

No. 25–7614

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**In the Supreme Court of the United States**

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ORPHEUS HANLEY, ET UX.,  
Petitioners,

*v.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION,  
Respondent.

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**ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

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**BRIEF OF THE ENVIRONMENTAL HEALTH TRUST AS  
*AMICUS CURIAE* IN SUPPORT OF PETITIONERS**

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Joseph M. Sandri, Jr.  
*Counsel of Record*  
ENVIRONMENTAL HEALTH TRUST  
8070 Georgia Ave  
Ste 301  
Silver Spring, MD 20910  
(202) 253–3956  
jsandri@ehtrust.org

*Attorney for Amicus Curiae*

**JULY MMXXVI**

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## QUESTIONS PRESENTED

1. 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.

2. 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.

3. 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.

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## INTEREST OF *AMICUS CURIAE*

Environmental Health Trust is a 501(c)(3) nonprofit corporation that focuses on environmental health scientific and legal research, policy advice and support, and public education on emerging environmental health hazards. EHT's interest in the case includes and is not limited to: (i) long-standing scientific, legal, and engineering research and concern over hazardous or potentially hazardous wireless infrastructure deployments; and (ii) specific concern for impacts to: humans, especially children and the vulnerable, and to the environment, including flora and fauna.<sup>1</sup>

## SUMMARY OF ARGUMENTS

The petition presents exceptionally important questions warranting this Court's review. Respondent Pennsylvania Public Utility Commission (PUC) has effectively converted a federal and state statutory regime of customer-initiated advanced metering into a de facto mandatory program enforced through threats of service termination and without due regard to basic constitutional rights and related consumer protections. This directly conflicts with the plain text of federal law under PURPA §111(d)(14), 16 U. S. C. §2621, as amended by the Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594, which requires utilities to offer time-based rates and suitable meters “upon

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<sup>1</sup> No counsel for any party authored this brief, in whole or in part. No person or entity other than *amicus* contributed monetarily to its preparation or submission. Notification pursuant to and as required by S. Ct. R. 37.2 has been given to the parties' counsels of record.

customer request.” It conflicts with Pennsylvania’s own Customer Choice Act.

It raises serious constitutional questions under the Fourth, Fifth, and Fourteenth Amendments concerning bodily safety and autonomy—as well as privacy—in granular energy-usage data, physical intrusions onto persons and private property, and procedural due process. Specific, documented, and serious concerns also exist that direct harms flow from the radiofrequency (RF) radiation generated by wireless devices and networks, as evidenced by (1) the existence of federal human health wireless radiation exposure limits and poor or irregular maintenance with those federal wireless radiation exposure limits and (2) systemic failures by federal agencies to comply with federal court-ordered scientific reviews of those outmoded limits. These issues recur across the nation as states implement smart-meter programs with varying degrees of (i) coercion and (ii) knowledge of the federal health limits. Granting certiorari will provide much-needed uniformity, clarify the limits of state authority under federal energy statutes, and protect core constitutional and related consumer rights. As such, the petition should be granted.



## ARGUMENTS

*Amicus curiae* respectfully submits the following arguments in support of the positions that the Court should grant certiorari.

### **I. The Petition Raises Important and Recurring Questions of Federal Statutory Interpretation, Preemption, and Constitutional Law that Warrant This Court’s Review**

Smart meters (advanced metering infrastructure) often operate at high radiation emission and exposure levels to collect highly granular, real-time electricity usage data—often at 15-minute or shorter intervals—that can reveal intimate details of household activity, occupancy patterns, appliance use, and personal habits. Billions of dollars have been invested nationwide in smart-meter deployment, yet states have adopted inconsistent policies: some treat installation as voluntary with robust opt-out rights, while others (like Pennsylvania under PUC’s interpretation) effectively mandate it.

This fragmentation creates precisely the kind of national inconsistency in the application of federal energy law that this Court regularly resolves. The questions presented—whether federal statutes mandating a “customer request” framework can be overridden by state agencies, and what constitutional limits apply to compelled installation and data collection—are of exceptional importance to millions of consumers and to the federal-state balance in energy regulation, as well as in wireless radiation exposure matters.

## **II. PUC’s Policy Conflicts with Federal Law Requiring Customer-Initiated Advanced Metering**

The Energy Policy Act of 2005 amended PURPA by adding §111(d)(14), the “Time-Based Metering and Communications” standard:

[E]ach electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule . . . The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

PURPA §111(d)(14)(A).

This language is unambiguous: advanced metering and time-based pricing are to be made available upon customer request. The statute does not authorize or contemplate compulsory installation. The statute does not require—nor can it require—compulsory exposure to high levels of wireless radiation.

Pennsylvania’s Customer Choice and Competition Act similarly ties smart-meter deployment to customer requests in key contexts and requires utilities to submit plans consistent with customer choice principles. 66 Pa. C. S. §2807(f), as amended by Act 129 of 2008. The PUC’s approval and enforcement of near-universal deployment plans, coupled with repeated threats of service shutoff to coerce installation, contravenes the Act by imposing smart meter installations against customers’ wishes.

### **III. The Type of Smart Meter Device Proposed by a State Cannot Be Poisonous and Mandated, Especially When Safe Options Exist**

Unresolved concerns exist regarding direct harms flowing from the radiofrequency radiation emitted by wireless devices and infrastructure. As it stands, enforcement of these limits has been weak and inconsistent. Federal Communications Commission (FCC) Release of 11 Records to the Environmental Health Trust (EHT) in Response to a Freedom of Information Act Request (FOIA), Env't Health Trust, <https://tinyurl.com/3nh8s2cv> (Apr. 21, 2024, as visited Jul. 15, 2026, and archived on the Internet Archive); see *In the Matter of T-Mobile License, LLC*, Notice of Apparent Liability For Forfeiture, 30 FCC Rcd. 12679 (2015), <https://tinyurl.com/yf7sxwhm> (as visited Jul. 17, 2026, and archived on the Internet Archive); see generally Theodora Scarato, U.S. Policy on Wireless Technologies and Public Health Protection: Regulatory Gaps and Proposed Reforms, 13 FRONT. PUB. HEALTH 1677583, 11 fig.2 (2025), <https://tinyurl.com/mrx78bm3> (chart comparing the different nations' environmental exposure limits for cell towers and wireless) (as visited Jul. 15, 2026, and archived on the Internet Archive); see Ian M. Giatti, Lutheran Church Hiding Cell Tower Antenna in 'Faux Brick' Above Preschool, Advocate Says, Christian Post, <https://tinyurl.com/bdzcd4xm> (July 9, 2026, as visited Jul. 15, 2026, and archived on the Internet Archive).

Furthermore, the FCC has repeatedly failed to comply with a 2021 order issued by the D. C. Circuit directing it to, in justifying its decision not to update its

wireless radiation human exposure guidelines, consider new scientific evidence which suggests that its current exposure limits may be inadequate to protect human health. *Env't Health Trust v. FCC*, 9 F.4th 893, 914 (2021); Pet. for Writ of Mandamus, p. 6, *In re Children's Health Defense et al.*, No. 26–1121 (CADC, May 18, 2026). As such, reasonable uncertainty exists regarding the safety of wireless devices and infrastructure under the current regulatory regime.

While there arguably is no explicitly enumerated constitutional right “not to be poisoned” by a state government action, the courts have recognized related protections under the Due Process Clause of the Fourteenth Amendment (and, for federal actions, the Fifth Amendment). These derive from the right to bodily integrity (or bodily autonomy)—a component of the “liberty” interest protected by substantive due process.

The Fourteenth Amendment provides that “[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law[.]” U. S. Const., Amdt. XIV, §1. Substantive due process limits what states can do, even with fair procedures. It protects certain fundamental rights against arbitrary or conscience-shocking government action, including the right to be free from unwanted invasions of one’s body. See *Guertin v. Michigan*, 912 F.3d 907, 918 (CA6 2024). This stems from common-law traditions and cases recognizing personal security and control over one’s body as fundamental (*e. g.*, “the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law”). *Sterling v. City of Jackson*, 159 F.4th 361, 373–74 (CA5 2025) (quoting *Union Pac. Ry. Co. v. Botsford*,

141 U.S. 250, 251 (1891)); see *Guertin*, 912 F.3d at 918 (summarizing history of common law right to bodily integrity).

Courts evaluate state-caused harm (*e.g.*, contaminating public water supplies with lead or other toxins) under several different standards. Under the “shocks the conscience” test, the standard for liability is intentional harm or deliberate indifference. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). Under the “state-created danger” doctrine, recognized in several circuits, see *e.g.*, *Irish v. Fowler*, 979 F.3d 65, 74 (CA1 2020); *Okin v. Vill. of Cornwall-on-Hudson Police Dep’t*, 577 F.3d 415, 428 (CA2 2009); *Sanford v. Stiles*, 456 F.3d 298, 304 (CA3 2006); *Doe v. Rosa*, 795 F.3d 429, 439 (CA4 2015); *Jane Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 932 (CA6 2020); *D.S. v. E. Porter Cnty. Sch. Corp.*, 799 F.3d 793, 798 (CA7 2015); *Fields v. Abbott*, 652 F.3d 886, 891 (CA8 2011); *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1066 (CA9 2006); *Estate of B.I.C. v. Gillen*, 710 F.3d 1168, 1173 (CA10 2013); *Butera v. D.C.*, 235 F.3d 637, 652 (CADC 2001), when the state affirmatively creates or increases a danger (*e.g.*, switching water sources without proper treatment, then misleading the public), it can trigger liability. *Sterling*, 159 F.4th at 386; see also Sarah Roesler, *State-Created Environmental Dangers and Substantive Due Process*, 73 FLA. L. REV. 685, 701–03 (2021). Some courts analyze whether there has been a violation of bodily integrity, a substantive due process right under the Fourteenth Amendment, reasoning that directly introducing or forcing exposure to toxins invades the right to control one’s body. See *Guertin*, 912 F.3d at 935; see *Sterling*,

159 F. 4th at 373–74, 377 (discussing bodily integrity claims for toxic municipal water).

For example, in the Flint, Michigan, water crisis cases (*e. g.*, *Guertin v. Michigan*), residents alleged officials knowingly pumped lead-contaminated water into homes and lied about its safety. Federal courts allowed claims to proceed under the Fourteenth Amendment’s substantive due process right to bodily integrity. *In re Flint Water Cases*, No. 17–10164, No. 17–103442, 2019 WL 3530874, at \*14 (ED Mich., Aug. 2, 2019). The Sixth Circuit and others rejected qualified immunity for some officials, finding the conduct plausibly “shocks the conscience.” *Guertin*, 912 F. 3d at 935. This Court declined to block these suits in related proceedings. *Guertin v. Michigan*, 912 F. 3d 907 (CA6 2024), *cert. denied*, *City of Flint v. Guertin*, S. Ct. No. 19–205 (Jan. 21, 2020). Similar logic appears in other toxic water or environmental exposure cases against municipalities or state actors. See, *e. g.*, *Sterling*, 159 F.4th at 386.

There are limitations on the right to bodily integrity. First, it does not operate as a general “right to clean water” or safety. *Id.*, at 376–77. The Constitution does not guarantee minimal levels of safety or services; mere negligence or failure to prevent harm by third parties is not usually enough. *Collins v. City of Harker Heights*, 503 U. S. 115, 126–127 (1992). Liability typically requires affirmative state misconduct or deliberate indifference. *Lewis*, 523 U. S. at 850; *Guertin*, 912 F. 3d at 918.

Further, a procedural due process analysis may be applicable if the state deprives a property or liberty interest without adequate notice or hearing. *Mathews*

v. *Eldridge*, 424 U. S. 319, 333 (1976), (*e. g.*, failing to provide remedies for contamination).

In short, the right flows from the Fourteenth Amendment's protection of bodily integrity and liberty against arbitrary state invasions. See *Lewis*, 523 U. S. at 845. Deliberate or deliberately reckless state poisoning (*e. g.*, via public utilities) can violate it, as seen in major contamination lawsuits, *e. g.*, *Guertin*, 912 F. 3d at 935 and *Sterling*, 159 F. 4th at 373–74, 377, but routine regulatory failures or non-state harms do not. See *Lewis*, 523 U. S. at 849; see also *Butera*, 235 F. 3d at 647.

PUC imposing smart meters on Petitioners (Hanleys) when there is ongoing uncertainty about the adequacy and enforcement of human radiofrequency radiation exposure and emissions safety guidelines is plainly reckless and creates a risk of bodily harm via that radiation. As such, PUC's decision to impose smart meters, against the plain language of superseding state and federal statutes which require smart meters installation only upon customer request, violates Hanleys' right to bodily integrity under the Fourteenth Amendment. This Court should grant the Petition in order to protect against arbitrary state intrusions into bodily autonomy, especially where there is uncertainty regarding potential risks to safety of such an intrusion.

**CONCLUSION**

Wherefore, this Court should grant certiorari.

Joseph M. Sandri, Jr.  
*Counsel of Record*  
ENVIRONMENTAL HEALTH TRUST  
8070 Georgia Ave  
Ste 301  
Silver Spring, MD 20910  
(202) 253-3956  
jsandri@ehtrust.org

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*Attorney for Amicus Curiae*