

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

NAVIGATOR HEARTLAND GREENWAY
LLC,

Plaintiff,

v.

BREMER COUNTY, IOWA; BREMER
COUNTY BOARD OF SUPERVISORS;
KEN KAMMEYER, in his official capacity as
a Bremer County Supervisor; COREY
CERWINSKE, in his official capacity as a
Bremer County Supervisor; DUANE
HILDEBRANDT, in his official capacity as a
Bremer County Supervisor,

Defendants.

CIVIL NO. 6:23-cv-2030

COMPLAINT

COMES NOW the Plaintiff, Navigator Heartland Greenway LLC (“Navigator”), by and through its undersigned attorneys, submits the following Complaint against Bremer County, Iowa (“Bremer County”), the Bremer County Board of Supervisors (the “Board of Supervisors”), and Ken Kammeyer, Corey Cerwinske, and Duane Hildebrandt all in their official capacities as Bremer County Supervisors, (collectively, “Defendants”), stating as follows:

NATURE OF THE CASE

1. This case concerns the unprecedented and undemocratic decision of Bremer County and its Board of Supervisors, through a zoning ordinance, to unlawfully usurp the power of federal and state government and purportedly determine, on behalf of Iowa’s 98 other counties as well as its millions of citizens, whether a multi-state, multi-county carbon dioxide pipeline should be built in the state. Because such an outcome would interfere with extensive regulatory regimes established by federal and state law regarding pipeline construction, render superfluous Iowa’s

statutory permitting scheme for hazardous liquid pipelines (which the legislature specifically created to allow for county participation), and establish a system by which no pipeline could ever practically be built in Iowa, Defendants' offending zoning ordinance must be declared unlawful, wrongful, and void.

2. In Iowa, interstate and intercounty hazardous liquid pipelines are regulated by extensive federal and state statutory schemes.

3. At the federal level, the right to determine and promulgate safety standards for interstate hazardous liquid pipelines is expressly reserved to federal authorities under the Pipeline Safety Act ("PSA"). Courts across the country have understood this preemption to apply broadly and have unequivocally held local ordinances which attempt to adopt or impose any standards pertaining to pipeline safety are preempted by federal law and cannot stand. Federal pipeline safety standards apply to, among other things, the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. (49 U.S.C. § 60102(a)(2)).

4. At the state level, the Iowa legislature, through Chapter 479B, has granted the Iowa Utilities Board (the "IUB") sole and exclusive authority to determine whether an intercounty hazardous liquid pipeline should be built within the state, and—if so—through which route and with which construction and land use restrictions. Chapter 479B does so by requiring any company that wishes to build a hazardous material pipeline in Iowa (a "pipeline company") to receive a permit from the IUB before beginning construction. In order to receive a construction permit, the proposed pipeline must undergo an exhaustive examination by the IUB, including detailed analysis of the pipeline's proposed route, its health and safety risks, and its impact on the economic, environmental, and societal welfare of Iowa's citizens, municipalities, and counties. Only after the

IUB finds the pipeline will “promote the public convenience and necessity” *and* signs off on the *exact* route of the pipeline can a permit be issued and construction begin.

5. To ensure that the IUB is properly informed of, and can properly assess, the costs and benefits of a pipeline to Iowa’s 99 counties, Chapter 479B provides extensive opportunity for county participation.

6. First, Iowa Administrative Code Section 199–7.13 permits Iowa counties, landowners, and other interested stakeholders, to “intervene” in the IUB’s docket and participate as a party to the permitting proceeding.

7. An intervening county is afforded full party status in the IUB’s consideration of Navigator’s permit application through various means, including but not limited to the ability to send the pipeline company discovery requests, the ability to review and respond to the pipeline company’s pre-filed testimony, the ability to submit pre-filed testimony in response, and the ability to participate in the pipeline company’s evidentiary hearing before the IUB, which in turn entails the ability to present evidence, to present witnesses, and to cross-examine witnesses of other parties, including the pipeline company’s own witnesses. Iowa Admin. Code r. 199–7.13(7) (noting a person granted leave to intervene is a party to the proceeding).

8. Second, Iowa Code Chapter 479B invites Iowa counties to participate in the IUB’s permitting process through a statutorily prescribed notice-and-objection process, during which counties may submit any and all objections they have regarding any given pipeline proposal to the IUB.

9. Under Iowa law, the IUB is required to consider all evidence provided by intervening parties, as well as review each and every objection submitted, consider all this

information in determining whether to grant a construction permit to a pipeline company, and issue a written ruling explaining why and how it reached its final permitting decision.

10. Third, Chapter 479B also explicitly requires applicants such as Navigator to provide information in their permit application regarding “[t]he relationship of the proposed project to the present and future land use and zoning ordinances.” Iowa Code § 479B.5(7); Iowa Admin. Code r. 199-13.3(1)(f)(2)(3). Through this requirement, information regarding county and local zoning and land use are considered by the IUB as part of IUB’s authority to determine the route, account for economic and environmental impacts, and determine whether the project is in the public convenience and necessity.

11. Thus, in establishing Chapter 479B, the Legislature intended to create a uniform review and permitting process (overseen by the IUB) which would balance the important economic, environmental, and infrastructural benefits of pipeline construction projects with local concerns held by landowners, counties, and municipalities. History makes clear this process has succeeded in its goals, as the IUB has routinely evaluated the most detailed route considerations, often requiring highly specific revisions to proposed routes on the basis of their effect on a single plot of land (e.g., in a recent decision, the IUB required a pipeline route be moved approximately 900 feet to the north so that a farm’s turkey operations would remain undisturbed by the prospective pipeline).

12. None of this would come as a surprise to Defendants, who have repeatedly availed themselves of 479B’s county participation mechanisms. Indeed, on November 21, 2022, Defendants filed a petition to intervene in Plaintiff Navigator’s pipeline construction proceedings, (Exhibit 1), which the IUB granted in an order issued January 18, 2023 (Exhibit 2). Plaintiff did not object to Defendants’ petition to intervene, in recognition of the participation anticipated by

statute and in encouragement of all interested parties to avail themselves of the opportunity to let their voices be heard through the IUB's procedural process. So, too, did Defendants previously avail themselves of Chapter 479B's notice-and-objection process, submitting their objections to Navigator's proposed pipeline project to the IUB on August 3, 2022. (Exhibit 3).¹

13. And yet, rather than follow the specific statutory process afforded to them and allow the IUB to render a reasoned and fair judgment on the project, on February 27, 2023, *only weeks after the IUB permitted Bremer County to intervene in Navigator's proceeding*, Defendants passed Zoning Ordinance No. 23-02 (the "Ordinance"), jumping the line and superimposing their preferences regarding Plaintiff's pipeline construction project over the preferences of all other relevant stakeholders, including the interests of the federal government in uniform safety and operational requirements, Iowa's other 98 counties, the IUB, and the state's landowners, taxpayers, and citizens.

14. In passing the Ordinance, Defendants usurped for themselves, without any legal authority, all of the powers traditionally reserved to the federal and state governments in the pipeline construction context. Among other things, the Ordinance prescribes safety standards beyond those found in federal law, establishes a separate permitting system from that provided by Chapter 479B, mandates routing and siting rules that conflict with the IUB's exclusive authority to determine a pipeline's route, and threatens to punish landowners who enter into an agreement with any pipeline company (despite Chapter 479B's clear expectation that landowners will work with pipeline companies regarding land easements).

¹ By virtue of their submission of objections to the docket, and their intervention in Navigator's IUB case, Defendants have recognized the IUB as the proper authority, pursuant to Chapter 479B, for analyzing and determining the proper siting and routing of Navigator's proposed Heartland Greenway pipeline.

15. If allowed to stand, the Ordinance would render the near entirety of Chapter 479B's permitting regime superfluous, all while creating a balkanized system which would empower any county to act as a super legislature and single-handedly determine the viability of any intercounty and interstate pipeline project, regardless of the wishes of other counties in Iowa or the needs of the State or the federal government. Such a system would not only effectively block any future pipeline developments in Iowa but also penalize all other counties who have followed the rules and submitted their objections to the IUB as required by Chapter 479B, all while undermining Iowa's clear interest in efficient, uniform, and responsible development of hazardous liquid pipelines within the state.

16. Plaintiff Navigator thus brings this action seeking declaratory and injunctive relief against the enforcement of the Ordinance, on the grounds that (1) its provisions are entirely preempted by both federal and state law; (2) it is an arbitrary, capricious, and improper exercise of the county's zoning powers; (3) was adopted in bad faith with an improper purpose; and (4) interferes with Navigator's and landowners' vested rights.

PARTIES

17. Plaintiff Navigator is a limited liability company organized under Delaware law with its principal place of business in Omaha, Nebraska, and is authorized to do business in Iowa.

18. Defendant Bremer County, Iowa is a county and governmental body under the laws of Iowa.

19. Defendant Board of Supervisors is the board of supervisors and governing body for Bremer County under the laws of Iowa.

20. Defendant Ken Kammeyer is a supervisor on the Board of Supervisors and is a resident of Iowa. Mr. Kammeyer is sued only in his official capacity.

21. Defendant Corey Cerwinski is a supervisor on the Board of Supervisors and is a resident of Iowa. Mr. Cerwinski is sued only in his official capacity.

22. Defendant Duane Hildebrandt is a supervisor on the Board of Supervisors and is a resident of Iowa. Mr. Hildebrandt is sued only in his official capacity.

JURISDICTION & VENUE

23. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Navigator's claims occurred in the Northern District of Iowa ("District").

24. The Court has personal jurisdiction over the Defendants as a result of their continuous and systematic contacts in the District.

25. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because some of Navigator's claims arise under federal law.

26. The Court has supplemental jurisdiction over Navigator's state law claims in this action under 28 U.S.C. § 1367 because Navigator's federal and state claims are so related that they form part of the same case or controversy.

27. The Court also, independently, has diversity jurisdiction over Navigator's state law claims in this action under 28 U.S.C. § 1332, as there is complete diversity between the parties and the amount in controversy exceeds \$75,000.

28. This Court has the authority to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

FACTUAL ALLEGATIONS

A. Navigator's CO₂ Pipeline

29. Carbon dioxide (“CO₂”), a greenhouse gas, is a natural byproduct of numerous manufacturing processes, including ethanol production and fertilizer production.²

30. As a greenhouse gas, CO₂ poses substantial environmental concerns if released into the atmosphere in large quantities. Specifically, CO₂ absorbs and radiates heat, warming the planet and contributing to climate change and its disastrous effects. Increased atmospheric carbon dioxide is responsible for about two-thirds of the energy imbalance that is causing Earth's temperature to rise, which has direct and cascading effects on many things including weather, plants and agriculture, disease, water, and ecosystems.³

31. Carbon capture and sequestration (“CCS”) is a process which generally involves capturing CO₂ when it is generated and transporting it to a different location for safe storage.⁴

32. Navigator, its parent company, Navigator CO₂ Ventures LLC, and other affiliated entities are developing an interstate CO₂ pipeline known as the Heartland Greenway Pipeline System (the “HGPS”) and related facilities for the purpose of CCS (collectively with HGPS, “Heartland Greenway”).

33. The Heartland Greenway Pipeline System will traverse Iowa, Illinois, Minnesota, Nebraska, and South Dakota and transport captured CO₂ from a substantial number of emitting facilities for storage.

² Uisung Lee, et al., *Using Waste CO₂ from Corn Ethanol Biorefineries for Additional Ethanol Production: Life-Cycle Analysis* (Dec. 17, 2020) (available at <https://onlinelibrary.wiley.com/doi/full/10.1002/bbb.2175>).

³ Rebecca Lindsey, National Oceanic & Atmospheric Admin., *Climate Change: Atmospheric Carbon Dioxide* (June 23, 2022) (<https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide>).

⁴ United States Geological Survey, *What is Carbon Sequestration?* (last visited March 30, 2023) (available at <https://www.usgs.gov/faqs/what-carbon-sequestration>).

34. The HGPS will function as an interstate hazardous liquid pipeline as defined by 49 C.F.R. § 195.2. As such, it will be designed, constructed, operated, and maintained subject to the federal pipeline safety requirements of 49 C.F.R. Parts 194 and 195 set forth by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”).

35. Heartland Greenway is being developed in two or more phases. The facts stated in this Complaint describe the first phase of the pipeline that is currently in development.

36. In Iowa specifically, the HGPS will cross 33 of the State’s 99 counties, including Defendant Bremer County.

37. Heartland Greenway will allow facilities qualified under Section 45Q(d) of the Internal Revenue Code of 1986, as amended, to receive a tax credit for using carbon capture equipment to dispose of qualified carbon dioxide in “secure geologic storage.” Internal Revenue Code of 1986, as amended, § 45Q(a). Qualified carbon dioxide is defined as “carbon dioxide captured from an industrial source which (A) would otherwise be released into the atmosphere as industrial emission of greenhouse gas.” PL 110-343, 122 Stat 3765 (Oct. 3, 2008). Facilities participating in Heartland Greenway that would fall within the definition of 45Q(d) include Iowa’s ethanol, fertilizer, and agriculture industries.

38. Further, Heartland Greenway will benefit carbon emitters inside and outside of the State of Iowa, which will have benefits to all Iowans from the reduced carbon emissions. CCS is a crucial part of the ethanol industry’s commitment to reducing carbon intensity to 70% lower than petroleum gasoline by 2030, and carbon neutrality by 2050,⁵ and only with projects like Heartland Greenway can the ethanol industry achieve such ambitious goals.

⁵ Isaac Emery, et al., *Pathways to NetZero Ethanol: Scenarios for Ethanol Producers to Achieve Carbon Neutrality by 2050*, at 2 (Feb. 14, 2022) (available at shorturl.at/mCPY0).

39. For phase one of the project, Navigator and its affiliates have already secured agreements with 20 ethanol producers and one fertilizer facility along the planned pipeline route to support development of the HGPS that will have an initial CO₂ transportation capacity of approximately 10 million metric tons (MMt) per year. The carbon intensity score of the ethanol produced from plants using Heartland Greenway for sequestration can be reduced by as much as 50%,⁶ making them more competitive in the low-carbon fuel markets that pay premiums for low carbon ethanol. Further, ethanol plants that wish to market their CO₂ to industrial end users will have a transportation option to reach customers in scale that may otherwise be too far for traditional trucking options to be economic in the quantities demanded for such uses. This economic savings will allow industrial users such as food processors to potentially lower their costs and provide more cost-competitive products to the citizens of Iowa. CO₂ reduction by ethanol producers is crucial to the long-term survival and success of the industry. Further, the project is consistent with state and federal goals for reduction of carbon emissions.

40. Heartland Greenway will also strengthen the agriculture industry in general and specifically in Iowa. Economically, strong and durable ethanol and fertilizer plants benefit farmers. The ethanol industry is the largest purchaser of Iowa corn, consuming approximately 57% of Iowa's corn crop each year.⁷ A stable ethanol industry provides Iowa's farmers with a reliable market for their corn and underpins the value of 26 million acres of Iowa farmland those crops are grown on. Furthermore, low-carbon fertilizer produced in Iowa can become a high-value input into

⁶ Growth Energy, *Achieving Net-Zero Ethanol* (Sept. 2021) (available at <https://growthenergy.org/wp-content/uploads/2021/09/GEBS-2021-04-Achieving-Net-Zero-Ethanol.pdf>).

⁷ Urbanchuk, *Contribution of the Renewable Fuels Industry to the Economy of Iowa*, at 1.

crop production, and farmers can realistically expect that crops grown using such low-carbon fertilizer will command a premium over those using other higher-carbon inputs.

41. Heartland Greenway will also provide direct benefits to communities located along and near the system footprint. These benefits will include, but are not limited to, providing: temporary construction employment; full-time, local jobs to operate and maintain the pipeline; right-of-way (ROW) payments; additional sales tax revenues from the sale of goods and services during construction and long term operation and maintenance of the pipeline; annual State and local community revenue from property taxes; and long-term support of regional contractors, manufacturers, distributors, and retailers through ongoing purchase of goods and services to operate and maintain the pipeline system.

42. Overall, the Heartland Greenway will increase the economic strength and durability of Iowa's manufacturing sector, especially the ethanol and fertilizer industries, which in turn benefits employees, suppliers, communities, citizens and governments in Iowa where the plants are located. The Heartland Greenway will also reduce the environmental impacts of fertilizer and ethanol productions, grow Iowa's economy, and bolster the State's reputation as a leader in the energy sector.

B. Iowa Code Chapter 479B

43. In Iowa, the construction, land use, and siting of interstate hazardous liquid pipelines is governed by Iowa Code Chapter 479B.

44. In adopting Chapter 479B, the Iowa legislature intended for the IUB to be the exclusive authority vested with the responsibility of determining whether a hazardous material pipeline should be built in Iowa, how it should be built in Iowa, and where it should be built in Iowa. As explained in Section 479B.1:

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

45. To facilitate these goals, Chapter 479B establishes a detailed process by which any party seeking to build a hazardous material pipeline in Iowa must obtain regulatory approval from the IUB through application for, and ultimately receipt of, a pipeline construction permit.

46. Parties seeking a pipeline construction permit are required to submit a detailed petition to the IUB regarding the future project. Among other things, Section 479B.5 requires any such party to include in the petition:

. . . . 3. A legal description of the route of the proposed pipeline and a map of the route.

4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.

5a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.

5b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.

6. The possible use of alternative routes.

7. The relationship of the proposed project to the present and future land use and zoning ordinances.

8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

In addition, the petitioning party must submit an affidavit stating that it held—prior to the petition’s submission—informational meetings in each county in which the pipeline might be built informing landowners and counties of the proposed details of the project and legal rights available to affected landowners.

47. Under Chapter 479B, the submission of this petition triggers an extensive and robust administrative process, which includes, among other things, the submission of written objections, written discovery, pre-filed witness testimony, and which culminates in a robust (and lengthy)⁸ administrative evidentiary hearing whereby all parties are permitted to present witnesses, submit evidence, and cross-examine witnesses of all other parties. Through this deliberative and thorough process, any affected person, *including Iowa counties*, may intervene as a party to the docket and/or file written objections to the IUB. In its review process, the IUB staff reviews and examines all details included in the petition, issues letters to the petitioning party requiring revisions to the proposed plan for more information, conducts route inspections, and reviews all evidence, testimony, and objections that have been received by all impacted parties. Chapter 479B requires the IUB to consider *the petition, evidence and testimony from all parties, and any objections received* in making its determination regarding the application. Traditionally, all interested parties are encouraged to submit briefings to the IUB. To the extent necessary, the IUB is permitted to “examine the proposed route of the pipeline and location of the underground storage facility” as well as call upon any testimony that would be helpful in reaching its determination. Iowa Code § 479B.8.

⁸ The evidentiary hearing for Docket # HLP-2021-0001, a permit filed by Summit Carbon Solutions for their proposed CO2 pipeline project, was recently scheduled to last from October 2023 through December 2023. While not yet scheduled as of the date of filing this Complaint, Navigator expects its evidentiary hearing to be set for a similar duration.

48. After the hearing, Chapter 479B delegates the final decision on whether a pipeline should be built solely to the IUB. In granting the IUB this authority, the Legislature plainly intended for the IUB to take into consideration *all* competing interests and factors related to the construction of the pipeline, balance local interests with statewide interests, and to render a final reasoned decision, only permitting a pipeline project to commence upon a showing that the proposed services will “promote the public convenience and necessity.” Chapter 479B also allows the IUB to grant a permit upon specific conditions. The IUB employs a meticulous process in considering applications for pipeline construction and carefully analyzes information provided by all parties, pursuant to the robust statutory and regulatory scheme under which it operates.

49. Upon attainment of a pipeline construction permit, a pipeline company is authorized to begin construction of the pipeline and is granted eminent domain rights as necessary.

C. Navigator’s Compliance with the 479B Process

50. On October 25, 2022, Navigator filed a Petition for a Hazardous Liquid Pipeline Permit with the IUB under Iowa Code Chapter 479B (the “Petition”). Before it filed its Petition, Navigator followed the procedures set forth in Chapter 479B and Chapter 13 of the IUB’s administrative rules, described generally above. Those procedures included, but were not limited to, determining a potential route and “corridor” within which the HGPS is proposed to be located. As set forth in Navigator’s Petition, parameters regarding the proposed route included numerous federal requirements.

51. Federal requirements guided the determination of the route—separation distances from inhabited structures, gathering places, and population centers based on initial modeling were established, and areas of known cultural resources, including federal and state registered locations, were avoided.

52. Once the route corridor was established, Navigator requested that the IUB hold informational meetings in all affected counties, as required by Iowa Code 479B.4(3) and 199 Iowa Admin. Code 13.2. The informational meetings were presided over by representatives of the IUB. After the IUB certified that Navigator met each requirement in Chapter 479B and 199 Iowa Admin. Code Chapter 13.2(6), Navigator was permitted to conduct surveys under Iowa Code 479B.15 and to negotiate with landowners.

53. Thirty days after the informational meetings were concluded, Navigator was allowed to file its Petition for a hazardous liquid pipeline. Iowa Code 479B.4(3). Navigator's Petition included detailed information required by federal and state law, including without limitation those requirements in Iowa Code 479B.5 and 199 Iowa Admin. Code 13.3. After an IUB staff review, discovery, and the receipt of written testimony, a public hearing will be held by the IUB to determine if Navigator should be issued a permit for a hazardous liquid pipeline. *See* Iowa Code 479B.6.

54. Navigator has already surveyed, and continues to survey, parcels along the proposed route for the project, securing necessary local, state, and federal permits, and working with landowners to obtain access to properties.

D. Defendants' Participation in the 479B Process

55. As described above, upon submission of a Petition, Chapter 479B allows for extensive county participation, primarily through allowing counties to intervene in the pipeline permit proceeding and to submit objections to the IUB.

56. On August 3, 2022, Defendants submitted objections to Navigator's pipeline project to the IUB. (Exhibit 3). In their objections, Defendants raise to the IUB concerns related to

drainage issues, safety concerns, issues with the proposed route, perceived negative consequences to infrastructure development, and their disagreement with the project's goals.

57. Even more significantly, on November 21, 2022, Defendants filed a petition to intervene in Navigator's pipeline permitting proceedings. (Exhibit 1). As explained above, under Chapter 479B, an intervening county is afforded full party status in the IUB's process, including but not limited to the ability to participate in discovery, present witness testimony, and participate in the evidentiary hearing. Iowa Admin. Code r. 199-7.13(7) (noting a person granted leave to intervene is a party to the proceeding).

58. Navigator did not object to Defendants' petition to intervene, in recognition of the statutorily prescribed process for the county's participation and in encouragement of all interested parties to avail themselves of the opportunity to let their voices be heard through the IUB's procedural process.

59. On January 18, 2023, the IUB granted Defendants' request to intervene. (Exhibit 2).

E. Defendants' Ordinance

60. Thus, by January 18, 2023, Defendants—through Chapter 479B's robust county participation mechanisms—had informed the IUB of their concerns with the project and secured for themselves a voice in the process by successfully intervening in the proceeding. As expressly contemplated and intended by Chapter 479B, Defendants' concerns were raised to the IUB, with the IUB now entrusted to balance those concerns with the concerns of *all other stakeholders* (including, but not limited to, Iowa's 98 other counties as well as its citizens and landowners) to reach a reasoned, fair, and (most importantly) democratic decision.

61. And yet, rather than work within the well-reasoned, democratic, and statutorily prescribed system established by Chapter 479B, on February 27, 2023—*weeks after the IUB granted Defendants’ request for intervention*—Defendants passed the Ordinance (Exhibit 4), amending Articles I, II, and XVIII of the Bremer County Zoning Ordinance (“Bremer Zoning Code”).

62. In so doing, Defendants usurped for themselves all federal and state regulatory authority regarding the construction of hazardous liquid pipelines in Iowa and anointed themselves a super legislature capable of determining the viability of interstate and inter-county statewide projects on the sole basis of their own concerns and considerations. Through and through, the Ordinance represents a remarkable and unlawful encroachment on federal and state regulatory authority by a single county zoning board.

63. The ways in which Defendants seek to usurp federal and state regulatory authority through their Ordinance include, but are not limited to, the Ordinance’s implementation of a robust permitting process, which in large part mimics the process set forth for the IUB in Chapter 479B,⁹ the requirement that Navigator route its pipeline to comply with numerous setbacks, the requirement that landowners apply for a permit from the County before signing an easement agreement with Navigator, and the implementation of penalties and fines against both Navigator and landowners for failing to comply with the Ordinance’s unlawful and invalid provisions.

64. Article XVIII extensively regulates and restricts hazardous liquid pipelines in Bremer County, imposing various “conditions and safeguards.” (Exhibit 4, at 6–18).

⁹ The IUB process, by law, is subject to the Iowa Administrative Procedure Act and is a very robust quasi-judicial proceeding. The process in the Ordinance lacks these same protections and processes. Instead, the County unilaterally attempts to substitute its judgment for the judgment of state and federal entities that have jurisdiction over those subjects (e.g., emergency response and plume modeling, permit application, and others).

65. The explicit purpose of the Ordinance is to “secure safety from fire, flood, panic, and other dangers,” to “protect health and general welfare,” to mitigate hazards, to prevent and prepare for potential disasters, and to evaluate risks related to hazardous liquid pipelines. (Exhibit 4, at 1–2, 4, 6).

66. The Ordinance repeatedly states that it is fundamentally concerned with the “health, safety, and welfare of the public.” (Exhibit 4, at 10).

67. Further, it contains its own permitting process, declaring that a conditional use permit will not be issued unless the Board of Adjustment finds in its discretion that the use meets the standards outlined in Article XV, Section 5-3-15.09(1)(f) of the Bremer Zoning Code, which includes that the use “will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.” (Exhibit 4, at 13).

68. The Ordinance further accuses hazardous liquid pipelines of constituting “a threat to public health and the general welfare[.]” (Exhibit 4, at 2); *see also* (Exhibit 4, at 14–16) (containing an entire section on emergency response and hazard mitigation, *i.e.* safety).

69. Despite its emphasis on safety, the Ordinance admits that “the federal Pipeline Safety Act in 49 U.S.C. § 60101 et. seq. authorizes the United States Department of Transportation to regulate safety standards for the design, construction, operation, and maintenance of hazardous liquid pipelines.” (Exhibit 4, at 2).

70. The amendments to Bremer Zoning Code require that Hazardous Material Pipelines meet substantial separation requirements. (Exhibit 4, at 10–11).

71. The Ordinance justifies these separation requirements by alleging that hazardous liquid pipelines pose “a threat to the public health and welfare, to the productivity of agricultural lands, and to the value of residential, commercial, and industry Property Owners in the County.”

(Exhibit 4, at 10). It states that the separation requirements are “designed to further the goal and objectives of the County’s comprehensive zoning plan, including to protect health and welfare[.]” (Exhibit 4, at 10).

72. The Ordinance outlines specific separation distances between hazardous liquid pipelines and city limits, churches, schools, nursing homes, long-term care facilities, hospitals, public parks, conservation areas, sensitive areas, public recreation areas, occupied structures, animal feeding operations, electric power generating facilities, electric transmission lines, electronic transmission substations, public drinking water treatment plants, public wastewater treatment plants, and private water supply wells. (Exhibit 4, at 11).

73. The Ordinance contains a definition of “Independent Agreement” at section 18.01 of the Ordinance that states that it means “alternative provisions regarding land restoration or Line Location contained in agreements independently executed by a Pipeline Company and a Landowner or a Property Owner as described in Iowa Code § 479B.20(10).”

74. The Ordinance contains a definition of “Property Owner” at section 18.01 of the Ordinance that includes “the owner or owners, together with his, her, its, or their heirs, successors and/or assigns, of the land or property over, under, on, or through which, a Pipeline or any part of it, including any related facilities, may be located and which is subject to the regulations and restriction of this Zoning Regulation.” The definition also states: “Property Owner includes a Landowner and also includes a Person with whom a Pipeline Company negotiates or offers to execute an Independent Agreement with respect to a Pipeline.”

75. The Ordinance contains a definition of a “Pipeline Company” at section 18.01 that states that it is the same “as defined in Iowa Code § 479B.2” and includes, unless otherwise defined, any Person engaged in or organized for the purpose of owning, operating, or controlling

Pipelines for the transportation or transmission of any Hazardous Liquid. Navigator fits within the definition of a “Pipeline Company” as used in the Ordinance.

76. The Ordinance seeks to regulate contracts entered into or to be entered into by a Pipeline Company and with landowners at section 18.03(2), which states that “A Property Owner that intends to negotiate or sell an easement to a Pipeline Company by means of an Independent Agreement shall submit an application to the County Zoning Administrator for a Conditional Use Permit before executing the Independent Agreement with the Pipeline Company. If a Property Owner executes an Independent Agreement with a Pipeline Company on or after the effective date of this Article without obtaining a Conditional Use Permit, the County may exercise all lawful remedies provided in section 5-3-17.02 of this Zoning Regulation.”

77. The Ordinance requires at section 18.05(4) that a Pipeline Company provide to the County a list of Property Owners that have executed an Independent Agreement or who have been or will be contacted about the execution of an Independent Agreement.

78. The Ordinance requires at section 18.05(6) that the Pipeline Company must file with the County a standard or template Independent Agreement the Pipeline Company proposes to execute with the Property Owners in the County. The provision goes on to state that the Independent Agreement must include certain terms set forth in section 18.12 of the Ordinance.

79. The Ordinance provides at section 18.06 that the Property Owner is also given the duty to file with the County a copy of the Independent Agreement that the Property Owner proposes to execute.

80. The Ordinance requires at section 18.07(1) a per-mile fee, which is actually a tax under Iowa law, with the proceeds to be used by the County for “emergency planning and hazard mitigation costs,” among other costs.

81. The Ordinance also imposes certain requirements related to emergency response and hazard mitigation planning by requiring a Pipeline Company to “provide information to assist the County in its emergency response and hazard mitigation planning.” (Exhibit 4, at 14).

82. The Ordinance outlines certain information relevant to emergency planning and hazard mitigation that must be provided to the County, including but not limited to: “[a]n estimate of the worst-case discharge of carbon dioxide released in metric tons and standard cubic feet from a rupture of a pipeline,” “[a] rupture dispersion modeling report containing the results of computational fluid dynamic computer model estimates of the maximum geographic ranges of the Fatality Zone and Hazard Zone for the Carbon Dioxide Pipeline in the event of its rupture in a range of weather conditions,” and “[a] computer model report showing the Blast Zone for the Carbon Dioxide Pipeline.” (Exhibit 4, at 15).

83. The Ordinance also requires the Pipeline Company to provide “[a]ll information needed by County first responders, emergency response personnel, and law enforcement personnel in order to engage in local emergency management and hazard mitigation planning, equipment and training needs.” (Exhibit 4, at 15.) Further, the Ordinance requires the Pipeline Company to provide information related to the “[i]dentification of residential and business emergency response needs, including by not limited to: a Mass Notification and Emergency Messaging System; evacuation plans; evacuation equipment needs especially for mobility impaired individuals; [and] carbon dioxide detectors, and respirators.” (Exhibit 4, at 16).

84. The Ordinance also seeks to impose certain requirements relevant to the abandonment, discontinuance, and removal of any hazardous liquid pipeline at section 18.12. Part of these requirements include a provision that mandates that the Pipeline Company, upon discontinuing use of the line, must “offer to each Property Owner the option to have the Pipeline and

all related facilities physically dismantled and removed, including both the below and above ground facilities.” (Exhibit 4, at 17).

85. The Ordinance was read and discussed at the Bremer County Board of Supervisors meetings on February 13, 2023, February 21, 2023, and February 27, 2023. These minutes reflect that Defendants brought in safety experts, addressed “questions about safety” and “safety concerns,” and considered the Ordinance to be primarily about safety, intended to “prevent danger.” (Exhibit 5, at 2); (Exhibit 6, at 1–2); (Exhibit 7, at 1–2).

86. The Ordinance threatens to cause substantial damage to Navigator by dramatically altering the planned layout of the HGPS, causing undue delays in execution of the project, including, among other things, potentially a need for Navigator to notify new landowners, hold additional county meetings, and amend its Petition, creating undue financial hardship for Navigator and potentially landowners relating to inefficient routing, and/or making the project economically and practically impossible or nearly impossible to site in Bremer County in any efficient manner, resulting in severe financial harm.

87. Further, if Navigator is not afforded relief here, any one of Iowa’s other counties through which a hazardous liquid pipeline company seeks to cross may attempt to announce additional and potentially inconsistent regulations of their own, throwing Navigator’s entire pipeline project into disarray and chaos. In fact, two other counties—Story County and Emmet County—have already done so. The federal and state frameworks, which were intended to create uniform requirements for interstate pipelines, would be upended if counties could make their own rules in this field.

F. Federal Preemption

88. Navigator’s HGPS CO₂ pipeline is a hazardous liquid pipeline that is subject to both federal and state law.

89. Federal law exclusively regulates a number of aspects of hazardous liquid pipelines, including without limitation safety standards for the transportation of hazardous liquids by pipeline. *See e.g.*, 49 U.S.C. § 60104(c).

90. Navigator’s HGPS is subject to a number of federal regulations, including without limitation regulations and standards relating to safety of pipelines and the transportation of carbon dioxide.

91. As one example, the PSA provides the federal government with the exclusive authority to regulate interstate pipeline safety, which includes construction, design, operations and maintenance. 49 U.S.C. § 60102.

92. Congress enacted the PSA in 1994 “to recodify, without substantive change,” the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquids Pipeline Safety Act of 1979. *Tex. Midstream Gas Servs. LLC v. City of Grand Prairie*, 608 F.3d 200, 209 (5th Cir. 2010).

93. The PSA’s purpose “is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities.” 49 U.S.C. § 60102(a)(1).

94. The United States Department of Transportation (the “USDOT”) must “prescribe minimum safety standards for pipeline transportation and for pipeline facilities,” 49 U.S.C. § 60102(a)(2), “regulate carbon dioxide transported by a hazardous liquid pipeline facility,” and “prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility,” 49 U.S.C. § 60102(i)(1).

95. To implement the requirements of the PSA, the USDOT delegates its authority to PHMSA. 49 U.S.C. §§ 108(a), 108(f). Navigator admits its project is regulated by PHMSA, and it is designing its project to comply with applicable PHMSA standards.

96. The CO₂ that would be transported through the HGPS is defined as a hazardous liquid under the PSA. 49 U.S.C. § 60101(a)(4).

97. PHMSA regulates the transportation of hazardous liquids at 49 C.F.R. Parts 194 and 195. These regulations set forth the minimum standards by which pipeline operators are required to design, construct, operate and maintain their systems.

98. At 49 C.F.R Part 194, PHMSA implements requirements related to oil spill response plans. In part, these requirements require operators to determine the “worst case discharged for each of its response zones” in the event of a pipeline rupture and develop a “response plan [that] include[s] procedures and a list of resources for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge.” 49 C.F.R. §§ 194.105; 194.107. These requirements also apply to hazardous liquid pipelines that transport CO₂.

99. At 49 C.F.R. Part 195, PHMSA implements a variety of regulations applicable to hazardous liquid pipelines, including those that transport CO₂. In part, these regulations implement requirements related to operations and maintenance, emergency response, public awareness, and abandonment of pipelines. *See, e.g.*, 49 C.F.R. §§ 195.402; 195.403; 195.440.

100. Additionally, PHMSA imposes certain setback requirements, which requires that “[n]o pipeline may be located within 50 feet (15 meters) of any private dwelling, or any industrial building or place of public assembly in which persons work, congregate, or assemble, unless it is provided with at least 12 inches (305 millimeters) of cover in addition to that prescribed in § 195.248.” 49 C.F.R. § 195.210.

101. Title 49, United States Code, Section 60104(c), subtitled “Preemption”, explicitly states that “[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.”

102. By design, the PSA “leaves nothing to the states in terms of substantive safety regulation of interstate pipelines, regardless of whether the local regulation is more restrictive, less restrictive or identical to the federal standards.” *ANR Pipeline Co. v. Iowa State Com. Comm’n*, 828 F.2d 465, 470 (8th Cir. 1987).

103. The PSA preempts state and local laws that seek to regulate the safety of interstate pipeline systems, in part, to ensure that these systems are not subject to a patchwork of regulation, which impairs the pipeline operator’s ability to maintain its system and ensure safety.

104. Like States, Counties do not have the authority to intrude on the federal government’s exclusive authority in this area. *See, e.g., N. Border Pipeline Co. v. Jackson Cnty.*, 512 F. Supp. 1261, 1266 (D. Minn. May 1, 1981) (holding that federal law preempted a County’s attempt to regulate in the area of pipeline safety and that the county was “without authority to regulate cover requirements for interstate natural gas pipelines.”).

105. Pursuant to 49 C.F.R. § 195.2, an interstate pipeline is “a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids or carbon dioxide in interstate or foreign commerce.”

106. The Ordinance is written under the false pretense that it will “establish a process . . . for permitting and approving the use of land in Bremer County for the transport of hazardous liquid through a hazard liquid pipeline that is not inconsistent with federal law, including the Hazardous Liquid Pipeline Safety Act[.]” (Exhibit 4, at 5). Instead, the Ordinance is replete with

safety standards intended to apply to interstate hazardous liquid pipelines which are already the subject of federal regulations promulgated at 49 C.F.R. Parts 194 and 195.

107. In particular, the Ordinance mandates the preparation of emergency response and mitigation plans, which are currently required under PHMSA regulations obligating operators to prepare and implement emergency response plans under 49 C.F.R. Part 194 (“Response Plans for Onshore Oil Pipelines”) and 49 C.F.R. § 195.402 (“Procedural manual for operations, maintenance, and emergencies”). The federal pipeline safety requirements implemented by PHMSA also impose specific requirements relevant to emergency response training. 49 C.F.R. § 195.403.

108. Moreover, the concepts of “Blast Zone,” “Facility Zone,” and “Hazard Zone” as provided by the Ordinance conflict with the public awareness obligations imposed on interstate hazardous liquid pipelines at 49 C.F.R. § 195.440 (“Public awareness”).

109. Additionally, the Ordinance seeks to impose significant separation distance requirements that are at odds with the requirements set forth by PHMSA at 49 C.F.R. §§ 195.210 (“Pipeline location”), 195.250 (“Clearance between pipe and underground structures”), and 195.256 (“Crossing of railroads and highways”). These federally mandated requirements already impose location and setback requirements applicable to interstate hazardous liquid pipelines, including HGPS. If applied, the Ordinance would violate the PSA and impose requirements on an interstate pipeline system that is already subject to PHMSA’s federal pipeline safety regulations. These requirements would only apply in Bremer County. Given that the HGPS will cross approximately a third of Iowa’s 99 counties (as well as other counties in other states), there is a substantial risk that other counties could also impose requirements through local ordinances,

thereby subjecting Navigator to a patchwork of regulations and requirements in direct violation of the PSA and the goals of Congress.

110. Defendants' attempt to regulate interstate pipeline safety and transportation of carbon dioxide under the Ordinance is preempted by federal law and is thus violative, improper, and injurious to Navigator.

G. State Preemption

111. Navigator's HGPS is also subject to a number of state regulations, including without limitation those in the Iowa Code and those promulgated by the IUB.

112. As explained above, the IUB has exclusive authority over the location and routing of pipelines. *See e.g.*, Iowa Code § 479B.1; Iowa Admin. Code r. 199–13.

113. At the federal level, the PSA does not authorize the USDOT to prescribe the location or routing of a pipeline facility. 49 U.S.C. § 60104(e).

114. The authority to locate or route pipelines in Iowa is left to the State of Iowa and the IUB specifically.

115. The Iowa Legislature specifically authorized the IUB as the party “to approve the location and route of hazardous liquid pipelines.” Iowa Code § 479B.1.

116. The IUB has promulgated extensive regulations detailing its approval of the location and route of such pipelines. *See, e.g.*, Iowa Admin. Code r. 199–13.

117. The Iowa legislature enacted Chapter 479B to grant the IUB the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to

approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary. Iowa Code § 479B.1.

118. A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with Chapter 479B. Iowa Code § 479B.3.

119. The entire process for a pipeline company to construct, maintain, operate, or receive a permit for a pipeline in Iowa is set forth and governed by Chapter 479B and the IUB rules promulgated for such purpose.

120. Defendants or any other persons can intervene as parties to the docket, and they can also file written objections with the IUB to the proposed construction, maintenance, operation, or application for a permit for a pipeline in Iowa or any other aspect of that pipeline, and many have done so already. Iowa Code § 479B.7 (“1. A person, ***including a governmental entity***, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections. 2. All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.”) (emphasis added). The IUB is required to consider any such objections at the hearing on whether to grant the requested permit.

121. The Ordinance would render the near entirety of Chapter 479B’s statutory scheme superfluous and functionally irrelevant. By way of example, the Ordinance establishes separation distances between hazardous liquid pipelines and city limits, churches, schools, nursing homes, long-term care facilities, hospitals, public parks, conservation areas, sensitive areas, public

recreation areas, occupied structures, animal feeding operations, electric power generating facilities, electric transmission lines, electronic transmission substations, public drinking water treatment plants, public wastewater treatment plants, and private water supply wells. (Exhibit 4, at 12).

122. As previously described, Chapter 479B expressly requires the Board to make routing and location decisions, including authorizing the Board to examine the proposed locations provided by the pipeline company in location maps submitted at the time a permit is applied for. And yet, if the Ordinance were to be allowed to go into effect, Navigator would be required to amend its plans, which in turn would require the submission of a new routing map to the IUB for its subsequent inspection, analysis, and review. Most remarkably, nothing would prevent Defendants from, thereafter, once again amending the Ordinance to create new distance requirements, once again restarting the process and preventing the IUB from ever receiving a final permit application as, due to changes required by each new ordinance, Iowa Code Chapter 479B and the IUB's rules may require new informational meetings, new surveys, new evidentiary submissions, or other actions.¹⁰ This could go on forever, effectively ensuring the IUB would never even be able to consider any pipeline project. And yet, if the Ordinance is allowed to go into effect, this is the exact system that would *de facto* govern pipeline development in Iowa on a county-by-county basis.

123. The rerouting of any pipeline by a county would also be made in isolation from the decisions made by the counties upstream and downstream from that county. Therefore, there would be a very real and likely instance where one route by a county could force the pipeline into an

¹⁰ Indeed, Navigator has learned that another county (represented by same counsel as Defendants), which had previously passed an anti-pipeline zoning ordinance, has already decided to amend that ordinance in response to litigation efforts. Shifting ordinances like this would very likely result in a literally unnavigable web of county ordinances that are incompatible and inconsistent. Uniform, statewide regulation is necessary to prevent this.

entrance or exit point at the surrounding counties that are inconsistent with each other, making the construction of an intercounty, intrastate pipeline impossible.

124. Similarly, as another example, the Ordinance purports to condition *any* construction of a pipeline on the County's provision of a conditional use permit. The remarkable implication of this provision would be that the IUB—the state authority designated by the Legislature to have the authority to issue permits for construction—could determine that a pipeline should be built through various locations in Bremer County and issue a permit for such construction, and yet that permit would have no effect because the Board of Supervisors did not agree with the IUB—even after the IUB overruled the Board of Supervisors' objections filed in the IUB docket.

125. The Ordinance would not only frustrate the entire purpose of Chapter 479B's permitting regime, but also punish all the other Iowa counties who followed the rules and intervened and/or submitted their objections and concerns to the IUB, entrusting that the statutorily mandated process would produce the best results for Iowa. If allowed to stand, Defendants' actions would render the IUB's entire objection process obsolete and meaningless. This is the opposite of the Legislature's intent expressed in Iowa Code Chapter 479B.

126. Defendants' attempt to regulate pipelines in Iowa under the Ordinance, including the location and route of such pipelines, is preempted by state law and is thus violative, improper, and injurious to Navigator.

127. The Ordinance interferes with the ability of Navigator to negotiate agreements with property owners in Bremer County and attempts to regulate agreements that Navigator has already entered into with property owners in Bremer County. The prohibition on negotiating agreements is contradicted by state law that requires Navigator to negotiate with property owners

or otherwise obtain easement rights after the conclusion of the informational meeting mandated by the IUB and prior to construction of the pipeline.

COUNT I: FEDERAL PREEMPTION OF THE ORDINANCE

128. Navigator restates and realleges the foregoing allegations as if set forth fully herein.

129. Under the Supremacy Clause, “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

130. Thus, state and local laws, ordinances, and other regulations that conflict with federal law are “without effect.” *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

131. Defendants’ Ordinance is preempted by federal law in numerous ways, including without limitation 49 U.S.C. § 60104(c), which announces complete federal preemption of safety standards, and other related separation requirements for the purpose of regulating interstate pipeline safety.

132. The Ordinance is also preempted under applicable law, including the PSA and the regulations promulgated thereunder, due to the doctrines of express, field, and conflict preemption.

133. Defendants had no authority to issue the Ordinance, and it is invalid.

134. The Ordinance stands as an obstacle to accomplishing Congress’ full purposes and objectives.

135. The Ordinance should be found and declared to be invalid, unenforceable, null and void, without effect, and preempted by federal law.

COUNT II: STATE PREEMPTION OF THE ORDINANCE

136. Navigator restates and realleges the foregoing allegations as if set forth fully herein.

137. The Iowa Legislature granted the IUB authority to approve numerous issues relating to hazardous liquid pipelines in Iowa, including without limitation the location and routing of hazardous liquid pipelines.

138. Iowa Code Chapter 479B sets forth the exclusive process for pipeline companies to follow in Iowa in order to obtain a permit from the IUB to locate and construct a hazardous liquid pipeline in Iowa.

139. The separation requirements in Defendants' Ordinance are intended to, or have the effect of, dictating the location and routing of hazardous liquid pipelines in Bremer County.

140. These separation requirements and the procedures required in the Defendants' Ordinance, including the additional permitting process, cannot be reconciled with either the State's and IUB's exclusive duties to regulate, oversee, and approve the routing and location of the Navigator Pipeline.

141. Defendant's Ordinance is preempted by state law, including without limitation interfering with the IUB's duties and authority under Iowa Code Chapter 479B and Iowa Admin. Code r. 199–13.3.

142. The Ordinance is also preempted under applicable law, including Iowa Code Chapter 479B and the regulations promulgated thereunder, due to the doctrines of express, field, and conflict preemption.

143. The Ordinance would have the effect of making the route approved by the IUB illegal.

144. Under Iowa law, "a county's exercise of home rule power cannot be 'inconsistent with the laws of the general assembly.'" *Goodell v. Humboldt County*, 575 N.W.2d at 486, 500 (Iowa 1998) (quoting Iowa Const. art. III, § 39A). "Thus, the constitutional grant of home rule

power is carefully qualified so as to withhold the grant of power where it conflicts with [a] state statute.” *Id.* (alteration in original) (citation and quotation marks omitted); *see also Mall Real Est., L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 195 (Iowa 2012) (“[L]egislative power trumps the power of local authorities when the legislature exercises its power.” (citation and quotation marks omitted)).

145. Under Iowa law, local regulations and ordinances that conflict with or are irreconcilable with state law are preempted and invalid. *See Goodell*, 575 N.W.2d at 500–01; *Mall Real Est.*, 818 N.W.2d at 196; *Worth Cnty. Friends of Agric. v. Worth County*, 688 N.W.2d 257, 262 (Iowa 2004). When a “local ordinance would prohibit an activity absent compliance with the additional requirements of local law, even though under state law the activity would be permitted because it complied with the requirements of state law,” then the regulation is “inconsistent with state law and preempted.” *Goodell*, 575 N.W.2d at 501.

146. The Ordinance stands as an obstacle to accomplishing the Iowa Legislature’s full purposes and objectives.

147. The Ordinance imposes a tax which is preempted under Iowa law and the Iowa Constitution which do not allow Counties to impose new taxes not allowed by the Iowa legislature and set forth in the Iowa Code.

148. The Ordinance should be found and declared to be invalid, unenforceable, null and void, without effect, and preempted by Iowa law.

COUNT III: DECLARATORY JUDGMENT - INVALIDITY OF THE ORDINANCE

149. Navigator restates and realleges the foregoing allegations as if set forth fully herein.

150. The Ordinance should be found and declared to be invalid, unenforceable, null and void, without effect, and preempted by Iowa law.

151. Navigator also seeks a judicial declaration that the Ordinance has no effect because it was an unlawful exercise of power by Defendants.

152. Under Iowa law, zoning decisions may not be made in bad faith and with an improper purpose. The Ordinance is not supported by competent substantial evidence and was adopted in an arbitrary and capricious manner by parties who have no expertise in these hyper-technical areas. The Ordinance cites as support safety and routing considerations that are solely within the domain of PHMSA and/or the IUB, who are experts in these areas.

153. Moreover, the zoning decision was adopted with the blatantly improper purpose of frustrating Navigator and any similarly situated pipeline company's particular plans for development.

154. As such, Defendants' enactment of the zoning ordinance was unlawful and is thus unenforceable.

PRAYER FOR RELIEF

Plaintiff Navigator Heartland Greenway LLC respectfully requests this Court enter judgment in its favor and against Defendants Bremer County, Iowa, the Bremer County Board of Supervisors, and Ken Kammeyer, Corey Cerwinske, and Duane Hildebrandt all in their official capacities as Bremer County Supervisors on each and every claim set forth above, and award it appropriate relief including, but not limited to, the following:

a. An order declaring under Federal Rule of Civil Procedure 57 that the Ordinance is preempted by federal and/or state law and is unlawful, invalid, unenforceable, without effect, and null and void as applied to Navigator's pipeline project;

b. A preliminary and permanent injunction under Federal Rule of Civil Procedure 65, enjoining Defendants from (i) enforcing or implementing the Ordinance; (ii) enforcing or implementing any other similar ordinances; and (iii) enforcing or implementing any resolution, ordinance, moratorium, ban, or other regulation that purports or intends to regulate any aspect of Navigator's HGPS project, including but not limited to those regarding safety or the location or routing of the pipeline;

c. Awarding Navigator its costs and reasonable attorneys' fees under Federal Rule of Civil Procedure 54 and any other applicable authority; and

d. An Order awarding all such other and further relief as this Court may deem just and proper under the circumstances.

Dated: April 12, 2023

Respectfully submitted,

/s/ Elizabeth A. Culhane

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