

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**

**BRIEF OF AMICUS CURIAE
IOWA FARM BUREAU FEDERATION
IN SUPPORT OF PETITIONERS**

CHRISTINA L. GRUENHAGEN
Counsel of Record
Wickham & Geadelmann, P.L.L.C.
5400 University Avenue
West Des Moines, IA 50266
(515) 225-5528
cgruenhagen@ifbf.org

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. The Preemption Standard and Language of the PSA Conflict with the Decision Below Creating a Circuit Split.	3
A. The Decision Below Expands Preemption Beyond the Statute’s Plain Meaning.....	4
B. This Case Presents an Ideal Vehicle for Resolving the Circuit Split Created by the Decision Below	7
II. By Parsing Legislative Intent, the Eighth Circuit Established an Unworkable Test for Analyzing Federal Preemption	11
A. The Court’s Approach Improperly Substitutes Speculation About Legislative Intent for the Statute’s Plain Text	12
B. The Resulting Statutory Interpretation Test is Unworkable and Unpredictable in Application	13
CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<i>Coleman v. Thompson</i> , 501 U.S. 722 (1991).....	6
<i>Corn v. City of Lauderdale Lakes</i> , 997 F.2d 1369 (11th Cir. 1993).....	16
<i>English v. General Electric Company</i> , 496 U.S. 72 (1990).....	8-9
<i>Fla. Lime & Avocado Growers, Inc. v. Paul</i> , 373 U.S. 132 (1963).....	8
<i>Griffin v. Oceanic Contractors, Inc.</i> , 458 U.S. 564 (1982).....	5
<i>Hardt v. Reliance Standard Live Ins. Co.</i> , 560 U.S. 242 (2010).....	5
<i>Kinley Corp. v. Iowa Util. Bd.</i> , 999 F.2d 354 (8 th Cir. 1993).....	15
<i>Medtronic Inc. v. Lohr</i> , 518 U.S. 470 (1996).....	6, 7
<i>New York v. U.S.</i> , 505 U.S. 144 (1992).....	6
<i>Texas Midstream Gas Servs., LLC v. City of Grand Prairie</i> , 608 F.3d 200 (5th Cir. 2010).....	4, 9, 11, 14, 15
<i>U.S. v. Ron Pair Enterprises, Inc.</i> , 489 U.S. 235 (1989).....	4, 5, 13
<i>United Distribution Companies v. FERC</i> , 88 F.3d 1105 (D.C. Cir. 1996).....	7
<i>Virginia Uranium, Inc. v. Warren</i> , 587 U.S. 761 (2019).....	13, 14, 17
<i>Washington Gas Light Co. v. Prince George’s Cnty. Council</i> , 711 F.3d 412 (4th Cir. 2013).....	4, 10

Constitutional Provisions

U.S. Const. art VI, cl. 2	5
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Statutes

49 U.S.C. § 60101	8
49 U.S.C. § 60101 et. seq.....	3
49 U.S.C. § 60104(c)	3
49 U.S.C. § 60104(e)	4, 5, 11, 14

Rules

49 C.F.R. § 195.11 (2025).	17
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INTEREST OF AMICUS CURIAE¹

The Iowa Farm Bureau Federation (“IFBF”) is an independent, non-governmental, volunteer organization of landowners and farm families. The organization has more than 156,000 members, which include farmers and landowners living and working in Iowa counties with land use ordinances regulating proposed liquified carbon dioxide pipelines. IFBF was founded to protect, promote, and represent farm families who recognize the three branches of government should work in harmony to protect landowner values and property rights in accordance with longstanding legal and equitable principles.

IFBF members have a direct interest in the outcome of this case. Approximately ninety-five percent of the almost nine thousand acres of Iowa land affected by phase one of the proposed pipeline is used for agriculture. The construction and maintenance of pipelines disturb the soil, displaces land improvements, and reduces crop yields for a period of time. Pipelines are installed below the ground over which farming resumes for the next crop season. Farmers also reside, raise livestock and conduct other agricultural activities on or near the cropland. They are therefore vitally interested in the authority of

¹ Pursuant to Supreme Court Rule 37.6, the undersigned counsel certifies that no party’s counsel authored this brief in whole or in part; no party or party’s counsel, or any other person, other than amicus curiae Iowa Farm Bureau Federation or its counsel, contributed money that was intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for each of the parties received notice via email of the intent to file this brief on October 24, 2025.

state and local governments to determine the location and routing of hazardous liquid pipeline facilities to minimize the impact of the pipeline.

SUMMARY OF ARGUMENT

The decision below disregards Congress' deliberate choice to preserve state and local authority to prescribe the location and routing of hazardous liquid pipeline facilities. Congress expressly recognized the traditional role of state and local governments in regulating location and routing and declined to impose federal siting rules or routing permits when passing the Pipeline Safety Act ("PSA"). By finding preemption where Congress reserved this right to the states, the Eighth Circuit Court of Appeals upset the balance between federal and state authority and created a conflict with decisions of other circuits.

The Eighth Circuit Court of Appeals disregarded traditional tools for statutory interpretation and instead determined it was appropriate to delve into the uncertain realm of intent and motivation, arriving at a conclusion contrary to the statute's express terms. By denying states and counties the ability to regulate in this area, they cannot consider and balance the competing interests of the pipeline company and the expressed concerns of the affected landowners. Instead, it primarily leaves the macro location and routing decisions to the pipeline company. Ultimately, this is the only Court with the power to resolve this controversy and establish precedent consistent with the statutory design of the PSA.

ARGUMENT

I. The Preemption Standard and Language of the PSA Conflict with the Decision Below Creating a Circuit Split.

Hazardous liquid pipelines are federally regulated through the Pipeline and Hazardous Materials Safety Administration (“PHMSA”), under the Department of Transportation. Under its statutory authority, PHMSA regulates pipeline construction specifications, operation, maintenance, and emergency preparations. *See* 49 U.S.C. § 60101 et. seq. PHMSA does not issue hazardous liquid pipeline permits or routing permits. The granting of hazardous liquid pipeline permits, public convenience and necessity determinations, eminent domain, agricultural land restoration and mitigation, and routing approvals remain a responsibility confined to state power.

The decision below conflicts with those of similarly situated courts, despite involving facts that are barely distinguishable from the present case. While § 60104(c) states that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation,” paragraph § 60104(e) specifically states “[t]his chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.” 49 U.S.C. § 60104(c) and (e). Therefore, Congress made it abundantly clear that

the location and routing of hazardous liquid pipelines are not within the federal government's control. *See id.* The Fourth and Fifth Circuits respected Congress' decision to allow state and local governments to regulate location and routing, by affirming the local ordinances involved that established prohibited locations and minimum setbacks from hazardous liquid pipeline facilities. *See generally Texas Midstream Gas Servs., LLC v. City of Grand Prairie*, 608 F.3d 200 (5th Cir. 2010); *Washington Gas Light Co. v. Prince George's Cnty. Council*, 711 F.3d 412 (4th Cir. 2013).

A. The Decision Below Expands Preemption Beyond the Statute's Plain Meaning

Traditional canons of statutory interpretation demand that courts first look at the plain language of a statute before the inquiry advances any further. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989). "The plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" *Id.* (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)). When assessing a statute, federal courts "must enforce [the] plain and unambiguous statutory language according to its terms." *Hardt v. Reliance Standard Live Ins. Co.*, 560 U.S. 242, 251 (2010). This well-established system ensures consistency where statutory ambiguity does not exist. *See Ron Pair Enterprises*, 489 U.S. at 242.

Before analyzing the approach the Eighth Circuit employed, it must be understood that state and local governments are treated equally under the PSA, so to

preempt local governments' ability to establish setback distances as a method to prescribe pipeline routing is to also preempt state governments' authority. 49 U.S.C. § 60104(e) (2022). Because Congress expressly withheld from the federal government the authority to dictate the location and routing of hazardous liquid pipelines, that power necessarily remains with state or local governments. In reserving that function to states, Congress confirmed that decisions regarding the location and routing of such facilities fall squarely within traditional state and local land-use authority.

Preemption is deeply rooted in the foundation of the Constitution. "This Constitution, and the Laws of the United States...shall be the supreme Law of the Land." U.S. Const. art VI, cl. 2 (Supremacy Clause). This principle establishes that federal law prevails over state and local enactments. *Id.* However, the doctrine is not without limits. Preemption only applies when Congress has clearly intended to occupy a field or where state or local law directly conflicts with federal objectives. *Medtronic Inc. v. Lohr*, 518 U.S. 470, 484–86 (1996). States retain authority for the protection of individuals.

"The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an

end in itself: ‘Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.’”

New York v. U.S., 505 U.S. 144, 181 (1992) (quoting *Coleman v. Thompson*, 501 U.S. 722, 759 (1991)). Within those bounds, state and local governments retain substantial authority to regulate matters of local concern.

Here, the decision below undermines the statute and established precedent protecting local governance. To begin a preemption analysis, the Supreme Court is clear, “start with the assumption 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.” *Medtronic Inc.*, 518 U.S. at 485. Proper statutory analysis also requires the express preemption of a state adopting “safety standards” to be read in the context of the statute which preserves location and routing decisions to the states. “It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *United Distribution Companies v. FERC*, 88 F.3d 1105, 1165 (D.C. Cir. 1996). It was erroneous for the Eighth Circuit to conclude that Congress’ “clear and manifest purpose” in enacting the PSA was for the federal government to curtail local governments in exercising their police powers to control the location and routing of a hazardous liquid pipeline when in the consideration of the ordinance, someone raised a safety concern. *See Medtronic Inc.*, 518 U.S. at 485; 49 U.S.C. § 60104(e).

Because the statutory language leaves the authority to control the location of hazardous liquid pipelines to states and local governments, the analysis utilized by the Eighth Circuit should have started and ended with the language of the statute, instead of examining the counties' motivation or intent. The lower decision found it appropriate to look beyond the plain language of the statute contrary to this Court's precedent for appropriate preemption analysis. Pet. App. 2a.

The PSA preempts a state from the adoption of safety standards and describes the types of regulations this entails such as construction specifications, operation, maintenance, employee training and emergency preparations. *See* 49 U.S.C. § 60101 et. seq. But, it also places limits on the federal government by expressly excluding control over the location and routing of the pipeline. This police power is preserved for states and its political subdivisions, such as the counties in this case.

B. This Case Presents an Ideal Vehicle for Resolving the Circuit Split Created by the Decision Below

The decision below analyzed the PSA provisions differently than the other appellate courts and consequently came to a different outcome. Rather than examining the language of both provisions in the PSA and the effect of the local setback ordinances, the Court gave little effect to paragraph (e) and decided that one of the motivations for adopting the setback ordinance was determinative of preemption. The federal and state regulations should have instead been reconciled to give effect to both. "The test of

whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.” *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963). This case presents an opportunity for the Supreme Court of the United States to examine the application of federal preemption and whether a state or its counties has the right to exercise the full extent of its authority over prescribing the location and routing of a hazardous liquid pipeline as reserved by the PSA.

In *Texas Midstream Gas Services, LLC v. City of Grand Prairie*, the Fifth Circuit was faced with an issue similar to that of Iowa’s Shelby and Story Counties. *See generally* 608 F.3d 200 (5th Cir. 2010). Texas Midstream Gas Services (“TMGS”) challenged a setback ordinance imposed by the city of Grand Prairie from a natural gas compressor station. *Id.* at 203–204. TMGS brought forth similar claims as Summit Carbon Solutions, LLC in this case claiming the setback ordinances were preempted by the PSA. *See id.* at 204. However, the Fifth Circuit was not persuaded, stating “[a] local rule may incidentally affect safety, so long as the effect is not ‘direct and substantial.’” *Id.* at 211. The court further explained, “this incidental salutary effect on fire safety does not undermine Congress’s intent in promulgating the PSA, as it is neither direct nor substantial.” *Id.*

In making a determination related to the incidental salutary effect on safety, the Fifth Circuit relied on *English v. General Electric Company*, which

presents a compelling argument regarding the incidental effect of statutory application. 496 U.S. 72, 85 (1990). The Supreme Court's example in *English* concerning minimum wage and child labor laws underscores that state regulations of general applicability are not preempted merely because they have an incidental or tangential effect on federally regulated activities. *Id.* The incidental or tangential effect that Shelby and Story Counties' ordinances have on safety should be central to the statutory analysis.

As the dissent in the decision below articulates, "such ordinances are typically, and understandably, driven by multiple concerns, including economic, environmental, and safety." Pet. App. 22a. To elaborate on this line of reasoning, consideration by the Shelby County supervisors of the ordinances' incidental and salutary effect on safety should not have been dispositive on the issue of preemption by the PSA. These local measures were aimed at multiple objectives including legitimate land-use, economic, and environmental concerns. In fact, the Shelby County ordinance cites mostly non-safety concerns as a justification for enacting setback distances. "[T]o protect health and the general welfare," and, "to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirement." Pet. App. 89a. The implications for safety fall short of the type of regulatory conflict that would justify federal displacement under the PSA.

The Fourth Circuit also considered a similar issue in *Washington Gas Light Co. v. Prince George's Cnty. Council*, 711 F.3d 412 (4th Cir. 2013). In this case,

Prince George County denied zoning approval for an expansion of Washington Gas Light Company's ("Washington Gas") natural gas substation. *Id.* at 415. The new zoning restriction was enacted with several goals. *Id.* at 421. Washington Gas filed suit claiming that the county zoning plans were "safety regulations in disguise" and that they were preempted by the PSA. *Id.*

In comparing this case to *Texas Midstream Gas Services*, the Fourth Circuit noted that the setback distance as compared to the complete prohibition by Prince George County was "a distinction without a difference." *Id.* "Logically the power to impose a zoning requirement includes the power to preclude any proposed usage of the zoning area that cannot comply with such requirement." *Id.* Therefore, under the Fourth Circuit's view, whether Shelby County's zoning ordinance is characterized as including a setback distance or a prohibition, the preemption analysis of the PSA is unaffected.

The Court analyzed express, implied, and conflict preemption and found that the prohibition under county zoning was beyond the scope of the PSA's express preemption provision and implied preemption was absent because the PSA did not authorize PHMSA to prescribe the location or routing of the pipeline facility. *Id.* at 422; 49 U.S.C. § 60104(e). Addressing Washington Gas' argument that the zoning regulations were safety standards, the Court held that Prince George County's zoning was not a preempted safety standard just because it touched on matters of safety. *Id.* at 421-422. Zoning ordinances can have multiple objectives and including safety

concerns as one objective does not turn it into a preempted safety standard under the PSA.

The Eighth Circuit created a circuit split from the Fourth and Fifth Circuits, by ruling that the county zoning ordinance regulations are preempted safety standards. The Court's flawed premise for the decision was that "nominally non-safety provisions are preempted by federal law if they nevertheless regulate safety" and the Court looked beyond the text for evidence of the law's purpose. Pet. App. 6a, 8a. In contrast, the Fifth Circuit ruled that a setback distance could incidentally affect safety and still not be preempted by the PSA. Similarly, the Fourth Circuit ruled that the prohibition against an expansion of a pipeline facility fit within the preservation of location and routing decisions to local governments and was not preempted by the PSA. Zoning ordinances by their nature regulate the siting of many types of structures and land uses, but few zoning ordinances could be categorized as having no bearing on safety at all. The ordinances here operate squarely within the counties' traditional zoning authority. Had the Eighth Circuit followed the precedent set by the Fourth and Fifth Circuits, Shelby and Story Counties' zoning ordinance would be appropriate location and routing decisions and not preempted safety standards.

II. By Parsing Legislative Intent, the Eighth Circuit Established an Unworkable Test for Analyzing Federal Preemption

By attempting to discern legislative intent or motivation rather than adhering to the text of the

PSA, the Court below created an unworkable and unpredictable test for analyzing federal preemption issues. This approach forces speculation about the lawmakers' motives and leads to inconsistent statutory interpretation.

**A. The Court's Approach Improperly
Substitutes Speculation About Legislative
Intent for the Statute's Plain Text**

This court has consistently advised against searching through state (or local) legislative intent. *Ron Pair Enterprises*, 489 U.S. at 242. “[I]f trying to peer inside legislators’ skulls is too fraught an enterprise, shouldn't we limit ourselves to trying to glean legislative purposes from the statutory text where we began.” *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 777 (2019). The Eighth Circuit’s approach may have been defensible had the statute been ambiguous, but that is not the case here. Pet. App. 6a–7a. The federal statute’s language is clear, and when statutory text is unambiguous, the analysis as it relates to preemption properly ends there. *Id.* The court below erred by departing from the plain meaning of the statute and engaging in an unnecessary search for motivation. Pet. App. 6a–9a. As demonstrated below, other circuits have adhered to the proper, strict textual approach and arrived at the correct conclusions when evaluating the language of the PSA as it relates to similar factual situations. *Texas Midstream Gas Servs., LLC*, 608 F.3d at 212; *Washington Gas Light Co.*, 711 F.3d at 426.

As pointed out in *Virginia Uranium*, peering into the skulls of legislators is a query that should not be the first line of analysis since discerning legislative

motives presents a speculative inquiry. *Virginia Uranium, Inc.*, 587 U.S. at 777. The decision below seemingly disregarded this standard and instead determined that this method of fact finding was appropriate. Pet. App. 7a–8a. The clarity of the plain text within the context of the statutory provisions at issue makes it reasonable to conclude that the decision below would have yielded a different result had the court not embarked on a path of determining the motivation of the county supervisors.

B. The Resulting Statutory Interpretation Test is Unworkable and Unpredictable in Application

Following the Eighth Circuit’s ruling, a state or local government cannot prescribe the location or route of a hazardous liquid pipeline if even one of the motivations for a setback distance is to address the safety concerns of its constituents. Pet. App. 9a. Further, under the PSA, the federal government has never been allowed to prescribe the location or routing of a hazardous liquid pipeline, regardless of safety considerations. 49 U.S.C. § 60104(e). Therefore, seemingly no governmental entity has the power to prescribe the general route or location of a hazardous liquid pipeline, although the Eighth Circuit recognized, “this holding does not prohibit local governments from considering safety, nor prevent them from enacting all zoning ordinances.” Pet. App. 9a. The holding, in effect, prohibits counties from considering safety when enacting a zoning ordinance applicable to hazardous liquid pipelines, because according to the Eighth Circuit “nominally non-safety provisions are preempted by federal law if they

nevertheless regulate safety.” Pet. App. 6a. (*citing Kinley Corp. v. Iowa Util. Bd.*, 999 F.2d 354, 359 (8th Cir. 1993)). However, as demonstrated above in *Texas Midstream Gas Services* and *Washington Gas Light Company*, many zoning ordinances will, and do, address safety concerns. See Pet. App. 9a; *Texas Midstream Gas Services*, 608 F.3d at 211; *Washington Gas Light Co.*, 711 F.3d at 421. The application of the standard created by the Eighth Circuit imposes obligations that cannot reasonably be met.

Under the authority created by the decision below, counties enacting setback ordinances must now avoid any reference to safety in the public debate, despite being charged by law with protecting the safety and welfare of their residents. Pet. App. 9a. This discrepancy places local governments in an untenable position, forcing them to disguise legitimate safety considerations behind other labels from the start and to coach the public to avoid mentioning safety as a concern. The inevitable result will be less transparency, more closed-door conversations, and diminished trust in the zoning process. The law should promote candor and accountability in local decision making, not penalize counties for acknowledging the public-safety concerns inherent in land-use regulation. *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1388 (11th Cir. 1993) (Stating local governments should be able to act on information gathered at city council meetings and there is no basis in the Constitution to justify holding otherwise.).

Practically speaking, establishing uniform setback distances allows the state or local government to influence the route choice before the pipeline company

chooses its route. When the state or local permit is requested, the pipeline company has already chosen the route and may have already obtained easements from private landowners. The ruling below curtails a state's ability to prescribe the overall location and route and leaves it with only the ability to make small adjustments to the route within a particular parcel or to deny the entire route. When one of the concerns addressed by a setback ordinance is safety or safety-adjacent objectives, the Eighth Circuit's decision effectively ties the hands of states and local governments to protect their legitimate, federally preserved interests to prescribe the location and routing of hazardous liquid pipelines.

Additionally, the Eighth Circuit stated, “[t]his court emphasizes the distinction between safety *standards*—which the PSA preempts—and safety *considerations*—which the PSA does not preempt.” *Id.* The Court did not delve into this distinction in its analysis or in its decision. With respect to the language and history of the PSA, a safety “standard” could (and should) mean provisions such as the diameter of the pipe, inspection of the pipe welds, and pressure under which the pipe may operate. 49 C.F.R. § 195.11 (2025). Without analysis, the Eighth Circuit characterized expressed concerns about safety in this case as safety “standards,” thereby expanding the scope of preemption beyond what Congress intended. Pet. App. 9a. This unexplained distinction has produced the uncertainty now before this Court, blurring the line between legitimate local zoning authority and federally preempted safety regulations. Given the impractical distinction between a safety standard and a safety consideration, the resulting

ambiguity undermines regulatory effectiveness and creates an untenable standard for compliance.

Additionally, differentiation between “considerations” and “standards” is a concerningly unworkable standard for other courts to apply. *Id.* Such a distinction provides no clear guidance for current industry participants or affected landowners, and it ensures future litigation involving similar issues. By inviting and authorizing other courts to consider and inquire into statutory intent, the result is a process that has been advised against by this court. *Virginia Uranium, Inc.*, 587 U.S. at 777. As *Virginia Uranium* makes clear, proper focus is on the statutory text, not conjecture about unexpressed purposes. *Id.* By encouraging courts to parse motives or intent rather than examine the statutory language, the Eighth Circuit’s reasoning departs from established interpretive principles and threatens to create further inconsistency in preemption analyses.

CONCLUSION

The Eighth Circuit Court of Appeals’ departure from the Fourth and Fifth Circuit’s rulings creates disparate interpretations of the Pipeline Safety Act and removes the ability of states and local governments to balance local concerns in the location and routing of hazardous liquid pipelines. Both the Fourth and Fifth Circuits realistically acknowledge that locating and routing a pipeline involves the consideration of many factors, including safety concerns, without converting those siting provisions into a safety standard. Congress reserved the right to

prescribe the location and route of a hazardous liquid pipeline to the states, including local governments like Shelby and Story Counties. The differing interpretations of federal law between the Circuits and the resulting upset in the balance of power between states and the federal government caused by the decision below makes this case ripe for review. For the foregoing reasons, amicus curiae respectfully requests that this Court grant the petition for a writ of certiorari in this case.

Respectfully submitted,

CHRISTINA L. GRUENHAGEN

Counsel of Record

Wickham & Geadelmann, P.L.L.C.

5400 University Avenue

West Des Moines, IA 50266

(515) 225-5528

cgruenhagen@ifbf.org

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