

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

SUMMIT CARBON SOLUTIONS, LLC,

Plaintiff,

v.

SHELBY COUNTY, IOWA;
SHELBY COUNTY BOARD OF
SUPERVISORS; STEVE KENKEL, in his
official capacity as Shelby County
Supervisor; CHARLES PARKHURST, in his
official capacity as a Shelby County
Supervisor; DARIN HAAKE, in his official
capacity as a Shelby County Supervisor,

Defendants.

No. 1:22-cv-00020

SUMMIT’S MOTION FOR SUMMARY JUDGMENT

Plaintiff Summit Carbon Solutions, LLC, through undersigned counsel, respectfully submits this Motion for Summary Judgment.

Defendant Shelby County enacted Ordinance No. 2022-04 on November 1, 2022, to impose its own safety-related “supplemental standards” on federally regulated pipelines like the CO₂ pipeline that Summit is developing. But as this Court has already ruled, Ordinance No. 2022-04 is preempted by both Iowa and federal law. *See* Dkt. 51, Order Granting Prelim. Inj. Indeed, the Iowa Legislature has delegated to the Iowa Utilities Board (IUB) exclusive authority over pipeline permitting and siting as set out in Iowa Code § 479B. And the Iowa Supreme Court has recognized that Iowa law preempts county-level legislation when it erodes the authority of the “enforcement scheme established by” the Iowa Legislature. *Goodell v. Humboldt County*, 575

N.W.2d 486, 502 (Iowa 1998). Moreover, the federal Pipeline Safety Act (PSA), 49 U.S.C. §§ 60101 *et seq.*, regulates all safety aspects of interstate CO₂ pipelines, including Summit's planned pipeline, and the PSA, by and through the Supremacy Clause of the U.S. Constitution, preempts all aspects of pipeline safety, including measures like Ordinance No. 2022-4. *ANR Pipeline Co. v. Iowa State Com. Comm'n*, 828 F.2d 465 (8th Cir. 1987); *Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354 (8th Cir. 1993); *cf. N. Nat. Gas Co. v. Iowa Utils. Bd.*, 377 F.3d 817 (8th Cir. 2004).

Accordingly, Summit respectfully requests that the Court grant summary judgment in its favor on its affirmative claims as well as the County's counterclaim. There are no genuine issues of material fact: Shelby County enacted Ordinance No. 2022-4, and it is preempted by state and federal law. *See* Fed. R. Civ. P. 56(a). Thus, Summit is entitled to a declaratory judgment that Ordinance No. 2022-3 is invalid, unenforceable, and null and void; permanent injunctive relief prohibiting the County from enforcing Ordinance No. 2022-4; and summary judgment on the County's counterclaim, denying it the relief it requests.¹

In support of this Motion for Summary Judgment, Summit relies on the concurrently filed Brief, Statement of Undisputed Material Facts, and Appendix.

¹ *See* Dkt. 44, Counterclaim (requesting declaratory relief that Ordinance No. 2022-4 is valid and enforceable; injunctive relief mandating that Summit comply with the Ordinance; and infraction penalties against Summit).

Respectfully submitted this 4th day of August, 2023.

By: /s/ Bret A. Dublinske

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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was electronically filed with the Clerk of Court using the Electronic Document Management System (EDMS) on August 4, 2023 which will send a notice of electronic filing to all registered counsel of record.

By: /s/ Sarah McCray
Sarah McCray