

BOARD OF SUPERVISORS MEETING

Meeting Notice

Tama County Board of Supervisors

Mon., Nov. 3, 2025

Meetings may also be available online for viewing and/or participating in by clicking the below link barring no power, internet, or equipment failure or other unforeseen circumstances. Meetings will still be held if there is no electronic availability.

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Agenda Schedule

** Agenda is not printed in any particular order, only time specific items will be addressed at certain times

8:30AM

Call to Order, Pledge of Allegiance

Approve agenda

Public comments-This time is set aside for public comments on County business topics. To be recognized raise your hand or stand. After recognition by the Chair, state your name and address. You may speak one time per issue. If the comment is for an item not on the agenda, please understand the Board of Supervisors will not act on your comments at this meeting due to the Open Meetings Law requirements but may do so at a future board meeting by placing it on the agenda. The Chair and Board members welcome comments from the public; however, all comments must be directed to the board and not others in attendance; keep your comments germane; it is not appropriate to use profane, obscene, or slanderous language. No personal attacks will be allowed. The Chair may limit each speaker to three minutes.

Discuss/Approve 10/27/25 regular minutes

Engineer-road projects report

Discussion/possible action on ITC Road Maintenance Agreement

Discussion/possible action to set dates and times for 1st and 2nd tier canvasses

Discussion/possible action on financial support of amicus brief in the case of

Couser v. Shelby County

Supervisor updates by district

Discussion/approve claims

Public comments

Adjourn

Board of Supervisors Minutes
October 27, 2025

The Tama County Board of Supervisors met at 8:30 a.m. October 27, 2025. Present: 1st District Supervisor, Curt Hilmer; 2nd District Supervisor, David Turner; 3rd District Supervisor, Heather Knebel; 4th District Supervisor, Mark Doland and 5th District Supervisor, Curt Kupka. Also, Tama County Auditor, Karen Rohrs, Sheriff Schmidt, and members of the public.

The Pledge of Allegiance was recited.

Motion by Turner, seconded by Kupka to approve the agenda. Discussion: None. All voted aye. Motion carried.

Public Comments: Public comments were heard from Carolyn Adolphs, Kennan Seda, and Gerald Husak. Public comment time closed at 8:35 am.

Motion by Knebel, seconded by Turner to approve the minutes of the October 20th regular meeting. Discussion: None. All voted aye. Motion carried.

The Board met with Ben Daleske, Tama County Engineer, to get a road projects report. Daleske also presented a funding agreement for bridge replacement project BRS-C086(118)—60-86 on E44 for the board chairman to sign. Motion by Kupka, seconded by Turner to approve the board chairman signing the funding agreement. Discussion: None. All voted aye. Motion carried.

Supervisors Kupka and Hilmer who serve on the secondary roads committee gave an update regarding the employment structure.

Tama County Treasurer, Amanda Kriegel, was present to discuss Iowa Code 427.9 with the Board. In Iowa Code 427.9 it states that “The county board of supervisors shall annually send to the department of health and human services the names and social security numbers of persons receiving a tax suspension pursuant to this section”. The treasurer informed the Board that there are currently two county residents who receive this suspension. Motion by Hilmer, seconded by Knebel to have the auditor, on the Board of Supervisors behalf, send notification to the department of health and human services the names and social security numbers of the Tama County residents receiving this tax suspension to verify if they are eligible to continue receiving the tax suspension. Discussion: None. All voted aye. Motion carried.

Motion by Turner, seconded by Kupka to approve the board chairman signing the County Weed Commissioner’s Annual Report. Discussion: None. All voted aye. Motion carried.

Motion by Hilmer, seconded by Turner to approve the Zoning Administrator’s Quarterly Report. Discussion: None. All voted aye. Motion carried.

Supervisor Knebel and Supervisor Doland spoke as to why the county needs to update and approve a Comprehensive Land Use Plan that is in compliance with Iowa Code Chapter 18B. Motion by Turner, seconded by Hilmer to approve Resolution 10-27-2025A directing the Tama County

Planning and Zoning Commission to develop the Comprehensive Land Use Plan for recommendation to the Board of Supervisors. Discussion: It was discussed if the Moratorium on Community Solar (Resolution 5-19-2025A) should be included in the following resolution. Motion by Doland, seconded by Turner to amend Resolution 10-27-2025A to include the Moratorium on Community Solar (Resolution 5-19-2025A). Discussion: None. All voted aye. Motion carried.

RESOLUTION 10-27-2025A

Resolution Directing the Tama County Planning and Zoning Commission to Develop the Comprehensive Land Use Plan for recommendation to the Board of Supervisors

WHEREAS, Iowa Code Chapter 18B, also known as the Iowa Smart Planning Act, was signed into law April 26, 2010; and

WHEREAS, Iowa Code Chapter 18B requires counties to adopt and maintain a Comprehensive Land Use Plan; and

WHEREAS, Tama County does not have a Comprehensive Land Use Plan compliant with Iowa Code Chapter 18B; and

WHEREAS, the Tama County Board of Supervisors recognizes the importance of a Comprehensive Land Use Plan for guiding future growth, development, protecting resources, providing a clear vision, and balancing community needs within Tama County; and

WHEREAS, Region 6 Resource Partners possesses the expertise and resources necessary to assist Tama County in the facilitation and development of said plan;

NOW, THEREFORE, BE IT RESOLVED by the Tama County Board of Supervisors that:

1. The Tama County Planning and Zoning Commission is hereby directed to prioritize the development of the Comprehensive Land Use Plan in accordance with Iowa Code Chapter 18B.
2. Region 6 Resource Partners shall be engaged by the Zoning Commission and a quote received on the cost to facilitate and assist in the writing of the Comprehensive Land Use Plan for Tama County.
3. While the Comprehensive Land Use Plan shall be the primary focus, the Planning and Zoning Commission may continue its work on the industrial wind turbine ordinance and any other ordinances deemed necessary as resources and time allow.

The Indefinite Moratorium on Wind Energy Conversion Systems (Resolution 1-6-2025B), Community Solar (Resolution 5-19-2025A), and Utility Scale-Solar (Resolution 1-6-2025C) will remain in place while the comprehensive land use plan is being developed by Tama County.

Roll Call Vote: Hilmer, aye. Turner, aye. Knebel, aye. Doland, aye. Kupka, aye. Resolution passed and adopted this 27th day of October, 2025. Mark Doland, Chairman, Board of Supervisors. Karen Rohrs, County Auditor.

Motion by Hilmer, seconded by Kupka to approve a temporary liquor license for the Traveling Tapster for an event to be held at the Tama County Market in Chelsea on November 6th.

Discussion: None. All voted aye. Motion carried.

Motion by Turner, seconded by Kupka to approve the claims for payment as presented in the amount of \$304,834.57. Discussion: None. All voted aye. Motion carried.

Public Comments: Public comments were heard from Carolyn Adolphs. Public comment time closed at 9:15 am.

Motion by Turner, seconded by Knebel to adjourn the meeting. All voted aye. Motion carried.
Chairman Doland adjourned the meeting at 9:16 am.

These minutes are intended to provide a summary of the discussions and decisions made during the Board of Supervisor meeting. For the most accurate and comprehensive record, please refer to the audio recording of the meeting that can be provided upon request at the auditor's office.

ROAD MAINTENANCE AGREEMENT

This Agreement is made and entered into this ____ day of _____, 20__ by and between ITC Midwest LLC, a limited liability company organized and existing under the laws of the state of Michigan (hereinafter, the “Developer”), and the Board of Supervisors of Tama County, Iowa (hereinafter “the County”).

RECITALS:

WHEREAS, Developer is a transmission owner duly-certified by the Iowa Utilities Commission (“IUC”); and

WHEREAS, Developer is constructing a transmission line in Tama County, including using vehicles for transmission line and civil construction equipment and materials including but not limited to: bucket trucks, digger derricks, cranes, excavation equipment (i.e., backhoes, bulldozers, hole drilling rigs, dump trucks, vacuum excavation equipment), materials trucks (containing, i.e.: large transmission line structures, rock and fill (both bringing in and taking out, equipment deliveries)), concrete trucks, wire pulling materials and equipment (hereinafter “the Project”); and

WHEREAS, the construction of the Project will require Developer, its agents, employees, contractors, subcontractors and other third parties working on its behalf in support of construction to traverse roads, bridges, culverts or other appurtenant road structures (hereinafter “County roads”) maintained by the County with oversized and specialized construction equipment, trucks and other vehicles; and

WHEREAS, the County possesses statutory authority to restrict or constrain the travel and/or transit of trucks, vehicles, machinery and/or equipment over County roads; and

WHEREAS, pursuant to the reasonable exercise of its police powers the County is authorized to enter into this Agreement in lieu of establishing a weight load and/or permitting scheme applicable to County roads; and

WHEREAS, the parties agree it is in the best interest of each to memorialize the rights, duties, obligations, and responsibilities of the parties with respect to Developer’s use of County roads during construction of the Project, and by this written Agreement desire and intend to set forth the terms and conditions of their agreement in writing.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties stipulate and agree as follows:

1. For purposes of this Agreement the following terms are defined as:

- a. “Developer” is “ITC Midwest LLC and its respective agents, employees, contractors, subcontractors and other third parties working on its behalf in support of the Project”; and
- b. “Heavy Construction Vehicle” is “any truck, tractor, trailer, machinery or equipment, used individually or in combination, heavier than 24,000 pounds gross vehicle weight”; and
- c. “minor damage” is “any damage or rutting to a depth of less than four (4) inches to the surface of an unpaved, rock County road.” For the avoidance of doubt, rutting of four (4) inches to the surface of a paved County road is not “minor damage” and is considered major damage for the purposes of this

Agreement;

d. "repair and maintenance of minor damage" is "blading, grading or re-shaping of County road surfaces, filling of wheel ruts up to four inches in depth, and replacement of aggregate surfaces using equipment appropriate for the work being completed".

2. Within thirty (30) days after this Agreement is fully executed, Developer and the County shall each designate a field supervisor who shall serve as the day-to-day point of contact with the other during the construction of the Project. Each shall provide the other with such supervisor's mailing address and telephone numbers to facilitate prompt communication between the parties.

3. Developer and the County have agreed upon transit routes to be utilized by Developer's Heavy Construction Vehicles. A map of said transit routes is attached hereto as Exhibit A and incorporated herein by reference. Any proposed changes in the agreed upon transit routes shall be submitted in writing by Developer to the County for review and approval, which shall not be unreasonably withheld. Developer agrees all Heavy Construction Vehicles shall exclusively use the agreed upon transit routes and no other County roads. Nothing herein shall be construed to prevent Developer's lawful use and travel upon any County roads by vehicles, machinery or equipment which are not Heavy Construction Vehicles.

4. During or after construction, the County shall, in writing, notify Developer's designated field supervisor of the nature of the damage to County road surfaces that may occur (including minor damage) and the anticipated actions required to repair such damage (including repair and maintenance of minor damage). Upon Developer's receipt of any such notice, the County may either direct Developer to undertake and complete repair of such damage at Developers' cost, or the County may undertake and complete such repairs identified by the County within seven (7) days of receipt of any such notice, and bill Developer for direct County costs and expenses for such work, calculated by the rates accepted by the Federal Emergency Management Agency (FEMA Rates). Unless disputed, Developer shall pay such bill within thirty (30) days of receipt of any bill for costs and expenses for such work.

5. Notwithstanding any other provision of this Agreement, the County shall have the absolute right to immediately undertake any repairs required to protect persons or the traveling public from imminent threat of bodily harm without prior notice to Developer. If the County undertakes such repairs, it shall immediately notify Developer such work has commenced, and upon completion bill Developer for direct County costs and expenses for such work, calculated by the rates accepted by the Federal Emergency Management Agency (FEMA Rates). Unless disputed, Developer shall pay such bill within thirty (30) days of receipt.

6. If Developer disputes any bill submitted by the County for work performed by the County to repair damage to County roads and the amount of the bill is less than \$100,000, the parties agree to submit such issue to informal binding arbitration, to be conducted by a person agreed upon by the parties. If the amount of the bill is in excess of \$100,000, the parties agree to submit the issue to formal binding arbitration under the rules and procedures of the American Arbitration Association. Developer agrees to pay any amounts determined by the arbitrator within thirty (30) days of the issuance of a final ruling by the arbitrator.

7. If a driver of a Heavy Construction Vehicle is not on the agreed upon transit routes, the County shall issue a warning to the driver to always travel on the agreed upon transit routes, and shall notify Developer's field supervisor of the issuance of the warning. If the same driver is thereafter found to be operating a Heavy Construction Vehicle on any road which is not an agreed upon transit route, the County may issue the driver a citation and Developer shall thereafter prohibit such driver from operating Heavy Construction Vehicles on County roads for the remainder of the Project.

8. Developer agrees to defend, indemnify and hold harmless the County, its supervisors, boards, administrators, employees, agents and representatives against any and all losses, claims, damages, expenses and liabilities, including reasonable attorneys' fees, for physical injury or death to any person or physical damage to property arising out of Developer's use of County roads by Heavy Construction Vehicles. This indemnification obligation shall survive the termination of this Agreement for a period of two years. Developer shall at all times during the term of the indemnification obligation carry (i) worker's compensation insurance in accordance with the laws of the State of Iowa and employer's liability insurance; (ii) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence; and (iii) automobile liability insurance with minimum limits of \$500,000 per occurrence. Certificates of insurance shall be provided to the County prior to the commencement of Developer's use of County roads by Heavy Construction Vehicles.

9. Developer shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Developer's activities associated with the Project and shall obtain all permits, licenses and orders required to conduct any and all such activities. For the avoidance of all doubt, Developer warrants that all Heavy Construction Vehicles will be duly licensed, and Developer will apply for and receive any necessary permits (including oversize permits) to operate its Heavy Construction Vehicles on County roads. Developer will provide the maximum weight of the Heavy Construction Vehicles upon the County's request.

10. Developer shall notify the County when it has completed operation of Heavy Construction Vehicles on County roads. The County shall notify Developer within sixty (60) days thereafter of any uncompleted repair work, and this Agreement shall terminate upon the completion of and payment for such repairs.

11. Any notices described herein shall be given to the following:

To Developer: Vice President and Deputy General Counsel, Legal Services
ITC Holdings Corp.
27175 Energy Way
Novi, MI 48377

And

Manager, Real Estate Department
ITC Midwest LLC
3165 Edgewood Pkwy. SW
Cedar Rapids, IA 52404

To Tama County: Tama County Auditor
Tama County Courthouse
PO Box 61
Toledo, IA

12. The parties agree, acknowledge, warrant and represent:

- (a) The foregoing recitals are true, correct, constitute the intent of the parties, and are incorporated by reference into the terms of this Agreement; and
- (b) the consideration herein expressed is contractual and not a mere matter of recital; and
- (c) no promise or agreement not expressed in this Agreement has been made by the parties, and any amendments or modifications to this Agreement shall be in made in writing; and
- (d) all prior oral or written statements relating to the subject matter of this Agreement are merged into this writing; and
- (e) they have carefully read the foregoing Agreement and know the contents thereof and have signed the same as their own free act; and
- (f) in executing this Agreement, they do not rely on any statement or representation made by the other or their respective agents, attorneys or employees, but they rely solely upon their own judgment; and
- (g) the person executing this Agreement has been duly authorized by all requisite corporate or other entity action, if applicable, and no other proceedings on the part of the party on whose behalf they execute this Agreement are necessary to authorize this Agreement and the conveyances contemplated hereby; and
- (h) each shall cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and conditions of this Agreement; and
- (i) this Agreement shall be binding upon the heirs, successors and assigns of both parties; and
- (j) this Agreement shall be construed and interpreted in accordance with the laws of the state of Iowa.

IN WITNESS WHEREOF, the said parties hereto have set their hands the day and year first above.

The Board of Supervisors of Tama County, Iowa

_____	Date: _____
Supervisor – Chair	
_____	Date: _____
Supervisor	
_____	Date: _____
Supervisor	
_____	Date: _____
Supervisor	
_____	Date: _____
Supervisor	

Attest: _____
County Auditor

ITC Midwest LLC, a Michigan limited liability company

By: ITC Holdings Corp., its sole member

By: _____
Dusky Terry
Vice President, ITC Holdings Corp. and
President, ITC Midwest LLC

ACKNOWLEDGMENT

STATE OF IOWA)
)SS.
COUNTY OF _____)

BE IT REMEMBERED that on this ____ day of _____, 20____ before me, the undersigned, a notary public in and for the county and state aforesaid, came Dusky Terry, who being by me duly sworn and who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

2025 ISAC Executive Committee

PRESIDENT

Linda Zuercher
Clayton County Treasurer

1ST VICE PRESIDENT

Mary Ward
Cass County Recorder

2ND VICE PRESIDENT

David Muhlbauer
Crawford County Supervisor

3RD VICE PRESIDENT

Brad Kunkel
Johnson County Sheriff

2025 ISAC Board of Directors

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Franklin County

AUDITOR

Amanda Waske
Ringgold County

COMMUNITY SERVICES

Russell Wood
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Mike Miner
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Mills County Supervisor

ISAC Executive Director

Andrea N.J. Woodard

October 20, 2025

Chair, Tama County Supervisor
Tama County
Toledo, IA 52342

Dear Mark Doland:

We are reaching out on behalf of the Iowa State Association of Counties (ISAC) Board of Directors with a request for financial support for an amicus brief in the case of Couser v. Shelby County. The question before the United States Supreme Court has the potential to impact all counties nationwide and therefore, the Board has voted to weigh in with the Court.

Shelby and Story Counties are seeking further appellate review at the United States Supreme Court of an Eighth Circuit panel's decision that invalidated their zoning ordinances regulating a hazardous liquid pipeline, arguing that their local laws are preempted by the federal Pipeline Safety Act. The case centers on whether local setback and other zoning ordinances constitute federally preempted safety standards or if the local zoning ordinances constitute permissible land use controls. Enclosed you will find a detailed case summary from Timothy J. Whipple, attorney at Ahlers & Cooney, P.C.

The amicus brief, being filed on behalf of the ISAC membership, makes an argument that highlights the importance of local control. Amicus briefs help the Court to better understand the importance of a case and potentially raise different arguments or elaborate more on some of those arguments raised by the parties or others. Having several strong briefs in support of a petition from amici is viewed as a factor improving a case's chance of being accepted for further review by the United States Supreme Court when only a small fraction of petitions are accepted.

Many counties have been involved in related litigation and others have been in contact with Shelby and Story Counties. We are asking any county interested in supporting financially to consider a contribution of \$500 to help cover the cost of the amicus brief which has a total cost of \$25,000. Although \$500 is suggested, a pledge of any amount above or below will be greatly appreciated. Please send your contribution to ISAC no later than Friday, November 21.

If you have any questions, there will be a webinar hosted by ISAC at 1:00 pm on October 29, 2025. A link to register will be emailed in the near future. You may also reach out to ISAC General Counsel Beth Manley (bmanley@iowacounties.org). We also recommend you talk with your county attorney.

Thank you for your consideration.

Sincerely,

Andrea N. J. Woodard
Executive Director
Iowa State Association of Counties



Linda Zuercher
ISAC Board President
Clayton County Treasurer



TO: Iowa State Association of Counties
FROM: Timothy J. Whipple
DATE: September 22, 2025
RE: Amicus Curiae (Friends of the Court) Brief in *Couser v. Shelby County, Iowa*

Shelby and Story Counties are pursuing further appellate review at the U.S. Supreme Court of an Eighth Circuit panel's decision that found the Counties' zoning ordinances impacting Summit Carbon's hazardous liquid pipeline to be preempted by the federal Pipeline Safety Act.

Brief Background

Each County's litigation began after their respective Boards of Supervisors independently adopted zoning ordinances that imposed certain setback requirements and other obligations on the intended use of land for the routing and running of a hazardous liquid pipeline. Thereafter, Summit Carbon Solutions, LLC sued the two Counties individually in U.S. District Court for the Southern District of Iowa. Because of the cases' similarities in substance they have been heard together; however, the two zoning ordinances would have imposed zoning requirements on hazardous liquid pipelines unique to each County. During pre-trial motions, the District Court ruled in favor of Summit, finding that various provisions of the Counties' ordinances were preempted by either state or federal law, or both. The Counties sought further review of the District Court's decision by appealing to the U.S. Court of Appeals for the Eighth Circuit. A three-judge panel issued the Eighth Circuit's opinion on June 5, 2025, upholding the District Court's decision but with different reasoning. A summary of the panel's decision, which significantly infringes on the traditional police powers of state and local governments to regulate hazardous liquid pipeline, follows.

Summary of the Eighth Circuit's Opinion in *Couser v. Shelby County, Iowa*

In *Couser v. Shelby County, Iowa*, 139 F.4th 664 (8th Cir. 2025), the Eighth Circuit struck down zoning ordinances adopted by Shelby and Story Counties that imposed setbacks, abandonment, and other requirements on a proposed carbon dioxide pipeline. The court, with one judge dissenting, held that the setback and abandonment requirements in the zoning ordinances were expressly preempted by the federal Pipeline Safety Act, which precludes state and local governments from adopting "safety standards" relating to the "design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities." 49 U.S.C. § 60104(c), (e).

In finding the setbacks preempted, the court "look[ed] beyond the rationale offered" by the Counties and instead searched for "evidence of the law's purpose" to determine whether the "primary motivation" of the ordinances was safety. *Couser*, 139 F.4th at 670-71. The court found

that the primary motivation of the setbacks was safety because they “apply alike to economically developed and remote areas,” which “undercuts aesthetic, land-use, and development rationales,” and because the ordinances require “larger setbacks from buildings with vulnerable populations.” *Id.* at 671. According to the court, “[t]he evidence supports that, at their core, the setbacks regulate safety.” *Id.* The court claimed its holding “does not prohibit local governments from considering safety, nor prevent them from enacting all zoning ordinances....” *Id.* Rather, the court emphasized “the distinction between safety *standards*—which the PSA preempts—and safety considerations—which the PSA does not preempt.” *Id.* The court also held that the setbacks were not saved by 49 U.S.C. § 60104(e), which denies PHMSA the authority “to prescribe the location or routing of a pipeline facility.” According to the court, the use of the term “prescribe” means to dictate the location or route. *Id.* at 671. Regulations that merely “relate” to location or route—such as the counties’ setbacks—are not excluded from the preemptive scope of the PSA. *Id.* at 672.

The court also struck down land restoration requirements that applied to abandoned pipelines. Although the PSA only applies to facilities “used or intended to be used in transporting hazardous liquids,” *see* 49 U.S.C. §§ 60101(a)(18), (5), the court held that “PHMSA oversight extends to abandoned and discontinued pipelines” and thus state or local regulation of abandoned pipelines is preempted. *Id.* at 673.

Judge Kelly filed a dissenting opinion disagreeing with the majority’s conclusion that the setback and abandonment provisions were preempted by the PSA. With respect to the setbacks, Judge Kelly found that they “fit comfortably within a local land use ordinance,” and that such ordinances are “typically, and understandably, driven by multiple concerns, including economic, environmental, and safety.” *Id.* at 677. Judge Kelly would have concluded that “the setback requirements are location and routing standards that, though animated in part by safety considerations do not have a ‘direct and substantial’ effect on safety and thus do not amount to the type of standards that Congress expressly reserved for federal regulation.” *Id.* With respect to the abandonment provisions, Judge Kelly found that the PSA’s application to facilities “used or intended to be used” does “not cover pipelines that have been abandoned,” which is defined in the PSA as “permanently removed from service.” *Id.* at 677-678. Because the land restoration provisions only applied after a pipeline is abandoned, “federal regulatory governance has ceased” and there is no preemption. *Id.* at 678.

The counties sought *en banc* review of the court’s decision, but that request was denied. The counties are now pursuing a petition for writ of certiorari with the United States Supreme Court, which is due in late October. The counties would welcome the support of amicus briefs from state and local governments who are negatively impacted by this decision. Amicus briefs can help the Court better understand a case’s importance and potentially raise different arguments, or elaborate more on some of those arguments raised by others. Having several strong briefs in support of a petition from amici is viewed as a factor improving a case’s chances of being accepted for further review by the U.S. Supreme Court (which only accepts a small fraction of petitions).

The Counties maintain the Eighth Circuit's decision is legally wrong and problematic for the following reasons, necessitating the Supreme Court's review of the case:

1. Courts are not supposed to inquire into the motives of state or local lawmakers.

In analyzing whether the zoning ordinances were preempted, the court stated that it "looks beyond the rationale offered" by the Counties and instead would search for "evidence of the law's purpose" to determine whether the "primary motivation" of the ordinances was safety. This approach is contrary to decades of Supreme Court precedents which have "long warned against undertaking potential misadventures into hidden state legislative intentions without a clear statutory mandate for the project." *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 776 (2019) (collecting cases). There are a multitude of problems with this approach: (1) it will stifle deliberation in state and local legislative bodies and encourage resort to secrecy and subterfuge, (2) it will result in state and local lawmakers being haled into court to be cross-examined about their motivations in passing a law, (3) it risks subjecting identical laws to different standards based on the judge's assessment of the true motivations behind the law, and (4) it is unclear how one determines the motivation of a law when it was adopted by a legislative body made up of individuals who may have different motivations.

2. The decision creates a vague and unworkable standard and could invalidate a wide range of facially proper state and local laws. The Eighth Circuit held that state and local governments can *consider* safety when regulating the location and routing of pipelines, they just can't adopt safety *standards*. It is unclear what this means. How much safety is too much safety? And whose intent controls when the ordinance was passed by multiple lawmakers having different motivations? As the dissent recognized, zoning ordinances "are typically, and understandably, driven by multiple concerns, including economic, environment, and safety." Because safety is an essential component of the police power, the court's focus on whether an ordinance was motivated by safety concerns will have the effect of invalidating a wide range of state and local laws that are facially proper under state and local police power.

3. The decision creates a regulatory void. The Eighth Circuit's decision results in a situation where PHMSA can regulate safety standards but can't regulate the location and routing of pipelines, and state and local authorities can regulate the location and routing of pipelines but can't do so based on safety. Thus, *no one* can making routing decisions based on safety. That is an absurd result and contrary to the purpose of the Pipeline Safety Act which is to *improve* safety.

4. The decision creates a circuit split between the Eighth Circuit and the Fourth and Fifth Circuits, and is contrary to the views of the federal regulator, PHMSA. In *Washington Gas Light Company v. Prince George's County Council*, 711 F.3d 412 (4th Cir. 2013), and *Texas Midstream Gas Servs. v. City of Grand Prairie*, 608 F.3d 200 (5th Cir. 2010), the Fourth and Fifth Circuits held that proper land use regulations are not preempted "safety standards" under the Pipeline Safety Act, even if safety is considered. This is consistent with the views of the federal



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regulator, PHMSA, who views pipeline safety as the shared responsibility of federal, state, and local governments and who recognizes the authority of local governments to “contribute in many ways to the safety of their citizens,” including through “[r]estricting land use and development along pipeline rights-of-way through zoning, setbacks, and similar measures.”

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