No. 25-419

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

REPLY BRIEF FOR PETITIONERS

DAVID C. FREDERICK
DEREK C. REINBOLD
Counsel of Record
ALEX P. TREIGER
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(dreinbold@kellogghansen.com)

December 23, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

LEGISLATIVE MATERIALS

OTHER MATERIALS

This case meets all the criteria for this Court's review. Indeed, Summit does not dispute that the question presented affects the authority of tens of thousands of state and local governments to regulate millions of miles of pipelines.

Many of those governments and other affected stakeholders have filed briefs urging the Court to grant certiorari. Six States explain that the Eighth Circuit opened a circuit split by invalidating the counties' setback requirements—zoning measures long understood to fall within "the traditional role of the states in regulating land use." States *Amicus* Br. 9. The Iowa Farm Bureau Federation, which represents more than 156,000 affected landowners and farmers, describes how this intrusion into state and local authority deprives them of longstanding protections for their property interests. IFBF *Amicus* Br. 1.

The court of appeals' rule also raises other practical problems. A coalition representing all 99 Iowa counties warns that the Eighth Circuit's approach to preemption creates serious difficulties for local governments attempting to legislate responsibly: Under a motive-focused preemption test, counties must either suppress ordinary legislative debate or risk having a stray remark later weaponized as evidence that an otherwise lawful ordinance trespasses on federal authority. ISAC *Amicus* Br. 16.

Leading scholars of federal preemption law underscore just how anomalous that approach is. Professors *Amicus* Br. 5-8. This Court's preemption precedents turn on the federal law's text and the challenged law's effect—not on the subjective motivations of state and local legislators. By elevating purpose over text and effect, the court of appeals departed from settled law

and reached the wrong result on what everyone agrees is an exceptionally important issue.

Summit presents just three flimsy arguments to oppose review. *First*, although Summit insists there is no circuit split, it concedes (at 22) that "the *outcomes*" in the Fourth and Fifth Circuits differ from the outcome here on analogous facts. Summit never explains how courts reaching opposite results on the same legal question—whether the Pipeline Safety Act preempts local setback ordinances—could fail to constitute a split warranting this Court's review.

Second, Summit's gestures at vehicle problems reduce to disagreements about the merits. Summit points to no procedural defect, unresolved factual issue, or threshold obstacle to review. Its contention that the Eighth Circuit reached the correct result is no reason to deny certiorari.

Third, that Summit devotes its opposition to the merits underscores why this case is an appropriate vehicle for review. The parties' dispute turns on a single question of federal law, fully briefed and decided below. That posture makes this case an ideal opportunity for the Court to resolve the split and clarify preemption doctrine before further confusion sets in.

ARGUMENT

I. The Circuits Are Split

A. Summit makes no serious effort to deny that this case would have come out differently in the Fourth or Fifth Circuits. The Eighth Circuit "look[ed] . . . to evidence of the law's purpose," App. 7a-8a, and inferred that safety was the "primary motivation" because the setback provisions (1) apply equally in economically developed and remote areas, and (2) impose larger buffers near homes, schools, churches, and

hospitals. App. 8a-9a. The ordinance the Fifth Circuit upheld in *Texas Midstream Gas Services, LLC v. City of Grand Prairie*, 608 F.3d 200 (5th Cir. 2010), also (1) imposed identical setback requirements in rural and urban zones, and (2) required greater buffers for residential areas than for commercial or industrial ones. *See* Pet. 17. The ordinance sustained by the Fourth Circuit in *Washington Gas Light Co. v. Prince George's County Council*, 711 F.3d 412, 415 (4th Cir. 2013), went further still, prohibiting all industrial use within the affected zone.

So even Summit must concede (at 22) that "the *outcomes* in *Texas Midstream*, *Washington Gas*, and this case differ." "The Eighth Circuit's decision" here "therefore conflicts with earlier decisions by other Courts of Appeals." States *Amicus* Br. 10. That acknowledged split warrants this Court's review.

B. Summit misreads *Texas Midstream* and *Washington Gas* (at 21-22) when it claims those decisions applied a motive-based test. In both cases, the court focused on what the challenged law did, not why local officials acted—the opposite of the Eighth Circuit's approach. In *Texas Midstream*, the Fifth Circuit upheld setback requirements governing the siting of a natural-gas compressor station by examining their "effect"—a term it mentioned five times—which was "primarily related to aesthetics or non-safety police powers." 608 F.3d at 211-12. The court contrasted such zoning measures with state regimes that overlapped with federal safety regulation, *id.*—measures the Fifth Circuit long has held preempted no matter their "purposes." *Natural Gas Pipeline Co. v. Railroad Comm'n of Texas*, 679 F.2d 51, 54 (5th Cir. 1982) (ignoring state "purposes" as "irrelevant"). The Fourth Circuit took the same approach in *Washington Gas*, declining to ask whether safety concerns "played

some part" in the enactment because its effect was to regulate land use. 711 F.3d at 421-22 (disregarding Washington Gas's arguments "that the County Zoning Plans are 'safety regulations in disguise'").

To be sure, *Texas Midstream* once used the phrase "primary motivation," and *Washington Gas* once referred to "main purpose." But in neither case did the court adopt motive as the governing rule. Both instead repeatedly grounded their analysis in "effect." *Texas Midstream*, 608 F.3d at 211-12; *Washington Gas*, 711 F.3d at 421. The Eighth Circuit stands alone in treating legislative purpose as dispositive.[1]

II. This Case Is An Ideal Vehicle To Resolve An Exceptionally Important Issue

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

This case also comes to the Court in an ideal posture: it arises from a final judgment, presents no

---

[1] Summit offers no substantive response, only unfounded accusations of impropriety. BIO 20-21. The petition's procedural history section (at page 12, not 5 as Summit claims) inadvertently omits internal quotation marks around the phrase "primary motivation," which the court of appeals treated as a legal rule from *Texas Midstream*. *See* App. 9a. That passage of the petition describes the Eighth Circuit's motive-driven analysis; it does not analyze *Texas Midstream*. The petition addresses *Texas Midstream* in detail several pages later. *See* Pet. 14-15, 17.

disputed facts, and turns on a single legal question—whether the PSA preempts the counties' setback provisions because they were "motivated" in part by safety concerns. App. 18a n.3. Summit does not dispute these points and, indeed, underscores the purely legal nature of the disagreement by focusing its brief on the merits, not certworthiness.

B. Summit's brief also confirms that the issues here are exceptionally important—first by not contesting importance and second by highlighting (at 19) the Department of Justice's repeated intervention in cases involving state and local regulation of interstate pipelines. As the government recently explained, it routinely submits briefs in such cases to ensure the PSA is properly interpreted to balance the interests of multiple government bodies. *See* Statement of Interest of the United States at 1-2, *Enbridge Energy, Ltd. P'ship v. Whitmer*, No. 1:20-cv-01141, ECF #140 (W.D. Mich. Sept. 12, 2025) ("*Enbridge* Statement of Interest"); *see also* Br. of the United States as Amicus Curiae, *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Reservation v. Enbridge Energy Co.*, Nos. 23-2309 & 23-2467, ECF #94 (7th Cir. Apr. 10, 2024); Br. for the United States as Amicus Curiae, *Portland Pipe Line Corp. v. City of S. Portland*, No. 18-2118 (1st Cir. June 28, 2021).

C. Summit's only vehicle objection is that there may be alternative grounds for affirmance under Iowa law. But the court of appeals expressly declined to adopt the district court's holding that Iowa law preempted the counties' setback requirements. App. 18a n.3. This Court routinely grants review no matter alternative arguments that "the Court of Appeals did not address." *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 221 n.4 (2024); *see also Brownback v. King*, 592 U.S. 209, 215 n.4 (2021) ("We leave it to the Sixth

Circuit to address [the] alternative arguments on remand."). And Summit's Iowa-law arguments are particularly weak. *See* Pet. 11 n.24.[2]

III. The Decision Below Is Incorrect

A. The decision below also warrants review because it conflicts with this Court's preemption precedents. *See* Pet. 25-27. Traditional interpretive principles confirm that the PSA does not preempt local land-use regulations like the counties' setback provisions. *See* Pet. 18-24. The Eighth Circuit skipped over the PSA's text, structure, and history, holding that the setbacks are preempted "safety standards" just because the counties were "motivat[ed]" by safety when enacting them. App. 9a. Summit makes the same errors here.

First, Summit disregards the PSA's "text and context," *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (plurality), which "necessarily contains the best evidence of Congress's pre-emptive intent," *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). As a matter of ordinary meaning, the counties' setback provisions are not "safety standards" because they do not prescribe safety-related criteria for pipeline design, construction, or operation. *See* Pet. 20-21.

---

[2] Summit's suggestion (at 26) that the Eighth Circuit's Iowa-law analysis "applies equally to the setbacks" is incorrect. The court held that the counties' permitting requirements were preempted because those provisions would have allowed the counties to prohibit construction of Summit's pipeline despite the Iowa Utilities Commission's approval. App. 18a; *see Goodell v. Humboldt Cnty.*, 575 N.W.2d 486, 501 (Iowa 1998) (a local ordinance is preempted when it would bar an activity that state law permits). The setback provisions do not prohibit pipeline construction; they merely affect where it may occur. *See Goodell*, 575 N.W.2d at 501 ("When a state law merely sets a standard, a local law setting a higher standard would not conflict with the state law . . . .").

The statute's structure confirms that conclusion. The PSA identifies 10 categories of safety standards the Secretary of Transportation "shall prescribe" and conspicuously omits pipeline location and routing from that list. 49 U.S.C. § 60102(a)(2)(B). A neighboring provision reinforces the point by expressly denying the Secretary authority to dictate pipeline "location or routing." *Id.* § 60104(e). Read together, those provisions make clear that Congress preserved state and local power over where pipelines may go, which is all the counties' setbacks govern. *See* Pet. 21-23.

Summit likewise ignores other indicia of statutory meaning. The PSA's legislative history confirms that Congress intended to leave "'the siting of new pipelines'" to "'the individual states they traverse.'" Pet. 23 (quoting H.R. Rep. No. 102-247, pt. 1, at 13-14 (1991)). And the presumption against preemption points in the same direction, particularly because Congress expressed no intent to displace local governments' traditional land-use authority. *See* Pet. 23-24. Summit offers no argument to rebut that presumption—and does not even acknowledge it.

Second, Summit's assertion (at 25) that the PSA preempts the counties' setback provisions because their "function" is "to protect people and property" rests on the same flawed, motive-based analysis the Eighth Circuit adopted. As this Court has explained, preemption turns on "*what* the State did, not *why* it did it." *Virginia Uranium*, 587 U.S. at 774 (plurality); *see* Pet. 25-26 (collecting cases). And *what* the counties did here was regulate where pipelines may go.

Summit's defense of the decision below also illustrates that the Eighth Circuit's focus on the *why* is unworkable. As Judge Kelly observed in dissent, zoning ordinances are "typically, and understandably,

driven by multiple concerns, including economic, environmental, and safety." App. 22a. The counties' setback provisions reflect that mix. They seek, among other things, to (1) "protect the health, safety and welfare of citizens"; (2) "preserve the current use and value of property"; and (3) "minimize the economic burden or potential limited utility of the land for future development." C.A. App. 386-90 (Shelby County); *see* App. 119a (Story County listing similar goals). Summit, like the court of appeals, offers no principled basis for disregarding the non-safety purposes.

Third, Summit contends (at 7-8, 25) that § 60104(e) does not preclude PHMSA from promulgating safety standards that "affect[] where a pipeline may be built." That is true—but beside the point. Of course PHMSA may issue "safety standards" that incidentally affect pipeline location or routing. 49 U.S.C. § 60102(a)(2)(B). The question is whether such rules displace state and local authority.

Summit points to regulations (at 8-9 & n.2) that demonstrate the answer must be no. One requires that gas meters "be located in a ventilated place and not less than 3 feet . . . from any source of ignition." 49 C.F.R. § 192.353(c). Sure, requiring 3 feet between gas meter and flame technically restricts a meter's location. But that safety-focused requirement cannot support Summit's claim that PHMSA is charged with regulating the location of pipeline facilities to the exclusion of state and local authority.

Summit's reliance (at 19) on a recent Statement of Interest from the Department of Justice is misplaced for the same reason. In it, the government explained that, while the PSA "does not limit PHMSA's authority over all matters relating to the 'location or routing' of pipelines," PHMSA nevertheless does "not dictate[]

the location or route" of pipelines. *Enbridge* Statement of Interest at 19-20. That is all the counties' setback ordinances do. If state and local governments cannot dictate the location or route of pipelines, and PHMSA does not do so either, then the result is a regulatory vacuum that Congress neither created nor intended. *See* Pet. 30-31.

Finally, Summit mistakenly invokes (at 7) the Federal Energy Regulatory Commission's authority over the routing of interstate natural gas pipelines. Congress's decision to give a different federal agency siting authority over a different category of pipelines—while withholding that authority from PHMSA for hazardous liquid pipelines—reflects a "deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003).

PHMSA agrees. As the agency has explained, "[w]hile the Federal Energy Regulatory Commission has exclusive authority to regulate the siting of interstate gas transmission pipelines, there is no equivalent federal agency that determines siting of all other pipelines, such as carbon dioxide pipelines," and thus "the responsibility for siting new carbon dioxide pipelines rests largely with the individual states and counties through which the pipelines will operate." App. 142a (Ltr. to Lee Blank, CEO, Summit Carbon Solutions). Yet the court of appeals stripped the counties of that authority, contrary to Congress's design.

B. This case also provides "an ideal opportunity to clarify preemption doctrine" after this Court's fractured decision in *Virginia Uranium*. ISAC *Amicus* Br. 3. There, the Court divided over the role of motive in preemption analysis based on unusual text in the

Atomic Energy Act of 1954[3] and a distinctive line of precedent interpreting it. The PSA presents no such complications and therefore offers a clean vehicle for clarifying preemption doctrine more broadly.

Summit's attempt to limit *Virginia Uranium* to implied-preemption cases is unavailing. Summit argues (at 28-29) that motive plays a different role where Congress enacted an express preemption clause, and it contends (at 30) that, because the PSA preempts state and local "safety standards," a court necessarily must inquire into legislative "purpose." That gets the law backwards. As the *Virginia Uranium* plurality explained, a statute's "preemptive effect" is a question of "statutory meaning," answered by examining the statute's text and context. 587 U.S. at 767 (plurality). That principle applies across the board—to express, field, and conflict preemption alike. *Id.*

To determine whether the PSA preempts the counties' setback provisions, therefore, the Eighth Circuit should have analyzed the statute's text and asked "*what* the State did, not *why* it did it." *Id.* at 774 (plurality). Instead, the court bypassed that statutory analysis and held the ordinances preempted based on its assessment that safety was the counties' "primary motivation." App. 9a. Summit does not dispute that.

Nor are the "conceptual and practical" problems with probing "hidden state legislative intentions" identified in *Virginia Uranium* limited to implied-preemption cases. 587 U.S. at 775-76 (plurality); *see* Professors *Amicus* Br. 14-22. The same difficulties—indeterminate intent, chilled legislative debate, and

---

[3] *See* 42 U.S.C. § 2021(k) (allowing States "to regulate . . . for purposes other than protection against radiation hazards").

inconsistent outcomes—apply equally in the express-preemption context, as the circuit split here demonstrates. *See supra* pp. 2-4.

Summit's contrary view (at 30) would make legislative motive relevant in every express-preemption case unless Congress says otherwise. That is not the law. Motive matters only when the statute expressly makes it so—as in (arguably) provisions preserving state laws enacted "for purposes other than" a specified federal concern. *See Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 216 (1983). Otherwise, the settled rule applies: "effect rather than [the] purpose of a state statute governs pre-emption analysis." *International Paper Co. v. Ouellette*, 479 U.S. 481, 498-99 n.19 (1987).

* * *

Further debate over the merits can wait. For now, what matters is that the courts of appeals are divided over the scope of preemption under the PSA. The Fourth and Fifth Circuits apply a text-based, effects-focused approach that respects Congress's decision to leave interstate pipeline siting and routing to state and local governments. The Eighth Circuit, by contrast, applies a motive-based test that reclassifies ordinary zoning measures as preempted "safety standards." There is no dispute that this divide affects the authority of thousands of state and local governments over millions of miles of pipelines. Absent this Court's intervention, local governments will confront a preemption trap whenever they perform routine zoning functions; pipeline operators will face a patchwork of unpredictable outcomes turning on judicial speculation about legislative motive; and lower courts will lack a clear, administrable rule. The Court's review is urgently necessary.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DAVID C. FREDERICK
DEREK C. REINBOLD
Counsel of Record
ALEX P. TREIGER
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(dreinbold@kellogghansen.com)

December 23, 2025