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 IN OPPOSITION

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QUESTION PRESENTED

Whether county ordinances that impose minimum setback distances for hazardous-liquid pipelines from sensitive facilities and homes—and do so to address perceived risks to the public—constitute "safety standards" that are preempted by the Pipeline Safety Act, 49 U.S.C. § 60104(c).

CORPORATE DISCLOSURE STATEMENT

Respondent Summit Carbon Solutions, LLC is owned by Summit Carbon Holdings, LLC and SCS MgmtCo, LLC. No publicly held corporation owns 10% or more of Summit Carbon Holdings, LLC's or SCS MgmtCo, LLC's membership interests.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners Shelby County, Iowa; the Shelby County Board of Supervisors; and Supervisors Steve Kenkel, Charles Parkhurst, and Darin Haake (each sued in his official capacity) were defendants in the district court and appellants in the Eighth Circuit in No. 23-3758.

Petitioners Story County, Iowa; the Story County Board of Supervisors; and Supervisors Latidah Faisal, Linda Murken, and Lisa Heddens (each sued in her official capacity) were defendants in the district court and appellants in the Eighth Circuit in No. 23-3760.

Respondent Summit Carbon Solutions, LLC was a plaintiff in both district court actions and an appellee in the consolidated appeals below.

Respondent William Couser was a plaintiff in both district court actions and an appellee in the Eighth Circuit in No. 23-3760.

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INTRODUCTION

The Pipeline Safety Act (PSA) expressly preempts states and local governments from adopting or enforcing "safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). Pipeline safety, Congress has declared, is the province of the federal Pipeline Hazardous Materials Safety Administration (PHMSA). And "safety standards"—contrary to the petitioners' claim—include standards that affect where a pipeline may be constructed. Indeed, PHMSA has long promulgated safety standards that restrict where pipeline facilities may be built.

In this case, Shelby and Story Counties enacted ordinances that, among other things, require pipeline operators to submit emergency response plans that meet PHMSA's rules and impose standards that require pipelines to be constructed minimum distances from buildings with vulnerable populations (*e.g.*, schools, nursing homes, and hospitals) and residences—including homes on farms miles from any municipality. Pet.App.8a–9a,11a–12a.

Not surprisingly, the district court and the Eighth Circuit both concluded that these standards—adopted for the express purpose of protecting the public—are precisely what they purport to be: safety standards. So the courts held that the PSA preempts them.

The counties ask this Court to grant review because (they say) the Eighth Circuit erred by considering the ordinances' safety purpose, stands

alone in doing so, and thereby created a "motivation-based" test that conflicts with this Court's precedents. The counties further insist that this case is an "ideal vehicle" for review, asserting that the validity of their setbacks "turn[s] entirely on a single legal issue," the proper test for preemption under the Pipeline Safety Act. Pet.31.

None of that is correct.

First, there is no circuit split—much less an "entrenched" or "square" one. Pet.1, 13. No court of appeals has held that a zoning ordinance or other location-based regulation cannot constitute a safety standard. And in the very decisions the counties cite for the supposed division of authority, the Fourth and Fifth Circuits likewise considered whether the driving force behind the local law—its purpose—was safety. In fact, the "primary motivation" test that the counties attribute to the Eighth Circuit actually comes from the Fifth Circuit's decision in *Texas Midstream Gas Services v. City of Grand Prairie*, 608 F.3d 200, 212 (5th Cir. 2010). Each appearance of that phrase in the Eighth Circuit's opinion is a direct quotation from the Fifth Circuit. Pet.App.8a–9a.

Second, even if there were a circuit split, this case would be a poor vehicle to resolve it. Under any test the counties propose—or a court could imagine—these setback requirements qualify as safety standards. The counties conceded that point as a matter of subjective purpose, admitting the setbacks were about safety. And as a matter of objective design, the ordinances serve no function

other than safety. As the Eighth Circuit explained, the fact that the ordinances require larger setbacks for vulnerable populations and apply to dwellings in every part of the counties—including "remote areas"—eliminates or at least "undercuts" any asserted non-safety purpose. Pet.App.9a.

Third, a reversal of the Eighth Circuit's federal preemption holding would not even give the counties what they want. Under Iowa law, regulatory authority over hazardous liquid pipelines that is not already preempted by federal law is reserved to the Iowa Utilities Commission. So what escapes federal preemption is preempted by state law. Although the Eighth Circuit did not separately analyze state preemption as to the setbacks—because it had already invalidated them under the Pipeline Safety Act—the state-law analysis the court applied to other parts of the ordinances preempts the setback requirements as well. At most, a decision here would be an academic exercise to resolve an imagined circuit split.

Finally, the counties attempt to recast this express-preemption dispute as a vehicle to revisit *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761 (2019), and the role of legislative motive in implied-preemption analysis. That effort is misplaced. *Virginia Uranium* concerned whether a court may infer preemption where Congress did not expressly preempt the subject regulated; this case involves a statute that expressly prohibits states from enforcing "safety standards" for interstate pipelines. 49 U.S.C. § 60104(c). Determining whether a pipeline rule is a "safety

standard" necessarily requires asking what the rule is designed to do, because no such regulation labels itself as "safety" on its face—although these ordinances come close. So unlike *Virginia Uranium*, the question here is not whether motive may expand preemption beyond Congress's text, but whether the counties' ordinances fall within the category Congress expressly barred. The Eighth Circuit answered that straightforward question correctly, and nothing in *Virginia Uranium* calls that analysis into doubt.

STATEMENT OF THE CASE

A. Summit's Interstate Pipeline Project

Respondent Summit Carbon Solutions, LLC is developing an interstate project that will collect carbon dioxide (CO_2) emitted by ethanol plants (and certain fertilizer facilities) and transport it by pipeline to underground geologic storage sites for permanent sequestration. Pet.App.34. At the time the district court granted summary judgment, Summit had contracted with more than thirty facilities across the Midwest to capture, transport, and store the CO_2 emitted from their operations. *See* CA8 Joint Appendix (JA) 1116–17. In Iowa alone, the pipeline will traverse 700 miles through nearly a third of the State's 99 counties, connecting many separate ethanol plants. *Id.* at 17, 1167.

Transporting CO_2 at this scale—either for sequestration or for enhanced oil recovery—requires dedicated pipeline infrastructure. And as the record reflects, pipeline transport is the safest, most efficient, and only commercially feasible

means of moving compressed CO_2 over long distances. JA192.

B. Legal Background

Summit's pipeline is regulated at both the federal and state level.

Like all hazardous liquid pipelines in the United States, Summit's pipeline is subject to the jurisdiction of the Pipeline and Hazardous Materials Safety Administration, or PHMSA, an agency within the U.S. Department of Transportation that regulates pipeline safety. "[T]o provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities," 49 U.S.C. § 60102(a)(1), PHMSA has adopted minimum safety standards for the design, construction, testing, operation and maintenance of natural gas and hazardous liquid pipelines. *See* 49 C.F.R. parts 190 through 199.

In Iowa, Summit is also regulated by the Iowa Utilities Commission, which the Iowa legislature has given "*the* authority" to regulate and "approve the location and route of hazardous liquid pipelines." Iowa Code § 479B.1 (emphasis added).

1. The Pipeline Safety Act and PHMSA's Exclusive Jurisdiction Over Safety Standards

Congress enacted the Pipeline Safety Act in 1994 to combine, recodify, "and enact without substantive change" the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquids Pipeline Safety Act of 1979. Pub. L. No. 103-272,

108 Stat. 745, 745 (preamble). The PSA's purpose "is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation," who oversees PHMSA. 49 U.S.C. § 60102(a)(1).

To that end, the PSA directs the Secretary of Transportation to create "minimum safety standards for pipeline transportation and for pipeline facilities," *id.* § 60102(a)(2), with "pipeline facility" defined broadly to include not only the pipe itself but also the "right of way, a facility, a building, or equipment used or intended to be used in transporting" gas or hazardous liquid, *id.* §§ 60101(a)(3), (5), (18). Exercising that authority, PHMSA has promulgated numerous pipeline-safety regulations, ranging from the thickness of the pipe, distance from residences, to the depth a pipeline must be buried underground. *See, e.g.*, 49 CFR §§ 195.106, 195.210, 195.248; 49 CFR § 192.5.

Congress also made clear that PHMSA is not just *a* regulator of interstate pipeline safety; it is *the* regulator. Under the PSA, 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). And because the statute defines pipeline facilities broadly, *id.* §§ 60101(a)(3), (5), (18), that prohibition extends to safety requirements directed at any component of an interstate pipeline system—including the right of way.

Although PHMSA is the Nation's exclusive pipeline safety authority, it is not a pipeline siting authority. The PSA therefore provides that it "does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility." 49 U.S.C. § 60104(e).

That provision means only what it says: PHMSA does not select a pipeline's precise route or the specific location of facilities such as pumps or compressor stations. The counties nonetheless invoke that clause to make two sweeping claims in their petition: (1) that "safety standards" under the PSA are limited to "technical matters of engineering and operation" and cannot include rules affecting "where a pipeline [or pipeline facility] may be placed," and (2) that 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.'" Pet.1–2, 6 (quoting § 60104(e)).

Those two assertions—which the counties present as black-letter law and repeat throughout the petition—are misleading and incorrect.

Starting with the second claim: Section 60104(e)'s location-or-routing limitation is not about "expressly denying" the federal government siting authority or reserving it to the states. Natural-gas pipelines too are governed by the PSA's safety regime, but their routes are approved *by the federal government*—specifically, the Federal Energy Regulatory Commission. Section 60104(e) simply makes clear that PHMSA, itself, is not a siting authority; the PSA provision does

not carve out any sphere of siting authority for any other governmental entity—state or federal.

Although states may serve as the siting authority for other types of hazardous-liquid pipelines, such as those carrying oil and CO_2, that allocation of authority arises from other statutes—not from § 60104(e). Indeed, Congress first enacted the location-or-routing provision—what is now § 60104(e)—as part of the Natural Gas Pipeline Safety Act of 1968, when the only pipelines at issue were natural-gas pipelines whose routing was (and remains) a purely federal concern. *See* Pub. L. No. 90-481, 82 Stat. 720.[1] So the counties misdescribe the work that § 60104(e) is doing.

The counties' first claim, which it makes without citation to any authority, is also wrong. "Safety standards" under the PSA are not limited to "technical matters of engineering and operation"; and contrary to the counties' assertion, they may—and indeed do—affect "where a pipeline [or pipeline facility] may be placed." Pet.2.

No court has held otherwise. And for more than 50 years, PHMSA and its predecessors have been doing just that—promulgating safety standards that affect where a pipeline facility may be placed.[2]

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[1] *See also* H.R. Rep. No. 90-1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3,223, 3,251–3,253 (discussing the authority of FERC's predecessor, the Federal Power Commission, to determine the location or routing of interstate gas pipeline facilities).

[2] *See e.g.*, 49 C.F.R. §§ 192.163(a) (location of compressor buildings), 192.179(a) (spacing requirements for the location

In 1969, the Secretary approved a regulation that instructed pipeline companies to "avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." 49 C.F.R. § 195.210 (first promulgated at 34 Fed. Reg. 15473, 15475,15479 (Oct. 4, 1969)). That regulation was re-promulgated in 1981 to reflect the passage of "the Hazardous Liquid Pipeline Safety Act of 1979." 46 Fed. Reg. 38357, 38366 (July 27, 1981). It was in force when Congress enacted the PSA, and it remains in force today.

That regulation alone refutes the counties' background contention that the PHMSA's safety standards may not constrain where pipelines may be placed and that the Pipeline Safety Act is limited to engineering topics. And it is hardly unique: numerous other PHMSA regulations likewise affect the location of pipeline facilities. The starting premise of the counties' petition—that the PSA carves out such regulations from the definition of safety standard—is false.

2. The Iowa Utilities Commission's Exclusive State Role in Siting and Regulating Pipelines.

As the court of appeals recognized, the Iowa Utilities Commission is the siting and permitting authority for the State of Iowa. Pet.App.3a. The

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of valves), 192.185 (location requirements for vaults), 192.325 (underground clearance requirements), 192.327 (depth-of-cover requirements), 192.353 (location requirements for customer meters), 192.365 (location of valves on service lines).

state commission holds "*the* authority" to permit and "implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state." Iowa Code § 479B.1 (emphasis added).

To construct a pipeline, a pipeline company must submit a detailed application to the Utilities Commission that, among other things, includes a description and map of proposed route, the "possible use of alternative routes," a description of private highways, waters, and streams that the pipeline will cross, and the "inconvenience or undue injury which may result to property owners as a result of the proposed project." *Id.* § 479B.5. Following an evidentiary hearing where the Commission "examine[s] the proposed route," *id.* § 479B.8, the three-member body denies the application or grants a permit "in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper." *Id.* § 479B.9. As the Eighth Circuit explained, that "delegation of power is singular, sweeping, and cedes nothing to the counties." Pet.App.17a.

3. The Counties' Hazardous Liquid Pipeline Ordinances.

After Summit submitted its application to the Iowa Utilities Commission, Shelby County and Story County enacted ordinances that regulate hazardous liquid pipelines.

Shelby County Ordinance: On November 1, 2022—over ten months after Summit filed its Utilities Commission application—the Shelby County Board of Supervisors passed Ordinance No. 2022-4. Pet.App.80a. The new local law imposes several requirements for the construction and operation of hazardous liquid pipelines beyond those imposed by the state regulations enacted under Iowa Code Chapter 479B and federal regulations enacted under the PSA.

The ordinance—which names Summit expressly—contains a lengthy preamble that focuses on the safety risk associated with CO_2 pipelines. Pet.App.80a–88a. It states that "there are several factors that would influence human safety in the event of a rupture of such pipeline" and that such an incident "may lead to asphyxiation of nearby people." Pet.App.85a. The ordinance then recounts the February 2022 rupture of a CO_2 pipeline in Satartia, Mississippi, and notes that PHMSA has initiated rulemaking "to update safety and emergency preparedness" in response to that incident. Pet.App.86a–87a. In one of its many "whereas" clauses, the ordinance adds that PHMSA's rulemaking "is not yet complete," suggesting that the County must act in the interim. Pet.App.87a.

With that context, and because the County Board of Supervisors believes that the "use of land for purposes of transporting Hazardous Liquids through Pipelines poses a threat to the public health and welfare," Pet.App.98a, the ordinance imposes a series of safety-based requirements on pipeline operators. It requires a detailed

emergency-response and hazard-mitigation plan tied to PHMSA's CO_2 rules if they exist and otherwise to county mandates, Pet.App.105a–06a, subjects operators to an extensive local permitting regime, Pet.App.99a–100a, and imposes sweeping setbacks, Pet.App.98a–99a. Specifically, pipelines must maintain "minimum separation distances" of: (1) two miles from any incorporated city; (2) one-half mile from churches, schools, nursing homes, and hospitals; (3) one-quarter mile from parks; and (4) 1,000 feet from any "occupied structure," electric power facility, public drinking water treatment plant, or public wastewater treatment plant. Pet.App.98a–99a.

Story County Ordinance: Within a week of Shelby County enacting its ordinance, the Story County Board of Supervisors enacted its own. JA1099. Among other things, the ordinance required CO_2 pipelines to maintain minimum distances from dwellings and places of assembly, mandated a minimum burial depth, and required pipeline operators to submit a detailed emergency-preparedness plan incorporating modeling of CO_2 concentrations "that are immediately dangerous to life or health." JA1101–06.

The setback distances were based on county staff's assessment of CO_2 concentration levels that "cause dizziness, confusion, and other symptoms after 30 minutes" and levels that "can cause death and loss of consciousness" within several minutes. JA1110. The Planning and Development Director described the setbacks as "the minimum necessary" to protect "public health, safety, and welfare," and explained to the Board that the

ordinance was intended to "regulate . . . hazardous materials pipelines that pose . . . health and safety risks." Pet.App.36a (citing Audio of Oct. 18, 2022 meeting at 53:25).

Less than a month after this suit was filed, the Board enacted a new ordinance—Ordinance No. 311—repealing Ordinance No. 306 and replacing it with a revised regulatory framework. Pet.App.113a. The new ordinance retained the core features of the prior law, including county-level emergency-planning requirements and extensive setback provisions. Pet.App.125a–27a. Those setbacks were largely unchanged, though they are now set expressly by ordinance rather than by a formula tied to CO_2 concentration levels. Ordinance 311 prohibits hazardous-liquid pipelines from coming within one-quarter mile (1,320 feet) of retirement and nursing homes, childcare centers, group homes, detention facilities, and any dwelling—without regard to whether the property is urban or rural. Pet.App.125a–26a.

C. District Court Proceedings

The counties' ordinances did not sit long before being tested. Within weeks of their enactment, Iowa farmer William Couser and Summit sued each county in separate lawsuits in the United States District Court for the Southern District of Iowa, alleging that both the PSA and Iowa law preempt the local pipeline restrictions.

Shelby County moved first. While the case was still in its early stages, the County began enforcing its ordinance. Summit and Couser responded by

seeking emergency and preliminary injunctive relief, which the district court granted as to Summit.[3] Pet.App.26a–27a. As to the setback provisions—the focus of the counties' petition here—the district court resolved the case on state-law grounds alone, concluding that local governments lacked authority to regulate hazardous-liquid pipelines and thus finding it unnecessary, at that stage, to reach the federal question. Pet.App.28a–29a.

That same conclusion carried through to final judgment. On summary judgment, the district court adhered to its initial view that Iowa law vests exclusive regulatory authority over hazardous-liquid pipelines in the Iowa Utilities Commission, leaving no room for county regulation and, again, obviating the need to decide the federal preemption issue. Pet.App.28a–29a.

Story County followed a different procedural path and produced a fuller ruling. In a separate summary-judgment order enjoining Story County's ordinance, the same district judge reached both layers of the preemption analysis. The district court held that the ordinance's setback provisions were preempted by the PSA and, independently, that they were also preempted under Iowa law. Pet.App.55a–60a, 66a–71a. The court also enjoined nearly every other operative

[3] The district court dismissed Couser for lack of standing in the Shelby County case, but he remains a defendant in the Story County case. Pet.App.25a.

provision of the ordinances under either federal or state law.

D. Court Of Appeals Proceedings

The Eighth Circuit affirmed. Unlike the district court, which started with state preemption and then moved to federal preemption, the court of appeals started with the Pipeline Safety Act.

Writing for the majority, Judge Benton (joined by Chief Judge Colloton) held that the setbacks are "safety standards" under the PSA and thus preempted. The court identified two other Circuits that had addressed whether setback or zoning provisions were preempted by the PSA—the Fifth Circuit in *Texas Midstream Gas Services v. City of Grand Prairie*, 608 F.3d 200, 212 (5th Cir. 2010), and the Fourth Circuit in *Washington Gas Light Co. v. Prince George's County Council*, 711 F.3d 412, 421–22 (4th Cir. 2013). Pet.App.8a–9a.

In those cases, the Eighth Circuit explained, the "primary motivation" was not safety but was either "aesthetic" (*Texas Midstream*) or "designed to foster residential and recreational development" (*Washington Gas*). Pet.App.8a–9a (internal quotations omitted).

In this case, by contrast, the counties' primary—indeed, overriding—motivation was safety. In fact, the Eighth Circuit noted that there was no other rational explanation for the sweeping setback requirements for residences in remote rural areas, nor was there any other justification for requiring "larger setbacks from buildings with vulnerable populations," like hospitals and

nursing homes. Pet.App.9a. Safety is the point of the standards—hence, "safety standards." The majority therefore held that these setback provisions—along with several parts of the ordinances—are preempted by the PSA.

The Eighth Circuit also rejected the counties' separate argument—that any safety rule affecting pipeline location escapes preemption and that PHMSA acts outside its statutory authority whenever its regulations bear on routing. Pet.App.10a. As the court of appeals explained, "the PSA does not limit federal authority over all 'location or routing,' just the Secretary's authority to '*prescribe* the location or routing of a pipeline facility.'" *Id.* (emphasis in original) (quoting 49 U.S.C. § 60104(e)). Accordingly, while PHMSA may not select and permit a pipeline's precise route or the exact location of associated facilities, it "may adopt safety standards that relate to location or routing." Pet.App.11a.

After holding the setbacks preempted by the PSA, the court addressed the counties' pipeline permitting scheme under state law. Iowa law gives broad authority to the Utilities Commission to regulate and permit the precise location of hazardous liquid pipelines. Thus, the state-preemption question, the court of appeals explained, is whether it is "possible that a pipeline company could comply with an IUC-granted permit while not complying with a County's ordinance." Pet.App.15a. "If this possibility exists"—if a Utilities Commission permit could, even hypothetically, authorize construction along a route an ordinance would forbid—then "the

ordinance is inconsistent with state law and thus preempted." Pet.App.15a.

"That possibility exists here," the court explained. Pet.App.15a. Indeed, it is more than a possibility. The Iowa Utilities Commission "has determined" that "a pipeline route through Shelby and Story Counties" is appropriate, yet the counties' ordinances "could (and do) prohibit pipeline construction along that route absent compliance." Pet.App.15a–16a. The Eighth Circuit therefore unanimously held that state law preempts the counties' permitting schemes. Pet.App.16a.

The counties filed a petition for rehearing en banc, which the court of appeals denied when no judge requested a response. Pet.App.75a.

REASONS FOR DENYING THE PETITION

I. There Is No Circuit Split.

Attempting to spin an inviting narrative of an "entrenched" and "square" circuit conflict, the counties begin by collapsing two distinct legal questions: (1) whether PHMSA's authority to establish safety standards includes standards that *affect* a pipeline facility's location or route, and (2) how courts determine whether a local regulation of a pipeline facility qualifies as a "safety standard" for purposes of preemption under the Pipeline Safety Act. "Congress," the counties tell the Court, has "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.'" Pet.13–14 (quoting 49 U.S.C. § 60104(c), (e)).

Congress did no such thing. It provided that PHMSA is the sole national authority empowered to promulgate pipeline safety standards—many of which necessarily and directly affect where pipelines may be constructed—while also specifying that PHMSA itself is not a siting authority for any type of pipeline, whether the pipeline is sited by FERC or by a state. Those are separate concepts, and the statute carefully keeps them separate.

1. In the court of appeals, the counties pushed that same conflation a step further. They argued that any PHMSA regulation affecting a pipeline's location or route is *ultra vires* and urged the Eighth Circuit to so declare. The Eighth Circuit correctly rejected that theory, holding that the PSA's statement that the Secretary may not "prescribe the location or routing of a pipeline facility" simply means that PHMSA is not the siting authority. It does *not* mean that a regulation intended to promote safety ceases to be a "safety standard" merely because it affects a pipeline's location or route. Pet.App.10a–11a.

Critically for certiorari purposes, no court of appeals has held otherwise. Not the Fourth Circuit. Not the Fifth Circuit. Not any circuit. There is no split—entrenched or otherwise—on the meaning of the PSA's "location or routing" provision. The Fifth Circuit's decision in *Texas Midstream* does not even cite that provision of the PSA. And the Fourth Circuit's decision in

Washington Gas mentions it only in passing, and only when addressing a separate field-preemption argument. 711 F.3d at 422. The Fourth Circuit did not rely on § 60104(e) in its express-preemption discussion—let alone adopt the counties' reading of it. *Id*. at 421–22.

If any court of appeals had held otherwise—if it had concluded that a pipeline regulation cannot be a "safety standard" under the PSA if it affects the location or route of a pipeline facility—then numerous PHMSA regulations would be invalidated. That has not occurred; if it had, this Court would have heard about it. To the contrary, the United States recently appeared in a lawsuit between the State of Michigan and a pipeline company to make clear that the PSA's location-or-routing provision means exactly what the Eighth Circuit said: § 60104(e) "does not limit PHMSA's authority over all matters relating to the 'location or routing' of pipelines" but merely "circumscribes 'just the Secretary's authority'" to establish the specific route or location of a pipeline facility. Statement of Interest of the United States, *Enbridge Energy, Ltd. P'ship v. Whitmer*, No. 1:20-cv-01141 (W.D. Mich. Sept. 12, 2025), ECF No. 140, at 23 (quoting the Eighth Circuit's decision in this case). On this separate issue, there is no split—and no reason for the Court to review the Eighth Circuit's interpretation of § 60104(e).

2. Turning, then, to the counties' principal claim of a circuit split—about what constitutes a "safety standard" under § 60104(c)—the asserted conflict collapses on even a cursory examination.

The counties maintain that the Fourth and Fifth Circuits classify state and local laws by their *effects*, while the Eighth Circuit instead looks to a law's *motive*, treating a measure as preempted if safety is its "primary motivation." Pet.14. Framed that way, the counties insist, there is a split.

That supposed divide between "effects" and "primary motivation" may sound like an interesting conflict. A "square" one, as the counties put it. Pet.1. But the problem is that it does not exist. Far from diverging, all three courts of appeals apply the same test: the one articulated by the Fifth Circuit in *Texas Midstream* and then adopted by the others.

The counties hide that uniformity by quietly altering the quotations to the Eighth Circuit's decision. Quoting from the opinion, the counties explain that the Eighth Circuit invalidated the ordinances because it "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." ' " Pet. 5 (quoting Pet.App.9a (in turn quoting *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 358 (8th Cir. 1993))). That is indeed what the Eighth Circuit wrote, but the counties materially—and without disclosure—edited one of the quotes to give the impression that the Eighth Circuit alone applies a primary-motivation test. Specifically, the counties removed the internal quotation marks around "primary motivation," which is significant because the Eighth Circuit was quoting the Fifth Circuit's rule in *Texas*

Midstream—the very case upon which the counties base their alleged circuit split. *See* Pet.App.9a (the "blanket application" of the counties' setbacks "suggests the effect on safety is not incidental, but rather the 'primary motivation.'" (quoting *Texas Midstream*, 608 F.3d at 211)).

By deleting those quotation marks and omitting the Fifth Circuit citation altogether, the petition transforms express cross-circuit adherence into the appearance of a standalone Eighth Circuit doctrine. Thus, it is that silent editing—not any disagreement among the circuits—that creates the illusion of a "square" conflict.

In *Texas Midstream*, the Fifth Circuit addressed a zoning ordinance adopted after a pipeline company announced plans to construct an above-ground natural-gas compressor station (*i.e.*, a pipeline facility) within the city limits. 608 F.3d at 203. The ordinance required compressor stations to comply with specified setbacks, be surrounded by a security fence, and satisfy certain "aesthetic standards." *Id.* The district court held that the Pipeline Safety Act preempted the security-fence requirement as a safety standard but did not preempt the setback and aesthetic provisions; the Fifth Circuit agreed. *Id.* at 205, 209.

As relevant here, the Fifth Circuit held that the setback requirement was not a "safety standard" because it was not adopted out of safety concerns. *Id.* at 211. Instead, the city's own records showed that the "*primary motivation*" was non-safety

related; it was "to preserve neighborhood visual cohesion" and "avoid[] eyesores." *Id.* (emphasis added). Thus, the setback rule "primarily ensure[d] that bulky, unsightly, noisy compressor stations do not mar neighborhood aesthetics." *Id.*

In *Washington Gas*, the Fourth Circuit relied on that same formulation in holding that the PSA did not preempt a zoning ordinance prohibiting industrial uses in a particular area of the city. 711 F.3d at 414–15, 420–22. Citing *Texas Midstream*, the court concluded that the zoning ordinance was not a safety standard because its "main purpose" was to "maximize the public benefits from" the local metro station and "foster residential and recreational development"; any safety concerns were, at most, "merely incidental." *Id.* at 421–22.

Thus, although the *outcomes* in *Texas Midstream*, *Washington Gas*, and this case differ, the governing *test* does not. The Circuits applied the same standard in all three. The Fifth Circuit held in *Texas Midstream* that the setback requirement was not preempted because it was not primarily motivated by safety but instead by aesthetics and noise; the Fourth Circuit did the same thing in *Washington Gas* because the "main purpose" of the zoning ordinance was about transportation and economic development; and here, the Eighth Circuit invalidated two ordinances because their primary motivation and "direct and substantial effect on safety" was not merely incidental—it was the point. Pet.App.8a–9a.

In short, what the petition presents as a divide among the circuits is, in reality, nothing more than uniform law obscured by selective and altered quotations.

II. This Case Is A Poor Vehicle To Interpret The Scope Of The Pipeline Safety Act's Express-Preemption Provision.

The counties and *amici* predictably roll out the parade of horribles and what-ifs to declare that—regardless of a circuit split—this Court must step in, right now, to tell everyone what exactly the Pipeline Safety Act means when it says that state and local governments may not adopt or enforce "safety standards for interstate pipeline facilities." 49 U.S.C. § 60104(c).

As with any statute, there may someday be difficult line drawing that requires this Court's attention. But that day is not now, and this is certainly not the case for it.

The Eighth Circuit's ruling presents two independent and significant vehicle problems.

First, the ordinances at issue are unmistakable safety standards under any conceivable test, so this case does not present an opportunity to observe and define any meaningful distinction between local laws that are preempted and those that are not.

Second, even if the counties' ordinances were not preempted by federal law, they would still be preempted by state law. Iowa law, the Eighth Circuit explained, grants the Iowa Utilities

Commission the authority to regulate the siting and construction of pipelines within the State, and that "delegation of power is singular, sweeping, and cedes nothing to the counties." Pet.App.17a. So a decision from this Court cannot change the outcome; it is purely academic at this point.

A. Under any conceivable test, the ordinances are safety standards.

Putting aside the fact that there is no circuit split, take the counties at their word: that the decision of whether a pipeline regulation is a "safety" one should be judged solely by effects, not motive. How would that change the outcome of the Eighth Circuit's decision?

Not at all, under the Eighth Circuit's own words. Contrary to how the counties and *amici* frame it, the court of appeals did not search for latent motivations of county officials; it examined the ordinances on their face and assessed their only plausible effect: protection of the public.

The Eighth Circuit noted, for example, that the text of the ordinances "focuses on safety," with one of them "repeatedly discuss[ing] pipeline safety risks." Pet.App.7a. Indeed, the counties did not dispute that framing; they admitted it. Pet.App.7a.

And they had to. Shelby County's ordinance, the Eighth Circuit noted, "requires larger setbacks from buildings with vulnerable populations" (like hospitals and nursing homes), and the dwelling setbacks for both ordinances "apply alike to economically developed and remote areas," which

undercuts any "aesthetic, land-use, and development rationales." Pet.App.9a. That "direct and substantial *effect* on safety," the court concluded, simply confirms what is obvious: "at their core, the setbacks regulate safety." *Id.* (emphasis added).

The counties and their *amici* attempt to blur the analysis by toggling between whether the ordinances regulate safety and whether they affect location or routing. But, as explained above, § 60104(e)'s location-or-routing clause merely limits PHMSA's siting authority; it does not exclude from the category of "safety standards" any regulation that affects where a pipeline may be built. If it did, numerous longstanding federal safety regulations would be *ultra vires*. They are not; no court has held as much, and those location-related safety standards remain in effect today.

Stripped of that confusion, the analysis is straightforward. Whatever label one prefers—effect, motive, purpose, intent, or something else—these ordinances impose mandatory distance requirements measured in feet and miles from occupied structures, justified by the need to prevent asphyxiation or other harms in the event of a rupture. Their function and effect are to protect people and property from pipeline risks. Under any test—common sense included—that is a safety standard.

B. Even if the Pipeline Safety Act did not preempt the counties' ordinances, state law would.

The counties are asking this Court to decide a question that cannot alter the outcome of this case. Even apart from the Pipeline Safety Act, the ordinances are independently preempted under Iowa law—as the district court first held at the outset of this litigation and as the Eighth Circuit effectively affirmed.

Because the Eighth Circuit had already concluded that the PSA preempts the setback provisions, it did not specifically address those regulations under state law. But it did go on to address whether the counties' broader permitting schemes—including Shelby County's, which itself incorporates and enforces the setback distances[4]—was preempted under state law. And that analysis applies equally to the setbacks.

In Iowa, counties may not enact ordinances that are inconsistent with state law. And in this domain, the Iowa legislature has vested the Iowa Utilities Commission with exclusive authority to select pipeline routes and to "grant permits 'in whole or in part' and 'as it determines to be just and proper.'" Pet.App.17a (quoting Iowa Code §§ 479B.1, 479B.9). That "delegation of power," the Eighth Circuit explained, "is singular, sweeping, and cedes nothing to the counties." *Id.*

[4] Pet.App.101a (§§ 8.61–.62).

Thus, the dispositive state-law preemption inquiry, as the Eighth Circuit correctly framed it, is whether there is *any possibility* that the counties' ordinances "would prohibit a pipeline company from building in a certain location, even if the [Iowa Utilities Commission] permits construction there." Pet.App.18a. If even that possibility exists—if the ordinances could, theoretically, "prohibit construction, even if the IUC permits it"—then the provisions are "inconsistent with state law and thus preempted." *Id.*

That is more than a theoretical possibility in this case; it is the reality, as the Eighth Circuit explained. "The [Utilities Commission] could determine (*and has determined*) a pipeline route through Shelby and Story Counties to be just and proper," while "[t]he Counties' ordinances could (*and do*) prohibit pipeline construction along that route absent compliance." Pet.App.16a. (emphases added). As the court summarized, "[t]he ordinances prohibit what the state permits—building a pipeline along a specified route"—and so they are preempted. Pet.App.17a.

Because state-law preemption independently defeats the counties' ordinances, this case is an exceptionally poor vehicle for addressing the scope of federal preemption under the Pipeline Safety Act. Whatever this Court might say about § 60104(c), the judgment below would remain unchanged. That alone is sufficient reason to deny certiorari.

III. This Express-Preemption Case Is Not The Vehicle To Revisit *Virginia Uranium*'s Debate Over Motive In Implied-Preemption Cases.

The counties and their *amici* lean heavily on *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761 (2019), suggesting that the decision casts doubt on any consideration of legislative purpose in preemption analysis. But *Virginia Uranium* was an implied-preemption case about the Atomic Energy Act, where "[n]o express preemption provision [was] involved." *Id.* at 790 (Ginsburg, J., concurring). That is a far cry from the issue in this express-preemption case about what constitutes a "safety standard" under the PSA's express-preemption provision. The questions are different, and so is the role of motive in answering them.

In *Virginia Uranium*, the federal statute contained no express preemption clause governing the state law at issue. The Atomic Energy Act assigns the Nuclear Regulatory Commission exclusive authority over specific downstream nuclear functions (milling and tailings), while leaving the antecedent activity—uranium mining on nonfederal land—within state control. *Id.* at 768–69 (plurality opinion). Virginia regulated only mining, but the company argued that the ban was nevertheless impliedly preempted because the legislature's true aim was to regulate the downstream effects that are reserved to federal regulators. *Id.* at 770–72. The dispute, in other words, was whether courts may treat a law regulating a concededly non-preempted subject

(mining) as preempted based solely on an inferred impermissible purpose.

The Court fractured over that question. Justice Gorsuch's plurality rejected reliance on legislative motive to transform a state law regulating mining—an area Congress left to the States—into an indirect regulation of radiation entrusted to the Nuclear Regulatory Commission. *Id.* at 772–80. Justice Ginsburg's concurrence agreed in the judgment but declined to join the plurality's broader discussion of motive. *Id.* 781. And the dissent would have been more willing to consider purpose. *Id.* at 794–801 (Roberts, C.J., dissenting). But all three opinions were addressing the same basic issue: whether courts may treat a law that regulates activity Y as preempted because the State allegedly meant to influence activity X that Congress reserved to federal control.

This case is different in kind. The Pipeline Safety Act contains an express-preemption provision that forbids States and localities from "adopt[ing] or continu[ing] in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C. § 60104(c). Unlike the Atomic Energy Act provision at issue in *Virginia Uranium*, the PSA does not draw lines between different *subjects* of regulation (mining versus milling), nor does it invite courts to hunt for hidden purposes to see whether a State has strayed into a federally occupied field. Congress instead preempted a category of regulations defined by what they are: "safety standards."

That textual choice necessarily makes purpose part of the inquiry. No federal, state, or local pipeline rule announces itself on its face as a "safety standard." The regulations speak in concrete terms: wall thickness, operating pressure, burial depth, distances from dwellings and hospitals, emergency-response planning, and so on. What makes a particular rule a "safety standard" is *why* it exists—its function of protecting people and property from pipeline risks. Asking whether a pipeline rule is a "safety standard" thus inevitably requires asking why that rule was adopted and what it is designed to do. A setback measured in feet from occupied structures, justified by the need to prevent asphyxiation or other harms in the event of a rupture, is a safety standard by any ordinary understanding of the term.

That textual analysis is all the Eighth Circuit did here. It did not scour legislative history for latent intent or attempt to infer some forbidden, back-door objective. It looked to the ordinances' text, their stated findings, and their operation on the ground, and it concluded that their purpose—the reason for requiring pipelines be constructed so many miles from hospitals nursing homes and so many feet from dwellings—was a "direct and substantial effect on safety." Pet.App.8a–9a. Thus, "at their core, the setbacks regulate safety." Pet.App.8a–9a. That analysis flows directly from the PSA's express language; it does not expand the statute's preemptive scope beyond its terms, which is what concerned the Court in *Virginia Uranium*.

Put differently, *Virginia Uranium* asks whether a court may look to motive to turn a law that does not regulate the federally protected subject into a preempted law anyway. This case asks whether a court may look to purpose and effect to decide whether a state or locality's law does what Congress expressly forbids—establishes a safety standard for interstate pipelines. The former raises the concerns that divided the Court in *Virginia Uranium*; the latter is simply applying the text that Congress chose.

Whatever debates may continue about motive in implied-preemption cases, this express-preemption dispute under the Pipeline Safety Act is not the place to resolve them. It simply requires applying the text Congress chose: a prohibition on "safety standards" for interstate pipelines that squarely encompasses the counties' ordinances.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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