

No. 19-54

IN THE
Supreme Court of the United States

KAROLYN GIVENS, ET AL.,
Petitioners,

v.

MOUNTAIN VALLEY PIPELINE, LLC,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit**

**MOTION FOR LEAVE TO FILE AND BRIEF
AMICUS CURIAE OF THE NISKANEN CENTER
IN SUPPORT OF PETITIONERS**

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August 8, 2019

**MOTION FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE THE NISKANEN CENTER**

The Niskanen Center asks this Court under S. Ct. R. 37.2(b), for leave to file a brief amicus curiae in support of the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit. Petitioners have consented to the filing of this brief, but Respondent has not indicated whether it will consent or oppose the filing of this brief. A copy of the proposed brief is attached.

As more fully explained in the attached brief under “Interest of Amicus Curiae,” the Niskanen Center has demonstrated a particular interest in the legal and constitutional issues raised by the condemnation procedures followed by gas pipeline companies under the Federal Energy Regulatory Commission’s certificates, as in this case. Niskanen is currently representing landowners in the pending challenge to FERC’s approval of the Atlantic Coast Pipeline¹ and in FERC’s pending proceedings in connection with the proposed Pacific Connector Pipeline.² In addition, Niskanen Center has submitted amicus briefs in the D.C. Circuit challenges to

¹ Final Brief of Intervenors Lora Baum and Victor Baum In Support of Landowner Petitioners, *Atl. Coast Pipeline v. FERC*, No. 18-1224 (D.C. Cir. July 24, 2019).

² Federal Energy Guidelines: FERC Reports (FERC), Docket Sheet CP17-494.

FERC's approval of the Mountain Valley Pipeline³ and the PennEast Pipeline,⁴ and an amicus brief in the pending Third Circuit case concerning whether the Eleventh Amendment allows pipeline companies to condemn state property in federal courts.⁵ Niskanen Center also filed an amicus brief in *Puntenney v. Iowa Utilities Board*,⁶ concerning the proper interpretation of the Takings Clause in the Iowa Constitution. In short, the Niskanen Center has a significant interest in the issues raised in the Petition.

This brief will assist the Court in determining whether to grant certiorari because the Niskanen Center's brief sets forth the public's interest in preserving the integrity of the government's exercise of the power of eminent domain in cases involving natural gas pipeline installations under certificates of public

³ Final Brief Amicus Curiae of Niskanen Center In Support of Petitioners, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019).

⁴ Final Brief Amicus Curiae of Niskanen Center in Support of Petitioners, *Del. Riverkeeper Network v. FERC*, 895 F.3d 102 (D.C. Cir. 2019) (No. 18-1128), 2019 WL 2369441.

⁵ Brief for Amicus Curiae Niskanen Center in Support of Appellants and Reversal, *In Re PennEast Pipeline Company*, No. 19-1191, 2019 WL 1915656 (3d Cir. Apr. 25, 2019).

⁶ Final Brief of Amicus Curiae Niskanen Center, *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829 (Iowa 2019) (No. 17-0423).

necessity and convenience granted by FERC. And because the Niskanen Center so often represents landowners in defending their rights before FERC's decision-making bodies, the Center will offer the Court a broad, policy perspective on the issues not presented by either party in the case.

The Niskanen Center respectfully requests that the Court grant leave to file the attached brief as amicus curiae.

Dated: August 8, 2019 Respectfully submitted,

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QUESTION PRESENTED

The question dividing the courts of appeals is:

Whether district courts have power—without authorization from Congress—to issue preliminary injunctions granting private pipeline companies immediate possession of property in condemnations under the Natural Gas Act before the trials on just compensation.¹

¹ Petition for Writ of Certiorari at i, *Givens v. Mountain Valley Pipeline, LLC*, No. 19-54 (S. Ct. July 3, 2019).

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INTEREST OF AMICUS CURIAE

Under Supreme Court Rule 37.2(a), the Niskanen Center submits this brief amicus curiae in support of Petitioners.⁸

The Niskanen Center, which launched operations in January 2015, is a nonpartisan 501(c)(3) think tank that works to promote an open society: a social order that is open to political, cultural, and social change; open to free inquiry; open to individual autonomy; open to the poor and marginalized; open to commerce and trade; open to people who may wish to come or go; open to different beliefs and cultures; open to the search for truth; and a government that protects these freedoms while advancing the cause of open societies around the world. Central to Niskanen Center's purpose is the principle of securing Americans' rights to their property. It is a fundamental matter of justice that government should forcibly take private

⁸ Under this Court's Rule 37.2(a), the Niskanen Center has received written consent from Petitioners. The Center has requested consent from Respondents, but has not received confirmation whether consent is granted. Counsel of record for all parties received notice prior to the due date of the Amicus Curiae's intention to file this brief.

Under Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than Amicus Curiae, or its counsel, made a monetary contribution to its preparation or submission.

property only as a measure of last resort, when truly for public use, and must compensate the property owners sufficiently to render them indifferent to the taking.

The Niskanen Center has demonstrated a particular interest in the legal and constitutional issues raised by the condemnation procedures followed by gas pipeline companies under FERC certificates, as in this case. Niskanen represents landowners in the pending challenge to FERC's approval of the Atlantic Coast Pipeline⁹ and in FERC's pending proceedings in connection with the proposed Pacific Connector Pipeline.¹⁰ In addition, Niskanen Center has submitted amicus briefs in the D.C. Circuit challenges to FERC's approval of both the Mountain Valley Pipeline¹¹ and the PennEast Pipeline,¹² and an amicus brief in the pending Third Circuit case concerning whether the Eleventh Amendment allows pipeline companies to condemn state property in federal

⁹ Final Brief of Intervenors Lora Baum and Victor Baum In Support of Landowner Petitioners, *Atl. Coast Pipeline v. FERC*, No. 18-1224 (D.C. Cir. July 24, 2019).

¹⁰ Federal Energy Guidelines: FERC Reports (FERC), Docket Sheet CP17-494.

¹¹ Final Brief Amicus Curiae of Niskanen Center In Support of Petitioners, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019).

¹² Final Brief Amicus Curiae of Niskanen Center in Support of Petitioners, *Del. Riverkeeper Network v. FERC*, 895 F.3d 102 (D.C. Cir. 2019) (No. 18-1128), 2019 WL 2369441.

courts.¹³ Niskanen Center also filed an amicus brief in *Puntenney v. Iowa Utilities Board*,¹⁴ concerning the proper interpretation of the Takings Clause in the Iowa Constitution.

SUMMARY OF ARGUMENT

This Court has held that the landowner's right to exclude others is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."¹⁵ Consequently,

[a]n owner suffers a special kind of injury when a stranger directly invades and occupies the owner's property. . . . [P]roperty law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property. To require, as well, that the owner permit another to exercise complete dominion literally adds insult to injury. See Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations

¹³ Brief for Amicus Curiae Niskanen Center in Support of Appellants and Reversal, *In Re PennEast Pipeline Company*, No. 19-1191, 2019 WL 1915656 (3d Cir. Apr. 25, 2019).

¹⁴ Final Brief of Amicus Curiae Niskanen Center, *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829 (Iowa 2019) (No. 17-0423).

¹⁵ *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979).

of “Just Compensation” Law, 80 Harv. L. Rev. 1165, 1228, and n. 110 (1967).¹⁶

When a statute authorizes permanent occupation of private land by a third party or the government, this Court’s “cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.”¹⁷

Knick v. Township of Scott, Pennsylvania,¹⁸ decided in this Court’s most recent term, after the Fourth Circuit’s decision in this case, reaffirmed this principle, holding that “a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it.”¹⁹

The preliminary injunction granted in this case, which allowed Mountain Valley Pipeline Company to immediately occupy Petitioners’ land without paying for it, would appear to be directly contrary to *Knick*, meriting review by this Court—if not summary reversal.

¹⁶ *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 436 (1982).

¹⁷ *Id.* at 419-20.

¹⁸ 139 S. Ct. 2162 (2019).

¹⁹ *Id.* at 2170.

This case has far-reaching implications since, as the Inspector General of the Department of Energy has noted, recent significant growth in the natural-gas industry has dramatically increased the number of and controversy over natural-gas pipelines like the one in this case.²⁰

In addition, this case raises a critical issue regarding the proper measure of just compensation when a taking not only deprives the owner of exclusive possession, but also destroys the income derived from the property. As the Fourth Circuit noted:

[O]ne Landowner, for instance, operates property that serves as a wedding venue and pick-your-own-apples orchard, and testified that he would suffer greater harm as a result of construction in the spring and summer than if possession were delayed until November 2018. And, to give a second example, another Landowner alleged special disturbances to farm animals and timber values that

²⁰ See Office of Inspector General, U.S. Department of Energy, Audit Report: The Federal Energy Regulatory Commission's Natural Gas Certification Process (May 24, 2018), <https://www.energy.gov/sites/prod/files/2018/05/f52/DOE-OIG-18-33.pdf> (last accessed July 25, 2019).

would result from immediate possession of her land.²¹

Contrary to the Fourth Circuit, an award of just compensation will not compensate Petitioners for these losses, which federal law classifies as consequential damages not included in a just compensation award.²²

The Court should grant review to determine whether the measure of just compensation, when denied to the landowner at the time of taking, should include consequential losses, which could not be claimed if the landowner had received just compensation at the time of taking—and title had passed to the pipeline company—as the Fifth Amendment requires.

REASONS FOR GRANTING THE PETITION

- 1. This Court’s recent decision in *Knick v. Township of Scott, Pennsylvania* is at odds with the Fourth Circuit’s reasoning**

²¹ *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 220 (4th Cir. 2019).

²² Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions at 160 (2016), <https://www.justice.gov/file/408306/download> (last accessed on July 25, 2019); see *United States v. Gen. Motors Corp.*, 323 U.S. 373, 379 (1945) (“compensation . . . does not include future loss of profits”).

This Court should grant certiorari to determine whether its holding in *Knick v. Township of Scott, Pennsylvania*,²³ decided after the Fourth Circuit and other courts have upheld the practice of gas pipeline companies gaining occupancy before paying just compensation, is consistent with the Fifth Amendment’s guarantee of just compensation when private property is taken for a public use.

As the petition states, the Fourth Circuit (and the other circuits that have disagreed with the Seventh) grounded its holding on the erroneous belief that “the Constitution does not prohibit condemnations in which possession comes before compensation.”²⁴

But a little over a month ago this Court, in *Knick v. Township of Scott, Pennsylvania*, squarely rejected that analysis, reaffirming that taking possession of private property without paying for it violates the Fifth Amendment’s Just Compensation Clause “[r]egardless of post-taking remedies that may be available to the property owner.”²⁵ The Court explained that “[t]he Clause provides: ‘[N]or shall private property be taken for public use, without just compensation.’ It does not say: ‘Nor shall private property be taken for public use,

²³ 139 S. Ct. 2162 (2019).

²⁴ *Mountain Valley Pipeline*, 915 F.3d at 213; see *Jacobs v. United States*, 290 U.S. 13, 27-28 (1933).

²⁵ *Knick*, 139 S. Ct. at 2170.

without an available procedure that will result in compensation.”²⁶

To grant possession of private property without payment of just compensation violates the Fifth Amendment’s guarantee because

[a] later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place. The violation is the only reason compensation was owed in the first place. A bank robber might give the loot back, but he still robbed the bank. The availability of a subsequent compensation remedy for a taking without compensation no more means there never was a constitutional violation in the first place than the availability of a damages action renders negligent conduct compliant with the duty of care.²⁷

Overruling two of its own decisions which improperly relied on the same analysis as the Fourth Circuit did in this case, the *Knick* Court held unequivocally that “[t]he Framers meant to prohibit the Federal Government from taking property without paying for it. Allowing the government to *keep* the property pending

²⁶ *Id.*

²⁷ *Id.* at 2172.

subsequent compensation to the owner . . . was not what they envisioned,”²⁸ overruling *Williamson County*²⁹ and *San Remo*.³⁰

The Fourth Circuit, like the respondents in *Knick*, relied on the statement in *Cherokee Nation*,³¹ to the effect that the Constitution “does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken.”³² But, as this Court explained:

[R]espondents read those statements too broadly. They concerned requests for injunctive relief, and the availability of subsequent compensation meant that such an equitable remedy was not available. Simply because the property owner was not entitled to injunctive relief at the time of the taking does not

²⁸ *Id.* at 2176 (emphasis in original).

²⁹ *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

³⁰ *San Remo Hotel, L.P. v. City of San Francisco*, 545 U.S. 323 (2005).

³¹ *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641 (1890).

³² *Mountain Valley Pipeline, LLC v. An Easement to Construct, Operate & Maintain a 42-inch Gas Transmission Line Across Props. in Ctys. of Nicholas, Greenbrier, Monroe, & Summers, W. Va.*, No. 2:17-cv-04214, 2018 WL 1004745, at *11 (S.D.W. Va. Feb. 21, 2018) (quoting *Cherokee Nation*, 135 U.S. at 659) (citing *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 829 (4th Cir. 2004)).

mean there was no violation of the Takings Clause at that time.³³

In addition, the *Cherokee Nation* quote appears to be dictum since the statute analyzed there provided that “before the railway shall be constructed through any lands proposed to be taken, full compensation shall be made to the owner for all property to be taken or damage done by reason of the construction of the road.”³⁴

In *Knick*, this Court reiterated its holdings in numerous just compensation cases that “the act of taking”³⁵ is the “event which gives rise to the claim for compensation.”³⁶ Taking occupancy of private property without paying just compensation is flatly unconstitutional because the Fifth Amendment “places a condition on the exercise of that power”³⁷ to take private property in the first instance.

2. The Constitution guarantees just compensation, not inadequate compensation

This case squarely presents the issue of how far post-deprivation compensation can be

³³ *Knick*, 139 S. Ct. at 2175 (internal citations omitted).

³⁴ *Cherokee Nation*, 135 U.S. at 659.

³⁵ *Knick*, 139 S. Ct. at 2170.

³⁶ *Id.* (quoting *United States v. Dow*, 357 U.S. 17, 22 (1958)).

³⁷ *First English Evangelical Lutheran Church of Glendale v. Los Angeles*, 482 U.S. 304, 314 (1987).

stretched and still pass constitutional muster. In the seminal case of *Jacobs v. United States*,³⁸ involving the payment of interest on an award of just compensation, the Court articulated a broad definition of just compensation that leaves no room for the conclusion that landowners would recover anything less than full monetary losses resulting from the legitimate exercise of eminent domain:

The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive and includes all elements, “and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation.” The owner is not limited to the value of the property at the time of the taking; “he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking.”³⁹

In *United States v. Miller*,⁴⁰ the Court held that just compensation means the “full and perfect equivalent in money of the property

³⁸ *Jacobs*, 290 U.S. at 13.

³⁹ *Id.* at 16-17 (internal citations omitted) (quoting *Seaboard Air Line Ry. Co. v. United States*, 261 U.S. 299, 306 (1923)).

⁴⁰ *United States v. Miller*, 317 U.S. 369 (1973).

taken and the owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.”⁴¹ And in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*,⁴² the Court described just compensation as a compensatory remedy.⁴³ That is why, in defining “highest and best” use, the Supreme Court has emphasized that “[a]s its name suggests, . . . just compensation is, like ordinary money damages, a compensatory remedy.”⁴⁴

This Court has defined just compensation as the fair market value, “what a willing buyer would pay in cash to a willing seller.”⁴⁵ But as this Court explained in *Kimball Laundry Co. v. United States*,⁴⁶ the “transfer brought about by eminent domain is not a voluntary exchange, [so just compensation] can be determined only by a guess, as well informed as possible, as to what the equivalent would probably have been had a voluntary exchange taken place.”⁴⁷

Here, the facts show that losses sustained by the landowners under the early access

⁴¹ *Id.* at 373; see also *First English*, 482 U.S. at 304.

⁴² 526 U.S. 687 (1999).

⁴³ *Id.* at 710.

⁴⁴ *Id.*

⁴⁵ *Almota Farmers Elevator & Warehouse Co. v. United States*, 409 U.S. 470, 474 (1973).

⁴⁶ 338 U.S. 1 (1949).

⁴⁷ *Id.* at 6.

scheme sanctioned by some courts does not result in just or truly compensatory compensation for property owners' losses. Many of the landowners incur ruinous economic losses to their agribusiness, which are not recoverable as just compensation because consequential damages (including business losses) are outside the scope of takings damages.⁴⁸ The landowners whose property is subject to early entry by pipeline companies thus suffer "the injustice caused by undercompensation."⁴⁹

According to one commentator, "[u]ndercompensating condemnees may cause condemnors to fail to appreciate the total costs of eminent domain. Condemnors might then use eminent domain where the losses suffered by property owners exceeds the public use's net benefit to society."⁵⁰

The Fourth Circuit failed to apprehend the constitutional implications of its ruling that allowed pipeline companies access to private land and to commence pipeline construction,

⁴⁸ See *Gen. Motors Corp.*, 323 U.S. at 379-80 (noting business losses are excluded from a compensation award).

⁴⁹ Nathan Bu, *Taking Stock: Exploring Alternative*, 49 Colum. Hum. Rts. L. Rev. 213, 222 (Winter 2018).

⁵⁰ *Id.* at 223; see also Marina Fegan, *Just Compensation Standards and Eminent Domain Injustices: An Underexamined Connection and Opportunity for Reform*, 6 Conn. Pub. Int. L.J. 269, 269 (2007) (arguing that "inadequate compensation of property owners is greatly to blame for unjust or ineffective takings.").

and yet delay compensation until many years later (if ever, if the pipeline is not completed):

It is true, as the Landowners contend, that because the process of determining just compensation will be a lengthy one, the grant of preliminary relief means that their property will be disturbed sooner rather than later. But as we held in *Sage*, that is “simply a timing argument,” not an independent injury traceable to the “taking [of] property *before determining just compensation.*”⁵¹

But the issue is more than just a timing issue of when a landowner receives just compensation, as the Fourth Circuit erroneously concluded; the issue is whether the compensation is just when the time comes to compensate for the taking.

A noted takings scholar, Richard Epstein, has stated that the ideal amount of (or just) compensation would leave the property owner “in a position of indifference”⁵² between condemnation and retention of the property. Here, if just compensation is to be just for the landowners whose land and businesses have been destroyed or severely damaged during the

⁵¹ *Mountain Valley Pipeline*, 915 F.3d at 220 (quoting *Sage*, 361 F.3d at 829).

⁵² Richard Epstein, *Takings: Private Property and the Power of Eminent Domain* 182 (1985).

period between the actual transfer of the easement to the pipeline company and the actual payment of compensation, the compensation would have to include consequential damages.

The record shows significant consequential damages that will result from the pipeline's activities on the private land, none of which are recoverable under the standard of just compensation that focuses solely on the value of the property taken.⁵³ Among the consequential losses not recoverable as Fifth Amendment just compensation are: loss of business value or going concern value,⁵⁴ loss of or damage to goodwill,⁵⁵ future loss of profits,⁵⁶ frustration of plans,⁵⁷ frustration of contract or contractual expectations,⁵⁸ and loss of opportunity or

⁵³ See *Gen. Motors Corp.*, 323 U.S. at 379-80 (noting business losses are excluded from a compensation award).

⁵⁴ *Mitchell v. United States*, 267 U.S. 341, 345 (1925); *United States v. 1735 N. Lynn St.*, 676 F. Supp. 693, 697-98 (E.D. Va. 1987).

⁵⁵ *Gen. Motors Corp.*, 323 U.S. at 378.

⁵⁶ *Id.*; *United States ex rel. Tenn. Valley Auth. v. Powelson*, 319 U.S. 266, 283 (1943); *Yuba Nat. Res., Inc. v. United States*, 904 F.2d 1577, 1581-82 (Fed. Cir. 1990); *Ga.-Pac. Corp. v. United States*, 640 F.2d 328, 360-61 (Ct. Cl. 1980) (per curiam).

⁵⁷ *1735 N. Lynn St.*, 676 F. Supp. at 701 (citing *Powelson*, 319 U.S. at 281-82 & n.12; *Omnia Commercial Co. v. United States*, 261 U.S. 502, 513 (1923)).

⁵⁸ *Omnia*, 261 U.S. at 513; *United States v. 57.09 Acres of Land in Skamania Cty.*, 757 F.2d 1025, 1027 (9th Cir.

business prospect,⁵⁹ frustration of an enterprise,⁶⁰ and the loss of customers.⁶¹

This narrow definition of just compensation means that many of these Petitioners will therefore never receive just compensation for the pipeline easement. The Holleran family lost their property and livelihood when the pipeline company cut down the 250-year-old sugar maples they used to make syrup.⁶² The petition

1985); *United States v. 677.50 Acres of Land*, 420 F.2d 1136, 1138-39 (10th Cir. 1970); *Hooten v. United States*, 405 F.2d 1167, 1168 (5th Cir. 1969); *United States v. 1.604 Acres of Land*, 844 F. Supp. 2d 668, 681-82 (E.D. Va. 2011); *United States v. Gossler*, 60 F. Supp. 971, 976-77 (D. Or. 1945).

⁵⁹ *Powelson*, 319 U.S. at 283; *United States v. Grand River Dam Auth.*, 363 U.S. 229, 236 (1960); *Omnia*, 261 U.S. at 513.

⁶⁰ *Grand River*, 363 U.S. at 236; *Omnia*, 261 U.S. at 513.

⁶¹ *Stipe v. United States*, 337 F.2d 818, 819-21 & n.3 (10th Cir. 1964); *R.J. Widen Co. v. United States*, 357 F.2d 988, 990, 993-94 (Ct. Cl. 1966); *S. Ctys. Gas Co. of Cal. v. United States*, 157 F. Supp. 934, 935-36 (Ct. Cl. 1958).

⁶² Petition for Writ of Certiorari at 25-26, *Givens v. Mountain Valley Pipeline, LLC*, No. 19-54 (S. Ct. July 3, 2019); see *Constitution Pipeline Co., LLC v. New York State Dep't of Env'tl. Conservation*, 868 F.3d 87, 91 (2d Cir. 2017) (upholding the State of New York's denial of § 401 of the Clean Water Act certification for the Constitution Pipeline); *Constitution Pipeline Co., LLC v. A Permanent Easement for 1.84 Acres*, No. 3:14-2458, 2015 WL 1220248, at *4 (M.D. Pa. Mar. 17, 2015) (granting the Constitution Pipeline immediate possession of the Hollerans' property); Marie Cusick, *Conflicting*

also discusses the business losses—many of these properties are thriving agricultural businesses—farms and ranches—that earn income.⁶³ The petition further states that

[t]heir owners—some on fixed incomes—depend on that money to make ends meet. Early possession prematurely cuts off that income. Landowners cannot grow crops or graze cattle in the fields possessed by the pipeline company. They are forced to close businesses, temporarily or permanently, and miss out on rental income.⁶⁴

This Court has repeatedly held that the Just Compensation Clause is not the “poor relation”⁶⁵ of the other protections set forth in the Bill of Rights. But this case calls into question the federal courts’ commitment to backing full and fair just compensation for property owners who are paid inadequate compensation for the taking of their property.

Decisions on Pipelines Frustrate Industry, Landowners, State Impact Pennsylvania (Sept. 18, 2017), <https://perma.cc/UVK4-6KEH> (reporting how the pipeline developer’s contractors “cut down a large swath of maple trees” but pipeline project’s failure left the Hollerans “with heaps of rotting maple trees”).

⁶³ Petition for Writ of Certiorari at 27, *Givens*, No. 19-54 (S. Ct. July 3, 2019).

⁶⁴ *Id.* at 26.

⁶⁵ *Knick*, 139 S. Ct. at 2169.

It may be that the public will benefit from constructing new natural gas pipelines. The Fourth Circuit noted that “Mountain Valley’s certificate rests on an agency finding that the proposed pipeline will benefit the public by meeting a market need for natural gas, and will do so in a way that is environmentally acceptable.”⁶⁶ The open question, however—and the issue worthy of review by this Court—is whether the burden of achieving this public good must be borne by the affected landowners, or whether the right to just compensation secured by the Fifth Amendment (the only express money damages provision in the Constitution) must comprehensively include all losses associated with the exercise of eminent domain for the pipeline easement.

CONCLUSION

The petition for a writ of certiorari should be granted.

⁶⁶ *Mountain Valley Pipeline*, 915 F.3d at 221-22.

Respectfully submitted,

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