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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

DEC 29 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Orpheus Hanley and Kimberly Hanley PETITIONER
(Your Name)

vs.

Pennsylvania Public Utility Commission, RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Orpheus Hanley and Kimberly Hanley
(Your Name)

PO Box 539

(Address)

Conneaut Lake, PA 16316

(City, State, Zip Code)

814-732-0727

(Phone Number)

QUESTIONS PRESENTED

This case arises from a direct conflict between state Public Utility Commission mandates and federal and state statutes that condition the installation of advanced metering infrastructure (smart meters) on an affirmative customer request. Despite statutory language requiring customer initiation, the Pennsylvania Public Utility Commission has imposed mandatory installation without consent, eliminating customer choice and overriding federal protections. The resulting inconsistency among state interpretations threatens national uniformity in energy policy, consumer protections, and constitutional liberties.

The questions presented are:

- I. Whether the Supremacy Clause and federal preemption principles are violated when a state utility commission mandates the installation of an advanced metering device without an affirmative customer request, in conflict with federal statutes—including the Public Utility Regulatory Policies Act of 1978 (PURPA), the Energy Policy Act of 2005 (EPAAct)—and with state statutes such as the Pennsylvania Electricity Generation Customer Choice and Competition Act (Act 138 of 1996, amended by Act 129 of 2008) (“Customer Choice Act”) that require customer initiation.
- II. Whether compelling installation of smart meters without customer consent or request, and replacing statutory “customer choice” requirements with “opt-out” or “opt-in” schemes, violates constitutional protections under the Fourth, Fifth,

Ninth, and Fourteenth Amendments by presuming consent, denying refusal rights, authorizing physical intrusions and privacy-invasive data collection, and depriving consumers of meaningful process or judicial review.

- III. Whether the lack of uniformity in state regulatory interpretations and enforcement of federal metering statutes undermines national consistency in energy policy and consumer protections, warranting Supreme Court intervention to resolve conflicting decisions and restore uniform federal standards.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

PETITIONERS: Orpheus Hanley
Kimberly Hanley

RESPONDENTS: Pennsylvania Public Utility Commission

RELATED CASES

Orpheus Hanley and Kimberly Hanley v. Pennsylvania Public Utility Commission, Docket No. C-2023-3041147 (Pa. Public Utility Commission, decided May 09, 2024).

Orpheus Hanley and Kimberly Hanley v. Pennsylvania Public Utility Commission, Docket No. 865 CD 2024 (Pa. Commonwealth Court, decided December 05, 2024).

Orpheus Hanley and Kimberly Hanley v. Pennsylvania Public Utility Commission, Docket No. 2 WM 2025 (Pa. Supreme Court, order entered July 31, 2025).

This case asks whether a state utility commission may override federal law by mandating installation of advanced metering devices without an affirmative customer request, despite federal and state statutes that condition installation on customer initiation.

INTRODUCTION

This case presents a fundamental question of federal supremacy and constitutional rights. Federal law guarantees that advanced metering technology may be installed only upon customer request. Pennsylvania law mirrors this requirement, and the Pennsylvania Public Utility Commission's own regulation confirms that participation in advanced metering programs is not required. Yet absent an initiating request, the Commission has adopted and enforced a mandatory-installation regime that compels installation without a customer's consent, effectively presuming customer initiation and conditioning continued service on acceptance of a device that federal and state statutes treat as voluntary.

The state courts upheld this administrative interpretation without addressing the federal conflict, leaving unresolved whether a state agency may nullify statutory customer-choice protections through regulatory practice. The Commission's approach—treating “upon request” as “mandatory for all customers” and advancing an “opt-out” framework despite statutory language requiring customer initiation—illustrates the interpretive distortion that occurs when administrative practice substitutes for statutory text.

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APPENDIX D—Statement of the Vice Chair of the Pennsylvania Public Utility Commission Regarding ALJ Dismissal May 9, 2024.

APPENDIX E—Commonwealth Court Order granting extension of time (Per Curiam) October 25, 2024.

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Granted

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following provisions are involved in this case and are reproduced in full in

Appendix J:

U.S. Constitution

- U.S. Const. art. VI, cl. 2 (Supremacy Clause)
- U.S. Const. amend. IV
- U.S. Const. amend. V
- U.S. Const. amend. IX
- U.S. Const. amend. XIV

Federal Statutes

- 16 U.S.C. § 2621(d)(11)
- 16 U.S.C. § 2621(d)(14)
- Pub. L. No. 109-58, § 1252(a)(14) (Energy Policy Act of 2005)

Pennsylvania Statutes

- 66 Pa. C.S. § 1501
- 66 Pa. C.S. § 2807(f)(2)(i)
- 66 Pa. C.S. § 2807(f)(3)
- 1 Pa. C.S. § 1901
- 1 Pa. C.S. § 1903(a)
- 1 Pa. C.S. § 1921(a)
- 1 Pa. C.S. § 1922(3)

- 66 Pa. C.S. §§ 315, 332(a)

Regulations

- 52 Pa. Code § 57.251(a)
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Commonwealth Court of Pennsylvania court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

1.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was June 23, 2025.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: July 31, 2025, and a copy of the order denying rehearing appears at Appendix A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including Dec. 28, 2025 (date) on Oct. 30, 2025 (date) in Application No. 25 A 490.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

This case arises from a direct conflict between federal and state statutes guaranteeing customer choice in the installation of advanced net metering devices (“smart meters”) and the Pennsylvania Public Utility Commission’s (“PUC”) contrary mandate requiring installation without customer request or consent.¹ Petitioners are residential electric customers who have consistently exercised their statutory right to retain an analog electromechanical meter. They have never requested a smart meter, never consented to installation, and never agreed to pay the incremental costs associated with such devices.² Despite these protections, the utility repeatedly attempted to replace Petitioners’ analog meter under threat of service termination, and the PUC upheld this directive as a de facto mandatory-installation policy.³

I FEDERAL AND STATE STATUTES CONDITION SMART METER INSTALLATION ON CUSTOMER REQUEST AND CONSENT

Federal law requires that advanced metering and time-based rate schedules be made available upon customer request.⁴ Pennsylvania law mirrors this requirement. The Electricity Generation Customer Choice and Competition Act (Act 138 of 1996, as amended by Act 129 of 2008) (“Customer Choice Act”), directs electric distribution

¹ 16 U.S.C. § 2621(d)(11), (14); 66 Pa. C.S. §§ 2807(e)(1), (f)(2)(i).

² Appendix H.

³ *Id.*

⁴ 16 U.S.C. §§ 2621(d)(11), (14); Pub. L. No. 109-58, §§ 1251(a)(11), 1252(a)(14).

⁵ 66 Pa.C.S. §§ 2807(e)(1), (f)(2)(i), and (f)(3).

⁶ Pa. Leg. J., 192d Gen. Assemb., Reg. Sess. 2626–27 (Oct. 8, 2008) (at 2626, col. 2, and at 2627, col. 2).

⁷ 52 Pa. Code § 57.251(a) and § 57.253(b)(1).

⁸ 66 Pa.C.S. § 1501.

meter satisfies § 1501's standard, and the Commission's contrary interpretation exceeds its statutory authority.

III. THE PUC'S SMART METER DEPLOYMENT PLAN CONTRADICTS THE STATUTORY TEXT

Despite these statutory limits, the PUC approved a Smart Meter Deployment Plan asserting that "Act 129 calls for 100% customer deployment of smart meters" and that "there will be no opt-out for customers." Yet the same Plan acknowledges that smart meters must be installed "upon customer request, provided that the latter pays for the incremental cost." This internal contradiction reflects an administrative interpretation untethered from statutory text.⁹

Under the Statutory Construction Act of 1972, courts must interpret statutes according to their plain meaning, 1 Pa.C.S. § 1903(a), and must construe statutes to give effect to all provisions, avoid absurd results, and presume the legislature did not intend to violate constitutional rights. *Id.* § 1901. The PUC's interpretation violates each of these principles by rewriting "upon request from a customer" into "mandatory for all customers."

IV. PETITIONERS' 2016 AND 2023 PROCEEDINGS WERE NOT ADJUDICATED ON THE MERITS

⁹ Smart Meter Deployment Plan, Docket No. M-2013-2341994, § 1.3.2(1) and (4).

Petitioners first challenged mandatory installation in 2016. Although they attended the evidentiary hearing and attempted to present publicly available scientific and governmental materials, the ALJ refused to consider that evidence and restricted Petitioners' presentation after they declined to place personal medical information into the public record. Petitioners were not notified of any Commissioners' review or hearing. A video recording later referenced by the Commission did not include Petitioners' case, which was skipped entirely. In the 2023 proceeding, the PUC's Vice Chair acknowledged that Petitioners had been barred from presenting evidence in 2016, confirming that the earlier matter had not been adjudicated on the merits.¹⁰

In 2023, Petitioners again filed an informal and formal complaint challenging the PUC's mandatory-installation directive. The ALJ dismissed the complaint on preclusion grounds, relying on the 2016 dismissal. Because the 2016 proceeding did not result in a merits adjudication, the application of preclusion doctrines was improper. See *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. Ct. 1994); *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. Ct. 1983).

V. PROCEDURAL IRREGULARITIES AND DENIAL OF FAIR PROCESS (2024–2025)

While Petitioners were preparing their appeal to the Commonwealth Court, the utility continued to issue shutoff notices approximately every two weeks and attempted to replace Petitioners' analog meter during the pendency of appellate

¹⁰ Appendix D.

review. Petitioners contacted the PUC Secretary, who confirmed that such actions should not occur while the matter was under appeal. The Commonwealth Prothonotary concurred. Petitioners filed a third formal complaint documenting the utility's conduct.

During preparation for their petition for allowance of appeal to the Pennsylvania Supreme Court, Petitioners requested that the ALJ postpone the evidentiary hearing in the 2024 complaint until after the Supreme Court filing deadline. The ALJ denied the request and proceeded with the hearing three days after the filing deadline. Petitioners filed multiple petitions for a stay, noting that the 2024 proceeding was directly linked to the case pending before the Supreme Court and that continued enforcement actions could cause irreparable harm. The PUC denied all stay requests. Petitioners noted that the ALJ had inherent authority to issue a stay *sua sponte* to preserve the status quo during appellate review, yet no such relief was granted.

As pro se litigants, Petitioners were denied procedural accommodations ordinarily available to ensure fairness in administrative adjudications, including a stay to preserve the status quo, a continuance to complete a pending Supreme Court filing, and an opportunity to develop a factual record. The refusal to grant a stay or continuance, despite the acknowledged overlap between the proceedings, deprived Petitioners of a fair opportunity to present their case.

IV. THE PENNSYLVANIA COURTS DECLINED MEANINGFUL REVIEW

The Commonwealth Court initially granted Petitioners an extension of time to file their brief, with no opposition from Respondents. After the extension was granted, the court quashed the appeal upon Respondents' motion to dismiss. Petitioners sought reconsideration, emphasizing the statutory and constitutional issues at stake. The court denied reconsideration.

Petitioners then sought review in the Pennsylvania Supreme Court, requesting de novo review and urging the Court to address the statutory language conditioning smart meter installation on customer request. The Court denied allowance of appeal and denied reconsideration. As a result, no court has reviewed the statutory text, the PUC's contradictory interpretations, or the federal preemption issues.

VII THE DECISIONS BELOW ENTRENCH A SYSTEMIC MISINTERPRETATION OF STATUTORY TEXT

Pennsylvania courts have repeatedly upheld the PUC's mandatory-installation regime in cases such as *Povacz v. Pa. Pub. Util. Comm'n*, 241 A.3d 481 (Pa. 2020), *Schmukler v. Pa. Pub. Util. Comm'n*, 251 A.3d 839 (Pa. Commw. Ct. 2021), and *McKnight v. Pa. Pub. Util. Comm'n*, 255 A.3d 652 (Pa. Commw. Ct. 2021). These decisions misapply the Statutory Construction Act by ignoring the plain meaning of "upon request from a customer," failing to harmonize § 2807(f)(2)(i) with related provisions, adopting interpretations that produce absurd results, presuming legislative intent to authorize universal installation despite explicit statutory limits, and disregarding federal statutes requiring customer initiation.

Petitioner's experience is not unique. Consumers across Pennsylvania have raised a range of concerns in response to the Commission's mandatory-installation practices, including matters of privacy, cost, personal preference, and individual circumstances. Some customers prefer to evaluate new technologies before adopting them; others prioritize privacy or continuity of existing service; still others simply wish to retain control over decisions affecting their homes and businesses. These varied perspectives underscore the practical consequences of a regime that eliminates the statutory opportunity to request or consent and affords no meaningful process to those who seek to exercise their choice, including the choice to adopt the technology or to refrain from participation.¹¹

VIII. THIS CASE PRESENTS A DIRECT CONFLICT BETWEEN FEDERAL LAW, STATE LAW, AND STATE ADMINISTRATIVE PRACTICE

Federal statutes guarantee customer choice. State statutes guarantee customer choice. State regulations guarantee customer choice. The PUC's Smart Meter Deployment Plan contradicts all three. Petitioners' case presents the precise conflict that the Supremacy Clause was designed to resolve.

¹¹ 52 Pa. Code § 57.251(a), (b)(1).

SUMMARY OF ARGUMENT

Federal law guarantees that advanced metering technology may be installed only upon customer request. Pennsylvania law mirrors this requirement, and the Pennsylvania Public Utility Commission's own regulation confirms that participation in advanced metering programs is not required. Yet the Commission has adopted and enforced a mandatory-installation regime that compels installation without customer request or consent, under threat of service termination. The decision below upholds this regime, creating a direct conflict with federal statutes, state statutes, and the Commission's own regulatory framework.

The statutory conflict is clear. PURPA and the Energy Policy Act require utilities to make advanced metering *available* upon request; they do not authorize mandatory deployment. Pennsylvania's Customer Choice Act likewise conditions installation on customer request and agreement to pay the cost. The Commission's contrary interpretation rewrites "upon request" into "mandatory for all customers," disregarding the plain text and violating the Statutory Construction Act's command to give effect to all statutory language. This conflict between federal law, state law, and state administrative practice presents a pure question of statutory interpretation appropriate for this Court's review.

The constitutional issues arise from the same statutory conflict. By compelling installation without request or consent, the Commission intrudes upon core property

interests and deprives customers of a meaningful opportunity to object. Petitioners were denied an evidentiary hearing, denied the ability to present evidence, and denied a record on which judicial review could meaningfully proceed. The Commission's refusal to take evidence, coupled with the courts' deferential review of an undeveloped record, deprived Petitioners of due process. These procedural defects are not isolated; they reflect a structural problem in which a powerful economic regulator may impose mandatory physical intrusions while insulating its decisions from meaningful judicial oversight.

The constitutional issues arise from the same statutory conflict. The right to decline the installation of a device on one's property is a retained right protected by the Ninth Amendment. By compelling installation without request or consent, the Commission intrudes upon core property interests and deprives customers of a meaningful opportunity to object.

The preclusion ruling below compounds these errors. Petitioners' 2023 complaint was dismissed on the ground that their claims had been resolved in a 2016 proceeding. But the 2016 case was never adjudicated on the merits; Petitioners were barred from presenting evidence, and the Commission's Vice Chair later acknowledged that the matter had not been resolved. Treating a non-merits dismissal as preclusive contradicts settled Pennsylvania law and foreclosed Petitioners' statutory and constitutional claims without any opportunity to be heard.

The national implications are significant. Smart-meter mandates and customer-choice disputes are arising across the country, and states vary widely in

their approaches — some require installation, some offer opt-outs, and others require opt-ins. Pennsylvania's recent legislative efforts to codify an "opt-out" framework, despite the statutory requirement that customers must first opt in, illustrate the regulatory confusion that results when agencies disregard statutory text. If left unaddressed, this fragmentation will deepen, creating inconsistent state regimes that undermine federal consumer-choice statutes and national energy policy.

This case is an ideal vehicle for resolving these questions. The issues are purely legal, the statutory conflict is squarely presented, the procedural record is complete, and there are no factual disputes. The state courts declined to address the federal questions, leaving unresolved whether a state agency may override federal and state statutory protections through administrative interpretation and whether due process permits mandatory installation without request or consent. Only this Court can restore uniformity, clarify the limits of state regulatory authority, and ensure that federal law is applied consistently nationwide.

REASONS FOR GRANTING THE PETITION

This case satisfies the considerations of Rule 10 of this Court's Rules.¹² It presents a direct conflict between federal statutes guaranteeing customer choice in advanced metering and a state administrative regime that conflicts with federal and state statutory requirements and constitutional protections by compelling mandatory installation and eliminating the statutory opportunity for customers to request or consent.¹³ The decision below also reflects a departure from settled principles of statutory interpretation, due process, and preclusion, and it raises recurring national questions concerning the limits of state utility commissions in the face of federal law.¹⁴ Review is warranted to resolve a conflict that affects millions of utility customers nationwide and implicates the Supremacy Clause.¹⁵

I. THE DECISION BELOW CONFLICTS WITH FEDERAL STATUTES GUARANTEEING CUSTOMER CHOICE IN ADVANCED METERING

Federal law expressly conditions advanced metering on customer request.¹⁶ PURPA requires utilities to make advanced metering and time-based rates available *upon request*.¹⁷ The Energy Policy Act of 2005 reaffirmed this requirement.¹⁸

¹² Sup. Ct. R. 10.

¹³ 16 U.S.C. § 2621(d)(11), (14); Pub. L. No. 109-58, §§ 1251(a)(11), 1252(a)(14) 66 Pa. C.S. § 2807(e)(1), (f)(2)(i).

¹⁴ 1 Pa. C.S. §§ 1901, 1921; *Mathews v. Eldridge*, 424 U.S. 319 (1976).

¹⁵ U.S. Const. art. VI, cl. 2.

¹⁶ 16 U.S.C. §§ 2621(d)(11), (14).

¹⁷ *Id.*

¹⁸ Pub. L. No. 109-58, § 1252.

The PUC's mandatory-installation regime directly contradicts these federal statutes.¹⁹ By upholding a policy that requires installation without customer request or consent, the decision below creates a conflict between state administrative practice and federal law.

This conflict is not theoretical. State legislators in Pennsylvania have recently proposed codifying a de facto "opt-out" framework—a term that appears nowhere in federal or state statutes—despite the statutory requirement that customers must first opt-in before any opt-out concept could even arise.²⁰ This legislative confusion is itself evidence of the regulatory fragmentation that results when state agencies disregard federal statutory commands.

This Court's review is necessary to restore uniformity and reaffirm the primacy of federal law.²¹

II. THE DECISION BELOW CONFLICTS WITH PENNSYLVANIA'S STATUTORY TEXT AND THE STATE'S OWN RULES OF CONSTRUCTION

Pennsylvania's Customer Choice Act requires smart meters to be furnished only upon request from a customer *who agrees* to pay the cost.²² The PUC's own regulation states that participation in advanced metering programs is not required.²³

The legislative history confirms this plain-text reading. During the floor debate on Act 129, Senator Tomlinson explained that the statute "is not mandated," but instead

¹⁹ 16 U.S.C. § 2621(d)(14).

²⁰ 66 Pa. C.S. § 2807(f)(2)(i).

²¹ U.S. Const. art. VI, cl. 2.

²² 66 Pa. C.S. § 2807(f)(2)(i).

²³ 52 Pa. Code § 57.251(a).

permits voluntary deployment “for anyone who wants to purchase a smart meter.”²⁴ Senator Boscola likewise emphasized that “smart meters would not be mandated for every single ratepayer,” noting that mandatory deployment would impose “hundreds of millions of dollars” in unnecessary costs on customers.²⁵ These statements reflect the General Assembly’s deliberate choice to preserve customer autonomy and reject universal installation.

The decision below disregards:

- the plain meaning of “upon request,”²⁶
- the requirement to harmonize statutory provisions,²⁷
- the presumption against interpretations that violate constitutional rights,²⁸
- and the Statutory Construction Act’s command to give effect to all statutory language.²⁹

By rewriting “upon request” into “mandatory for all customers,” the PUC and the courts below departed from settled statutory-interpretation principles.³⁰ This Court’s intervention is warranted to correct a clear departure from accepted interpretive standards.

²⁴ Pa. Leg. J., Oct. 8, 2008, at 2626 col. 2, 2627 col. 2.

²⁵ *Id.*

²⁶ 1 Pa. C.S. § 1903(a).

²⁷ 1 Pa. C.S. § 1921(a).

²⁸ 1 Pa. C.S. § 1922(3).

²⁹ 1 Pa. C.S. § 1921(a).

³⁰ 66 Pa. C.S. § 2807(f)(2)(i).

III. THE PUC'S MANDATORY-INSTALLATION REGIME CONFLICTS WITH ITS OWN SMART METER DEPLOYMENT PLAN

The Smart Meter Deployment Plan contradicts its own stated objective of complying with Act 129. In § 1.3.1(1), the Plan asserts that its primary objective is to “submit a plan that complies with Act 129.” Yet the assumptions that follow in § 1.3.2 do the opposite. Section 1.3.2(1) declares that “there will be no opt-out for customers,” even though Act 129 contains no such mandate and instead requires smart meters to be furnished “upon request” and only when the customer agrees to pay the cost. 66 Pa. C.S. § 2807(f)(2)(i). Section 1.3.2(4) then acknowledges this statutory requirement by stating that smart meters will be installed “upon customer request” and only if the customer pays the incremental cost. These provisions cannot be reconciled. A plan cannot simultaneously eliminate customer choice and require customer choice. By adopting assumptions that contradict the statute, the Plan undermines the very Act it claims to implement.¹

The PUC's Smart Meter Deployment Plan thus contains an internal contradiction: it asserts that Act 129 requires 100% deployment and “no opt out,” yet simultaneously acknowledges that smart meters must be installed only upon customer request and at customer expense. The decision below endorses an administrative interpretation that is inconsistent with the agency's own plan and the governing statutes. This conflict between agency practice and statutory text warrants review.

The decision below endorses an administrative interpretation that is

inconsistent with the agency's own plan and the governing statutes.³¹ This conflict between agency practice and statutory text warrants review.

IV. THE DECISION BELOW MISAPPLIED PRECLUSION DOCTRINES BY TREATING A NON-MERITS DISMISSAL AS A FINAL ADJUDICATION

The ALJ dismissed Petitioners' 2023 complaint on preclusion grounds based on a 2016 proceeding in which Petitioners were *barred from presenting evidence* and the merits were never adjudicated.³² The PUC's Vice Chair acknowledged that the 2016 case did not resolve Petitioners' claims.³³

Under Pennsylvania law, preclusion doctrines apply only when issues were actually litigated and decided.³⁴ The decision below conflicts with settled preclusion principles and allowed a non-merits dismissal to foreclose Petitioners' statutory claims.

This Court's review is warranted to correct a clear departure from established law.

V. THE PROCEEDINGS BELOW WERE MARKED BY PROCEDURAL IRREGULARITIES THAT DENIED PETITIONERS A FAIR OPPORTUNITY TO BE HEARD

Petitioners faced multiple procedural irregularities, including:

³¹ 6 Pa. C.S. § 2807(f)(2)(i).

³² *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. Ct. 1994).

³³ Appendix D.

³⁴ *Day v. Volkswagenwerk*, 464 A.2d 1313 (Pa. Super. Ct. 1983).

- repeated shutoff threats and installation attempts during pending appeals,³⁵
- denial of a continuance despite an imminent Supreme Court filing deadline,³⁶
- denial of multiple stay requests,³⁷
- refusal to preserve the status quo during appellate review,³⁸
- improper burden-shifting contrary to 66 Pa.C.S. §§ 315 and 332,³⁹
- restrictions on cross-examination,
- and disproportionate demands on pro se litigants.⁴⁰

These irregularities deprived Petitioners of a meaningful opportunity to present their claims and undermined the integrity of the administrative and judicial process. This Court has repeatedly granted review where procedural defects prevent fair adjudication of federal rights.⁴¹

VI. THE STATE COURTS DECLINED TO REVIEW THE FEDERAL QUESTIONS PRESENTED

Neither the Commonwealth Court nor the Pennsylvania Supreme Court addressed the federal statutory conflict,⁴² the state statutory conflict,⁴³ the PUC's contradictory interpretations,⁴⁴ the misapplication of preclusion,⁴⁵ or the due-process violations.⁴⁶

³⁵ Appendix H.

³⁶ *Id.* Appendix C.

³⁷ *Id.* Appendix H.

³⁸ *Id.*

³⁹ 66 Pa. C.S. §§ 315, 332(a).

⁴⁰ *Mathews v. Eldridge*, 424 U.S. 319 (1976).

⁴¹ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁴² 16 U.S.C. §§ 2621(d)(11), (14); Pub. L. No. 109-58, §§ 1251(a)(11), 1252(a)(14).

⁴³ 66 Pa. C.S. § 2807(f)(2)(i).

⁴⁴ Smart Meter Deployment Plan, Docket No. M-2013-2341994, 1.3.1(1), 1.3.2(1), (4).

⁴⁵ *Hopewell Estates*, 646 A.2d 1192.

⁴⁶ *Mathews*, 424 U.S. 319.

By quashing the appeal and denying review, the state courts left unresolved whether a state agency may override federal and state statutory protections through administrative interpretation. This Court's review is necessary to ensure that federal rights are not nullified by state administrative practice.

VII. THE QUESTION PRESENTED IS RECURRING AND NATIONALLY IMPORTANT, AND ALREADY CAUSING REGULATORY FRAGMENTATION

Smart meter mandates and customer-choice disputes are arising across the country.⁴⁷ States vary widely in their approaches—some require installation, some offer opt-outs, and others require opt ins—creating a fragmented national landscape that undermines uniform application of federal consumer-choice statutes.⁴⁸

Pennsylvania's recent legislative efforts to codify an "opt-out" framework—despite the statutory requirement that customers must first opt in—illustrate the regulatory confusion that results when agencies disregard statutory text.⁴⁹ If left unaddressed, this confusion will spread, creating a patchwork of inconsistent state regimes that undermine national energy policy and consumer protections.

Pennsylvania's recent introduction of Senate Bill 600 illustrates this confusion in concrete terms. SB 600 proposes to create a statutory "opt-out" option for smart meters, even though neither federal law nor Act 129 contains any "opt-out" framework. The bill's co-sponsorship memo describes it as providing consumers with

⁴⁷ *Povacz v. PUC*, 241 A.3d 481 (Pa. 2020).

⁴⁸ 16 U.S.C. § 2621(d)(14).

⁴⁹ 66 Pa. C.S. § 2807(f)(2)(i).

an “OPT OUT” option, and the bill text amends Title 66 to allow customers to choose between analog and smart meters. This legislative effort to codify a de facto term invented by the PUC underscores the fragmentation that results when state agencies impose mandatory installation regimes in defiance of federal and state statutes. The confusion now facing Pennsylvania’s legislature is a direct consequence of the PUC’s departure from statutory requirements.

This case presents a clean vehicle to resolve: whether federal law preempts state mandatory-installation policies,⁵⁰ whether state agencies may override statutory customer-choice protections,⁵¹ and whether due process permits administrative mandates imposed without request or consent.⁵²

The issue is of national importance and warrants this Court’s review.

VIII. THIS CASE IS AN IDEAL VEHICLE

This case presents a pure question of statutory interpretation,⁵³ a clear conflict between federal law and state administrative practice,⁵⁴ a fully developed procedural record,⁵⁵ no factual disputes,⁵⁶ a final judgment from the state’s highest court,⁵⁷ and a record that squarely presents the federal questions.⁵⁸

⁵⁰ U.S. Const. art. VI, cl. 2.

⁵¹ 16 U.S.C. § 2621(d)(14).

⁵² Mathews, 424 U.S. 319.

⁵³ 1 Pa. C.S. § 1921.

⁵⁴ 16 U.S.C. § 2621(d)(14).

⁵⁵ Appendix C.

⁵⁶ Povacz, 241 A.3d 481.

⁵⁷ Appendix A.

⁵⁸ *Id.*

The Court can resolve the conflict cleanly and definitively.

CONCLUSION

The Constitution does not permit agencies to amend statutes by interpretation, nor does it allow courts to defer when federal law is displaced. The Bill of Rights—born of the very fears that animated George Mason's refusal to sign the Constitution without explicit protections—stands as a barrier against precisely this kind of intrusion upon one's premises, the person, and the private sphere. And Article V makes clear that rights cannot be eroded by convenience, efficiency, or administrative preference. Only the people, through the amendment process, may alter their constitutional protections. No state agency, no monopoly, and no court may do so by silence.

Federal law establishes a voluntary, customer-initiated framework for advanced metering. State law mirrors that design. Yet a state-protected monopoly, aided by an administrative agency, has converted that voluntary framework into a mandatory regime, compelling participation, denying meaningful process, and overriding the statutory rights of individuals. When courts decline to review such overreach, the constitutional architecture collapses: consent is replaced by coercion, representative lawmaking by administrative invention, and judicial review by judicial abdication. A republican form of government cannot survive on those terms.

The Framers designed a republican government—small-r—to prevent exactly what occurs in Pennsylvania: the capture of state power by a narrow economic faction,

the imposition of obligations the legislature never authorized, and the refusal of courts to enforce the constitutional limits that protect the people. The Constitution replaced the old confederation—where states and their agencies could sidestep oversight—with a federal system that binds both state and national governments to lawful limits, enforced by the courts. A state-protected monopoly cannot convert a voluntary federal framework into a mandatory regime, compel participation on individuals' premises, or override statutory rights through interpretation alone. The Guarantee Clause confirms that a republican government requires consent, lawful authority, and judicial review—not administrative invention and judicial abdication. The Bill of Rights and Article V underscore that rights are secured against government, not granted by it, and cannot be eroded by agency fiat or judicial deference. Mason's Declaration of Rights recognized one's property as inviolable and that lawful process is essential before the government may enter or affect it. Those principles are violated when a state-created entity enters the premises by a de facto mandate rather than law, and when courts treat that de facto mandate as unreviewable.

WHY THIS CASE MATTERS

This case implicates the full architecture of the Constitution. It presents the structural breakdown the Framers warned against: a fusion of state power and private economic force that imposes obligations the legislature never authorized, intrudes upon individuals' premises without meaningful process, and is insulated from judicial correction. For ten years, Petitioners have pushed back against a

powerful state-economic alliance without meaningful process or protection on their property, and across the nation many individuals face similar coercive structures without adequate safeguards. The statutory conflict is clear, the agency's interpretations are contradictory, and the due-process violations are direct and ongoing. The lower courts' refusal to enforce statutory and constitutional limits undermines institutional integrity and threatens national uniformity in the administration of law. The case therefore speaks to every dimension of the Court's constitutional responsibility: the structural concerns emphasized by Justices Thomas and Alito; the due-process and administrative-law failures that animate Justices Gorsuch, Kavanaugh, Sotomayor, and Jackson; the statutory clarity and doctrinal coherence sought by Justices Barrett and Kagan; and the institutional stakes that matter to the Chief Justice. A republican form of government requires consent, lawful authority, and judicial review. When a state-created monopoly and an agency exceed their mandate and courts decline to intervene, those safeguards fail.

A state-protected monopoly acting beyond statutory authority, combined with judicial deference that abandons the Constitution's structural limits, is incompatible with the small-r republican government the Framers designed, and this Court's review is necessary to restore those safeguards.

This Court has long recognized that the rule of law requires more than procedural formality; it requires fidelity to the limits of government power. When a state agency exceeds those limits, when a monopoly uses state authority to compel what federal law forbids, and when courts refuse to correct the error, the structural

safeguards of the Republic have grossly failed. The Framers built the judiciary to prevent that failure.

The Republic depends on the rule of law, not the rule of factions. The Constitution depends on judicial enforcement, not judicial deference. And the people depend on this Court to ensure that the rights they retain—including the right to decline unwanted technological intrusion upon one's premises—are not extinguished by administrative fiat.

This petition asks the Court to do what Hamilton said only this Court can do: enforce the supremacy of federal law, restore the limits the Constitution demands, and protect individuals from unlawful state action. The questions presented are national in scope, recurring in nature, and fundamental to the balance between federal authority, state power, and individual rights. They warrant this Court's review.

The Framers wrote, "Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them; and the Articles of this Confederation shall be inviolably observed by every State."

And now, mindful of the Founders' appeal to "the Supreme Judge of the world," Petitioners respectfully ask this Court to grant review, that the rights retained by the people may not be extinguished by administrative command or judicial silence.

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

s/ Kimberly Hanley

s/ Orpheus Hanley

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