E-FILED 2025 MAY 28 1:52 PM POLK - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KERRY HIRTH, HENNINGS JOINT TRUST, VAN DIEST FAMILY LLC, CHARLES CITY AREA DEVELOPMENT CORPORATION, RLIJ, FREE SOIL FOUNDATION, KING INTERVENORS, et. Al Petitioners, v. IOWA UTILITIES COMMISSION et. Al Respondents,	Case No. CVCV067849 **BRIEF**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF THE ISSUES

1. WHETHER THE IUB VIOLATED KERRY HIRTH'S DUE PROCESS RIGHTS BY CHANGING IUB'S RULES AND POLICIES TO PREVENT HIM FROM TESTIFYING?
2. WHETHER THE IUB VIOLATED CAROLE HENNINGS'S DUE PROCESS RIGHTS BY PROHIBITING A WITNESS, STEVE KING, TO TESTIFY ON CAROL HENNINGS'S BEHALF WHEN CAROL HENNINGS'S HEALTH CONDITION PREVENTED HER FROM BEING ABLE TO TESTIFY IN PERSON?
3. WHETHER THE IUB ABUSED ITS DISCRETION BY DENYING CHARLES CITY AREA DEVELOPMENT CORPORATION'S REQUEST TO ALTER THE ROUTE ONE MILE WEST, WHERE OTHER PUBLIC UTILITIES ALREADY EXISTED?
4. WHETHER THE IUB VIOLATED VAN DIEST, LLC'S DUE PROCESS RIGHTS BY LIMITING THE TIME AND SCOPE OF BOB VAN DIEST'S TESTIMONY?
5. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE IUB'S FINDING THAT SCS'S HAZARDOUS PIPELINE WILL PROMOTE THE PUBLIC CONVENIENCE AND NECESSITY?

6. WHETHER THE IUB ERRED BY CONCLUDING THAT SCS'S HAZARDOUS PIPELINE WILL PROMOTE THE PUBLIC CONVENIENCE AND NECESSITY.
7. WHETHER THE IUB VIOLATED ARTICLE III, SECTION 1 OF IOWA'S CONSTITUTION OR ARTICLE I, SECTION 1 OF THE U.S. CONSTITUTION BY DELEGATING REGULATORY POWER TO OTHER STATES?
8. WHETHER THE IUB'S DECISION VIOLATES THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT OR THE TAKINGS CLAUSE OF THE IOWA CONSTITUTION, ARTICLE I, SECTION 18?
9. WHETHER IUB'S DECISION VIOLATES SUBSTANTIVE DUE PROCESS PROTECTIONS OF THE 14TH AMENDMENT BY RELYING UPON SPECULATIVE EVIDENCE THAT CARBON WOULD BE REDUCED BY THE PROJECT.
10. WHETHER IUB'S DECISION VIOLATES THE INALIENABLE RIGHTS CLAUSES OF ARTICLE I, SECTION 1, 9 AND 18 OF THE IOWA CONSTITUTION BY ELEVATING SCS'S PRIVATE INTERESTS OVER LANDOWNERS' FUNDAMENTAL RIGHT TO OWN AND USE LAND?

NATURE OF THE CASE AND COURSE OF PROCEEDINGS

This case arises out of consolidated Petitions for Judicial Review of a Final Decision of the Iowa Utilities Commission (hereinafter "IUB"[1]) entered on 6/25/24, which conditionally granted Summit Carbon Solutions' (hereinafter "SCS") application for a permit to establish a hazardous liquid pipeline through twenty-nine Iowa counties. IUB Final Decision and Order, p. 1, 6/25/24. The IUB considered voluminous evidence and ultimately concluded that the "service" provided by SCS "will promote the public convenience and necessity." The IUB subsequently issued SCS a conditional permit to begin its project. IUB Final Decision and Order, p. 1, 6/25/24.

As part of the IUB's ruling, SCS was granted the right of eminent domain over 859 parcels of privately owned land in Iowa. IUB Final Decision and Order, p. 1, 6/25/24. As part of its order, the IUB also required SCS to obtain and maintain at least a $100,000,000.00 insurance policy, adhere to specific construction standards, and compensate the affected landowners and

[1] The Court may note that previous case law, items in this petition, and the order at issue in this matter refer to the "Iowa Utilities Board," whereas this action states claims against the "Iowa Utilities Commission." Plaintiffs' use of the term "Commission" is to reflect current law. While the terms are factually interchangeable, on May 17th, 2024, Governor Reynolds signed Senate File 2385 into law, which restructured and renamed the-then Iowa Utilities Board. The Board then became the Iowa Utilities Commission, and its members became Commissioners. https://iuc.iowa.gov/press-release/2024-07-02/iowa-utilities-board-now-iowa-utilities-commission#:~:text=After%2038%20years%20as%20the,now%20be%20known%20as%20Commissioners.

tenants for damages that may result from the construction of the hazardous pipeline. IUB Final Decision and Order, p. 1, 6/25/24.

The IUB's conditions on SCS's permit require that SCS will not be allowed to begin construction in Iowa unless and until the North Dakota and South Dakota public utility commissions have approved a route and until North Dakota has permitted SCS's sequestration site. IUB Final Decision and Order, p. 65, 6/25/24. Then-Board Chair Erik Helland and Board Member Joshua Byrnes issued concurrences and partial dissents to the conditional permit. IUB Final Decision and Order, p. 1-2, 6/25/24. These concurrences and partial dissents did not impact the final order. As such, the impact of the IUB's ruling is that SCS is granted the right to physically invade the private property of landowners in Iowa at some unknown time.

The Iowa Utilities Commission's[2] Members are nominated by the Governor and confirmed by the Iowa Senate. Commissioners serve for six-year terms. The Chairperson is nominated from the members of the Commission for a two-year term, also subject to Senate confirmation. This means that in any one Commissioner's six-year term, the Governor may choose to reappoint a Commission Chair or appoint another member as Chair. It also means that the Iowa Senate may confirm, defeat, or decline to act on an appointment every other year.[3]

It should be noted that Plaintiffs do *not* argue that an omission by a government entity, in this case, the Iowa Senate, should generally be construed as an affirmative statement of public policy. Plaintiffs instead advise the Court that the relevant elected branches of government each have a statutory right to recommend and consider state executives as provided by law.

On March 3, Governor Kim Reynolds renominated Commissioner Helland for a second two-year term as IUB Chair and Commissioner Byrnes for a full six-year term. The Iowa Senate

[2] Formerly "Board." *Id.*
[3] https://www.legis.iowa.gov/docs/ico/chapter/474.pdf.

often confirms the Governor's nominees through a process called "En Bloc Appointments."[4] This is generally used when nominees are not controversial, allowing the Senate to confirm several nominees with a single vote. Both Mr. Helland and Mr. Byrnes were placed on the en bloc calendar and then removed, subjecting each Commissioner to an individual vote at the discretion of the Senate[5].

On May 13, 2025, the Iowa Senate confirmed Commissioner Byrnes by a vote of 45-1. The Iowa Senate declined to vote on Commissioner Helland's renomination as Chair before adjourning.[6]

On Monday, May 19, 2025, Governor Reynolds appointed Commissioner Sarah Martz as Chair of the Iowa Utilities Commission, effective immediately.[7]

Plaintiffs do not speculate as to whether the Board's/Commission's Final Order would have been different had these personnel changes been in place during the long and challenging process illustrated below.

Rather, Plaintiffs advise the Court that the nonjusticiable matters of the elected branches of Iowa government are directly tied to the justiciable issues in this action and may warrant the Court's consideration.

Relatedly, on May 13, 2025, the Iowa Senate passed House File 639, a bill to restrict the Iowa Utilities Commission's authority to vest eminent domain takings in privately owned companies. This bill is awaiting final action by Governor Reynolds. Plaintiffs assert that, regardless of the Governor's final action on this bill, these nonjusticiable decisions by the elected

[4] Rule 59, Iowa Senate. https://www.legis.iowa.gov/docs/publications/SR/1521711.pdf
[5] https://www.radioiowa.com/2025/05/13/iowa-utility-regulator-confirmed-for-another-term/
[6] https://www.legis.iowa.gov/docs/publications/SJNL/20250513_SJNL.pdf
[7] https://governor.iowa.gov/press-release/2025-05-19/gov-reynolds-appoints-sarah-martz-chair-iowa-utilities-commission

branches of government are worth noting and considering. Plaintiffs respectfully advise that these considerations are essential under the Court's authority under 17A.19(k).

Specifically, the IUB is a quasi-judicial, deliberative body created by statute. It is permitted to grant the state's power of eminent domain to private entities under certain narrow and restricted conditions. Its management has undergone significant changes since the issuance of the conditional permit referenced in this document. It is impossible to conclude that is the result of anything other than legitimate objections to the process the IUB used in issuing its conditional permit.

Plaintiffs will show that the IUB did *not* act as a "quasi-judicial body." It acted as though it were the Judiciary itself, making constitutional decisions, yet without protecting simple due process.

Plaintiffs will show that the IUB did *not* act as a deliberative body but instead placed itself in the shoes of the Iowa Legislature, expanding its authority over people on public policy grounds without the inconvenience of changing state law.

Plaintiffs will show that the IUB *did* use its unique statutory role to both skirt its executive branch responsibilities when convenient, yet to aggressively expand its role at its own discretion – then deciding that it and it alone could make decisions regarding workforce development, environmental concerns, agricultural policy, and *whether families could stay on their farms*.

Finally, the Plaintiffs will show that the conditional permit itself is defective. It is not just common law, but Iowa Code, that a grant of a property interest in fee simple absolute, if it must vest, must vest in an identifiable time period. The IUB's conditional permit missed that fundamental point.

The IUB, an administrative agency, has extraordinary power over people. No such power may exist without a check and balance under not just the Iowa Constitution but under Iowa Code 17A.

STATEMENT OF FACTS

Summit Carbon Solutions filed its pipeline petition on January 18, 2022, seeking authorization under Iowa Code Chapter 479B. The petition included a request to use eminent domain to secure interests in fee simple, an eminent domain taking, for the pipeline route. The project's justification relied heavily on claimed benefits to the ethanol industry, but the reports offered as evidence were either commissioned by Summit or produced by industry advocates. Summit witness Andrew Phillips admitted that economic cost data was excluded from the Ernst & Young report, and witness James Pirolli confirmed that the Iowa Renewable Fuels Association report did not address specific benefits attributable to Summit's pipeline. App.Vol 1 p. 20-31.

The Iowa Utilities Board ("IUB") issued the Final Decision and Order on June 25, 2024, conditionally approving Summit Carbon Solutions' ("SCS") application for a hazardous liquid pipeline permit. IUB Final Decision and Order, at 1 (June 25, 2024). The proposed pipeline would traverse twenty-nine counties across the state of Iowa.

In reaching its decision, the IUB reviewed an extensive evidentiary record and concluded that the service proposed by SCS "will promote the public convenience and necessity." *Id*. Consequently, the IUB granted SCS a conditional permit, allowing the company to proceed with the project, provided it complies with specific conditions. *Id*.

As part of the permit, the IUB granted SCS the power of eminent domain over 859 parcels of privately owned land in Iowa. Id. The Board also imposed several conditions on the permit, which include the requirements that SCS (1) secure and maintain a minimum

$100,000,000 insurance policy, (2) comply with specified construction standards, and (3) compensate affected landowners and tenants for damages incurred due to the pipeline's construction. *Id.*

Notably, the IUB prohibited SCS from initiating construction within Iowa until both the North Dakota and South Dakota public utility commissions approve the proposed pipeline route and until the North Dakota Industrial Commission has permitted the proposed sequestration site. *Id.* at 65.

On July 11, 2023, Kerry Mulvania Hirth filed a Petition for Intervention with the Iowa Utilities Board (IUB), citing her status as the daughter and heir of an Exhibit H landowner, Rodney Mulvania. Ms. Hirth asserted that the proposed Summit Carbon Solutions pipeline would negatively impact her father's land in Montgomery County, Iowa, and that she had a direct and significant interest in opposing the project. App.Vol 1 p.30

Ms. Hirth submitted her Initial Pre-filed Testimony in opposition to Summit's petition. She raised environmental, economic, and public safety concerns associated with the hazardous liquid pipeline, arguing that the project would not serve the public convenience and necessity required under Iowa Code 479B.9. App.Vol 1 p. 42. Ms. Hirth further contested the legality of granting Summit eminent domain, arguing that the project constituted an anticompetitive, vertically integrated market situation in which there could only be one buyer—a monopsony. Summit's business structure, she alleged, was designed to control the ethanol supply chain and suppress market prices in violation of Iowa Code § 553.5. App.Vol 1 p.48.

On August 18, 2023, Ms. Hirth filed a formal document withdrawing her earlier withdrawal of intervention, explaining that she had initially been misled by IUB staff into believing her participation precluded her father's right to testify. She clarified that her intent was

never to relinquish her right to intervene but to preserve her father's voice as an Exhibit H landowner. App. Vol 1. p.39.

Ms. Hirth had to file a separate lawsuit for Judicial Review in Polk County District Court on September 18, 2023. Ms. Hirth challenged the IUB's confidential designation of the Summit-ethanol offtake agreements. She argued that this designation denied due process to *pro se* intervenors by preventing them from reviewing critical evidence and cross-examining witnesses about the alleged economic benefits Summit claimed as the basis for eminent domain. App. Vol 1. p.39.

Kerry Mulvania Hirth was improperly denied the opportunity to testify before the Iowa Utilities Board (IUB) despite having complied with the appropriate procedures to appear on behalf of her father. In preparation, Ms. Hirth thoroughly reviewed the record and coordinated with her father to represent his interests at the hearing. Before the day's testimony, the IUB was notified of her intent to appear, and Ms. Hirth was issued a witness tag. She also participated in a private session with Board staff to confirm her representation. Nevertheless, when she attempted to testify, the Board refused to permit her to speak, asserting that doing so would be inconsistent with prior decisions. The Board's refusal to allow Ms. Hirth to testify deprived her and her father of a meaningful opportunity to be heard, violating their procedural due process rights. App.Vol 1. p.1-20.

Despite what the IUB stated, they had, on multiple occasions, allowed heirs to testify on behalf of their parents. Bradley Franken's testimony, Anne Gray's, and Tamera Snyder's testimony were allowed. All three were there to testify as heirs to their parents' land. Ms. Hirth was not given the same opportunity. Justice denied to one is justice denied to all. App. Vol 1. p.20-30.

On August 2, 2022, Donald and Carole Hennings, as trustees of the Hennings Joint Trust, filed an objection with the Iowa Utilities Board opposing the Summit Carbon Solutions CO_2 pipeline, characterizing it as an illegitimate use of eminent domain by a private company and a "land grab" unsupported by public necessity. They emphasized that any such project should proceed only with the voluntary consent of the landowner, not through state-backed coercion. App. Vol 2. p.140-150.

Their opposition was reaffirmed on July 15, 2023, when the Trust cited safety concerns about the pipeline's proposed path near Highway 20, an existing natural gas line, and high-voltage power lines. They also highlighted insurance limitations, noting that their provider would not guarantee coverage for incidents involving a hazardous CO_2 pipeline. App. Vol 2. p. 145.

On August 31, 2024, Michael Henning submitted a separate objection, opposing the use of eminent domain and arguing that the pipeline fails to meet the constitutional public use standard, poses safety risks, causes long-term agricultural damage, and endangers local groundwater. App p.149.

On October 10, 2023, Carole Hennings later clarified that she had not understood the procedural requirement to file pre-filed testimony to participate as an intervenor. Although she withdrew from formal intervenor status, she asked to retain her right to object to the use of eminent domain and sought to testify as a non-intervening landowner. App. Vol 2. p.140. However, the week before her testimony, Carole Hennings had open heart surgery and requested that former Representative Steve King represent her at the hearing. This was set up. Representative Steve King was checked in and nonetheless was prevented from testifying. App. Vol 2. p.132-137.

On July 10, 2023, Mr. King filed a Notice of Intent to Participate and a Petition to Intervene in the IUB proceeding, asserting standing as a former Congressman representing the impacted region and a pro bono policy advocate. Mr. King noted his authorship and co-sponsorship of federal legislation opposing the use of eminent domain for economic development. He cited specific constitutional concerns on behalf of his former constituents and other affected landowners. He is a subject matter expert. App.Vol 4. p.338.

Multiple Iowans and King Intervenors submitted testimony opposing Summit's proposed CO_2 pipeline, citing legal, safety, and environmental concerns. Michael Daly of Johnson County warned that the Board's decision would set a precedent for future projects despite the pipeline not crossing his land. App. Vol 4. p.351. Mark S. Joenks of Greenville testified that the pipeline would run just 375 feet from his home, within the blast and asphyxiation radius. Yet, he receives no compensation for not being classified as an affected landowner. App. Vol 4. p. 362.

Ted Junker of New Hartford criticized the project as speculative and driven by 45Q and 45Z tax credits. He urged delaying approval until the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued updated safety regulations, referencing the 2020 CO_2 pipeline rupture in Satartia, Mississippi. App. Vol 4. p.369. James and Janet Norris of Red Oak highlighted the absence of plume modeling and odorants, Summit's lack of pipeline experience, and the ecological risks to conservation areas and water systems. App.Vol 4. p.376.

Farmer Jeffrey Reints, whose land is not crossed by the pipeline, reported significant tile damage from a related project and explained that ethanol facilities could use on-site CO_2-to-methanol technologies as an alternative to pipelines. App.Vol 4. p.386. Jessica Wiskus argued that the project prioritizes private profit over constitutional property rights and does not qualify for public use under Iowa law. She cited *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829

(Iowa 2019), and *Clarke County Reservoir Comm'n v. Robins*, 862 N.W.2d 166 (Iowa 2015), to support the position that speculative economic gains do not justify eminent domain. App. Vol 4. p.390.

The Charles City Area Development Corporation submitted comments and testified to the Iowa Utilities Board, expressing grave concerns about the proposed Summit Carbon Solutions CO_2 pipeline. The Board of Directors emphasized that the project poses significant safety risks to existing industrial development zones and threatens future economic growth in the area. Specifically, they noted that the proposed pipeline route crosses a turnkey industrial park purchased and developed with public funds. The pipeline's location would place businesses and employees at risk and potentially deter future investment. They argued that any pipeline incident could severely damage Charles City's reputation as a safe and business-friendly community. App. Vol 2. p.151.

Bob Van Diest, founder and chairman of Van Diest Supply Company and an Iowa landowner, has consistently opposed the Summit Carbon Solutions CO_2 pipeline in filings before the Iowa Utilities Board. In his January 10, 2024, and February 27, 2024, filings, he objected to the use of eminent domain for a private, for-profit project, stating his land "is not for sale" and warning of damage to tile lines, reduced property value, and interference with business expansion. Van Diest also voiced his concerns over Summit's lack of transparency and unreliable claims of public benefit. App. Vol 4. p.325-337. In his April 9, 2024, filing, Van Diest emphasized the public safety risks of CO_2 pipelines, citing past ruptures and inadequate rural emergency infrastructure. He warned of threats to nearby industrial employees and a lack of proper emergency planning. App. Vol 4. p.335-337.

On July 24, 2023, Iowa State Representative Steven Holt submitted direct testimony on behalf of the Republican Legislative Intervenors for Justice (RLIJ) before the Iowa Utilities Board in Docket No. HLP-2021-0001. Representative Holt emphasized that the Legislature's grant of eminent domain authority to the Iowa Utilities Board (IUB) under Iowa Code § 479B.9 is explicitly limited. It does not extend to private economic development projects. He further noted that the statute requires a finding of both 'public convenience' and 'necessity' before granting a permit.

Rep. Holt argued that Summit's proposal fails to meet these requirements and described the misuse of eminent domain for private gain as a threat to constitutional protections. He cited the *Kelo* decision as a cautionary precedent and warned against setting a similar course in Iowa. App. Vol 3. p.213-223. *Kelo v. City of New London*, 545 U.S. 469 (2005)

Iowa State Senator Sandy Salmon also submitted testimony on July 24, 2023, voicing the concerns of constituents opposed to the pipeline. Citing a statewide Iowa Poll indicating that 78% of Iowans oppose eminent Domain for CO_2 pipelines, Sen. Salmon argued that the project constitutes private use and does not meet the public use standard. She referenced Senate Concurrent Resolution 6, which she co-sponsored, urging the IUB to reject eminent domain for carbon capture pipelines. App.Vol 3. p.242-260.

Iowa State Representative Charles Thomson testified that the IUB's intervention process excluded critical voices, including Mr. King, the former Congressman and subject matter expert. He emphasized the need for procedural integrity and public trust, arguing that the arbitrary denial of intervention undermines the rule of law. App. Vol 4. p.261-282.

On July 15, 2024, the RLIJ filed a Motion to Reconsider the IUB's Final Decision and Order. The motion alleged constitutional and procedural due process violations, noting that many

Iowans were excluded from participation. It also challenged the sufficiency of the Board's insurance requirements and contested the claim that Summit's project satisfies public convenience and necessity. App. Vol 4. p.283-295.

The RLIJ further criticized the Board's reliance on 45Q tax credits and speculative climate benefits to justify eminent domain. They argued these incentives serve private interests and do not create public use within the meaning of the Iowa Constitution. The motion concluded that the IUB's findings were contrary to law and unsupported by the evidence. App. Vol 4. p.283-295.

ARGUMENT AND AUTHORITIES

I. THE IUB VIOLATED THE PROCEDURAL DUE PROCESS RIGHTS OF KERRY HIRTH, CAROLE HENNINGS & CHARLES CITY AREA DEVELOPMENT CORPORATION AND BOB VAN DIEST.

A. The Standard of Review is de novo.

When a violation of a constitutional right is claimed, the standard of review is *de novo*. *In re Detention of Goodwin*, 689 N.W.2d 461, 466 (Iowa 2004). In applying this standard, the Court "makes an independent evaluation of the totality of the circumstances as shown by the entire record." *Id; State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001). While the Court defends findings regarding witness credibility, they are not bound by them. *Turner*, 630 N.W.2d at 606.

B. Based Upon a Totality of Circumstances, the IUB violated Petitioners' Procedural Due Process Rights.

Landowners of affected property and landowners of sufficiently near property have standing to challenge regulations affecting property. *1000 Friends of Iowa v. Polk County Bd. of Supervisors*, 19 N.W.3d 290, 297-98 (Iowa 2025). If there were any doubt, Bob Van Diest submitted evidence that if the hazardous pipeline went through his property, it would cause

extensive damage to his pattern tile lines, for which he invested approximately $1,000.00 per acre to construct. See App. Vol 4.p.346. Kerry Hirth's father, who owned a parcel designated in Exhibit H, which Kerry would inherit, was not allowed to present testimony because the IUB granted his daughter, Kerry, intervenor status, and the Commission ruled that only one person could testify per parcel. App.Vol 1. 04.

On behalf of Hennings Joint Trust, Carole Hennings submitted written objections; however, she was not allowed to testify at the hearing. App. Vol 2. p.138-141. The Trust also formally intervened. App. App. Vol 2 p.138. Ms. Hennings found the entire process of testifying to be confusing and changing, so she had to submit an additional request to testify live. App. Vol 2 p.140. Even though they were allowed to intervene, Carole Hennings required open heart surgery the week before her hearing. She contacted the IUB to this effect and was given directions on how to designate a person to speak on her behalf. However, IUB prohibited former Congressman Steve King, the individual designated to give testimony on her behalf, from testifying. App. Vol 2132-136.

Finally, Charles City Area Development Corporation sought an alternative route for the pipeline, as discussed in footnote 35 of then-Commission Chair Helland's Concurrence and Dissent. IUB Final Decision and Order, p. 504, fn. 35. It was testified by way of Timothy Scott Fox. IUB Final Decision and Order, p. 357, App. Vol 2. p.154-200. Accordingly, there should be no question that the Petitioners all have standing to raise challenges regarding how the IUB adjudicated their rights.

Petitioners raise procedural due process challenges under both the federal and Iowa constitutions. The first step in any procedural due process inquiry is determining, "whether a protected liberty or property interest is involved." *Bowers v. Polk County Bd. of Supervisors*, 638

N.W.2d 682, 691 (Iowa 2002). Requirements of procedural due process are notice and a *meaningful* opportunity to be heard. *Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255, 264 (Iowa 2001). Iowa follows the test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) to determine the process owed, which balances 1) the interests of the individual, 2) the governmental interests, and 3) the risk of erroneous deprivation of the individual's interests if the right he or she asserts is not recognized and the probable value, if any, of recognizing that right." *Matter of V.H., 996 N.W.2d 350, 540 (Iowa 2023)*.

A core tenet of procedural due process is the right to be heard "at a meaningful time and in a meaningful manner" (*Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). This principle ensures that individuals whose rights are at stake receive a fair opportunity to present their case before suffering adverse governmental action. The Iowa Constitution similarly enshrines this right under Article I, Section 9, which guarantees that no person shall be deprived of life, liberty, or property without due process of law. The Iowa Administrative Procedure Act (Iowa Code Chapter 17A) also establishes requirements for fair and impartial hearings, ensuring that administrative agencies provide affected individuals with a reasonable opportunity to be heard.

The IUB erred. It concluded broadly that its procedures complied with due process, as it held several meetings over eight weeks and reviewed a large transcript of testimony, including thousands of comments, which together totaled over 50,000 pages of pre-filed testimony. IUB Final Decision and Order, p. 470. Troubling, however, is that the IUB's due process analysis fits on *less than one page of text*. See IUB Final Decision and Order, p. 470.

This analysis gives unfair, short shrift to the landowners' and intervenors' complaints that the IUB's policies and procedures, while ultimately leading to the creation of a voluminous record, nevertheless failed to provide a meaningful opportunity for *each* affected landowner to be

heard. For example, suppose it is true that the IUB allowed late commentary on the matter. In that case, there is no good reason for the IUB to have prohibited Ms. Hennings, who fell ill during the proceedings, to designate Mr. King to testify on her behalf. Yet, the IUB did just that.

Moreover, there is no good reason for only Ms. Hirth or her father to be allowed to testify regarding her father's land. Both would have been able to give relevant and competent testimony as to the impacts caused by the proposed projects, and there is no logical reason to require the Hirths to choose one over the other, particularly when fundamental property rights are at stake.

Finally, as to the Charles City Area Development Corporation (CCADC), the IUB heard testimony from Timothy Scott Fox. However, the IUB unreasonably failed to consider an available alternate route that was less disruptive to CCADC's strategic plans. See IUB Final Decision and Order, p. 357-358. Once again, the IUB's analysis spans less than one page. While an exhaustive explanation is not required, more process was due to Petitioners than what was afforded by IUB.

II. THERE IS NO SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE PIPELINE WILL PROMOTE PUBLIC CONVENIENCE AND NECESSITY.

The Iowa Constitution, Article One, Section Eighteen states, "[p]rivate property shall not be taken for public use without just compensation." Iowa courts have interpreted this provision more restrictively than the U.S. Supreme Court has interpreted the Fifth Amendment. See *Clarke County Reservoir Comm'n v. Abbott*, 862 N.W.2d 166, 173 (Iowa 2015) ("We give independent legal force to the text of our constitution, particularly when it affords greater protection to individual rights than the federal counterpart."); *State v. Ochoa*, 792 N.W.2d 260, 267–68 (Iowa 2010). Indeed, the power to take private property for public use is an attribute of sovereignty that may be delegated only by express authorization from the Legislature, and statutes that delegate the power of eminent domain are strictly construed by express authorization from the Legislature

and statutes that delegate the power of eminent domain are strictly construed. *Clark County Reservoir Comm'n v. Abbott*, 862 N.W.2d at 171.

Iowa Code section 479B gives the Iowa Utilities Commission authority to issue a permit for a pipeline that "will promote the public convenience and necessity." *Puntenney v. Iowa Utilities Bd.,* 928 N.W.2d 829, 840 (Iowa 2019). "Public convenience" and "necessity" are separate meanings. *Id*. In Iowa, whether a project is a public convenience *or* a necessity depends on whether the "substantial benefits [of the project] outweighed the costs." *Id*. at 841. And "public use" is different than "public convenience" and "necessity."

Unlike the U.S. Supreme Court's ruling in *Kelo v. City of New London*, 545 U.S. 469 (2005), which allowed for takings motivated solely by prospective economic development, Iowa has thus far required a "public use" to be a direct, public use, rather than a public benefit derived from private commercial gain. See generally *City of N. Liberty v. Weinman*, 900 N.W.2d 616 (Iowa 2017); *Hickman v. Ringgold Cty.*, 941 N.W.2d 38 (Iowa 2020). The public use requirement is to prevent the abuse of the power of eminent domain for the benefit of private parties. *Clark Cnty. Reservoir Comm'n*, 862 N.W.2d 172.

Justice O'Connor's dissent in *Kelo* has not only resonated with Iowa courts in theory—it has directly influenced their reasoning. In *Puntenney v. Iowa Utilities Board*, 928 N.W.2d 829 (Iowa 2019), the Iowa Supreme Court considered whether the construction of the Dakota Access Pipeline met the public use requirement under the Iowa Constitution. The Court acknowledged that while transporting oil may serve a broad public interest, economic development alone would not justify using eminent domain. *Id*. at 848–49. Echoing Justice O'Connor's concern, the Court held that a "generalized economic benefit" was insufficient to satisfy the protections of Article I, Section 18.

The *Puntenney* Court explicitly distinguished the Iowa Constitution from the federal standard announced in *Kelo*, stating: "While Kelo remains binding federal precedent, we are not bound to interpret our Constitution identically... our Constitution demands stricter scrutiny of the public use requirement." *Id*. at 845.

The Iowa General Assembly responded directly to the threat of the *Kelo* decision by passing Iowa Code § 6A.22, which codified a narrow definition of "public use." The statute prohibits takings for "economic development purposes" and mandates that property may not be condemned primarily for private development, even if incidental public benefits exist. Section 6A.22(2)(b) provides: "A governmental or private entity shall not invoke eminent domain... if the primary purpose of the condemnation is for economic development..." This statutory language gives legislative force to the dissent's reasoning and reinforces Iowa's rejection of *Kelo's* broader standard. By comparison, the Iowa Supreme Court has upheld condemnations that support infrastructure improvements with demonstrable public benefits, as articulated in *Hickman v. Ringgold County, supra*, and *Woodbury County Soil Conservation District v. Ortner*, 279 N.W.2d 276 (1979).

Iowa courts continue to scrutinize eminent domain claims to prevent circumvention of constitutional protections. In *Skaff v. Sioux City*, 255 Iowa 49, 55–56 (1963), the Court held that "public use" must be actual and not a pretext for transferring property from one private owner to another. Similarly, in *Anderlik v. Iowa State Highway Comm'n*, 240 Iowa 919, 930 (1949), the Court insisted on a "reasonable necessity" standard and recognized the importance of individualized protection against unjust takings.

These rulings reinforce a doctrinal structure that insulates Iowa property owners from governmental actions that might otherwise exploit eminent domain to facilitate private ventures, such as pipelines, industrial development, or speculative infrastructure projects.

The Court in *Puntenney* affirmed the Iowa Utilities Board's decision authorizing eminent domain for the Dakota Access pipeline, finding that the project promoted the "public convenience and necessity" required by Iowa Code section 479B.9. *Puntenney*, 928 N.W.2d 829 at 841 (Iowa 2019). It reasoned that the IUB balanced the "substantial benefits [of the project]" against the costs. Since the Court used this balancing approach in *S.E. Iowa Cooperative Electric Association v. Iowa Utilities Board*, 633 N.W.2d 814, 821 (Iowa 2001), the Court could not find the agency's decision irrational, arbitrary, or capricious *Id*. The Court emphasized that each project must be evaluated on specific facts. In *Puntenney* and *S.E. Iowa Cooperative Electric Association*, the cases involved an oil pipeline and electric franchises, which are very different from hazardous liquid carbon pipelines.

In the case of SCS's proposed hazardous pipeline, however, the benefit to Iowa is, at best, tenuous because the hazardous pipeline transports carbon dioxide for sequestration in North Dakota under contracts with private ethanol plants rather than with Iowans or Iowa companies. **Iowans' land is nothing more than a means to a private end.** This constitutes economic development activity rather than a public utility function, contrary to Iowa Code section 6A.22(2)(b). The Legislature's restriction on eminent domain for economic development was intended to prevent takings that primarily benefit private enterprises, which is precisely what this project is.

The claim that the hazardous pipeline will serve a legitimate public use is false. The project is driven by private gain, with potential future public benefits that are said to be realized

globally by reducing carbon emissions. Iowans' fundamental property rights should never be subservient to speculative, future, non-fundamental rights of the world. Justice O'Connor's dissent in *Kelo* emphasizes avoiding arbitrary redistributions of land. Her warning that "any property may now be taken for the benefit of another private party, but with only the incidental public benefit required" finds renewed urgency in these proceedings. *Kelo*, 545 U.S. at 505.

Throughout this process, SCS has painted a sweeping and overly optimistic picture of its proposed carbon dioxide pipeline, cutting further against its claim of public use. SCS touts itself as an economic savior of Iowa's ethanol industry, claiming the project will secure its viability for decades. However, these grand proclamations falter under the slightest scrutiny. The evidentiary record lacks support for SCS's claims and, in many instances, provides substantial evidence directly contradicting them. The more one examines the facts, the clearer it becomes that Summit's narrative is built on a conjecture rather than a foundation of proven public benefit.

SCS's take-off agreements reveal restrictive, one-sided terms that favor SCS at the expense of Iowa's ethanol producers. The agreements limit the flexibility of the plants to pursue other carbon mitigation strategies, tie them to SCS's operational and financial decisions, and grant SCS extensive discretion over key decisions affecting plant operations. Instead of creating a competitive advantage, these agreements effectively shackle and monopolize Iowa's ethanol producers to SCS's control. What's worse is that many valid objections by landowners were cast aside because other landowners already signed voluntary easements, relegating the former landowners' rights to actions taken by third parties. IUB Final Decision and Order, p. 406, 411, 453.

III. THE PETITIONERS' DUE PROCESS RIGHT TO A FAIR HEARING WAS VIOLATED BECAUSE AT LEAST ONE DECISION MAKER WAS BIASED, AND PRACTICES AND PROCEDURES WERE DESIGNED OR IMPLEMENTED TO FAVOR SCS.

The procedural framework established by the IUB demonstrated bias in favor of Summit Carbon Solutions (SCS), violating the constitutional due process requirement for a neutral and impartial tribunal. In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883–84 (2009), the U.S. Supreme Court held that where "under a realistic appraisal of psychological tendencies and human weakness," a decisionmaker's interest poses "such a risk of actual bias or prejudgment that the practice must be forbidden," due process is violated.

Although the government claims neutrality, the Plaintiffs have shown that the behavior of the Board, in the context of these hearings, shows bias against the Plaintiffs by the IUB: or, the IUB has shown negligent interpretation of the rules, the laws, and the Constitution of both Iowa and the U.S. Constitution in its final order. This sequence underscores the broader perception, if not the reality, of structural bias and conflict of interest within the agency overseeing this critical proceeding.

The IUB's partiality is further demonstrated by its decision to expedite the permit process without allowing adequate consultation with affected landowners. SCS was afforded extensive procedural leeway to present its case, including introducing confidential records, technical reports, and expert testimony, while landowners encountered a byzantine system of procedural restrictions and roadblocks. Evidentiary rules were inconsistently applied, and filing deadlines were imposed without adequate accommodation, creating significant barriers to participation. Many intervenors were *pro se* or lacked legal representation, and the Board provided insufficient guidance to help them navigate the complex hearing procedures.

The IUB failed to provide affected landowners with clear, timely, and individualized notice of proceedings that threatened to strip them of their property rights. App. Vol 1. 93-96. As the U.S. Supreme Court held in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), due process requires notice "reasonably calculated" to inform affected parties and allow them to defend their rights. In cases such as *Owens v. Brownlie*, 610 N.W.2d 860, 870 (Iowa 2000), Notice and an opportunity to be heard are required when a person's protected liberty or property interest is at stake: technical notice is insufficient if it fails to afford a meaningful opportunity to respond.

These hearings were not only procedurally imbalanced—they were structurally confusing and inaccessible. The format and rules shifted without adequate explanation, leaving participants to decipher the expectations without reliable support. For example, Kerry Mulvania Hirth, who appeared on behalf of her father, was denied the opportunity to testify despite having notified the Board in advance, coordinating with IUB staff, and presenting proper witness credentials. The Board reversed course after she had already conferred privately with staff and confirmed her role, barring her from testifying on vague grounds of "inconsistency with prior decisions." This episode reflects the arbitrary and unpredictable application of procedures, emblematic of a process designed to exclude rather than engage.

The hearings were held exclusively in Fort Dodge, Iowa, during harvest season, when many landowners were occupied with critical agricultural duties. This compounded geographic and logistical burdens on participation. Many landowners in or near the projected plume radius did not receive formal notice and only learned of the proceedings through local media or word of mouth.

The IUB denied landowners critical pre-deprivation remedies. As outlined in *Goldberg v. Kelly*, 397 U.S. 254 (1970), due process requires that individuals be allowed to challenge state action before suffering irreparable harm. In eminent domain cases, this includes the right to contest the necessity and public purpose of the taking before property values are irreversibly harmed. The Iowa Supreme Court has confirmed this principle in *Owens v. Brownlie*, 610 N.W.2d 860 (Iowa 2000), and Iowa Code § 6B.2A imposes a duty on companies like SCS to engage in good-faith negotiations. Yet SCS's threatened use of eminent domain caused land devaluation long before formal proceedings occurred. Landowners were pressured into signing easements under coercive terms, often with misleading communications suggesting resistance was futile. The IUB failed to provide a clear forum for contesting the taking or to enforce Iowa Code § 6B.2A's requirement for good-faith negotiations, further compounding the constitutional harm.

These combined failures—deficient notice, absence of timely remedies, and unequal treatment—undermine the constitutional legitimacy of the IUB's proceedings and the public's Trust in the fairness of Iowa's regulatory institutions. The due process violations outlined here are not merely technical flaws but structural deprivations that demand judicial redress.

IV. SCS IS NOT A COMMON CARRIER.

Iowa Code 479B.2(2) provides that a "pipeline company" is defined as "any person or entity engaged in the transportation of hazardous liquids by pipeline as a common carrier." Iowa Code §479B.2(2). In this context, the term "common carrier" should be understood to mean a commercial enterprise that transports goods for hire as a public service, offering its services to all potential users. As noted by the Court in *Summit Carbon Solutions, LLC v. Kasischke*, 14

N.W.2d 119, 135, fn 5 (Iowa 2024), whether SCS is a "common carrier" has not been decided in Iowa.

South Dakota, however, has recently addressed this issue. On 8/21/24, South Dakota's Supreme Court ruled that SCS needed to demonstrate that its goods (CO2) would be put to productive use (rather than underground storage). *Betty Jean Strom Trust v. SCS Carbon Transport, LLC*, 11 N.W.3d 71, 84 (S.D. 2024). The Court noted that a commodity was an article of trade, commerce, or an economic good, such as raw materials or agricultural products. *Id*. Like in the case at bar, the record showed that the CO2 would be transported and stored underground, with no other apparent use. *Id*. The Court aptly noted that the only item of commerce it could detect was the federal tax credits driving the project. *Id*.

SCS argued below that if another pipeline qualifies as a common carrier, then SCS's pipeline should also be eligible. However, SCS misses the distinction between pipelines used to deliver goods that others can use and whether they transport goods for storage that others never use. Only carriers that transport goods that the public can use serve the purpose of the "public use" requirement for eminent domain to be exercised. A common carrier must serve all within its scope, while a private carrier serves only specific clients under private contracts. *Kvalheim v. Horace Mann Life Ins. Co.*, 219 N.W.2d 533. An entity serving a limited group by contract is a private carrier and not subject to public service obligations. *Id.*

SCS is a private, not a common, carrier. *Wright v. Midwest Old Settlers & Threshers Ass'n*, 556 N.W.2d 808, 810-811 (Iowa 1996) (establishing that a common carrier is one who *indiscriminately* undertakes to transport goods or people for hire); *Kindig v. Newman*, 966 N.W.2d 310, 322 (Iowa App. 2021). The *Wright* court noted that a common carrier holds itself out as a carrier of "all goods and persons for hire" even though it need not serve the public all the

time. *Id.* Rather than providing transportation services to the public, it selectively contracts with a closed set of industrial emitters—principally ethanol plants—to transport carbon dioxide. These arrangements are individualized, negotiated, and exclusive, indicating that Summit's business model is not "public" within the traditionally understood meaning of common carrier jurisprudence. Accordingly, Summit operates as a private carrier, not a common one.

SCS's transportation services are not offered to the public on demand but only under the terms of private agreements with select customers. These customers, primarily large-scale CO2 emitters, are not members of the general public, and the services SCS provides are tailored to serve the customers' specific business needs under the Iowa Supreme Court's reasoning in *Kvalheim v. Horace Mann Life Ins. Co.*, 219 N.W.2d 533, 536 (Iowa 1947), an entity that serves only a limited client base under specific contracts is classified as a private carrier and is not subject to the obligations of a common carrier. Summit's conduct falls squarely within that classification.

SCS's infrastructure also serves a private, commercial interest, enabling its clients to benefit from federal carbon capture tax credits at the expense of the public rather than serving any essential public service. Common carriers in Iowa are expected to meet a public necessity by providing access to transportation for persons or property as a public service. *Kindig*, 966 N.W.2d at 310. Summit's pipeline does not offer such a public utility. Instead, it is a commercial enterprise designed to serve a limited number of private beneficiaries. It does not align with the traditional public-service rationale underlying the common carrier doctrine.

Finally, unlike traditional common carriers, SCS has no obligation to serve all potential customers within its field of operations. It is under no regulatory duty to offer service indiscriminately or at uniform rates to all CO2 producers. As recognized in *Kvalheim*, a common

carrier must serve the general public without discrimination. SCS, by contrast, operates on a purely contractual basis with private parties, selecting its clients and determining its obligations on a case-by-case basis. This lack of a non-discriminatory service obligation supports the conclusion that Summit functions as a private carrier under Iowa law.

In sum, Summit Carbon Solutions fails to meet the legal requirements for common carrier status because it does not transport goods or persons for the general public, it contracts exclusively with private industrial entities, and it lacks both the statutory designation and the public-service obligations necessary to be classified as a common carrier under Iowa law. Its operations are more appropriately understood through the lens of private contractual arrangements, which place it squarely within the definition of a private carrier under the Iowa Supreme Court's holdings in *Wright*, *Kindig*, and *Kvalheim*.

V. DOMAIN MUST NOT BE USED FOR PRIVATE EMINENT GAIN.

The IUB's approval of eminent domain for the SCS's pipeline constitutes an unconstitutional taking for private gain, directly violating the Fifth Amendment's Takings Clause of the United States Constitution and Article I, Section 18 of the Iowa Constitution. These constitutional provisions stipulate that private property may only be seized for "public use" and strictly forbid eminent domain for predominantly private purposes.

The principle that eminent domain may only be exercised for legitimate public use is deeply embedded in constitutional jurisprudence. In *Kelo*, the U.S. Supreme Court addressed the issue of whether eminent domain could be exercised primarily for economic development purposes that benefit private entities. Although the Court controversially allowed the taking under Connecticut's broadly defined economic development statute, it faced extensive criticism for expanding the interpretation of "public use" beyond traditional limits. In response to *Kelo*,

many states, including Iowa, have implemented stringent restrictions that explicitly prohibit the use of eminent domain to benefit private economic interests. This Court should do everything it can to give Iowa's legislative intent its full effect.

Article I, Section 18 of the Iowa Constitution explicitly limits eminent domain authority by requiring that property be taken solely for a defined public use, excluding private economic projects from constitutional legitimacy. In particular, Iowa Code Section 6A.22 reinforces this constitutional limitation, specifying that economic development purposes alone do not constitute sufficient justification for eminent domain.

Whether a particular taking satisfies the constitutional "public use" requirement depends on whether it serves a direct and tangible benefit to the public rather than primarily benefiting private commercial interests.

Iowa law imposes a stringent standard for eminent domain, requiring that private property be taken for public use or purpose and that just compensation be paid. In the aftermath of the U.S. Supreme Court's decision in *Kelo*, the Iowa Legislature enacted HF 2351 in 2006, now Iowa Code Section 6A.22, to limit the ability of governmental and quasi-governmental entities to condemn property merely for economic development. The statute reflects Iowa's policy of narrowly construing "public use" and protecting landowners from private takings cloaked in public interest language. The Iowa Supreme Court has already applied this law in *Clarke County Reservoir Commission v. Robbins*, 862 N.W.2d 166 (Iowa 2015), where it held that incidental public benefits are insufficient if the predominant purpose of the taking is private. There is no reason for this Court to depart from precedent now, not after the Legislature and this Court have already spoken.

In the case of the SCS pipeline, the asserted public benefit is the transportation and sequestration of CO2 from ethanol production facilities. However, these facilities are privately owned and operated, and the pipeline enhances their profitability by qualifying them for low-carbon fuel markets in other states, such as California. This structure raises serious questions about whether the benefit to the public is direct and substantial or merely ancillary to a primarily private venture. Even if the sequestration of CO2 aligns with broader federal climate objectives, that alignment does not relieve the project of the need to demonstrate a legitimate and substantial public use under Iowa's more restrictive eminent domain framework because Iowans' land rights are enshrined in Constitutional law.

While carbon sequestration may have served the environmental goals of the Biden Administration, it does not follow that sequestration constitutes a public use that automatically justifies the use of eminent domain in Iowa. The primary beneficiaries of the proposed pipeline are private entities, and the alleged public benefits are indirect, speculative, and cost taxpayers money rather than providing direct benefits to taxpayers. Under Iowa's constitutional and statutory protections, these characteristics suggest that the proposed takings are not for legitimate public use and, thus, should not be granted eminent domain authority.

In *Clarke County Reservoir Comm'n v. Robins*, 862 N.W.2d 166 (Iowa 2015), the Iowa Supreme Court clarified the Clark County Reservoir Commission could not avail itself of the power of eminent domain because it consisted of private members. *Clark County Reservoir Comm'n*, 862 N.W.2d at 174-175. The Court noted that statutes that delegate eminent domain power must be strictly construed. *Id.* at 171. The Court reaffirmed that a taking must serve a genuine public use, meaning a benefit that is concrete, broadly accessible, and not a derivative of private commercial gain, and the "public use" requirement is intended to prevent the abuse of

power by private entities, which is the exact harm in this case. *Id*. at 172. SCS's project fails this standard. The pipeline's only function is transporting carbon dioxide to out-of-state storage sites to monetize federal tax credits, ultimately paid for by other taxpayers. These activities enrich private interests and yield no guaranteed, widespread benefit to the public.

The IUB's approval of eminent domain to SCS facilitates a troubling economic injustice: a forced wealth transfer from private landowners to corporate entities, with nothing in return. Traditionally, eminent domain has been reserved for precise public necessities—roads, schools, utilities—where the benefits are shared equitably and available to all. By contrast, SCS's eminent domain allows it to seize private land under the veneer of potential future environmental benefits to the world while securing below-market acquisitions to support its private enterprise. Such a system is constitutionally impermissible. It distorts the original purpose of eminent domain and exacerbates economic inequities by empowering corporations to appropriate private land for commercial purposes under state authority. Without a direct and demonstrable public benefit, taking private property for Summit's pipeline is not just unlawful—it violates the constitutional protections designed to shield citizens from this kind of government-enabled corporate overreach. If a project as private as this one can utilize eminent domain for these reasons, no land in Iowa is safe, and our fundamental right to own property, free from taking, except by the government for public use, is destroyed.

The Iowa Legislature, responding explicitly to concerns highlighted by the *Kelo* decision, enacted stringent statutory protections to prevent the misuse of eminent domain. Iowa Code Section 6A.22 strictly prohibits using eminent domain for purely economic development purposes, clearly reflecting legislative intent to curb abuses identified at the federal level. The IUB's approval directly contravenes this legislative intent, misapplying eminent domain powers

in favor of private corporate interests, thereby violating state law and constitutional principles. The district court must reverse.

VI. SCS'S HAZARDOUS PIPELINE DAMAGES IOWA'S LAND AND CREATES LONG-TERM AGRICULTURAL HARM.

Petitioners raised critical concerns regarding the irreversible harm the pipeline will cause to farmland, particularly soil compaction and damage to drainage tile systems. Farmers submitted evidence showing that construction activity, especially in wet soil conditions, would lead to long-term yield reductions and degradation of soil structure. The potential destruction of subsurface drainage systems poses additional threats to crop productivity and the usability of land. These harms are permanent in many cases and cannot be fully mitigated by Summit's restoration promises.

This economic and ecological harm directly affects the viability of agricultural operations and undermines Iowa's interest in preserving productive farmland. These issues further call into question the proportionality of the taking under Iowa Code § 17A.19(10)(k), which requires courts to assess whether the burdens imposed on landowners are grossly disproportionate to the purported public benefit. Again, this pipeline directly affects over 859 parcels of Iowa land and an unknown number of parcels indirectly due to the CO2 plume potential in the event of a leak.

Petitioners also raised unrefuted concerns regarding the lack of adequate insurance coverage and financial recourse in case of a hazardous CO2 leak. Many traditional insurance policies exclude damages arising from pollution, and landowners have testified that they have been unable to secure supplemental coverage for CO2-related incidents. App. Vol 1, Vol 2., Vol 3. Vol. 4. pp.105, 145-146, 287-288, 395. Summit has not provided sufficient guarantees or publicly disclosed insurance policies to demonstrate its capacity to compensate affected landowners for potential environmental, health, or property damage.

This gap in financial protections exposes landowners to unacceptable and uncompensated risk and undermines the purported equity and fairness of the IUB's decision. This issue is particularly relevant in a project that relies on perpetual easement rights and indefinite encumbrances on private property.

VII. SCS's HAZARDOUS PIPELINE DIRECTLY CONFLICT WITH FEDERAL REGULATIONS (PHMSA).

Throughout the proceedings, SCS stated it would follow all federally mandated guidelines. However, the IUB approval of the hazardous pipeline directly conflicts with comprehensive federal regulations set forth by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Federal regulations promulgated by PHMSA under 49 C.F.R. Part 195 establish rigorous national standards to ensure the safety, integrity, and environmental soundness of hazardous liquid pipelines, including pipelines transporting carbon dioxide. The Supremacy Clause of the United States Constitution unequivocally establishes that federal regulations preempt conflicting state actions or approvals.

Federal jurisdiction over pipeline safety is vested exclusively in PHMSA, which enforces regulations to minimize pipeline risks, ensure operational integrity, and maintain public safety. PHMSA's authority encompasses operational compliance and prescribes detailed standards for pipeline design, construction, and emergency response protocols. Conversely, the IUB exercises state-level authority primarily over land use, economic assessments, and eminent domain approvals, distinct from and subordinate to federal safety regulations.

PHMSA's proposed regulations impose stringent and detailed requirements beyond those considered or mandated by the IUB's approval. These include comprehensive design modifications, stricter materials standards, rigorous inspection procedures, and enhanced emergency preparedness measures. Thus, compliance with PHMSA's federal standards

necessitates significant changes to the pipeline's design and operational practices beyond those approved by the IUB, resulting in an irreconcilable jurisdictional conflict.

PHMSA classifies carbon dioxide as a Highly Volatile Liquid ("HVL"), significantly heightening safety, operational, and emergency response requirements compared to state-level regulatory classifications used by the IUB. Under federal HVL classification, carbon dioxide pipelines must adhere to extensive and specific leak detection technologies, advanced emergency preparedness measures, stringent materials specifications, and comprehensive pipeline integrity management practices.

The IUB's conditional approval, operating under less stringent state-level standards, fails to meet these federal HVL classification requirements. The disparity between state-approved pipeline specifications and federally mandated HVL standards places the Summit pipeline project in apparent regulatory non-compliance, requiring substantial redesign and additional investments to align with federal obligations.

PHMSA's regulatory framework prioritizes pipeline safety, environmental protection, and public health over economic considerations. Federal regulations require compliance, regardless of the financial implications for pipeline operators. Conversely, the IUB's approval explicitly emphasizes economic considerations, including local job creation, industry support, and perceived regional economic benefits, placing safety considerations secondary to financial interests.

The IUB's prioritization of economic interests above federally mandated safety standards contradicts federal regulatory objectives, creating a direct conflict between state and federal priorities. Compliance with stringent federal safety standards may impose substantial additional

costs on Summit, directly undermining the economic rationale underpinning the IUB's conditional approval.

VIII. IUB'S ORDER MUST BE VACATED BECAUSE IT WAS CONDITIONED UPON APPROVAL IN SOUTH DAKOTA, WHICH CANNOT BE REASONABLY OBTAINED.

The conditional approval granted by the IUB for the Summit Carbon Solutions pipeline has been fundamentally invalidated by South Dakota's rejection of the pipeline application. The interconnected nature of the pipeline's multi-state route required approval from South Dakota, North Dakota, and Minnesota, which the IUB explicitly recognized by conditioning its approval on acquiring permits from these states. South Dakota's subsequent denial effectively nullifies this conditional approval, raising critical legal and practical issues for the pipeline's viability and compliance with regulatory conditions.

The IUB's conditional approval explicitly mandated that Summit Carbon Solutions secure pipeline permits from North Dakota, South Dakota, and Minnesota regulatory bodies. This precondition was integral to the IUB's assessment of the project's feasibility, as the pipeline route was inherently multi-state and contingent upon seamless regulatory approval across all involved jurisdictions. Thus, the approval conditionally granted by the IUB inherently depended upon a comprehensive and coordinated multi-state approval process.

However, on April 23, 2025, the South Dakota Public Utilities Commission unanimously denied Summit's pipeline application. South Dakota's denial centered on critical issues of route feasibility and the use of eminent domain. Additionally, South Dakota's legislative actions prohibited the use of eminent domain for carbon dioxide pipeline projects, creating a significant legal barrier for Summit. This legislative prohibition effectively precluded Summit from obtaining the necessary land parcels through eminent domain, leaving voluntary acquisition as

the only remaining option—a notably challenging route given the pronounced landowner opposition.

South Dakota's denial has substantial ramifications for the conditional approval granted by the IUB here. The pipeline's approval in Iowa was explicitly conditioned upon obtaining parallel regulatory permits from neighboring states, including South Dakota. With South Dakota's denial, this critical precondition remains unmet, or if it can ever be met, the timeframe for doing so is uncertain, leaving landowners' free title to their land impaired by SCS's cloud. Due to action in South Dakota, SCS cannot effectively or in a timely manner meet IUB's conditional approval, which should result in a reversal.

The unresolved regulatory issues caused by South Dakota's denial have suspended the pipeline project indefinitely. This suspension places significant burdens on affected landowners in Iowa, prolonging uncertainty and negatively impacting property valuations and economic decision-making. Moreover, the project's suspension increases potential costs and undermines investor confidence, thereby diminishing the economic rationale upon which the IUB's initial approval was predicated.

IX. CCADC'S WILL SUFFER ECONOMIC HARM AND PROPERTY DEVALUATION.

The proposed Summit Carbon Solutions pipeline caused substantial economic harm to Petitioner Charles City Area Development Corporation ("CCADC") and severe property devaluation. CCADC, tasked with fostering economic growth, attracting investment, and coordinating strategic land development in Charles City and surrounding areas, faces significant disruption and irreparable financial damage due to the pipeline project. This damage is immediate and long-term, compromising CCADC's economic initiatives and negatively impacting the local community.

The CCADC site is one of only 29 Iowa-certified sites and is actively pursuing a Gold designation under the Certified Sites program. It has existing infrastructure, is near a major four-lane highway, and is development-ready. However, the proposed pipeline bisects this property, effectively suspending its development potential despite over $2 million in public and private investment made to date. App. Vol 2. p.151-152.

The CCADC is an economic entity dedicated to promoting regional financial stability and development through strategic planning, attracting commercial investment, and facilitating industrial growth. CCADC drives economic prosperity and sustainable job creation within Charles City and the broader Floyd County region through targeted land acquisitions, infrastructure development, and effective partnerships with private enterprises and public entities. App. Vol 2. p.151-152.

The parcels of land impacted by Summit's pipeline route were strategically acquired and carefully earmarked for critical commercial and industrial development projects. These projects are central to CCADC's broader strategic goals, which aim to stimulate significant local economic growth, job creation, and enhanced community prosperity. This development park is turnkey and ready for future development. App. Vol 2. p.151-152.

CCADC-managed lands subjected to pipeline infrastructure thus face severe marketability challenges. Prospective investors and businesses are cautious and risk-averse, opting to avoid parcels encumbered by pipelines due to increased operational liabilities, higher insurance premiums, and reduced flexibility in future property development. Consequently, the pipeline's presence critically undermines CCADC's ability to attract investments and finalize negotiations with potential commercial and industrial tenants, resulting in significant economic opportunities being lost. App. Vol 2. p.151-152.

Summit's pipeline project disrupts CCADC's carefully designed strategic development plans, significantly limiting the potential use and development of impacted land parcels. Regulatory setbacks, safety easements, and the inherent hazards associated with the pipeline severely restrict future development options. These limitations hinder CCADC's ability to implement infrastructure improvements, such as roads, utilities, and sewer systems, which are necessary for attracting businesses and promoting comprehensive economic growth. App. Vol 2. p.151-152.

Municipal infrastructure investments, often substantial and long-term, become significantly riskier and more costly when complicated by pipeline-related land use constraints. Such restrictions impede development timelines, increase construction costs, and inject uncertainty into long-term site planning efforts. Consequently, the overall economic viability of CCADC's development initiatives is materially compromised, resulting in immediate and future financial losses.

While the pipeline project proponents assert generalized statewide economic benefits, these claims fail to consider the specific localized economic harm imposed upon communities like Charles City. Any asserted economic benefits, such as temporary construction employment or indirect ethanol industry support, are speculative and disproportionately inadequate relative to the tangible, immediate, and long-term economic damages that CCADC and its local stakeholders sustained.

The project primarily serves the interests of private corporations and a select industry, specifically ethanol producers, who are particularly benefited by carbon sequestration tax credits. In stark contrast, local communities and development corporations, including CCADC, receive negligible or no proportional economic advantages. Thus, the claimed statewide benefits

fundamentally fail to justify or offset the substantial localized economic losses experienced by CCADC.

Beyond immediate economic impacts, the pipeline project significantly undermines CCADC's strategic positioning and long-term community development objectives. Hazardous infrastructure deters essential commercial investment, disrupts job creation strategies, and negatively impacts the broader community's quality of life. The resultant stagnation and economic uncertainty can lead to diminished regional competitiveness, hindered growth, and damage the community's socioeconomic fabric.

This disruption is not merely speculative—it is a concrete impairment of an already-prepared industrial development, resulting in an immediate loss of economic opportunity, tax base growth, and employment potential for Charles City and Floyd County. These specific losses must be weighed in the proportionality analysis under Iowa Code § 17A.19(10)(k) and serve to discredit further any assertion that the pipeline's benefits outweigh its harms.

CCADC's capacity to leverage state and federal economic incentives designed to stimulate local business investment is severely hampered, as incentives prioritize sites without complex regulatory and safety encumbrances. This reduction in strategic competitiveness directly impacts CCADC's effectiveness and capacity to fulfill its core economic development mission.

As noted by Chair Helland's partial dissent, there is legitimate concern regarding the placement of a pipeline in CCADC's developed areas. See IUB Final Decision and Order, p. 504, fn 35. Chair Helland noted that there are alternative routes that are "more just and proper." Still, since other landowners in the area had already signed easements, Chair Helland ceded CCADC's

private interests to the private interests of different landowners. Such reasoning is arbitrary and capricious and should not be allowed to stand.

X. SCS'S HAZARDOUS PIPELINE POSES SIGNIFICANT SAFETY THREATS TO THE PUBLIC.

One of the primary safety concerns associated with carbon dioxide pipelines is the risk of rupture and the sudden release of a large volume of compressed gas. In the event of a breach, supercritical carbon dioxide can rapidly decompress, creating a dense, ground-hugging vapor cloud that displaces oxygen in the surrounding atmosphere. This poses an immediate threat to human and animal life. A widely cited example is the 2020 pipeline rupture in Satartia, Mississippi, which forced the evacuation of over 200 residents and resulted in dozens of hospitalizations due to symptoms consistent with asphyxiation and chemical exposure. That incident highlights the potential magnitude of harm when proper safety protocols and site considerations are not in place. App. pp.111-112, 376, 387, 407-408, 454-455.

Another significant concern is the emergency response capacity in many rural counties along the proposed route. Local emergency management officials have repeatedly testified that they lack the necessary training, equipment, and procedural guidance to respond adequately to a carbon dioxide release. Responding to such an event would require specialized self-contained breathing apparatuses (SCBAs) and an understanding of CO2's dispersion behavior, neither of which is currently common in rural Iowa emergency services. Without adequate preparation and resources, local first responders may be unable to protect residents in the critical moments following a release. App. pp. 111, 377, 388, 454.

The behavior of CO2 following a pipeline failure is also influenced by terrain and weather conditions, which can exacerbate the danger to nearby communities. Unlike natural gas, which disperses upward, CO2 is heavier than air and tends to settle in low-lying areas. This

pooling effect increases the risk of asphyxiation in valleys, ditches, or other depressions in the landscape. Dispersion modeling and route planning must take into account these geographic features. However, concerns have been raised that the modeling submitted by Summit does not fully account for these factors or provide a sufficient margin of safety for vulnerable populations near the route.

Another significant issue is the lack of mandatory setback distances between the pipeline and occupied structures, such as homes, schools, and public buildings. There are no federal requirements specifying a minimum distance. While Summit has proposed certain setback distances, landowners and local governments argue that these measures fall short of what is necessary to ensure public safety. For example, a 500-foot setback may not provide adequate protection from the pressure wave or CO2 plumes resulting from a rupture, particularly in areas with high pipeline pressure and limited egress routes. The currently proposed rules, which are under advisement, now stipulate that a two-mile radius must be maintained on each side of a CO2 pipeline. This was not under consideration by the IUB.

Additional safety concerns stem from the limitations of the monitoring and leak detection technologies proposed for the project. CO2 pipelines require highly sensitive and responsive monitoring systems to detect ruptures or leaks in real time. However, the evidence presented to the Iowa Utilities Board suggests that Summit's plan does not include widespread installation of automatic shutoff valves or robust, continuous monitoring in remote areas. This raises serious questions about the pipeline operator's ability to detect leaks and respond promptly, especially in sparsely populated or difficult-to-access locations.

Construction risks are also relevant to the pipeline's long-term safety. Improper installation techniques, inadequate soil compaction, varying soil types, or insufficient

consideration of Iowa's seasonal freeze-thaw cycles can lead to pipeline movement or structural degradation over time. Subsurface conditions, including agricultural activity, can place additional stress on the pipeline, potentially leading to corrosion, weld fatigue, or other structural weaknesses that increase the likelihood of future failure.

These safety concerns highlight the need for a rigorous regulatory review and a cautious approach to permitting and constructing CO2 pipelines in Iowa. The cumulative risks—from rupture and dispersion to emergency unpreparedness and regulatory gaps—warrant meaningful consideration by the Iowa Utilities Board and any reviewing court.

XI. IUB'S PERMIT VIOLATES THE STATUTORY RULE AGAINST PERPETUITIES.

The perpetual easements Summit seeks to obtain, including the rights to modify or relocate the pipeline without further compensation or negotiation, present a serious concern. Iowa is widely recognized as having the cleanest titles to property, but the permits constitute nonvested, contingent interests in real property with no definite expiration or triggering event. Under Iowa law, specifically Iowa's modified "wait and see" rule against perpetuities (Iowa Code § 558.68), such interests may be void if they do not vest within a legally permissible period.

Under Iowa law, preemptive rights granted to Summit are considered nonvested property interests. If not tied to a precise expiration date or a life in being, nonvested property rights violate the rule against perpetuities by indefinitely restraining alienability. See *Henderson v. Millis*, 373 N.W.2d 497 (Iowa 1985); *Trecker v. Langel*, 298 N.W.2d 289 (Iowa 1980).

The IUB's grant of authority to Summit does not confer vested property rights. The permit is conditioned on multiple requirements. The grant of authority has no definitive timetable for when the rights vest. Similarly, Summit's eminent domain authority remains contingent on further IUB proceedings and compliance with statutory procedures. The classification of the

eminent domain authority as nonvested is contingent upon future events and ongoing regulatory compliance.

Iowa codifies a modified version of the traditional common law rule against perpetuities in Iowa Code § 558.68. This statute applies to nonvested property interests, including preemptive rights such as rights of first refusal. These **interests must vest,** if at all, within 21 years after the death of a relevant life in being at the time the interest is created. Under the "wait and see" doctrine adopted in § 558.68, the validity of a nonvested interest is not judged at the time of creation. Still, it depends on whether it vests within the permitted period. This approach enables flexibility, allowing courts to avoid invalidation based on hypothetical scenarios. See *In re Estate of Keenan*, 519 N.W.2d 373 (Iowa 1994); *In re Estate of Laughead*, 696 N.W.2d 312 (Iowa 2005). Iowa courts have equitable authority to reform nonvested interests that would otherwise violate the rule of law. This allows courts to preserve the parties' intent while ensuring legal compliance. See *Kositzky v. Monfore*, 519 N.W.2d 373 (Iowa 1994); *In re Estate of Ruhland*, 452 N.W.2d 417 (Iowa Ct. App. 1989).

Under Iowa Code § 479B, a hazardous liquid pipeline permit remains valid until the pipeline is abandoned or the permit is revoked or modified by the Board. The Board retains continuing jurisdiction and may impose new conditions or revoke the permit if Summit Carbon fails to comply with legal or permit requirements. The permit is also conditional on ongoing compliance. In short, the grant of authority is indefinite but contingent upon regulatory compliance and subject to revocation if Summit fails to meet its obligations or abandons the project. Furthermore, Iowa Code § 479B states that a pipeline company granted a pipeline permit shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the Commission, similar to the vesting language of Iowa Code § 558.68.

The rule against perpetuities applies to private property rights, such as preemptive rights granted in Summit's land agreements. These rights are *not* structured to vest within 21 years of a life in being. For that reason, they are invalid. Iowa's "wait and see" doctrine offers flexibility, and judicial reformation may cure defects, but the defects exist. The IUB's conditional grant of eminent domain authority does not constitute vested property rights. The authority in this grant cannot vest in a manner consistent with the Iowa Code. As such, legal scrutiny is necessary under the Iowa Code.

Because of this defect in the conditional permit, SCS does not possess enforceable property rights in the easements or pipeline corridor. These conditional pipeline construction rights and the ostensible eminent domain powers granted to SCS by the IUB are tied to indefinite, future contingencies. On its face, this conditional permit triggers the prohibitions of the Rule Against Perpetuities. This conditional permit purports to grant preemptive rights without a defined vesting period. Such a thing has been illegal in Iowa since 1983[8]. Iowa Code, 558.68(4).

Furthermore, the indefinite nature of these rights burdens current landowners and successive generations, thereby violating long-standing principles of fundamental property law that restrict land alienation by remote contingencies. These interests are unjustified in scope and should be adjudicated as void ab initio under Iowa law.

CONCLUSION

For the foregoing reasons, the Iowa Utilities Board's Final Decision and Order granting Summit Carbon Solutions a conditional hazardous liquid pipeline permit must be reversed. The record demonstrates that the IUB violated the due process rights of multiple petitioners,

[8] https://www.legis.iowa.gov/docs/ico/chapter/558.68.pdf

including Kerry Hirth, Carole Hennings, Bob Van Diest, and the Charles City Area Development Corporation, by establishing arbitrary procedures, denying meaningful opportunities to be heard, and creating a biased forum that privileged the private interests of Summit Carbon Solutions over the constitutional and statutory rights of Iowa landowners.

The IUB's findings are not supported by substantial evidence. The claimed public benefits are speculative, indirect, and disproportionately outweighed by the harms to property rights, agricultural land, economic development efforts, and public safety. The project serves a private purpose under the guise of public convenience and necessity, contrary to the Iowa Constitution, Iowa Code § 479B, and Iowa Code § 6A.22.

Further, the permit impermissibly vests nonvested and contingent property interests in violation of Iowa's statutory rule against perpetuities, Iowa Code § 558.68, and imposes indefinite burdens on Iowa landowners with no guaranteed public benefit. The conditional nature of the permit, which remains dependent on approvals that may never materialize in South Dakota, renders it both legally defective and practically unworkable.

Summit Carbon Solutions is not a common carrier and does not operate for the benefit of the general public. Its business model is designed to serve a narrow set of private industrial actors, and its claimed public benefits are derived from federal tax incentives rather than any direct service to the citizens of Iowa.

The IUB's actions amount to an unconstitutional delegation of power and an abdication of its duty to act as a neutral decisionmaker. Petitioners respectfully request that the Court vacate the IUB's Final Decision and Order, deny Summit's application for a permit, and remand with instructions consistent with Iowa law and the protections afforded under the Iowa and United States Constitutions.

Respectfully submitted,

/s/Jefferson Fink
Jefferson Fink (AT0013402)
Law Office of Jefferson Fink
3616 University Ave. Suite 11
Des Moines, IA, 50311
Tel: 515-720-9892
Email: law.fink@outlook.com
Attorney for Petitioners

CERTIFICATE OF SERVICE

I, Jefferson Fink, attorney for Petitioners, hereby certify that on May 28, 2025, I filed this "Plaintiff's Brief" with the Clerk of the IOWA DISTRICT COURT FOR POLK COUNTY.

/s/Jefferson Fink
Jefferson Fink (AT0013402)
Law Office of Jefferson Fink
3616 University Ave. Suite 11
Des Moines, IA, 50311
Tel: 515-720-9892
Email: law.fink@outlook.com
Attorney for Petitioners