IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SUMMIT CARBON SOLUTIONS, LLC, Petitioner, v. IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE, STATE OF IOWA, Respondent.	Case No. **MOTION FOR TEMPORARY/PRELIMINARY INJUNCTION**

Over 10,000 owners of land in Iowa, family farm entities, and individual and family trusts who never submitted their names, addresses, or status as being on or near a proposed pipeline to the Iowa Utilities Board ("Board" or "IUB") may lose their privacy and potentially their peace without ever having notice or a chance to object unless the Court issues an injunction in this case.[1]

Summit Carbon Solutions, LLC ("Summit"), respectfully requests an injunction pursuant to Iowa Code §§ 22.5 and 22.8 to protect the confidentiality of mailing lists Summit was asked to file in an Iowa Utilities Board docket involving Summit's proposed carbon capture and storage pipeline in Iowa. As is explained more fully below, the Court should enjoin the Board from releasing the requested documents, in whole or in part, for reasons both procedural and substantive. The invasion of the privacy of Iowans who are innocent bystanders to the Board's

[1] The mailing lists in this case involve over 15,000 records, which reflect each owner of each parcel in the pipeline notice corridor discussed below. There are some names duplicated due to data anomalies (the same owner shown with a middle initial in one record and without in another for the same parcel, for example, or an extra partial address due to the way records were formatted). To account for those records, Summit uses the figure "over 10,000" as an estimate in this pleading.

pipeline permit proceeding far outweighs any interests asserted by Sierra Club, Iowa Chapter ("Sierra Club"), who has requested the mailing lists.

Under the open records exception in Iowa Code §22.7(18), under the Iowa Supreme Court's *Clymer* test for privacy interests[2], and under the independent injunction standards in Iowa Code §22.8, the mailing lists at issue in this case are entitled to protection and should not be disclosed. The addressees have never filed their information with the Board, their identifying information is not evidence nor does it illuminate any decision-making process of the government. Disclosure serves none of the purposes of the Open Records Act. It would be unprecedented to require disclosure of the identification of private persons, with physical address information, who have had no interaction with the government agency and where the specific information has no nexus to government funding, a government decision, or the action of a government official. All disclosure would do here is serve the wholly private interests and agenda of a private activist organization, while exposing unwitting Iowa residents to publicity and disturbance.

FACTUAL AND PROCEDURAL BACKGROUND

Summit Carbon Solutions is an Iowa-based company that has proposed the world's largest carbon capture and storage project. This project, operating in five states, would partner with ethanol plants, including at least 12 in Iowa, to capture the carbon dioxide (CO2) from their fermentation process, and transport it by pipeline to unique geologic formations more than a mile underground in North Dakota for permanent storage. The project would capture and store up to 12 million tons of CO2 per year, the equivalent of removing the CO2 emissions from 2.6 million

[2] *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45 (Iowa 1999) (applying five-factor test " as a means of weighing individual privacy interests against the public's right to know.")

automobiles. The project will provide new capital investments, tax revenues, payments to landowners, thousands of construction jobs, and hundreds of good permanent jobs. Most important, however, the project will reduce the carbon intensity score of Iowa-produced ethanol by 30 points, making it much more competitive in growing low-carbon fuel markets – extending and increasing the market for Iowa's ethanol, and for corn grown by tens of thousands of farmers across Iowa.

Under Iowa Code chapter 479B and the Board's administrative rules implementing the statute, the first step in seeking a permit for the pipeline to transport the CO2 is to hold a public meeting in each county where the pipeline is proposed to be constructed and operated. Notice of such meetings, including a variety of specified information, must be sent via certified mail to "persons . . . responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements." 199 Iowa Admin. Code ("Board Rules") 13.2(5) (implementing Iowa Code § 479B.4). While the list for this mailing begins with county information on who is responsible for paying taxes on a given parcel, it also may include other persons, and more importantly it specifically identifies these persons, by name and with addresses, as persons whose parcels are in an area of interest to Summit. Notably, however, nothing in the statute nor the rule requires or contemplates the filing of the list on which the mailing was based to be filed with the Board.

While no provision of law requires the list to be filed, as part of the process of planning for the Board-run public information meetings, Board staff requested that Summit file the mailing lists it used to provide notices. The request placed Summit in a difficult position: it raised concerns about disclosing information about its potential host landowners and potentially

exposing them to unwanted publicity, but Summit also did not want to refuse a request from the decision-maker on its permit, potentially antagonizing its regulator before the permitting process was even underway. To best address both concerns, Summit filed the lists as requested, but with a request for confidential treatment, filed August 13, 2021, as is permitted under the Board's rules and consistent with the Iowa Open Records Act.

Pipeline objectors promptly began to file objections to the confidential treatment, making the baseless assertion that Summit's goal, rather than seeking to protect its landowners and neighbors, was instead to deter organizing by opponents by making it harder for such opponents to find each other. No party filed any formal pleading resisting the motion for confidential treatment except for the Office of Consumer Advocate, who filed an objection to the motion on September 14. Many of the non-pleading objections to the confidentiality of the lists had asked the Board not to rule until after the informational meetings. After the last informational meeting on October 22, 2021, Summit filed a Reply to the objections on November 1, and a supplement to the reply on November 16. On November 19, 2021, Sierra Club, Iowa Chapter filed a "Motion to Release Landowner List." As part of that motion, almost as an aside buried in the very last paragraph, Sierra appears to seek alternative relief that the Board took to be a request under Chapter 22:

> Sierra Club also requests that this motion be considered an open records request pursuant to Chapter 22 of the Iowa Code.
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> WHEREFORE, Sierra Club Iowa Chapter requests that the Board deny Summit's Motion for Confidentiality and grant this Motion to Release Landowner List.

On November 23, 2021, the Board issued an "Order Granting in Part and Denying in Part Request for Confidential Treatment, With Dissenting Opinion." In that Order, the Board ruled that the lists were public records, and that they didn't fall into the exception in Iowa Code

§22.7(6). Board went on to find, however, that because release of the records did not fall squarely within an open records exception but that it did implicate personal privacy interests, that the analysis had to consider those interests. *See* Order at 5 (citing *Clymer*). A majority of the Board found that personal records of individuals are protected and should be withheld but found that the privacy interests of business and governmental entities is lesser and that *those* records should be released in 20 days (the time under 17A to seek reconsideration). One Boardmember dissented, but nonetheless acknowledged the privacy interests and expressed that it may be reasonable to release *all* of the addresses – individual or entity – but *none* of the names so uninvolved, nonconsenting parties would not be specifically identified. *See* Order (Dissent) at 14.

Despite this ruling, on November 30, 2021, the Board issued a "Notice of Records Request" addressing the same subject matter – confidentiality of the mailing list filed by Summit. The November 30 Notice noted that as part of its Motion, Sierra Club has also made a records request. The Board stated that in compliance with the Open Records Act and the Board's rules, it was providing Summit with 14-days notice and opportunity to seek an injunction, otherwise after 14 days the Board would release in their entirety the lists filed – including those portions the Board just a week earlier determined were entitled to protection under the Iowa Supreme Court's *Clymer* analysis.[3]

[3] While Summit will discuss throughout this brief the Board's ruling below and the positions of the parties below because it is the best evidence of available of the parties' positions and because Sierra Club's approach here created confusing interplay between agency motion practice and open records law, **it is important to note that this case is not an appeal from the Board's Order**. As Summit discusses below, it has now sought reconsideration before the Board of that ruling. This challenge to the Open Records Act request is a freestanding original de novo action under Iowa Code chapter 22.

For the reasons herein, Summit respectfully submits that it is entitled to injunctive relief and asks the Court to enjoin the Board from releasing the mailing lists.

ARGUMENT

I. THE IDENTIFICATION AND ADDRESSES OF PRIVATE PERSONS ARE HIGHLY PROTECTED UNDER IOWA LAW, AND BOTH THE OPEN RECORDS ACT AND THE IOWA SUPREME COURT'S COMMON LAW TEST FOR PRIVACY INTERESTS REQUIRE AN INJUNCTION IN THIS CASE.

Notably, in virtually every case involving public records law, if records (and particularly records that began with a private party) are disclosed it is because those records had a direct nexus to public funds (employee pay, government contracting or bidding) or public decision making (discipline, hiring, acts of officials, records required by law to be involved in final decisions). There is no such nexus in this case. As a result, there is no basis to disclose the requested names and addresses. Summit sought and continues to seek confidential treatment to protect innocent bystanders who have had no say in their names being disclosed, no input, and who are dragged into this solely by the process chosen by the state for pipelines and by Sierra Club's unfortunate insistence on disclosing private information. In current environment, identification as persons who may be making a private decision on whether to sign an easement on their private property with Summit may subject them to harassment, and invasion of their privacy, peace and seclusion through no action of their own. They've done nothing to put themselves in the public fray.

Fortunately, there are several paths the Court can take to protect the privacy of the impacted Iowans. There are two relevant exceptions under the Open Records Act, and if neither of those are a sufficient fit, the Court must apply the Iowa Supreme Court's multi-factor test for privacy interests. Under that test, the *Clymer* case is on point and is dispositive in this case.

A. The Requested Records are Exempted from Disclosure Under the Open Records Act.

The purpose of the Open Records Act is "to open the doors of government to public scrutiny – to prevent government from secreting its decision-making activities from the public," and to "facilitate public scrutiny of the conduct of public officers." *American Civl Liberties Union Foundation of Iowa, Inc. v. Records Custodian, Atlantic School District*, 818 N.W.2d 231, 232-33 (Iowa 2012)(citing *Iowa Civil Rights Comm'n v. City of Des Moines*, 313 N.W.2d 491, 495 (Iowa 1979) and *Howard v. Des Moines Register & Tribune Co.*, 283 N.W.2d 289, 299 (Iowa 1979)). In this case, however, it is not government officials whose records are sought or whose privacy is being compromised. Rather it is Iowa residents with no say in government acts whose names and addresses are on the disputed lists. The records requested are also not part of any government decision-making. They are not evidence in the record. They are not even regularly requested in similar cases – in the case of Dakota Access pipeline, for example, they were neither requested nor filed. The policy interests of the Act are not served by disclosure, and there are (at least) two exceptions under the Open Records Act that would allow the mailing lists to be exempt from disclosure: 22.7(18) and 22.7(6).

1. Iowa Code §22.7(18).

This is a paradigm case for 22.7(18). That exception protects from disclosure:

> Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "persons outside of government" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

> a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.
>
> b. Information contained in the communication is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.[4]

As was explained above, nothing in a "law, rule, procedure, or contract" required the filing of the mailing lists with the Board. It was done in an effort to be administratively helpful, and was accompanied from the very start by expressions of concern about the privacy rights of the persons named in the lists. Summit could have refused the request, or fought any effort to require the lists – and disclosure will make it much more likely that future applicants for infrastructure permits before the Board will do so, exactly what 22.7(18) seeks to avoid.

The specific language in §22.7(18) is also instructive. There is an exception to the exception that allows disclosure if the persons whose communications are being disclosed were in regard to a "consulting or contractual relationship with a government body" or if the person communicating has a compensation arrangement with the government body – that is, if there is a nexus to public funds. Subparagraph (a) also allows disclosure if the private person making the communication consents to its disclosure. Here, Summit did the opposite, moving immediately for confidential treatment. Much more important, however, is that the real parties in interest, the 10,000-plus persons whose records would be disclosed, have never consented. It is likely many of them do not even know about the threat to their privacy, and have had no meaningful opportunity to protect their rights.

Subparagraph (b) is also instructive as to the policy of the Act and its exceptions. That subparagraph allows otherwise protected communications to be disclosed if such disclosure can

[4] Subparagraph (c) pertains to criminal investigations and has been omitted here.

be made "without directly or indirectly indicating the identity of the person outside of government. . . or enabling others to ascertain the identity of that person." It is clear that the legislature had significant concern for protecting the identity of persons outside of government whose information happened to be in government records. If that information was not required to be in government hands by "law, rule, procedure or contract" it was to be protected unless the private person consented, or their identity could be stripped from the records.

Far from the actual policy interests of the Open Records Act, the records here barely involve the Board at all; the relationship is between Summit and recipients of notice. The filing is tangential to any government act. Sierra Club has not suggested otherwise: in its motion before the Board, Sierra Club didn't argue that it was promoting any kind of sunshine on agency decision-making – Sierra Club argued that the disclosure would help its private organizing of opposition to Summit. Sierra Club wants to force Summit to pay to undermine Summit's own project, subsidizing the advocacy efforts of a large national NGO. That is surely not the purpose or policy behind the Open Records Act. Entirely to the contrary, Sierra Club's proposed use relies on the very identifying information the legislature clearly sought to protect, and to do so without any consent from the persons named. The Iowa Supreme Court has stated that while many exceptions to the Open Records Act should be read narrowly, §22.7(18) should instead be read broadly.

> We conclude that the purpose of the foregoing legislation is reasonably clear. It is the legislative goal to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public disclosure.

See City of Sioux City v. Greater Sioux City Press Club, 421 N.W.2d 895, 898 (Iowa 1988)(discussing Iowa Code §22.7(18) and rejecting disclosure of applications for city manager position). If applications for a government job are protected, surely Iowans who have not

interacted with the Board at all have even greater protection. The Court should find the mailing lists fit squarely within the § 22.7(18) exception and enjoin the release of the lists.

2. Iowa Code §22.7(6).

While the exception in §22.7(6) is slightly more narrow, it is similar to the § 22.7(18) exception. This exception is for information (even were it legally required to be submitted to the government) that if disclosed would aid competitors while serving no public purpose. Again, this case fits within the exception. The Board found that no competitors would be advantaged by the disclosure of the mailing lists; Summit believes the Board applied that term too narrowly. First, there is a second carbon capture pipeline project proposed in the state, the "Navigator" project – a competitor of Summit. There are some counties where both projects have portions of their routes. It is undoubtedly useful reconnaissance for Navigator to know which landowners may also be negotiating with Summit for easements, or to know, based on being able to determine the exact width of Summit's notice corridor, how much flexibility Summit has to move its line in a given area. The lists reflect strategic decisions relevant given how close in time and geography the two competing projects are.

Moreover, there is nothing in the statute that limits "competitor" to a commercial marketplace meaning. Sierra Club is inarguably a "competitor" in the contested case proceeding before the Board that is required for Summit to obtain a pipeline permit. Sierra Club has made abundantly clear that it is competing over the outcome through its objections filed in the docket and its avowed efforts, reflected in its motion to release the mailing lists, to organize opposition. There is no reason that kind of "competitor" should not also trigger the §22.7(6) exception.

There is also no public purpose cognizable under the Open Records Act that is served by the release of the mailing lists. There is no nexus between the lists and any stated purpose for the

Act. Which private parties Summit, also a private entity, mailed notices to shines no light on any government actor, or open the door to any government spending or other decision-making. As was true with §22.7(18), the requested mailing lists fall within the exception in §22.7(6).

B. The Privacy Interests of Persons on the Mailing Lists are Entitled to Protection Under the Iowa Supreme Court's *DeLaMater*/*Clymer* Privacy Balancing Test.

While Summit does not agree with all of the Board's analysis below as to the Open Records Act, the Board was correct when it determined that, even if the Open Records Act exceptions do not clearly cover this situation, that is not the end of the analysis. The Board correctly determined that consideration of the impacts on privacy must be separately considered. The Board was also correct to find that personal identifying information should be protected. The Iowa Supreme Court has, in several cases, established a multi-factor balancing test to determine whether, even without an Open Records Act exception, privacy interests require protection through non-disclosure or limited disclosure of records. *See*, *e.g.*, *Clymer v. City of Cedar Rapids*, 601 N.W.2d 42, 45-48 (Iowa 1999); *DeLaMater v. Marion Civil Serv. Comm'n*, 554 N.W.2d 875 (Iowa 1996).

The *Clymer* case is dispositive of the present question. Even without getting to the application of the multi-part test that resulted in the *Clymer* holding, the Court in *Clymer* found that there was no valid interest in disclosing public employee addresses.

> The basic theme emerging from the few cases dealing with disclosure of public employee addresses is that such information does not serve the core purpose of the freedom of information statutes – to enlighten the public about the operation or activities of the government. Put another way, a public employee has a substantial privacy interest in his or her address that outweighs the public's interest in disclosure, unless the information is necessary to open the government's actions to the light of public scrutiny.

Clymer, 601 N.W.2d at 47. Surely persons who aren't government employees, and who engage in no government acts relevant to Summit's permit, should have even more protection. Lists of

private persons who received mail from a private company are not "necessary to open the government's actions to the light of public scrutiny" – the lists are not the result of any government action. Sierra Club merely wants the lists to organize private citizens around Sierra Club's private agenda. That does not come close to the high bar discussed in *Clymer*.

The result is the same even if the Court walks through all five factors set forth in the *DeLaMater/Clymer* line of cases for determining whether privacy interests should be protected. Those factors are:

1) The public purpose of the party requesting the information;
2) Whether the purpose could be accomplished without disclosure of personal information;
3) The scope of the request;
4) Whether alternative sources for obtaining the information exist; and
5) The gravity of the invasion of privacy involved.

See Clymer, 601 N.W. 2d at 45. The *Clymer* Court concluded "[w]e do not believe the Gazette's request for gender, address and birth date information fares as well in the balancing test." *Id*. at 48. As the discussion above suggests, the same is true here.

As to the first element, as the Board correctly found, there is no public purpose for Sierra Club requesting the information. They made clear in the motion before the Board that they wanted the list to facilitate private objectors, including their own entity, in organizing. Helping one side of an issue organize is not the role of government, and not a policy behind the open records law.[5]

[5] The Sierra Club in its filing with the Board wrongly seems to assume that its ends are inherently in the public interest. This hubris is unwarranted, and Sierra Club's effort to characterize the effort to protect individual privacy as a nefarious move to deter organizing is entirely unsupported. As the Court is likely aware, numerous suits have recently been filed in Polk County against Meredith Publishing based on their sale of subscriber lists. Those plaintiffs are upset that their personal contact information is being disclosed. Certainly Meredith isn't trying to stop any kind of organizing. Sierra Club misses the obvious point that people care about their own information. The stakes are likely higher here for the named persons because of the emotions around pipelines. Summit has consistently been attempting to do the

Moreover, as to the second element, even if organizing private parties on one side of a litigated issue were a policy of government, such organizing can be accomplished in any manner of ways without the lists. Sierra Club could hold meeting and advertise in the counties the pipeline will cross. To the extent Sierra Club claims individual opponents of Summit's project have no way to find each other, they can file comments in the IUB docket as many have done, identifying themselves. They can use social media, as many have also done. They can simply talk to their neighbors: a pipeline is linear infrastructure; if a person received a notice, they know that one of more adjacent households did as well. The real issue here is that Sierra Club doesn't want to buy its own list from a data vendor, doesn't want to pay for advertising – they want to free-ride on Summit's list for their own private organizing, and they want their supporters to be able to do the same. That simply is not a public policy of government. The organizing among private parties can take place effectively, even if not precisely as efficiently, in myriad ways without exposing over 10,000 identities without their consent.

The third element is the scope of the request. The Board focused solely on the burden on Summit to disclose – the lists are already compiled and were filed, so the Board found the "scope" limited. Summit believes the Supreme Court's intent was broader, however. The scope here also goes to the number of persons who will be impacted. The scope here is quite broad: over 10,000 persons may lose their privacy with respect to their proximity to a proposed pipeline, a status they didn't choose but which may subject them to harassment and publicity.

The fourth factor is whether the information can be obtained in a different way. It is not clear which way the Court intended this to cut. In any event, here while landowner names and

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right thing by its potential landowners and their neighbors, trying to avoid precisely the kind of uproar now going on with Meredith over involuntary disclosure without consent.

addresses may be ascertainable through other sources, the identification of those persons as within the notice corridor of Summit's project can not be determined without Summit's mailing lists. Summit believes this favors privacy as it shows it is the type of information not made readily available.

Finally, the fifth factor is the gravity of the invasion of privacy. The Iowa Supreme Court in *Clymer* made clear that address information is a grave invasion, finding the public employees in that case "have a legitimate interest in avoiding unwanted contacts at their homes" that should be protected by keeping the addresses from public dissemination. *Clymer*, 601 N.W.2d at 48. More specifically, the Court found that the newspaper's interest "fails to outweigh the safety and security issues implicated the revelation of these personal details." *Id*. Infrastructure projects often raise more emotions than the sick leave use of public employees, and the lack of civility in discourse has only increased since 1999 when *Clymer* was decided.

II. THE PROCEDURAL POSTURE OF THIS CASE SHOULD ALSO GIVE THE COURT PAUSE IN ALLOWING RECORDS TO BE DISCLOSED AS IT SHORT-CIRCUITS THE BOARD'S PROCESSES, AND DEPRIVED IMPACTED INDIVIDUALS OF ANY MEANINGFUL RIGHTS.

While this case is readily resolved on the substantive arguments above, the unusual procedure regarding the mailing lists should also concern the Court. The Court should allow the Board's processes to continue to play out before allowing any records to be released. And if the Court has any inclination to release the mailing lists, it should first develop a way to ensure that potentially impacted individuals have basic due process: fair notice and an opportunity to be heard on the issue.

As to the Board processes, Sierra Club made a motion in the Board proceeding, and tucked within it a request under the Open Records Act. While Summit acknowledges that open records are one of the rare cases involving agency proceedings where Iowa Code chapter 17A is

not *exclusive*, that does not mean that Sierra Club doesn't face an *election*. *See* Iowa Code § 22.7(5)("In the alternative, rights under this chapter also may be enforced by an action for judicial review according to the provisions of the Iowa administrative procedure Act." – note this is in the alternative, not "in addition to") Sierra Club voluntarily engaged in motion practice with the Board. It should not be able to render the resources and work by other parties and the Board meaningless by also filing an Open Records Request. Sierra Club should have to accept the outcome of the motion practice, and seek review of that outcome under Chapter 17A if it chooses. Instead, we now have inconsistent results – the Board rendered a decision on the motion that protects some records but not others, while the Board's response to the records request is to say *all* of the records will be disclosed in the absence of an injunction. Moreover, the records request cuts off Summit's substantive rights under chapter 17A and the Board's rules, as Summit was entitled to seek reconsideration of the Board's ruling, which it has timely filed. That motion to reconsider seeks to have all of the records protected for some of the same reasons presented here: § 22.7(18) makes no distinction between corporations and individuals, small family farm corporations who live at the address of record for the LLC have exactly the same peace and security interests as individuals, and the sole case the Board relied on to the contrary – involving AT&T, records of a regulatory investigation, and specific federal statutory language – is highly distinguishable not least of which because AT&T is a massive corporation, no one lives at its offices, and it can easily afford security for those offices. Summit's motion to reconsider should have an opportunity to be heard before there is any threat of a release of records.

Further, it is a significant problem that the real parties in interest – the thousands of individuals who may be drawn into a contentious public issue – have had no say or even notice of the intent to disclose their records. Those persons are innocent bystanders caught in the

middle between the state requirements for a pipeline applicant to create mailing lists and Sierra Club's efforts to stop beneficial infrastructure investments. Even the Office of Consumer Advocate recognized below legitimate concerns about, for example, persons on the Safe at Home list, and acknowledged that some kind of opt-out procedure would better balance the interests of the persons on the lists. The Board acknowledged those concerns, but found them impractical to implement. But practicality shouldn't be the test for protecting the privacy of individuals who have, to this point, had no process. If it is impractical to find a process for disclosure that protects their privacy, the solution – given Iowa caselaw's clear emphasis on protecting address information (see *Clymer*) -- isn't to set aside their interests but rather the solution is to not disclose at all.

III. RELIEF REQUESTED

Iowa Code § 22.5 provides for enforcement of the provisions of the Open Records Act – including its exceptions – by injunction. Additionally, Iowa Code § 22.7(8) creates a free-standing cause of action for injunction regarding public records, and allows the Court to grant an injunction in whole or part against the public examination of records if it finds

a. That the examination would clearly not be in the public interest; and
b. That the examination would substantially and irreparably injure any person or persons.

Iowa Code § 22.7(8)(1). As required by the statute, Summit has made such showing supported by a factual affidavit and more importantly supported by Iowa law as set forth above. There can be little question that persons named on the mailing lists face the potential for irreparable harm. If the Court allows the names and addresses near the pipeline to be released and then those persons begin to suffer harassment or disturbance, the Court cannot unring the bell and make the information confidential again.

Accordingly Summit respectfully requests that the Court issue an injunction prohibiting the Board from releasing the mailing lists Summit voluntarily provided and for which Summit sought confidential treatment. Alternatively, the Court should stay the release until Summit's motion for reconsideration below is litigated, and then should require release only of those records to which the Board does not grant confidential treatment. The Court should also consider how to ensure persons named in the records can have adequate process to protect their own interests.

Filed this 14th day of December, 2021.

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