IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION

WILLIAM COUSER and SUMMIT CARBON SOLUTIONS, LLC, Plaintiffs, v. SHELBY COUNTY IOWA, SHELBY COUNTY BOARD OF SUPERVISORS, STEVE KENKEL, in his official capacity as a Shelby County Supervisor, CHARLES PARKHURST, in his official capacity as a Shelby County Supervisor, and DARIN HAAKE, in his official capacity as a Shelby County Supervisor, Defendants.	)	Case No. 1:22-cv-00020-SMR-SBJ ORDER ON MOTION TO CERTIFY QUESTIONS TO THE IOWA SUPREME COURT

On November 15, 2022, Plaintiffs William Couser and Summit Carbon Solutions, LLC, filed this lawsuit against Shelby County, Iowa, the Shelby County Board of Supervisors, and the Shelby County Supervisors in their official capacities. [ECF No. 1]. On February 6, 2023, Plaintiffs filed a motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction. [ECF No. 24]. The Court entered a TRO against Defendants on February 9, 2023 upon stipulation by the parties. [ECF No. 29]. Following additional briefing and oral argument, the Court granted a preliminary injunction on July 10, 2023. [ECF No. 51].

On July 21, 2023, Defendants filed a Motion to Certify Questions to the Iowa Supreme Court. [ECF No. 56]. Specifically, the Motion requests the Court certify the following questions:

A) Does Iowa Code Chapter 479B preempt county zoning ordinances that impose setback requirements on hazardous liquid pipelines in the county?
B) Does Iowa Code Chapter 479B preempt county zoning ordinances that require a pipeline company to obtain a zoning

permit prior to constructing a hazardous liquid pipeline in the county?

C) Does Iowa Code Chapter 479B preempt county zoning ordinances that require landowners to obtain a zoning permit prior to granting an easement to a pipeline company intended to construct a hazardous liquid pipeline in the county?

In the Motion, Defendants explain that Plaintiffs intend to resist the request. [ECF No. 56 at 3]. Neither Plaintiffs' resistance nor Defendants' reply are necessary for the Court to conclude the Motion should be DENIED, which it does for the reasons below.

I. GOVERNING LAW

Whether a district court should certify questions of state law "rests 'in the sound discretion of the federal court.'" *Saunders v. Thies*, 38 F.4th 701, 716 (8th Cir. 2022) (quoting *McKesson v. Doe*, 141 S. Ct. 48, 51 (2020)). Federal courts rarely certify questions because the process may "prolong the dispute," "increase expenses incurred by the parties," and a federal system "presumes federal and state courts alike are competent to apply federal and state law." *McKesson*, 141 S. Ct. at 51 (quoting *Lehman Brothers v. Schein*, 416 U.S. 386, 391 (1974)). Furthermore, the United States Court of Appeals for the Eighth Circuit has cautioned that "federal courts have a duty to address matters of state law, even when that law is unsettled." *Estate of Bisignano v. Exile Brewing Co., LLC*, 4:22-cv-00121-SHL-SBJ, 2023 WL 3479173, at *6 (S.D. Iowa Feb. 24, 2023) (quoting *Jung v. Gen. Cas. Co. of Wisc.*, 652 F.3d 796, 801 (8th Cir. 2011)).

Federal courts have identified several factors in determining whether to grant a motion to certify a question of state law to a state supreme court. The most relevant are "(1) the extent to which the legal issue under consideration has been left unsettled by state courts; (2) the availability of legal resources which would aid the court in coming to a conclusion on the legal issue; [and] (3) the court's familiarity with the pertinent state law." *Baldwin v. Estherville, Iowa,* 333 F. Supp. 3d 817, 847 (N.D. Iowa 2010). The court may consider if "there is any split of authority among

those jurisdictions that have considered the issues presented in similar . . . circumstances." *Hagen v. Siouxland Obstetrics & Gynecology, P.C.*, 964 F. Supp. 2d 951, 961 (N.D. Iowa 2013). A court may also examine "whether the party seeking to certify questions is responsible for choosing the federal forum or whether the state's highest court has previously declined to decide the issues for which certification is sought." *Estate of Bisignano*, 2023 WL 3479173, at *6.

II. ANALYSIS

The Motion presents several distinct arguments in favor of certification of certain questions to the Iowa Supreme Court. [ECF No. 56-1 at 1]. The Court briefly addresses them below.

A. Novel and Unsettled Questions of State Law

Defendants assert the question of whether "Iowa Code chapter 479B impliedly preempts county zoning of hazardous liquid pipelines" is worthy of certification. [ECF No. 56-1 at 6]. They explain that this is because there is "no case law from either the Iowa Supreme Court or the Iowa Court of Appeals addressing this issue." *Id.* They highlight certain provisions of the statute they claim run contrary to the interpretation found by the Court. *Id.* at 7 (citing Iowa Code § 479B.5(7)).

This argument is unpersuasive for two different reasons. First, the Iowa Supreme Court has provided extensive law on the relevant legal doctrine of preemption. It has clarified the scope of the interaction between local and state law. *Goodell v. Humboldt Cnty*., 575 N.W.2d 486 (Iowa 1998). It has explored the interaction of various levels of preemption under federal, state, and local law. *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703–04 (Iowa 1993). It has examined the doctrine of express preemption. *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372 (Iowa 1977). The Iowa Supreme Court has considered the implied preemption of local ordinances on many occasions. *See City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983); *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990); *City of Davenport*

v. Seymour, 755 N.W.2d 533, 537 (Iowa 2008); *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 339 (Iowa 2015). Put simply, the Iowa Supreme Court has provided sufficient law to decide the underlying preemption question even if the decisions do not discuss Iowa Code 479B.

Second, the Motion to Certify is an attempt to relitigate an unfavorable ruling on the motion for a preliminary injunction. According to the Motion, there is a lack of clarity in the law because the Iowa Code has provisions that allegedly run contrary to the Court's conclusion. [ECF No. 56-1 at 7]. Specifically, Defendants point to language in the statute requiring applicants to describe "[t]he relationship between the proposed project to the present and future land use and zoning ordinances" in a petition. *Id.* (quoting Iowa Code § 479B.5(7)). This argument is not about clarity, but is Defendants' position on why the Court's analysis was incorrect. A motion for certification is not the appropriate avenue to address this matter. *Hopkins v. Jegley*, Case No. 4:17-cv-00404-KGB, 2021 WL 259651, at *3 (E.D. Ark. Jan. 25, 2021) (discussing the forms of relief defendants may seek when they wish to challenge the entry of an unfavorable preliminary injunction).

For these reasons, the first explanation provided by Defendants for the certification of questions to the Iowa Supreme Court is unconvincing. Therefore, it weighs against certification.

B. Issues Are Likely to Recur

Defendants contend certification is appropriate because the issue is likely to recur. [ECF No. 56-1 at 11]. In support of this contention, they highlight the existence of three cases in the United States District Court for the Southern District of Iowa and three in the United States District Court for the Northern District of Iowa about similar ordinances. *Id.* This contention does not convincingly explain why the Iowa Supreme Court, which has the authority to decline certified questions and often exercises it, would be the preferrable adjudicator than the United States Court of Appeals for the Eighth Circuit, which must decide the matter upon receipt of a perfected appeal,

especially because a decision by either would bring finality to the cases. This lack of explanation is concerning given both bodies are presumed competent to address complex matters of state law. *McKesson*, 141 S. Ct. at 51 ("our system of 'cooperative judicial federalism' presumes federal and state courts alike are competent to apply federal and state law"). This consideration weighs against the grant of a motion to certify.

C. Certification Will Not Prejudice Summit

Defendants maintain Plaintiffs would not suffer prejudice because "the County is already under an injunction prohibiting [it] from enforcing the ordinance." [ECF No. 56-1 at 12]. This argument misunderstands the potential prejudice facing Plaintiffs, as certification would slow the ultimate resolution of the case. Resolution would likely be slowed by at least one year. *Hagen*, 964 F. Supp. 2d at 977 ("It has been my experience that certification delays a case approximately one year"). It's possible the delay is longer than one year. *Dindinger v. Allsteel, Inc.*, No. 3:11-cv-00126-SMR-CFB, 2013 WL 12034436 (S.D. Iowa July 26, 2013) (certification); *Dindinger v. Allsteel, Inc*., 860 N.W.2d 557 (Iowa 2015) (answering questions on March 6, 2015). During a pause, Plaintiffs would face enormous uncertainty and lose competitive advantages and profits that would not be recoverable. [ECF No. 51] (discussing the significant harms from a lengthy delay). Plaintiffs would have to simultaneously litigate matters on the same cases in both federal and state court, which raises the potential for conflicting decisions and wasted resources. Accordingly, this element does not support certification of the questions to the Iowa Supreme Court.

D. Federal Questions Do Not Predominate

Next, Defendants allege that the "[f]ederal questions do not predominate in this lawsuit" because "Summit has asserted one claim based on state preemption and one claim based on federal preemption." [ECF No. 56-1 at 10–11]. This argument is not one of the nine considerations that

are relevant for certification. *Baldwin*, 333 F. Supp. 3d at 847 (listing six factors); *Hagen*, 964 F. Supp. 2d at 961 (adding a seventh factor); *Estate of Bisignano*, 2023 WL 3479173, at *6 (adding two more considerations). The Court declines to look beyond the nine considerations at this time because the proffered consideration is not relevant. Thus, this argument does not support the certification of questions to the Iowa Supreme Court.

III. CONCLUSION

For the reasons discussed above, the Motion to Certify Questions is DENIED.

IT IS SO ORDERED.

Dated this 27th day of July, 2023.

Stephanie M. Rose

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT