipelines. The worst incident was "a 1965 explosion in Natchitoches, La." that "gutted a 13-acre area, killed 17 people, burned five houses, and melted cars and rocks in the vicinity." Lyndon B. Johnson, *Statement by the President Upon Signing the Natural Gas Pipeline Safety Act of 1968* (Aug. 13, 1968). The Federal Power Commission determined that the Natchitoches pipeline failed from stress and corrosion, but no federal agency had authority to impose safety standards that might have averted the disaster.[1]

Congress responded with the Natural Gas Pipeline Safety Act of 1968[2] and then the Hazardous Liquid Pipeline Safety Act of 1979,[3] which were recodified by the Pipeline Safety Act of 1994, or PSA, 49 U.S.C. §§ 60101-60137. The PSA aims "to provide adequate protection against risks to life and property posed by" pipelines. *Id.* § 60102(a)(1). To that end, the statute directs the Secretary of Transportation to "prescribe minimum safety standards" that "may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation,

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[1] *See Natural Gas Pipeline Safety Regulations: Hearings on S. 1166 Before the S. Comm. on Commerce*, 90th Cong. 35 & n.11 (1967) (citing Fed. Power Comm'n, Bureau of Nat. Gas, *Final Staff Report on the Investigation of the Failure of Tennessee Gas Transmission Company Pipeline No. 100-1 Near Natchitoches, Louisiana on March 4, 1965*, Docket No. CP65-267 (Aug. 12, 1965)).

[2] Pub. L. No. 90-481, 82 Stat. 720.

[3] Pub. L. No. 96-129, 93 Stat. 989.

replacement, and maintenance of pipeline facilities." *Id.* § 60102(a)(2)(B).[4]

The Pipeline and Hazardous Materials Safety Administration has implemented this mandate with regulations governing hazardous-liquid-pipeline accident and safety-condition reporting,[5] design requirements,[6] construction,[7] pressure testing,[8] operation and maintenance,[9] qualification of personnel,[10] and corrosion control.[11] These regulations impose minutely detailed requirements. To name just a few: Operators must submit accident reports if a pipeline releases five or more gallons of hazardous liquid.[12] Pipes must be designed to withstand an internal pressure set by a formula that turns on yield strength, wall thickness, diameter, seam joints, and temperature.[13] Pipes cannot have "wrinkle bend[s],"[14] and welders cannot

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[4] A pipeline facility "includes a pipeline, a right of way, a facility, a building, or equipment" that is "used to transport" gas or "hazardous liquid in interstate or foreign commerce." 49 U.S.C. § 60101(a)(3), (5)-(8), (18). "'[P]ipeline transportation' means transporting gas and transporting hazardous liquid." *Id.* § 60101(a)(19).

[5] 49 C.F.R. §§ 195.48-195.65.

[6] *Id.* §§ 195.100-195.134.

[7] *Id.* §§ 195.200-195.266.

[8] *Id.* §§ 195.300-195.310.

[9] *Id.* §§ 195.400-195.454.

[10] *Id.* §§ 195.501-195.509.

[11] *Id.* §§ 195.551-195.591.

[12] *Id.* § 195.50(b).

[13] *Id.* § 195.106(a) ($P = (2St/D) \times E \times F$).

[14] *Id.* § 195.212(a).

use "miter joint[s]."[15] And certain pipes must have "cathodic protection" to guard against the kind of corrosion that affected the Natchitoches line.[16]

2. Before 1968, regulating interstate pipelines fell to the States, which had imposed a patchwork of sometimes-conflicting safety standards. Connecticut "prescribed minimum electric resistivity standards for pipe coatings to protect pipe from corrosion"; New York "require[d] X-ray examination of at least a prescribed minimum sample of the welds in each project"; and several States "require[d] automatic valves" while others "forbid them." H.R. Rep. No. 90-1390, at 14 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3229-30. "Thus the applicable legal safety restraints [we]re frequently not uniform in respect to various segments of a single pipeline company system." *Id.*, 1968 U.S.C.C.A.N. 3230.

Congress addressed this lack of uniformity with a narrow preemption provision: States may not adopt or enforce "safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c).

At the same time, Congress preserved traditional state authority. The PSA expressly denies the federal government—and therefore leaves to States and localities—the power "to prescribe the location or routing of a pipeline facility." *Id.* § 60104(e).[17] PHMSA recognized this division in connection with the pipeline at

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[15] *Id.* § 195.216.

[16] *Id.* § 195.563.

[17] By contrast, for liquefied natural gas pipelines, Congress authorized the Secretary of Transportation to "prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility." 49 U.S.C. § 60103(a).

issue here: because "there is no . . . federal agency that determines siting of . . . carbon dioxide pipelines," responsibility for siting "rests largely with the individual states and counties" through which such pipelines pass. App. 142a (Ltr. to Lee Blank, CEO, Summit Carbon Solutions).

B. Factual Background

1. The United States has around 5,000 miles of carbon dioxide pipelines.[18] Most of the gas those pipelines carry is injected underground for "enhanced oil recovery," a process in which carbon dioxide is used to loosen trapped crude oil.[19] Other carbon dioxide is transported for "sequestration." App. 34a. Estimates suggest that the existing network of carbon dioxide pipelines could expand nearly tenfold by 2050.[20]

Carbon dioxide is odorless and colorless. App. 85a. Because it is denser than air, carbon dioxide displaces oxygen and tends to pool at ground level. Exposure can cause headaches, drowsiness, elevated heart rate and blood pressure, and ultimately death by asphyxiation. C.A. App. 360, 1231. In pipelines, carbon dioxide is often transported under enormous

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[18] *See* PHMSA, *Annual Report Mileage for Hazardous Liquid or Carbon Dioxide Systems* (last updated Sept. 8, 2025), https://www.phmsa.dot.gov/data-and-statistics/pipeline/annual-report-mileage-hazardous-liquid-or-carbon-dioxide-systems.

[19] U.S. Dep't of Energy, Nat'l Energy Tech. Lab'y, *Commercial Carbon Dioxide Uses: Carbon Dioxide Enhanced Oil Recovery* (accessed Sept. 23, 2025), https://netl.doe.gov/research/coal/energy-systems/gasification/gasifipedia/eor.

[20] *See* Press Release, U.S. Dep't of Transp., *USDOT Proposes New Rule to Strengthen Safety Requirements for Carbon Dioxide Pipelines* (Jan. 15, 2025), https://www.transportation.gov/briefing-room/usdot-proposes-new-rule-strengthen-safety-requirements-carbon-dioxide-pipelines.

pressure and temperature as a "supercritical" fluid. App. 92a.[21]

In 2020, a carbon dioxide pipeline ruptured in Satartia, Mississippi. App. 86a. Nearly 50 residents were hospitalized and 200 had to be evacuated. *Id.*

2. Respondent Summit Carbon Solutions, LLC plans to construct a 2,000-mile pipeline system traversing five Midwestern States (Iowa, North Dakota, South Dakota, Minnesota, and Nebraska). App. 34a. The pipeline will transport supercritical carbon dioxide from 30 facilities (mostly ethanol plants) to sequestration sites in North Dakota. C.A. App. 17, 1028. In Iowa, it will extend 700 miles and pass through 30 counties, including Shelby and Story. App. 34a.

Summit's pipeline affects thousands of Iowa landowners. Before this lawsuit, Summit had requested eminent domain over 1,035 parcels of land, C.A. App. 464-65, 1276-77, and easement rights that would permanently restrict the building of structures along the pipeline, *id.* at 479, 1282. An overwhelming majority of Iowans—nearly 80%[22]—oppose such a use of eminent domain. *See id.* at 387 (highlighting the "passion behind the opposition to the use of Eminent Domain for the purposes of the construction of [a] hazardous liquid pipeline").

3. On hearing Summit's plans, concerned citizens petitioned Shelby County's Board of Supervisors to adopt an ordinance regulating hazardous liquid

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[21] PHMSA only regulates carbon dioxide transported by pipeline in its supercritical state. *See* 49 C.F.R. § 195.2 (defining "carbon dioxide").

[22] *See* Shelby Cnty. Statement of Undisputed Material Facts ¶ 4, No. 1:22-cv-00020, ECF #59-1 (Aug. 4, 2023) ("Shelby SOF"); Story Cnty. Statement of Undisputed Material Facts ¶ 6, No. 4:22-cv-00383, ECF #31-2 (Aug. 21, 2023) ("Story SOF").

pipelines. C.A. App. 340-58. At a hearing, the local Chamber of Commerce supported such an ordinance as "key to the economic growth of Shelby County." *Id.* at 290 (Tr. 18:23-24). A city administrator tied the measure to protecting the city's property tax base. *Id.* at 291 (Tr. 22:10-12). A school superintendent stressed that a ruptured pipe near the district could endanger "1,500 students" and "200 staff," potentially overwhelming local hospitals. *Id.* (Tr. 19:12-18). One farmer asked, "is there anybody in this room who would want to set their children or their grandchildren out there next to that pipeline when they charge it up with pressure?" *Id.* at 293 (Tr. 30:19-23). Another called Summit's project "a big money grab" that trampled constitutional "property rights." *Id.* (Tr. 27:17-28:5).

Shelby County enacted Ordinance 2022-4 in November 2022. *See* App. 80a-112a. As relevant here, the ordinance imposes "minimum separation distances"—setbacks—prohibiting construction of a hazardous liquid pipeline within two miles of city limits[23]; a half mile of a church, school, nursing home, or hospital; a quarter mile of a park; and 1,000 feet of any occupied structure. App. 98a-99a (§ 8.4). The county's Zoning Commission explained that the ordinance seeks to (1) "protect the health, safety and welfare of citizens"; (2) "preserve the current use and value of property"; and (3) "minimize the economic burden or potential limited utility of the land for future development." C.A. App. 386-90.

4. Following a similar process, Story County enacted Ordinance 311 in May 2023. *See* App. 113a-

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[23] The two-mile setback for city limits existed in Shelby County's zoning plan years before the county adopted Ordinance 2022-4. C.A. App. 288.

134a. As relevant here, the ordinance prohibits pipeline construction within a quarter mile of dwellings, schools, hospitals, churches, city boundaries, and urban expansion areas. App. 125a-126a. These setback requirements are consistent with the county's strategic plan for preserving its "rural character" and aim to preserve "existing rural residential development," to "ensure orderly growth and development," and to "address social, economic, and environmental concerns related to conflicts between different uses of land." App. 119a.

C. Proceedings Below

1. Rather than engage with the counties to identify an acceptable route or request a variance, Summit went straight to court. Summit filed suits seeking declaratory and injunctive relief, claiming the ordinances were preempted under Iowa and federal law. C.A. App. 11-46, 977-1014.

2. In December 2023, the district court granted summary judgment to Summit and permanently enjoined Shelby's and Story's ordinances. *First*, the court found the setback provisions preempted under Iowa law. App. 29a, 56a. Because Iowa empowers a state utility board to "grant a [pipeline-construction] permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper," Iowa Code § 479B.9, the court concluded that county setback requirements conflicted with the board's authority. In its view, if the board were to approve Summit's pipeline—which it had not yet done—the setbacks might create "a serious possibility" that "Summit would be unable to build"

the line. App. 57a (Story); *see* App. 29a (similar for Shelby).[24]

Second, the court held that Story's setback provision was preempted under the PSA. It reasoned that "setbacks are safety standards" because federal regulations instruct companies (1) "'to avoid, as far as practicable,'" constructing pipelines near buildings, and (2) to bury pipelines at least 12 inches deep when building within 50 feet of a structure. App. 69a-70a (quoting 49 C.F.R. § 195.210).[25]

3. The Eighth Circuit affirmed for different reasons. In a split decision, the majority held the counties' setback provisions were preempted, resting solely on the PSA.[26] The majority acknowledged that the Fourth and Fifth Circuits have "held that a challenged local

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[24] The district court never found that compliance with the setbacks would be impossible. Nor did it consider that both counties have a process for Summit to seek a variance from their zoning requirements, *see* C.A. App. 282, 1702-04, that Summit holds a weekly "route variance meeting," *id.* at 698, 1501, or that Summit has altered this pipeline's route more than 950 times, *id.* at 699, 1502. Even so, the court struck down the setback provisions under Iowa's "demanding" conflict-preemption standard—which is supposed to be reserved for conflicts that are "irreconcilable," "obvious," "unavoidable," and not "reasonabl[y] debat[able]"—without giving weight to Iowa's strong presumption that local ordinances are valid. *City of Davenport v. Seymour*, 755 N.W.2d 533, 539 (Iowa 2008).

[25] PHMSA adopted that rule in 1981—years before Congress in 1994 expressly preserved state and local authority over a pipeline's "location or routing." And today, as a PHMSA representative acknowledged at a May 2023 public meeting, the agency "[does not] regulate the setbacks on pipelines." Shelby SOF ¶ 56; Story SOF ¶ 57.

[26] The court of appeals expressly declined to adopt the district court's holding that Iowa law preempted the counties' setback requirements. App. 18a n.4.

setback was not a safety standard." App. 8a-9a (citing *Washington Gas Light Co. v. Prince George's Cnty. Council*, 711 F.3d 412, 421-22 (4th Cir. 2013), and *Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 211 (5th Cir. 2010)). But it reached the opposite result, "hold[ing] that the Counties' setbacks *are* safety standards." App. 9a (emphasis added).

The majority came to that conclusion by examining the counties' "motivation" in adopting their setback provisions. App. 9a. Stating that it would "look[] beyond the rationale offered to evidence of the law's purpose," the majority began with the ordinances' "preamble[s]," which it read as "focus[ing] on safety." App. 7a-8a. It added that the ordinances imposed "larger setbacks from buildings with vulnerable populations" and that the setback requirements "apply alike to economically developed and remote areas." App. 9a. From those features, the majority concluded that the ordinances' "effect on safety is not incidental, but rather the primary motivation," and therefore the ordinances conflict with "Congress's express 'intent to preempt the states from regulating in the area of safety.'" *Id.* (quoting *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 358 (8th Cir. 1993)); *see* App. 13a (noting circuit precedent that "the PSA sweep[s] broadly").

Judge Kelly dissented in relevant part. She began by agreeing with the Fourth and Fifth Circuits that "the setback requirements . . . fit comfortably within a local land use ordinance." App. 21a-22a (citing *Texas Midstream*, 608 F.3d at 211, and *Washington Gas*, 711 F.3d at 421-22). And she criticized the majority's motivation-based analysis, noting that "[zoning] ordinances are typically, and understandably, driven

by multiple concerns, including economic, environmental, and safety." App. 22a. From there, she concluded that "the setback requirements are location and routing standards that, though animated in part by safety considerations, . . . do not amount to the type of standards that Congress expressly reserved for federal regulation." *Id.*

The Eighth Circuit denied the counties' petition for rehearing and rehearing en banc. App. 74a-75a.

REASONS FOR GRANTING THE PETITION

This petition presents an ideal vehicle for resolving an entrenched circuit split affecting state and local regulation of millions of miles of pipelines. Whether a community retains the power to regulate the placement of pipeline facilities should not turn on the region of the country in which it is located or the circuit in which a challenge is filed.

The circuits are divided over whether local land-use ordinances that govern where pipelines may be located are valid zoning measures or preempted "safety standards" under the Pipeline Safety Act. That question is both critically important and cleanly presented. State and local governments must know whether they may adopt zoning measures such as setbacks and siting restrictions without running afoul of federal law. This case squarely presents that preemption question on a fully developed record, with no factual disputes and only a single legal issue to resolve.

I. The Circuits Are Divided Over What Constitutes A Preempted "Safety Standard" Under The Pipeline Safety Act

Congress distinguished between federally preemptive "safety standards for interstate pipeline facilities" and state and local measures that may "prescribe the

location or routing of a pipeline facility." 49 U.S.C. § 60104(c), (e). The courts of appeals disagree about how to enforce that dividing line. *See* States Reh'g En Banc Br. 8-10 (noting the split). The Fourth and Fifth Circuits classify state and local laws by their *effect*, upholding land-use ordinances as exercises of the location and routing authority that Congress preserved in § 60104(e) while striking down regulations that trench on the federal domain of pipeline "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance." 49 U.S.C. § 60102(a)(2)(B). The Eighth Circuit, by contrast, looks to the *motive* for a challenged state or local action, and dubs the measure a preempted "safety standard" if it views safety as the "primary motivation."

A. The Fourth And Fifth Circuits Hold That State And Local Laws That Have The Effect Of Regulating Pipeline Location And Routing Are Not Preempted Safety Standards

1. The Fifth Circuit applied its effects test to uphold setback requirements much like those at issue here. That case was about the City of Grand Prairie's "regulation of the siting . . . of a natural gas compressor station." *Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200, 203 (5th Cir. 2010). Grand Prairie, "[a]pparently concerned by the prospect of a compressor station within city limits," amended its development code to require "that compressor stations comply with setback rules." *Id.* Even so, the court stressed that "safety standards" under the PSA cover "pipeline installation, operation, and maintenance," not local land-use rules. *Id.* at 210. The setback requirement, the court explained, did not regulate those technical subjects but "primarily

ensure[d] that bulky, unsightly, noisy compressor stations do not mar neighborhood aesthetics." *Id.* at 211. The court contrasted the ordinance with preempted measures like a "state permitting, inspection, and enforcement regime." *Id.*; *see also Olympic Pipe Line Co. v. City of Seattle*, 437 F.3d 872, 876 (9th Cir. 2006) (finding preempted Seattle's attempts to require "a hydrostatic test" and "two inspection digs" of an interstate pipeline). Unlike such "parochial safety provisions," a "setback requirement is not a safety standard." *Texas Midstream*, 608 F.3d at 211-12.

The Fifth Circuit has applied its effects test for decades. In a case under one of the PSA's predecessor statutes, the court struck down the Texas Railroad Commission's "Rule 36." *Natural Gas Pipeline Co. v. Railroad Comm'n of Texas*, 679 F.2d 51, 52 (5th Cir. 1982). That rule purported to require the operator of a natural gas line to follow "specified procedures and safeguards to warn and protect the general public against the accidental release of hydrogen sulfide from their facilities." *Id.* Those requirements "clearly overlap[ped]" with "the safety regulations promulgated pursuant to" federal law, *id.*, so the court found Rule 36 "explicitly preempted," *id.* at 54. In the process, the court rejected as "irrelevant" arguments about the "purposes" of the regulation. *Id.* (citing *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963)); *see Florida Lime*, 373 U.S. at 142 ("The test of whether both federal and state regulations may operate, or the state regulation must give way, is . . . not whether they are aimed at similar or different objectives.").

2. The Fourth Circuit reached the same "conclusion on analogous facts" in *Washington Gas Light Co. v. Prince George's County Council*, 711 F.3d 412, 421

(4th Cir. 2013) (citing *Texas Midstream*, 608 F.3d at 211). There, the county's development plan foreclosed a utility's preferred liquified-natural-gas-storage site by prohibiting industrial uses in a transit-oriented district. *Id.* at 415. The court rejected the utility's claim that these were "safety regulations in disguise." *Id.* at 421. "At their core," the plans were "local land use provisions designed to foster residential and recreational development." *Id.* Given this effect, the court declined to probe whether "safety concerns played some part in the enactment of the County Zoning Plans." *Id.* at 421-22. And the court noted that Congress had not "occup[ied] the field of natural gas facility siting," given the PSA's denial of any federal authority "'to prescribe the location or routing of a pipeline facility.'" *Id.* at 422 (quoting 49 U.S.C. § 60104(e)).

B. The Eighth Circuit Holds That State And Local Laws Primarily Motivated By Safety Are Preempted Safety Standards

The court below charted a different course. Acknowledging that "[o]ther circuits have assessed whether setbacks, specifically, constitute safety standards" and have concluded that they "w[ere] not," App. 8a-9a (citing *Texas Midstream*, 608 F.3d at 212, and *Washington Gas*, 711 F.3d at 421-22), the court reached the opposite result from the Fourth and Fifth Circuits, "h[olding] that the Counties' setbacks are safety standards," App. 9a. The court began by "look[ing] . . . to evidence of the law's purpose." App. 7a-8a. It inferred that safety was the counties' "primary motivation" from two features of their setback provisions: (1) that they "apply alike to economically developed and remote areas," and (2) that they require larger buffers near "vulnerable populations"

(homes, schools, churches, hospitals, and the like). App. 8a-9a. On those grounds, the court concluded that the counties' setbacks "constitute safety standards." App. 8a. And having reached that conclusion, the court held that "Section 60104(e) does not save the Counties' setbacks from preemption." App. 11a.

That motivation-first analysis produces the opposite result from the Fourth and Fifth Circuits on indistinguishable facts. Take *Texas Midstream*: Like the ordinances here, Grand Prairie's ordinance imposed the same setback requirements for rural and city zones. *See* Grand Prairie, Texas, UDC art. 4, § 10 (4.10.2), *reproduced at* App. 135a-137a (requiring 300-foot setbacks for "AG/OPEN" (agricultural or open spaces) and for "SF-A/TH" and "MR" (single-family attached/ townhouse and mixed-residential zones)). And like the ordinances here, Grand Prairie required greater buffers for "vulnerable populations." *See id.* (requiring 300-foot setbacks for "SF" (single-family-residential) districts but only 100 feet for "HC" (heavy commercial) zones and 50 feet for "HI" (heavy industrial) zones). In other words, the very characteristics that the Eighth Circuit majority seized on as evidence of an impermissible safety motivation are equally present in Grand Prairie's ordinance—yet the Fifth Circuit squarely held that ordinance was *not* a preempted safety standard. *See* App. 8a (acknowledging this different holding); App. 22a (Kelly, J., concurring in part and dissenting in part) (same).

This case also would have come out differently in the Fourth Circuit. The zoning plan in *Washington Gas* went even further than the ordinances here or in *Texas Midstream*. It barred "*all* industrial usage" in the covered zone—a far broader prohibition than the modest minimum distances required here. 711 F.3d

at 415 (emphasis added). Yet the Fourth Circuit—citing *Texas Midstream*—held that "the power to impose a zoning requirement includes the power to preclude any proposed usage of the zoned area that cannot comply with such requirement." *Id.* at 421. And the court made clear that § 60104(e) preserves such traditional zoning authority, applying it to uphold the local restriction. The Eighth Circuit, by contrast, effectively wrote that saving clause out of the statute.

* * *

The divide is stark. The Fourth and Fifth Circuits apply a text-based, effects-focused rule that respects Congress's choice to leave interstate pipeline siting and routing to state and local governments. The Eighth Circuit instead employs a motive test that reclassifies ordinary zoning rules as preempted "safety standards." That outcome-determinative conflict is now entrenched after the Eighth Circuit denied rehearing en banc—and it warrants this Court's review.

II. The Decision Below Is Incorrect

The PSA's text, history, and purpose demonstrate that Congress did not intend to preempt local land-use regulations like the counties' setback provisions. The Eighth Circuit's contrary conclusion—that the ordinances are preempted safety standards because the counties were "motivat[ed]" by safety when enacting them—conflicts with this Court's preemption precedents, which accord local-government motive no weight.

A. The Pipeline Safety Act Does Not Expressly Preempt The Counties' Ordinances

Preemption "fundamentally is a question of congressional intent." *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990). But this Court's preemption jurisprudence does not permit "a 'freewheeling judicial

inquiry into whether a state statute is in tension with federal objectives.'" *Chamber of Com. v. Whiting*, 563 U.S. 582, 599 (2011) (plurality) (citation omitted). Instead, the Court examines a preemption argument much like "any other about statutory meaning, looking to the text and context of the law in question and guided by the traditional tools of statutory interpretation." *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (plurality); *see CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993) (looking for "[e]vidence of pre-emptive purpose . . . in the text and structure of the statute at issue").

Under these ordinary interpretive principles, the counties' ordinances fall outside the PSA's preemptive reach. The text and structure of the statute confirm that these ordinances do not impose "safety standards" subject to preemption, but regulate pipeline location and routing—an area Congress left to local control. Other indicia of statutory meaning reinforce that conclusion. And if doubt remained, the presumption against preemption would resolve it in favor of upholding these local enactments and avoiding the regulatory vacuum that would result if no level of government had authority over pipeline siting.

1. ***Text and structure.*** When Congress has enacted an express preemption clause, the preemption inquiry begins and ends with the text. The "plain wording of the clause . . . necessarily contains the best evidence of Congress' pre-emptive intent." *CSX Transp.*, 507 U.S. at 664. The PSA's preemption provision expressly bars local authorities from adopting "safety standards for interstate pipeline facilities." 49 U.S.C. § 60104(c). But "matters beyond that reach are not pre-empted." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992). So local governments retain the

power, among other things, "to prescribe the location or routing of a pipeline facility." 49 U.S.C. § 60104(e). Congress thus "circumscribe[d] its regulation and occup[ied] only a limited field." *Kelly v. Washington ex rel. Foss Co.*, 302 U.S. 1, 10 (1937) (federal law preempted state regulation of steam vessels but not tugboats).

a. As a matter of ordinary meaning, the counties' setback provisions are not "safety standards." *See Whiting*, 563 U.S. at 595 (looking to ordinary meaning in finding no preemption). They do not establish safety-related "measure[s]" for assessing a pipeline's "accuracy or quality." *Standard*, *The Concise Oxford Dictionary* 1119 (6th ed. 1976).[27] Nor do they set "a definite level or degree of quality that is proper and adequate for a specific [safety-related] purpose." *Standard*, *Webster's Third New International Dictionary* 2223 (1976); *cf.* Br. for the United States as Amicus Curiae at 2, *Williamson v. Mazda Motor of Am., Inc.*, No. 08-1314 (U.S. Aug. 6, 2010) ("motor vehicle safety standards" are "minimum standards for motor vehicle or motor vehicle equipment performance") (cleaned up).

The counties' ordinances are instead classic land-use regulations that concern only pipeline placement. The setback provisions "prescribe the location or routing of a pipeline facility," 49 U.S.C. § 60104(e), by establishing "minimum separation distances" between a pipeline and certain areas (like cities) and structures (like houses of worship, schools, and hospitals). App.

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[27] Because Congress has not altered the "safety standards" language since it was enacted in the Hazardous Liquid Pipeline Safety Act of 1979, this Court should give those words their "ordinary meaning" as of 1979. *See Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018).

98a-99a (Shelby County); *see* App. 125a-126a (Story County). They do not specify any safety-related metric for assessing pipeline quality or performance.

The distinction between safety standards and other regulations that merely implicate safety is familiar in other regulatory contexts. Federal motor vehicle safety standards govern the design and performance of cars, requiring seatbelts, airbags, crashworthiness, and the like. *See Williamson v. Mazda Motor of Am., Inc.*, 562 U.S. 323, 326 (2011). But they do not dictate where cars may travel—that is a matter for state and local governments, which set speed limits, designate school zones, and determine which roads are open to trucks. In the same way, federal standards regulate how to safely design, build, and operate pipelines, while state and local governments decide where a pipeline may sit.

b. "What the text states, context confirms." *Virginia Uranium*, 587 U.S. at 768 (plurality). The PSA empowers the Secretary of Transportation to promulgate safety standards that "may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 U.S.C. § 60102(a)(2)(B). Setback provisions fall within none of those 10 categories—and they are not at all like the safety standards that PHMSA has promulgated. Those regulations govern technical aspects of pipeline construction and operation—such as wall thickness, welding methods, valve placement, corrosion protection, and emergency procedures. *See supra* pp. 5-6. By contrast, the counties' ordinances say nothing about how a pipeline must be designed, built, or maintained; they speak only to a pipeline's "location or routing." 49 U.S.C. § 60104(e).

That statutory line makes clear why setback provisions cannot be recast as preempted "safety standards." The PSA expressly denies the Secretary of Transportation authority to dictate pipeline "location or routing." *Id.* And PHMSA has confirmed that "there is no . . . federal agency that determines siting of . . . carbon dioxide pipelines." App. 142a. If setbacks are nonetheless "safety standards," state and local governments cannot dictate siting either—at least not if the "effect on safety" is their "primary motivation." App. 9a. Such a reading would erase the boundary Congress drew between federal safety regulation and local land-use authority, leaving pipeline siting in a regulatory vacuum. It "seems more than a little unlikely" that Congress designed such a scheme. *Virginia Uranium*, 587 U.S. at 771 (plurality).

c. Traditional interpretive principles reinforce that conclusion. Under the negative-implication canon, "'expressing one item of [an] associated group or series excludes another left unmentioned.'" *Esteras v. United States*, 145 S. Ct. 2031, 2040 (2025) (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)) (brackets in *Chevron*); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012). Section 60102 conspicuously omits location and routing from the 10 categories of safety standards the Secretary of Transportation "shall prescribe." PHMSA has taken the same position, observing in 2023 that "[n]othing in" the PSA "impinges on the[] traditional prerogatives of local . . . government" "to regulate land use, including setback distances." App. 145a; *see Virginia Uranium*, 587 U.S. at 770-71 (plurality) (looking to agency practice).

That omission reflects a "deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S.

149, 168 (2003). The PSA preserves state and local authority over pipeline "location or routing," 49 U.S.C. § 60104(e), which is all the setback requirements regulate. "The natural implication is that Congress did not intend" to displace land-use regulations like the counties'. *Esteras*, 145 S. Ct. at 2040; *see Cipollone*, 505 U.S. at 517.

2. ***History.*** History and practice confirm what the text makes clear. Before 1968, States imposed a patchwork of conflicting safety standards regulating, among other things, what coating pipelines must use, how operators must examine welds, and whether to use automatic valves. *See supra* p. 6. Those are the kinds of state-specific technical specifications Congress intended to replace with uniform federal standards. By contrast, setback ordinances do not dictate technical features of pipeline construction or operation. They regulate where a pipeline may be placed—a subject that Congress deliberately left to state and local authority.

The PSA's legislative history shows that Congress struck a careful balance between federal and state pipeline regulation: the federal government would become "responsible" for "safety regulations cover[ing] pipeline[s]," while "the siting of new pipelines" would remain "subject to the . . . requirements of the individual states they traverse." H.R. Rep. No. 102-247, pt. 1, at 13-14 (1991), *reprinted in* 1992 U.S.C.C.A.N. 2642, 2643-44.

3. ***The presumption against preemption.*** If any doubt remains, "the presumption against pre-emption" resolves it in the counties' favor. *Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009).

A "cornerstone[]" of "all pre-emption cases," the presumption rests on the premise "'that the historic

police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Id.* at 565 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)); *see Arizona v. United States*, 567 U.S. 387, 400 (2012). So "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption," *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (internal quotation marks omitted), by interpreting the clause "precisely and narrowly," *Cipollone*, 505 U.S. at 518.

The presumption against preemption "applies with particular force when Congress has legislated in a field traditionally occupied by the States." *Altria Grp.*, 555 U.S. at 77; *see also CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014) (plurality) ("in an area traditionally governed by the States' police powers"). That is the case here: the counties' ordinances regulate land use, and "[r]egulation of land use . . . is a quintessential state and local power." *Rapanos v. United States*, 547 U.S. 715, 738 (2006) (plurality); *see Warth v. Seldin*, 422 U.S. 490, 508 n.18 (1975) ("[Z]oning laws . . . are peculiarly within the province of state and local legislative authorities."). PHMSA has acknowledged the same point, explaining that "[l]ocal governments have traditionally exercised broad powers to regulate land use, including setback distances and property development that includes development in the vicinity of pipelines." App. 145a.

The PSA contains no "clear and manifest" expression of congressional intent to strip local governments of this core authority. To the contrary, the statute expressly preserves the prerogative of a state authority "to prescribe the location or routing of a pipeline facility." 49 U.S.C. § 60104(e).

B. The Eighth Circuit's Motivation-Based Preemption Analysis Is Inconsistent With This Court's Precedent

The court of appeals disregarded the PSA's plain meaning, its history, and the presumption against preemption. Instead, it deemed the counties' ordinances preempted because it believed safety concerns were the "primary motivation" for their enactment. App. 9a. That was error.

1. The court of appeals erred by focusing on the counties' motives and not the ordinances' effects. This Court long has made clear that the "effect rather than [the] purpose of a state statute governs pre-emption analysis." *International Paper Co. v. Ouellette*, 479 U.S. 481, 498 n.19 (1987). Congress may, of course, displace that default rule and make preemption turn on legislative motive—but it does so only with clear language. *See*, *e.g.*, 47 U.S.C. § 332(c)(7)(B)(iv) (preempting state and local regulation of wireless-facility siting "on the basis of the environmental effects of radio frequency emissions"). Congress made no such statement here. To the contrary, the PSA preempts only state and local "safety standards," not "safety-*motivated* standards."

Preemption turns on "*what* the State did, not *why* it did it," *Virginia Uranium*, 587 U.S. at 774 (plurality), and the setback provisions regulate only where pipelines may be built. Yet the court of appeals held them preempted because their "primary motivation" was safety. App. 9a. By looking in the wrong place, the court reached the wrong result.

2. The court of appeals' approach to preemption is unworkable. Probing "hidden state legislative intentions" poses serious "conceptual and practical [problems]." *Virginia Uranium*, 587 U.S. at 775-76

(plurality). Legislators "often pursue legislation for multiple and unexpressed purposes," so there is no way to "determine when and how to ascribe a particular intention to a particular legislator," much less to "impute it to the collective institution." *Id.* at 776; *see Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 216 (1983). Inquiring "into state legislative intentions" also threatens to stifle the "open and vigorous legislative debate . . . vital to testing ideas and improving laws." *Virginia Uranium*, 587 U.S. at 775 (plurality). And such inquiries "risk subjecting similarly situated persons to radically different legal rules as judges uphold and strike down materially identical state regulations based only on the happenstance of judicial assessments of the 'true' intentions lurking behind them," *id.* at 775-76, as the circuit split here demonstrates. *See supra* pp. 13-18. For these reasons, the Court consistently has refused to "become embroiled" in the "unsatisfactory venture" of attempting to find preemption based on perceived legislative purpose. *Pacific Gas*, 461 U.S. at 216; *see*, *e.g.*, *Virginia Uranium*, 587 U.S. at 767 (plurality); *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 403-04 (2010); *Florida Lime*, 373 U.S. at 142.

Despite these warnings, the court of appeals found preemption by cherry-picking safety concerns from among the counties' many stated purposes. Shelby County explained that its ordinances addressed "three common concerns": "the health, safety and welfare of citizens," "preserv[ing] the current use and value of property," and "protection for future development." C.A. App. 387-89. Story County, too, offered multiple justifications, including to preserve "existing rural residential development," to "improv[e] basic infra-

structure," to "ensure orderly growth and development," to address "environmental concerns related to conflicts between different uses of land," and to "secure safety from . . . dangers." App. 89a, 119a. As Judge Kelly noted, ordinances like these are "typically, and understandably, driven by multiple concerns, including economic, environmental, and safety." App. 22a (Kelly, J., concurring in part and dissenting in part). Only by plucking one concern from the broader mix could the court "ascribe a particular intention" to the counties. *Virginia Uranium*, 587 U.S. at 776 (plurality).

3. Finally, the court of appeals inverted the ordinary presumption that local police-power enactments are valid unless Congress clearly says otherwise. It seized on features common to zoning—uniform application "to economically developed and remote areas" and protections for "vulnerable populations"—to find the setback provisions preempted. App. 9a; *see* App. 22a (Kelly, J., concurring in part and dissenting in part) (noting that "the setback requirements . . . fit comfortably within a local land use ordinance"). But those features are what make the counties' ordinances an exercise of "quintessential state and local power," *Rapanos*, 547 U.S. at 738 (plurality), triggering a presumption against preemption that the Eighth Circuit never applied.

III. The Question Presented Is Important And Warrants Review In This Case

A. Local-Government Authority Over Pipeline Siting Is Exceptionally Important

As multiple *amici* emphasized below, whether the PSA preempts local "routing decisions" is "exceptionally important." States Reh'g En Banc Br. 1; *see* Pipeline Safety Trust Reh'g En Banc Br. 10. Summit's own

amicus, the American Petroleum Institute, suggested that local control over "millions of miles of pipeline systems" is at stake. API C.A. Br. 31-32. Summit's proposed pipeline alone will be the longest carbon dioxide pipeline in the world,[28] stretching "more than two thousand miles," traversing South Dakota, North Dakota, Iowa, Minnesota, and Nebraska. App. 34a. Each State has "a strong interest in ensuring their traditional powers to regulate land use is respected." States Reh'g En Banc Br. i. Yet the panel's decision denies them the routing and siting authority necessary to protect that interest.

The Eighth Circuit's reasoning does not end with carbon dioxide pipelines. Even supporters of the decision below admit that it "has sprawling implications that affect oil and gas pipelines as well." Mike Karbo, *Iowans Benefit from State and Federal Authority over Pipelines*, N'West Iowa Rev. (Aug. 7, 2025). In the Fifth Circuit, oil-rich Texas retains state and local authority over pipelines carrying the carbon dioxide used in oil drilling. But in the Eighth Circuit—home to corn-rich States like Iowa, where ethanol production generates large volumes of carbon dioxide—those same governments have no authority over the pipelines poised to spread across their land. That is exactly the situation Congress sought to avoid when reserving state and local routing authority in the PSA.

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[28] *See* Leah Douglas, *Summit says carbon pipeline project has secured 20% of Iowa route*, *Reuters* (Apr. 19, 2022), https://www.reuters.com/business/sustainable-business/summit-says-carbon-pipeline-project-has-secured-20-iowa-route-2022-04-19/.

B. The Decision Below Creates Serious Practical Problems For Legislators, Courts, And The Public

1. The court of appeals' decision puts thousands of local governments in an impossible position. As the American Petroleum Institute explained, the potential reach of the PSA's preemption provision is stunning: there are "*90,837* local governments in the U.S., including 3,031 county governments, 35,705 township and municipal governments, 12,546 independent school districts, and 39,555 other special-purpose local governments." API C.A. Br. 21. Yet the Eighth Circuit held that the ordinances here were preempted simply because they were "motivat[ed]" by safety concerns. App. 9a. That holding collides with requirements in Iowa and many other States that counties exercise zoning authority "to secure [the] safety" of their residents and "to protect health and general welfare." Iowa Code § 335.5(1).[29] Under the Eighth Circuit's approach, the very invocation of safety that state law compels becomes fatal under federal law.

The consequences are perverse. Legislators will be forced to avoid open debate, resorting to secrecy and subterfuge rather than risk preemption by offering even tentative federal-field-related justifications for a proposed law. As Judge Kelly explained, zoning ordinances are "typically, and understandably, driven

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[29] Other States in the Eighth Circuit impose a similar duty. *See*, *e.g.*, Ark. Code Ann. § 14-56-403(a) ("The plans of the municipality shall be prepared in order to promote, in accordance with present and future needs, the safety . . . of the citizens."); Minn. Stat. § 462.357(1) (authorizing municipalities to zone for "the purpose of promoting the public health, safety, morals, and general welfare").

by multiple concerns, including economic, environmental, and safety." App. 22a (Kelly, J., concurring in part and dissenting in part). The decision below flips that reality on its head, transforming local zoning measures "understandably" motivated in part by safety into federally preempted "safety standards."

2. The panel tried to soften the blow by claiming that its "holding does not prohibit local governments from considering safety," but instead draws a "distinction" between zoning regulations "primar[ily] motivat[ed]" by safety, which are preempted, and those that merely account for "safety *considerations*," which are not. App. 9a. That distinction is illusory—and unworkable. As Justice Scalia explained for the Court in *Shady Grove*, "determining whether state and federal rules conflict based on the subjective intentions of the state legislature is an enterprise destined to produce 'confusion worse confounded.'" 559 U.S. at 404 (citation omitted). Legislatures are "composed of individuals who often pursue legislation for multiple and unexpressed purposes." *Virginia Uranium*, 587 U.S. at 776 (plurality). Yet under the Eighth Circuit's approach, courts must attempt in every PSA preemption case "to discern . . . the purpose behind any putatively pre-empted state [or local] rule." *Shady Grove*, 559 U.S. at 404. The result can only be regulatory chaos, as courts "uphold and strike down materially identical state regulations based only on the happenstance of judicial assessments of the 'true' intentions lurking behind them." *Virginia Uranium*, 587 U.S. at 775-76 (plurality).

3. The decision below also creates a dangerous regulatory vacuum. The PSA withholds from the Secretary of Transportation any authority over pipeline "location or routing." 49 U.S.C. § 60104(e).

And as explained above, no federal agency claims that power. *See supra* pp. 6-7, 22. If state and local governments also are barred from addressing pipeline siting whenever safety is their "primary motivation," App. 8a, then no government has clear authority to decide where pipelines may run. That result leaves communities exposed, with neither federal nor local officials able to ensure that hazardous infrastructure is kept at a safe distance from homes, schools, or hospitals.

C. This Case Is An Ideal Vehicle To Resolve The Circuit Conflict

This case cleanly presents the question whether the PSA expressly preempts local land-use ordinances that take pipeline safety into account. That purely legal issue was raised and decided below. The majority held that "[t]he PSA preempts the . . . ordinances' setback . . . provisions," App. 13a, while the dissent concluded that it does not, App. 20a. Both opinions recognized that the Fourth and Fifth Circuits had upheld similar ordinances. App. 8a-9a, 21a-22a. The conflict is thus squarely presented.

The case also arrives in a posture that makes it especially suitable for review. The appeal arose from a final judgment, and there are no disputed facts. The decision below turned entirely on a single legal issue: whether the PSA preempts the counties' setback provisions because they were "motivated" in part by safety concerns. App. 18a n.4.

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The Court's review is urgently needed. Without it, local governments will face a preemption trap every time they carry out their traditional zoning responsibilities; pipeline operators will face a patchwork of unpredictable rulings hinging on judicial divination of

legislative motive; and courts will be left without clear, administrable rules. Only this Court can restore the balance Congress struck between federal authority over technical pipeline safety standards, and state and local authority over land use and pipeline routing.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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