

No. 25-419

IN THE
Supreme Court of the United States

SHELBY COUNTY, IOWA, ET AL.,
Petitioners,

v.

WILLIAM COUSER, ET AL.,
Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit**

**BRIEF FOR *AMICUS CURIAE* IOWA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF
PETITIONERS**

NOAH HEINZ
Counsel of Record
ALBERT PAK
Pak Heinz PLLC
20 F Street NW, 7th Fl.
Washington, DC 20001
(202) 505-6354
noah.heinz@pakheinz.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iiv
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
I. This Court Has Rejected Motive-Based Tests for Preemption in a Wide Range of Areas.	6
A. Inquiring into Legislative Motive Is Perilous.	6
B. Preemption Case Law Has Excised Motive-Based Tests.	8
1. Preemption cases focus on effects, not purpose.	8
2. Preemption cases addressing federal “standards” turn on effects, not purpose.	10
C. This Case Presents an Opportunity to Clarify <i>Virginia Uranium</i>	12
II. Motive-Based Preemption Tests Create Practical Problems for Counties.	14
A. There Is No Meaningful Distinction Between Considering Safety and Passing an Ordinance with the Purpose of Promoting Safety.	14
B. The Lower Court’s Motive-Based Rule Will Produce Practical Problems for Local Governments.	16
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Alexander v. S.C. State Conf. of the NAACP</i> , 602 U.S. 1 (2024).....	8
<i>Arizona v. United States</i> , 567 U.S. 387 (2012).....	9
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011).....	9
<i>Crosby v. Nat’l Foreign Trade Council</i> , 530 U.S. 363 (2000).....	9
<i>Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt.</i> <i>Dist.</i> , 541 U.S. 246 (2004).....	3, 10
<i>Fletcher v. Peck</i> , 10 U.S. (6 Cranch) 87 (1810)	7
<i>Gade v. Nat’l Solid Wastes Mgmt. Ass’n</i> , 505 U.S. 88 (1992).....	3, 10, 11
<i>Hughes v. Talen Energy Mktg., LLC</i> , 578 U.S. 150 (2016).....	9
<i>Int’l Paper Co. v. Ouellette</i> , 479 U.S. 481 (1987).....	2, 9
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022).....	8
<i>Kesler v. Dep’t of Public Safety</i> , 369 U.S. 153 (1962).....	9

<i>Kurns v. Railroad Friction Prods. Corp.</i> , 565 U.S. 625 (2012).....	9
<i>Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n</i> , 461 U.S. 190 (1983).....	8, 12, 13
<i>Perez v. Campbell</i> , 402 U.S. 637 (1971).....	2, 9
<i>Shady Grove Ortho. Assocs., P.A. v. Allstate Ins.</i> , 559 U.S. 393 (2010).....	2, 6, 7
<i>Virginia Uranium, Inc. v. Warren</i> , 587 U.S. 761 (2019).....	3, 12, 13

STATUTES

42 U.S.C. § 2021(k)	12, 13
49 U.S.C. § 60102(a)(2)	3, 11
49 U.S.C. § 60104(c)	3, 5, 11
49 U.S.C. § 60104(e)	3, 11, 16
Iowa Code § 331.301(1)	17
Iowa Code § 335.5(1)	14
Iowa Const. art. III, § 39A	17

OTHER AUTHORITIES

Jean Strouse, <i>Morgan: American Financier</i> (2000)....	4
John F. Manning, <i>Textualism and Legislative Intent</i> , 91 Va. L. Rev. 419 (2005)	7

IN THE
Supreme Court of the United States

SHELBY COUNTY, IOWA, ET AL.,
Petitioners,

v.

WILLIAM COUSER, ET AL.,
Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit**

**BRIEF FOR *AMICUS CURIAE* IOWA STATE
ASSOCIATION OF COUNTIES IN SUPPORT OF
PETITIONERS**

INTEREST OF *AMICUS CURIAE*¹

The **Iowa State Association of Counties** is a nonprofit whose members are elected and appointed county officials from all 99 Iowa counties. Its mission is to promote effective and responsible county government for the people of Iowa. Among other things, the Association advocates on behalf of its membership regarding issues of importance to county governmental bodies in Iowa. Iowa counties exercise broad constitutional and statutory home rule authority to govern matters of local concern such as

¹ All counsel of record were sent notice of intent to file this brief more than ten days before filing. No counsel for a party authored any part of this brief. No one other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

land use. Expansive federal preemption, especially when based on motive, threatens counties' autonomy. The Association has a strong interest in vindicating the legitimate policymaking discretion of home rule counties.

SUMMARY OF THE ARGUMENT

This Court should grant the Petition to state, once again, that “effect rather than purpose of a state statute governs pre-emption analysis.” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 499 (1987). The lower court hinged preemption on legislative purpose, creating a circuit split, defying this Court’s warnings against investigating legislative purpose, and misconstruing the text of the Pipeline Safety Act.

The Court has long disfavored judicial interrogation of legislative purpose. “[W]hat matters is the law the Legislature *did* enact,” not its reasons. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 403 (2010). A purpose-based approach will allow the same substantive rule to survive preemption in one state, but fail in another, merely because the challenger produces better evidence of illicit purpose. Governments always pursue multiple purposes, making the real purpose nigh impossible to divine. Cases from the 1800s through last year echo these weighty concerns.

Preemption case law uniformly examines a law’s scope and effect, not its purpose. Numerous cases follow that approach. In *Perez v. Campbell*, the Court abandoned “the aberrational doctrine . . . that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration.” 402

U.S. 637, 651-52 (1971). The lower court’s rule returns to the approach *Perez* discredited.

Preemption cases that, like this one, turn on a federal “standard” uniformly look to the scope and effect of the standard, not its purpose. That was true in defining emissions standards in *Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246, 252-53 (2004), and in defining occupational safety and health standards in *Gade v. National Solid Wastes Management Association*, 505 U.S. 88 (1992).

Those cases provide the rule that applies here. The Secretary of Transportation is authorized to promulgate “safety standards,” 49 U.S.C. § 60102(a)(2), which cover specified areas, *id.*, and expressly do not cover “location or routing,” *id.* § 60104(e). The scope and effect of what the Secretary may regulate as “safety standards” should inform the scope of preemption of state-law “safety standards” in 49 U.S.C. § 60104(c). Whatever the answer to that statutory interpretation question, it surely is not that anything is a “safety standard” if the government’s private motivation for promulgating it included a desire to promote safety—a desire that at least partially motivates almost all regulation.

One area that stands apart from the Court’s ordinary preemption jurisprudence is precedent construing the Atomic Energy Act, which has unusual text. The Court fractured in *Virginia Uranium, Inc. v. Warren* over construing that law. 587 U.S. 761 (2019). This case is an ideal opportunity to clarify preemption doctrine, building on the lead opinion in *Virginia Uranium*, since it has neither the unusual text nor the prior precedent that bothered the dissenters.

A motive-based preemption test is unworkable for local governments. The lower court held that considering safety does not render an ordinance a safety standard, but that acting with the purpose of enhancing safety does render it a safety standard. There is no meaningful distinction between considering safety and pursuing the purpose of safety that counties can follow.

Compounding the unworkability, it is unclear how a county could cure the illicit purpose of caring about safety once a court has found for a challenger. The challenger could always allege that any subsequent ordinance that is similar is a sham with the real purpose of promoting safety.

The lower court's legal test will stifle public debate, since it encourages local governments to purge smoking-gun evidence that they want to enhance safety. It may also shape who is appointed as a decisionmaker, since someone more honest (or less careful) will provide more fodder for lawsuits. Moreover, by making preemption turn on subjective legislative motive, the lower court's decision undermines county home rule authority and invites federal courts to second-guess local legislative judgments that lie at the core of our cooperative federalism. Finally, the lower court's rule will multiply litigation, since challengers will always be able to accuse counties of caring about safety too much, which could trigger burdensome discovery into local officials' subjective motivations.

ARGUMENT

J.P. Morgan famously said that "a man generally has two reasons for doing something: a good reason

and the real reason.”² If that is true of every person, it is doubly true of government bodies. The legislative process involves input, testimony, commentary, and advocacy from a wide range of perspectives, each urging different reasons. At the end of the process, every legislator, councilmember, board member, and commissioner has heard many reasons for voting for a provision and may hold some in their minds that have never been expressed. That process culminates in the promulgation of a particular provision of law. Its text is knowable, but there is no one, primary reason for it, whether good, bad, ugly, or real.

This Court’s preemption case law has taken that truth to heart, holding in case-after-case that preemption does not turn on the *motive* or *real reason* for a law. The real reason cannot preempt a state or local law or save it from preemption. Rather, what matters is the effect of the law: its scope, the duties it imposes, and the results it produces.

The lower court here forgot those lessons. Under federal law, “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.” 49 U.S.C. § 60104(c). The key interpretive question in this case is: What makes an ordinance a “safety standard”? For the lower court, the governmental body’s “safety purpose” is dispositive. Pet. App. 6a. Applying that test, Petitioner Counties’ setback, emergency plan, and abandonment requirements were deemed “safety standards” not because they actually regulated pipeline safety, but because, “look[ing] beyond the

² *E.g.*, Jean Strouse, *Morgan: American Financier*, at xiii (2000).

rationale offered,” the lower court found that the *real* reason for them was safety. Pet. App. 8a.

The Court should review that erroneous conclusion. Only this Court can rein in the Eighth Circuit’s divergent application of preemption doctrine. If allowed to stand, the lower court’s rule places counties in an untenable condition. They can “consider[] safety,” Pet. App. 9a, but that consideration cannot be the *reason* for acting. This provides no genuine guidance, and may lead counties to truncate discussions about safety, or to artificially limit their deliberations. No matter what they do, a company can always challenge an ordinance as motivated by safety, even if (as in this case), similar ordinances have survived challenge.

I. This Court Has Rejected Motive-Based Tests for Preemption in a Wide Range of Areas.

This Court has long warned of the perils of hinging a law’s validity on legislative motive. Its preemption case law even more clearly directs courts to the scope and effects of law to discern a conflict, rather than to malleable purposes.

A. Inquiring into Legislative Motive Is Perilous.

Perhaps the best articulation of the pitfalls of divining the *real* reason for a state law comes from *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010). There, Justice Scalia cautioned that “what matters is the law the Legislature *did* enact,” not its reasons. *Id.* at 403. The contrary “approach of 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.’” *Id.* at 404 (quoting *Sibbach v. Wilson & Co.*, 312 U.S. 1, 14 (1941)). Such an approach would mean “that one State’s statute could survive pre-emption . . . while another State’s identical law would not, merely because its authors had different aspirations.” *Id.* Beyond that, divining the *real* reason “will often prove arduous” because “laws further more than one aim” and the real reason “may be impossible to discern.” *Id.* Perhaps worst of all (for Justice Scalia), a court divining the real reason for a law “would be condemned to poring through state legislative history” if it exists. *Id.* at 405.

There simply is no way for courts to *find* the real reason for the passage of a law. There are no established judicial standards to do so. There is no agreement on what facts matter, or how deeply to delve. There is no agreement on whether purpose is a question of fact for the factfinder, or one of law for the court. Moreover, there is no reason to think Congress would *care* what a local government’s *reason* for passing an ordinance is—the same legal rule imposes the same potentially conflicting obligations and produces the same potentially conflicting results, regardless of whether a county cared mostly about safety or mostly about something else.

This logic is so strong that it abounds throughout this Court’s cases. No less an authority than Chief Justice Marshall warned of the perils of a suit “founded on the allegation that the act is a nullity in consequence of impure motives which influenced certain members of the legislature which passed the law.” *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 131 (1810). More recent cases endorse this reasoning on the grounds that a reason that “motivates one

legislature to vote for a statute is not necessarily what motivates scores of others to enact it.” *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 216 (1983). See also John F. Manning, *Textualism and Legislative Intent*, 91 Va. L. Rev. 419, 427-32 (2005).

The Court’s more recent case law has been even more diligent in expunging motive-based reasoning. In the Establishment Clause context, the Court recently overturned the *Lemon* test, which “called for an examination of a law’s purposes,” which did not match the original public meaning of that Clause, and mired courts in a perilous hunt for motivations. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022). Even in areas where the Court still will countenance a review for legislative motive, the Court has raised the standard based on similar concerns. See, e.g., *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (holding that the legislature starts with a “presumption” of good faith when facing an allegation of racial motive in drawing district lines).

The lower court’s rule stands opposed to these deep-rooted principles.

B. Preemption Case Law Has Excised Motive-Based Tests.

Closing the aperture to focus on just preemption cases, the Court has been even more reluctant to review state-law motive.

1. Preemption cases focus on effects, not purpose.

Modern preemption doctrine does not turn on motive (or even state-law purpose). To the contrary, a clean sweep of preemption cases in every area has

examined the *effects* of laws rather than their purpose. See, e.g., *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (foreign affairs); *Arizona v. United States*, 567 U.S. 387 (2012) (immigration); *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625 (2012) (railroads); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150 (2016) (energy rates); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (arbitration). To be sure, the intent of *Congress* matters in setting the scope of preemption, but that is an ordinary textual interpretation question. The purpose of the *state* (or local government) does not matter, except to the extent it dictates the legal effect of the state law (a matter determined by state law principles in any event).

The Court's laser focus on effects over purpose is not accidental but learned from experience. In cases like *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962), the Court looked to the purpose of state law to uphold laws affecting debts arising from car crashes. These laws conflicted with bankruptcy law, producing a quagmire. In *Perez v. Campbell*, the Court abandoned "the aberrational doctrine of *Kesler* . . . that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration." 402 U.S. 637, 651-52 (1971). This Court has glossed *Perez* as standing for the proposition that "effect rather than purpose of a state statute governs pre-emption analysis." *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 499 (1987). This principle applies in both directions—it is just as "aberrational" to find preemption based on purpose as it is to decline to find preemption. State-law purpose should not matter to preemption.

2. Preemption cases addressing federal “standards” turn on effects, not purpose.

Preemption cases involving federal standards similarly define the preemptive scope by reference to the effect of a given standard, not its purpose. For example, in *Engine Manufacturers Association v. South Coast Air Quality Management District*, the Court construed a “standard relating to the control of emissions” not as a standard *for the purpose* of controlling emissions, but rather as a standard requiring that a vehicle “not emit more than a certain amount of a given pollutant,” or that is “equipped with a certain type of pollution-control device,” or that has “some other design feature related to the control of emissions.” 541 U.S. 246, 252-53 (2004).

The same reasoning controlled in *Gade v. National Solid Wastes Management Association*, 505 U.S. 88 (1992). There, federal law preempted any state law that was an occupational safety and health standard. To determine whether the law at issue was such a standard, the Court “refused to rely solely on the legislature’s professed purpose.” *Id.* at 105. Rather than the “purpose or purposes of the state law,” the Court focused on “the effect of the challenged state action.” *Id.* at 107. The dispositive question boiled down to whether the challenged law “directly, substantially, and specifically *regulates* occupational safety and health.” *Id.* (emphasis added).

This approach to construing the term “standard” should apply uniformly. A safety standard under the Pipeline Safety Act should be one that directly, substantially, and specifically regulates pipeline safety—not, as the lower court held, one that regulates

something else but has the *purpose* of enhancing safety.

Applying those principles here, the result should have been straightforward. The Pipeline Safety Act empowers the Secretary of Transportation to “prescribe minimum safety standards for pipeline transportation and for pipeline facilities.” 49 U.S.C. § 60102(a)(2). Such standards “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), but in no event may the “Secretary of Transportation [] prescribe the location or routing of a pipeline facility,” 49 U.S.C. § 60104(e). States “may not adopt or continue in force safety standards for interstate pipeline facilities.” 49 U.S.C. § 60104(c).

The interlocking provisions of the statute make clear that a “safety standard” under section 60104(c) is coterminous in scope with the “safety standards” the Secretary may promulgate under section 60102(a)(2). To paraphrase *Gade*, such a standard must “directly, substantially, and specifically regulate” safety. *Gade*, 505 U.S. at 107. That rule would make all the sense in the world, since pipelines should be subject to just one set of safety standards. That logic makes clear beyond question that “safety standard” *cannot* mean any legal requirement whatsoever with the motive of enhancing safety—after all, “safety standard” is keyed to what the Secretary of Transportation can do, and the Secretary plainly could not simply pass any regulation he wants that had the subjective purpose of enhancing safety. At minimum, the Secretary cannot “prescribe the location or routing of a pipeline facility.” And there are surely other things, too, that would not

count as genuine safety standards (for example, a regulation of pipeline financing with the purpose of enhancing safety).

In short, this statute should be read the same as every other preemption case addressing federal standards, and should turn on the scope of a “safety standard.” On one side of the coin is what “safety standard” means for the *Secretary*. The other side of that same coin is what it also means for the counties. Preemption follows from a conflict between state and federal law—here, that requires assessing the scope and effect of state law, and comparing it to the scope and effect of the federal statutory term “safety standard” in the full Pipeline Safety Act. The scope may be fairly debatable in specific cases, but there is no plausible argument that it hinges on the subjective motivation of the lawgiver. That straightforward conclusion is sufficient to reverse the lower court.

C. This Case Presents an Opportunity to Clarify *Virginia Uranium*.

Cases construing the Atomic Energy Act present a possible exception to the otherwise consistent focus on effects over purposes. The AEA includes unusual language allowing states to “regulate . . . for purposes other than protection against radiation.” 42 U.S.C. § 2021(k). Construing this language, the Court held that a California law had an economic purpose unrelated to radiation, and so survived preemption. *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 215 (1983). However, its purpose-based holding was equivocal, since it *also* warned that the Court “should not become embroiled in attempting to ascertain California’s true motive,” and that the purpose only

mattered because there was no “actual conflict between state and federal law.” *Id.* at 216 & n.28.

This Court attempted to clarify *Pacific Gas & Electric* in its recent *Virginia Uranium, Inc. v. Warren* case but failed to land upon a rationale that satisfied a majority of the Court. 587 U.S. 761 (2019). The lead opinion in *Virginia Uranium* expounded on the dangers of motive-based tests. It highlighted “the costs to cooperative federalism and individual liberty” from “inquiring into state legislative purpose.” *Id.* at 775 (plurality). It warned that a motive-based test would “stifle deliberation in state legislatures and encourage resort to secrecy and subterfuge.” *Id.* Worse, “federal courts would have to allow depositions of state legislators and governors, and perhaps hale them into court for cross-examination at trial about their subjective motivations,” and, in the end, “judges [could] 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.

Six justices disagreed. Justices Ginsburg, Sotomayor, and Kagan did not join the “discussion of the perils of inquiring into legislative motive.” *Id.* at 781 (Ginsburg, J., concurring in the judgment). Chief Justice Roberts and Justices Breyer and Alito also did not join, largely based on “the text of the AEA,” which differs from the text here. *Id.* at 801 (Roberts, C.J., dissenting). The key text for the dissenters was the Atomic Energy Act’s provision authorizing states “to regulate activities for *purposes* other than protection against radiation hazards.” *Id.* (quoting 42 U.S.C. § 2021(k)). The dissent did not dispute the “difficulties about inquiring into legislative motive,” but believed the AEA’s unusual text—which *specifically* used the

word “purposes”—“require[d] such an approach” notwithstanding the “difficulty of the task.” *Id.*

This case is a prime opportunity to clarify the principles from *Pacific Gas* and *Virginia Uranium* in an opinion for the full Court. The text here does not use the word “purposes,” “motivations,” or anything similar, removing the key obstacle cited in dissent. Whatever the merits of a motivation-based preemption test for statutes that require such a rule in their text, the Pipeline Safety Act does not. The lower courts would benefit from a definitive ruling from a majority of the Court stating plainly that preemption turns on the scope and effect of state law, not its purpose.

II. Motive-Based Preemption Tests Create Practical Problems for Counties.

This Court has rejected motive-based tests for good reason. Not only are such tests focused on the wrong object and unworkable for *courts*, but motive-based tests also produce unsolvable dilemmas for local governments.

A. There Is No Meaningful Distinction Between Considering Safety and Passing an Ordinance with the Purpose of Promoting Safety.

The lower court’s distinction between considering safety and pursuing safety as a purpose is entirely unworkable. Iowa law requires counties to consider “safety” in their zoning decisions. Iowa Code § 335.5(1). Residents, stakeholders, and county officials obviously care deeply about safety, and safety concerns will always arise in some way or another during hearings and deliberations. *See, e.g.*, Pet. 9-10. Recognizing that fact, the lower court acknowledged

that counties may “consider[] safety,” Pet. App. 9a, but warned that they may not act on that “purpose” in passing an ordinance. In practice, that is a hopeless task. Does this mean a local government may *hear* about safety (and thus consider it), but, in enacting the ordinance, must put what it learned out of its mind (thus, not pursuing safety as a “purpose”)? Is it enough if most decisionmakers put safety out of their mind? Does it instead mean a local government must satisfy a Goldilocks test, considering safety *enough* to satisfy Iowa law and allow participation by the community, but not *too much* as to stray into preempted territory? Or is it simply a matter of cleverness—a county can pass any ordinance for any reason, as long as the *record* before it has few enough references to safety?

Considering what Petitioner counties in this case are supposed to do illustrates the problem. The lower court already held that their purpose in passing the challenged ordinance was safety. What should they do in the future to ensure a new ordinance passes legal muster? If the rule turned on effects, the answer would be clear: modify the operative provisions to eliminate conflict with federal law (which is what Story County tried to do). But to cure the taint of an illicit purpose is harder. Would new county officials need to make the decision, or would it be enough for the same officials to go through a new process, promising that *this time* they did not care as much about safety? Would it be enough to conduct a study of some kind, outlining as many non-safety rationales as possible for each requirement?

The answer cannot simply be “do not regulate pipelines,” since all agree state and local governments are the proper regulators for location or routing. Federal law expressly “does not authorize the

Secretary of Transportation to prescribe the location or routing of a pipeline facility.” 49 U.S.C. § 60104(e). Only local governments can do that. It would be strange if, in exercising this traditional authority that Congress expressly reserved to them, local governments were required to ignore the normal criteria they apply to all other zoning decisions.

B. The Lower Court’s Motive-Based Rule Will Produce Practical Problems for Local Governments.

A legal test that examines motive will stifle public debate on vital issues, interfere with local self-government, and multiply litigation.

Although the *real* reason for an ordinance is in the mind, it is proven through evidence of what supporters or county officials said. A challenger with “smoking gun” evidence has a strong chance of winning, while one with nothing more than inference will struggle. For that reason, the inevitable result of a legal test targeting legislative motive is policing speech. Well-advised counties will make sure that safety does not come up, or that when it comes up, it is always as “one consideration” rather than the reason to pass an ordinance. That outcome is a sad one for local government. The free exchange of ideas lies at the core of self-government. It has been celebrated since the nation’s founding and is protected in state law and the First Amendment. The self-censorship of local government at the behest of the federal courts would be an ignominious deterioration.

Beyond affecting what local governments *say*, a rule policing legislative motives could affect who gains power in the first place. A crafty commissioner could succeed where a loudmouth would fail under the lower

court's rule. This danger is particularly acute for home rule governments like Iowa's counties.³ Home rule was adopted to ensure that local governments that are closest to citizens can legislate on matters of local concern. Home rule has always included land use and community safety. By treating local intent as suspect, the lower court penalizes the very responsiveness and accountability that home rule was designed to protect.

No matter what local governments do, a profusion of litigation awaits if this Court denies certiorari. Whatever ordinances counties pass, there will always be *something* in the record touching on safety. Pipeline companies will always be able to argue after the fact that the *real* motive was safety all along.⁴ They will pore through meeting minutes for illicit motives, interview witnesses to discern a preference for safety, and seek to depose county officials to discern their true intent. Acting in the permanent shadow of litigation is no way for self-government to work.

³ The Iowa Constitution grants counties "home rule power and authority . . . to determine their local affairs and government." Iowa Const. art. III, § 39A. Thus, a county may "exercise any power and perform any function it deems appropriate . . . to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents." Iowa Code § 331.301(1).

⁴ That problem played out in this very litigation. Story County originally imposed setbacks based on pipeline diameter and blast radius, which likely were safety standards. *See* Pet. App. 4a, 36a-40a. After concerns about federal preemption arose, the County repealed that ordinance and adopted a uniform setback derived from its longstanding land-division practices. *See id.* at 40a-44a. But Summit still argued—successfully—that the safety purpose of the original ordinance animated the new one. *E.g., id.* at 7a.

CONCLUSION

For the reasons stated above, this Court should grant the writ of certiorari.

Respectfully submitted,

NOAH HEINZ

Counsel of Record

ALBERT PAK

Pak Heinz PLLC

20 F Street NW, 7th Fl.

Washington, DC 20001

(202) 505-6354

noah.heinz@pakheinz.com

Counsel for Amicus Curiae

November 6, 2025