

**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
Shelby County Supervisor; DARIN HAAKE,
in his official capacity as Shelby County
Supervisor,

Defendants.

Related case: 4:22-CV-383

CASE NO. 1:22-cv-20

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Defendants Shelby County, Iowa, Shelby County Board of Supervisors, Steve Kenkel, Charles Parkhurst, and Darin Haake (collectively “the County”), pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56, hereby move the Court for summary judgment in their favor, and in support, state as follows:

1. Plaintiff Summit Carbon Solutions, LLC (“Summit”) intends to build a carbon dioxide pipe across Iowa. The pipeline will involve more than 650 miles of pipeline and will travel through thirty counties in Iowa, including Shelby County.

2. On November 1, 2022, the Shelby County Board of Supervisors approved Ordinance No. 2022-4, a zoning ordinance regulating the use of land for hazardous liquid pipelines.

3. On November 15, 2022, Plaintiffs filed this lawsuit against the County and its Board of Supervisors in their official capacities. ECF No. 1. The Complaint seeks declaratory

relief that the County's hazardous liquid pipeline ordinance is preempted by Iowa Code chapter 479B and the federal Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, and seeks injunctive relief prohibiting the County from enforcing the ordinance. *Id.*

4. The County hereby moves for summary judgment in its favor on the grounds that the undisputed facts establish as a matter of law that (A) the ordinance is not preempted by state law, and (B) the ordinance is not preempted by federal law.

5. Pursuant to Local Rule 56(a)(3)-(4), attached hereto and incorporated herein by reference are the County's Statement of Undisputed Material Facts and Appendix in Support of this Motion for Summary Judgment.

6. The County has also filed a Brief in Support of this Motion for Summary Judgment as required by Local Rule 56(a)(2). However, because the brief exceeds the page limit authorized by Local Rule 7(h), the brief has been filed as an attachment to a Motion for Leave to File Overlength Brief which is being filed simultaneously with this motion.

WHEREFORE, for the reasons stated above and those stated in its Brief in Support of Motion for Summary Judgment, the County respectfully request that the Court grant its Motion for Summary Judgment, declare the ordinance not preempted by state or federal law, dissolve the preliminary injunction previously entered by the Court, and grant such other and further relief as the Court deems just and proper.

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

/s/ Emily A. Kolbe

Emily A. Kolbe (AT0012313)

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on: 8/4/23

By: U.S. Mail Fax
 Hand delivery Private Carrier
 Electronically (via CM-ECF) E-mail

Signature: /s/ Jason M. Craig