



Pursuant to 49 C.F.R. § 190.211(d) Republic denies all allegations in the NOPV, both expressed and implied. Subject to the Constitutional challenges set forth hereinbelow and as described in the first section of Exhibit A, which are hereby reserved without waiver by Republic, **Republic hereby specifically requests an in-person hearing** before a presiding official lawfully appointed according to the Appointments and Take Care Clauses of Art. II of the United States Constitution, to be held at the offices of the Southwest Region of the Office of Pipeline Safety in Houston, Texas.

**RESERVATION OF RIGHTS**  
**TO CHALLENGE CONSTITUTIONALITY OF ADMINISTRATIVE PROCEEDING**

In making this Request for Hearing, Respondent expressly **reserves the right to challenge the constitutionality** of the administrative hearing process, including, without limitation, on the following grounds:

**1. Lack of Jurisdiction**

Republic requests PHMSA to dismiss Republic from this enforcement action on the fundamental ground that PHMSA has no statutory jurisdiction over metallurgical testing laboratories—a position definitively supported by both legal precedent and the Pipeline Safety Act’s explicit text. PHMSA’s jurisdiction extends exclusively to “**owners or operators** of pipeline facilities,” yet Republic neither owns nor operates any pipelines or pipeline facility nor engages in gas transportation<sup>1</sup>, placing it entirely outside PHMSA’s regulatory reach.<sup>2</sup> This jurisdictional overreach is further evidenced by the regulatory framework itself, which provides Republic with no rights, obligations, protections, or procedural safeguards under PHMSA regulations—a clear indication that Congress never intended weld testing laboratories to fall under PHMSA’s enforcement powers. As the Supreme Court established in *FDA v. Brown & Williamson*, administrative agencies (such as PHMSA) remain “creatures of statute” that cannot expand their jurisdiction beyond what Congress has explicitly authorized. See *Food & Drug Admin v. Brown & Williamson Tobacco Corp.* 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000).

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<sup>1</sup> Republic’s Small Business Administration’s North American Industry Classification System number is 541380 (Testing Laboratories). For comparison, pipeline owners and operators have NAICS numbers beginning in 486xxx.

<sup>2</sup> Republic’s business activity with interstate pipelines is less than infinitesimal. It is not a Qualified Operator under Subpart N in 49 CFR Part 192 and Subpart G in 49 CFR Part 195. Prior to this NOPV, out of nearly 60,000 welder and WPS tests, only one test involved PHMSA or interstate pipelines (this is equivalent to 0.00001) and, on that test, PHMSA neither entered Republic’s facility nor engaged with Republic.

## **2. Seventh Amendment Right to Jury Trial**

PHMSA seeks \$2.4 million in civil penalties on a joint and severally liability basis. Republic requests PHMSA to dismiss it from PHMSA's administrative enforcement action. Republic invokes its constitutional right to a jury trial under the Seventh Amendment—a right the Supreme Court has consistently upheld when governmental agencies, such as PHMSA, try to impose punitive civil penalties. The recent landmark *Jarkesy* decision (2024) definitively established that “civil penalties designed to punish and deter, not to compensate” entitle NOPV respondents to jury trials and attempts to adjudicate such penalties through administrative proceedings without jury trial access unconstitutionally circumvents this fundamental protection. *SEC v. Jarkesy*, 603 U.S. 109, 125, 144 S. Ct. 2117, 2130 (2024). As a small business facing joint and several liability with a billion-dollar operator, Republic's constitutional rights cannot be sacrificed for administrative expediency, particularly when the penalties sought are clearly punitive rather than remedial in nature.

## **3. Article III Judge**

Republic requests dismissal of PHMSA's administrative enforcement action as infringing on Article III of the Constitution, which reserves the adjudication of private rights—especially the imposition of civil penalties—exclusively to independent, life-tenured Article III federal judges. The Supreme Court's recent decisive ruling in *Jarkesy*, 603 U.S. at 2029 established that when agencies seek to impose punitive civil penalties, the “public rights” exception collapses and Article III adjudication becomes mandatory. *SEC v. Jarkesy*, 603 U.S. 109, 144 S. Ct. 2117, 2130 (2024). Unlike constitutionally protected federal judges, PHMSA's Presiding Officials and Associate Administrator serve as executive officers subject to agency control without life tenure or salary protections, creating precisely the threat to judicial independence that the Framers sought to prevent. As the Fifth Circuit confirmed less than one month ago in *AT&T, Inc. v. FCC*, No. 24-60223, 2025 U.S. App. LEXIS 9172, at \*20 (5th Cir. 2025), when an administrative agency pursues “civil penalties, a punitive remedy that the Supreme Court has recognized could only be enforced in courts of law... Article III adjudication is mandatory.”

## **4. Appointments and Take Care Clauses (U.S. Const. art. II, §§ 1–2)**

Respondent objects to the authority of the Presiding Official and the Associate Administrator assigned to this matter on the grounds that (i) neither individual was appointed in compliance with the Appointments Clause, and (ii) restrictions on their removal violate Article II of the U.S. Constitution.

## 5. Due Process

Republic requests PHMSA dismiss it from PHMSA's enforcement action, as a violation of Republic's Fifth Amendment Due Process rights. PHMSA's NOPV and Proposed Civil Penalty Worksheet failed to afford Republic with adequate notice of the basis for PHMSA's proposed \$2.4 million civil penalty, depriving Republic of a meaningful opportunity to mount a comprehensive defense. PHMSA's NOPV fails to distinguish between Republic's conduct and that of the other Respondent, a billion-dollar pipeline operator with whom Republic shares no affiliation, with respect to the proposed \$2.4 million joint and several penalty. Instead, PHMSA calculated the proposed penalty against Republic using factors exclusively attributable to the other Respondent—including 1,235 points for "operator culpability" and 10 points for the other Respondent's "history of prior offenses"—a blatantly arbitrary and capricious approach that the Supreme Court prohibited in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996).

The enforcement action further violates Republic's Due Process rights by enforcing impermissibly vague standards against a non-operator with no regulatory relationship to PHMSA, while subjecting Republic to a structurally biased tribunal where PHMSA personnel serve simultaneously as prosecutors and adjudicators—precisely the type of unfair tribunal that the Supreme Court condemned in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

Republic draws PHMSA's attention to the March 11, 2025, Memorandum from the Acting General Counsel for the Department of Transportation which Republic asserts mandates that this NOPV proceeding be suspended so that PHMSA can thoroughly review the NOPV and implement the policies and procedure set forth in Section IV of the Memorandum. A copy of the Memorandum is attached as Exhibit C.

The above constitutional challenges and objections are made without waiver, are more fully set forth hereinabove and are expressly preserved by Republic for review by an Article III Court. Republic further reserves the right to supplement, raise, or address additional constitutional challenges and objections that may arise in the course of the administrative proceedings.

A handwritten signature in blue ink, appearing to read 'C. Larry Carbo, III', with a long horizontal flourish extending to the right.

C. Larry Carbo, III  
Texas Bar No. 24031916  
Kerry Williams