No. 25-159

In the Supreme Court of the United States

LEONARD W. HOFFMANN, ET AL.,
Petitioners,

v.

WBI ENERGY TRANSMISSION, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

In private condemnations under the Natural Gas Act, should just compensation be determined by reference to state law?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioners are Leonard W. Hoffmann (as Trustee of the Hoffmann Living Trust dated March 8, 2002); Margaret A. Hoffmann (as Trustee of the Hoffmann Living Trust dated March 8, 2002); Denae M. Hoffmann; Rocky & Jonilla Farms, LLP; and Randall D. Stevenson. Respondent is WBI Energy Transmission, Inc.

None of the petitioners has any parent corporation and no publicly held corporation holds more than 10% of the stock in any petitioner.

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The opinion of the court of appeals, Pet. App. 1a, is reported at 132 F.4th 1058. The district court's opinion awarding fees and costs in this case, Pet. App. 26a, is unreported, as is the district court's opinion ultimately determining the fees and costs awarded, Pet. App. 14a.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 2025. A timely filed application for extension of time was granted by Justice Kavanaugh on June 6, 2025, extending the time to file a petition for a writ of certiorari until August 7, 2025. The petition was timely filed on August 7, 2025. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant subsection of the Natural Gas Act, 15 U.S.C. § 717f(h), is reproduced at Pet. App. 57a.

STATEMENT

Legal Background

1. This Court has already explained the history of congressional regulation of the interstate natural-gas market. Congress first enacted the Natural Gas Act in 1938 "to regulate the transportation and sale of natural gas in interstate commerce." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 489 (2021). As originally adopted, the Act "vested the Federal Power Commission (now the Federal Energy Regulatory Commission) with the authority to . . . approv[e] the construction and extension of interstate pipelines." *Ibid.*

Unlike the Federal Power Act on which it was modeled, though, the original Natural Gas Act did not mention eminent domain. That "defect" proved a problem in some places. *Ibid.* (citing S. Rep. No. 429, 80th Congress, 1st Sess., at 2 (1947)). As the committee report advancing the amendment that eventually became 15 U.S.C. § 717f(h) explained, "[i]n some states the statutes are broad enough to grant the right of eminent domain to interstate natural gas companies which are regulated under the Natural Gas Act, but" not in all of them. S. Rep. No. 429, at 2. In some states, federally certified natural-gas companies could not exercise eminent domain to obtain land necessary for federally approved projects—either because state law allowed eminent domain only for utility companies serving customers in that state or because state law barred foreign corporations from using eminent domain at all. *Id.* at 2–3. And so, again drawing from the Federal Power Act, 16 U.S.C. § 814, Congress amended the Natural Gas Act in 1947 to add what is now 15 U.S.C. § 717f(h), which authorizes certificate holders to file eminent-domain actions. S. Rep. No. 429, at 1 (noting that the text "follows substantially the wording of the eminent domain provision of the Federal Power Act"); accord H.R. Rep. No. 695, 80th Congress, 1st Sess., at 2 (1947) (making same comparison). Like the relevant provision of the Federal Power Act, § 717f(h) authorizes holders of certificates of public convenience and necessity to "acquire [property] by the exercise of the right of eminent domain in the district court of the United States . . .

or in the State courts."[1] The language of § 717f(h) has remained the same since.

2. Neither § 717f(h) nor the provision of the Federal Power Act on which it was based says anything about how a reviewing court should determine the value of land being taken. The lower courts' modern consensus about how to deal with that silence began with the en banc Fifth Circuit's decision in *Georgia Power Co.* v. *Sanders*, 617 F.2d 1112 (5th Cir. 1980) (en banc). Construing the Federal Power Act, that court held that the statute's failure to specify a source of law required it to apply the factors enumerated in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979), which in turn required courts to look to state law in determining land value. A few years later, the Second Circuit (also construing the Federal Power Act) followed suit. *Winooski Hydroelectric Co.* v. *Five Acres of Land*, 769 F.2d 79, 81–82 (2d Cir. 1985).

With the increasing production of (and demand for) natural gas in the United States, the Natural Gas Act's analogous provision soon raised the same question—and got the same answer. First, the Fifth Circuit held that the Natural Gas Act should get the same treatment as the Federal Power Act. *Miss. River Transmission Corp.* v. *Tabor*, 757 F.2d 662 (5th Cir.

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[1] Also like the Federal Power Act, § 717f(h) commands district courts hearing these condemnations to "conform" their "practice and procedure . . . as nearly as may be with the practice and procedure" that would govern the analogous proceedings in state court. 15 U.S.C. § 717f(h). That procedural command has since been superseded by the adoption of Federal Rule of Civil Procedure 71.1.

1985). Then the Sixth Circuit held that § 717f(h)'s failure to specify a standard for land valuation meant that state law, as the traditional source of property rules, should control. *Columbia Gas Transmission Corp.* v. *Exclusive Nat. Gas Storage Easement*, 962 F.2d 1192 (6th Cir. 1992). The Third Circuit held the same. *Tenn. Gas Pipeline Co.* v. *Permanent Easement for 7.053 Acres*, 931 F.3d 237 (3d Cir. 2019). And then the Eleventh. *Sabal Trail Transmission, LLC* v. *18.27 Acres of Land*, 59 F.4th 1158 (11th Cir. 2023). This case arose against the backdrop of that unanimous consensus.

Factual Background

This case arises out of a condemnation by Respondent WBI Energy Transmission, which is a private natural-gas company authorized by the Federal Energy Regulatory Commission to construct a natural-gas pipeline. Pet. App. 28a. That authorization allows it to file eminent-domain actions to acquire rights-of-way that enable it to construct, operate, and maintain a natural-gas pipeline. *Ibid.* And it used that authority here to condemn an easement across the McKenzie County ranchland long owned by Petitioners and their families. Pet. App. 28a–29a.

WBI's initial attempts to acquire the easements it needed reached an impasse because the parties disagreed about the value of the land. WBI's position was that the value of the easements should be limited to a before-and-after comparison: An expert should compare the fair market value of land *with* a pipeline easement against the fair market value of land *without* a pipeline easement, and Petitioners should be awarded the difference (if any). *WBI Energy*

Transmission, Inc. v. *189.9 rods, more or less*, No. 1:18-cv-078, 2021 WL 1234585, at *2–3 (D.N.D. Apr. 1, 2021). Petitioners disagreed: North Dakota landowners (indeed, Petitioners themselves) had a robust history of selling pipeline easements in arm's-length transactions to oil companies that lacked the power of eminent domain, and they believed the value of a pipeline easement was best measured by what other people had paid for a similar easement. Some federal authority supported WBI's position, but the district court applied North Dakota law to hold that Petitioners' evidence of market-rate transactions should not be excluded at trial. *Id.* at *4, *8–9.

The parties promptly settled in the wake of that ruling, but the settlement agreement left open whether the condemnees could be forced to bear the costs of their own condemnation. Pet. App. 29a–30a. As with the first valuation dispute, state and federal law pointed in different directions: North Dakota law says that transaction costs of a condemnation (like expert and attorney fees) must be paid to landowners as part of their just compensation, while federal law says condemnees should generally bear the costs of the transaction. See Pet. App. 32a–33a, 45a.

In line with that settlement agreement, Petitioners timely moved to compel payment of the fees they had reasonably incurred in litigating the condemnation of their property. Pet. App. 30a. And the district court followed the same path as every appellate court to have considered the issue. Recognizing that no text commanded whether federal or state law should govern questions of land valuation, it turned to *Kimbell Foods* and found that nothing warranted setting aside well-established state compensation rules. Pet. App. 40a–44a. After all, "it is in the blood of North Dakota landowners to be protective of their real estate." Pet. App. 42a. Property owners' understanding of state rules governing property and its valuation had "been cemented into North Dakota's foundational practices and procedures in the area of property rights," and so (in the absence of any congressional directive to the contrary) they should control here as well. Pet. App. 44a. Since North Dakota law provides that a property owner must be placed in the same pecuniary position as he would have been in the absence of the condemnation—and that this necessarily means he cannot be forced to pay the fees and costs reasonably incurred in defending his property—the district court granted Petitioners' motion for attorney fees. Pet. App. 44a–46a.

The Eighth Circuit reversed. That court acknowledged that other courts nationwide had, like the district court, held that state law controls compensation decisions under the Natural Gas Act. Pet. App. 7a n.2. But in the Eighth Circuit's view, those other courts were wrong. Instead, the Natural Gas Act's delegation of the power of eminent domain allowed private companies to "step[] into the federal government's shoes[and] inherit[] all its rights and obligations." Pet. App. 4a. On this reading, the Act's silence on the question of compensation was irrelevant: Since a private condemnor under the Act is assumed to stand in the shoes of the federal government, any "gaps" on the question of compensation are filled by the Fifth Amendment, not state law, and a Natural Gas Act condemnor pays only what the federal government would have paid had it taken the land itself. Pet. App. 6a. In short, once Congress delegates any part of its power of eminent domain to a private party, courts should presume that the delegee will pay only whatever minimum compensation is needed to save the taking from unconstitutionality.

This Court granted certiorari to resolve the circuit split created by the decision below.

SUMMARY OF ARGUMENT

I. The ordinary tools of statutory interpretation all lead to the conclusion that the private condemnations authorized by § 717f(h) use the substantive land-valuation rules of the state where the condemned property sits. Textually, the statute says nothing at all about compensation. It simply delegates to certain private companies the power to file eminent-domain lawsuits—lawsuits that ask a court to adjudicate the value of a given piece of property. Nothing on the face of the statute tells those courts what law to use when making that determination.

But courts read statutes in light of background principles against which Congress was drafting, and several of those principles suggest that Congress's silence about compensation should be understood to require courts to use state law. One is that states are generally understood to be the primary source of rules about property (including the transfer of property). Another is that private delegations of eminent domain are disfavored: When the United States takes property in its own name, courts must respect its sovereign immunity and, in the absence of an explicit statutory command otherwise, require no more payment than that guaranteed by the Fifth Amendment. But the presumptions run the other way when the

United States delegates part of its eminent-domain power to a private party. If Congress wants to give a private party its power to disregard state substantive law, it has to say so out loud.

Congress also drafted § 717f(h) against the background of this Court's repeated decisions relying on state substantive laws when interpreting federal statutes. As noted above, that is the general rule when it comes to property, but it is also simply the general rule in other substantive contexts like statutes of limitations. Congress, knowing of that well-established practice, would have expected it to be used in the context of § 717f(h).

Indeed, even separate from what Congress would have known, this line of cases provides a substantive guide to reading the statutory text here. Historically, this Court assumed that state laws that spoke in general terms controlled in the context of federal causes of action unless they were preempted by those causes of action. That preemption rule applies here. North Dakota's just-compensation law speaks in broad terms about condemnation generally, and nothing about § 717f(h), either expressly or implicitly, requires federal courts to disregard that broad law.

Other tools of statutory interpretation lead to the same place. The statute's structure also points toward state law—not least because § 717f(h)'s eminent-domain language was directly lifted from the analogous provision of the Federal Power Act, which lower courts had already interpreted as incorporating state-law compensation rules.

It makes sense for Congress to have adopted that same language because nothing about the purpose or history of § 717f(h) suggests Congress wanted to depart from state-law compensation rules. The point of § 717f(h) was to provide an eminent-domain cause of action because some states' laws didn't provide one to companies building interstate gas pipelines. But many states *did* provide those companies with a cause of action, which state courts adjudicated under state law. For courts in those states, there would be no reason to assume that the adoption of § 717f(h) changed anything at all.

And that seems to be exactly what happened. State courts in the years immediately following the adoption of § 717f(h) uniformly viewed it as allowing them to continue using state law. If the existence of a federal eminent-domain cause of action automatically required courts to award only minimal constitutional compensation, that conclusion seems to have escaped contemporaneous courts entirely. And despite courts (on Respondent's view) getting the law wrong consistently for decades, Congress seems to have acquiesced in that interpretation—using more specific language when it wants to depart from the usual standard for private condemnations but otherwise leaving § 717f(h) (and the analogous provision of the Federal Power Act) untouched. In short, the ordinary rules of statutory interpretation tell us that § 717f(h) presumptively uses state-law compensation rules; contemporaneous courts seem to have read it exactly that way; and Congress has seemingly recognized that default interpretation in enacting other legislation.

II. As explained above, the statute's silence on just compensation should be read, in context, as applying state-law valuation rules. But, in the alternative, the Court could read the statute's silence as silence—a gap that must be filled with either federal or state law. And gaps in statutes are filled according to the principles articulated in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979). That case enumerates three factors for choosing between state and federal law: whether relying on state law would hinder the administration of the federal program, whether relying on state law would conflict with the program's objectives, and whether applying federal law would upset local commercial expectations.

Each one cuts in favor of state law here. First, nothing about applying state law would hinder the administration of the federal program because once FERC approves a pipeline, actually building that pipeline already requires extensive interactions with state laws and individual property owners. Second, nothing about the state-law rule would conflict with the objectives of the federal program. The point of the Natural Gas Act is to permit and regulate the interstate transportation of gas, not to minimize the amount of compensation a landowner receives for property that is forcibly appropriated. And third, applying a uniform federal rule would upset local expectations: Landowners generally expect their property to be governed by state-law rules, in part because this Court has repeatedly told them they should expect their property to be governed by state-law rules. Replacing longstanding state compensation rules with uniform federal rules would upend those expectations.

III. Respondent's remaining arguments fail to upend the conclusions reached above. Both

Respondent and the United States have placed enormous weight on this Court's decision in *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482 (2021). But that case says nothing about the question presented here. That case was about whether states enjoyed sovereign immunity against eminent-domain suits by private pipeline companies. This Court said no because it held that (1) states have no sovereign immunity against federal eminent-domain suits and (2) § 717f(h) authorizes approved pipeline companies to file eminent-domain suits without any qualifications. But neither holding has anything to say about the question presented here.

Finally, Respondent and the government raise various other arguments at the certiorari stage, but none need detain this Court long. They argue that the American Rule should control (even though the question presented asks about just-compensation rules rather than litigation costs) and wrongly suggest that a clause ordering federal courts to apply state procedural rules somehow implicitly commands them (and only them) to reject state substantive rules. They also raise policy arguments that ignore the basic reality that Petitioners' rule has been the uniform rule in the lower courts for decades. If applying that rule caused problems, they would be evident. And they are not. The most reasonable reading of the statute is the way most courts read it—and have read it for decades. The decision below should therefore be reversed.

ARGUMENT

I. Ordinary statutory interpretation establishes that private condemnation lawsuits under the Natural Gas Act use state-law compensation rules.

The text of § 717f(h) (read, as it must be, in light of the common law and this Court's earlier decisions) suggests that courts should use state-law compensation rules in private condemnations. The structure of the statute also suggests Congress meant for state law to provide the compensation rules. The purpose and context of the statute suggest the same. And that interpretation of the statute matches both what contemporaneous courts did and how Congress has responded to those interpretations.

A. The best reading of the text points to state law.

There are four overlapping reasons to read the text of § 717f(h) as applying state-law measures of land valuation to private condemnations. First, the text itself provides a limited delegation of the power to file condemnation lawsuits—lawsuits designed to adjudicate the value of a piece of property. Second, background common-law principles, including the longstanding rule that private delegations of eminent domain must be read narrowly, suggest that this limited delegation does not carry with it the power to set aside state rules about how to value that property. Third, this Court's early twentieth-century jurisprudence would have told Congress to expect courts to use substantive state-law principles when they interpreted § 717f(h). And, finally, even beyond what

Congress would have known, those cases provide the correct way to read the statute, which is to ask whether the text preempts state law that would otherwise control (which it does not).

1. The text grants only a limited delegation.

First, the plain text. There (at least initially) everyone agrees: Nothing in the statutory text says anything about the proper measure of compensation.

In Respondent's view, that silence about how much compensation is owed means the statute "does not . . . provide that compensation must be paid for taken property *at all*." BIO 24. Instead, landowners whose property is taken are entitled to payment only because the Fifth Amendment itself requires it; otherwise, they would get nothing. *Ibid.*; accord U.S. Br. 13 ("[T]he landowner's right to such compensation stems from the Fifth Amendment itself.").

This misunderstands the text. In part, Respondent's error flows from its insistence on reading § 717f(h) as a delegation of the eminent-domain power itself. It is not. Instead, it authorizes only the "exercise of the right of eminent domain in" either federal or state court. 15 U.S.C. § 717f(h).

That delegates only one aspect of the eminent-domain power. The United States, of course, can take property in any number of ways. It can seize private property directly, leaving property owners to sue for the compensation required by the Constitution. See *PennEast*, 594 U.S. at 487–88 (noting that the eminent-domain power permits exactly that). It can invoke the Declaration of Taking Act, under which a condemnor takes immediate title to property while leaving litigation about the exact compensation owed for a later day. 40 U.S.C. § 3114.

But the Natural Gas Act authorizes none of that. Instead, it provides only one avenue through which private pipeline companies can exercise eminent domain: by doing so "in the district court of the United States . . . or in the State courts." 15 U.S.C. § 717f(h). In other words, § 717f(h) is limited to a delegation of the power to take property *through a condemnation lawsuit*—to file what is sometimes called a "straight" condemnation. *Kirby Forest Indus., Inc.* v. *United States*, 467 U.S. 1, 3 (1984). In a straight condemnation, a condemning plaintiff "asks the court to determine the value of the land and to authorize the condemnation thereof upon the payment of the value thus determined." 6 *Nichols on Eminent Domain* § 24.05[1]. In other words, a straight condemnation is not itself the taking of property: The plaintiff in a straight condemnation asks a court to adjudicate the *value* of a piece of property, and "[t]he practical effect of final judgment on the issue of just compensation is to give the [condemnor] an option to buy the property at the adjudicated price." *Kirby Forest*, 467 U.S. at 4. If a condemnor wants to buy the property at the court's price, it tenders payment; if not, it can abandon the condemnation. *Ibid.*

The structure of a straight condemnation illustrates the problem with Respondent's reading of the text. It makes no sense to say that the statute does not authorize compensation when the only thing it authorizes is the filing of a lawsuit whose sole point is determining compensation so that the condemnor can decide whether it is willing to pay.

In other words, property owners' rights to compensation under § 717f(h) do not flow only from the Fifth Amendment. It is not as if Congress authorized private companies to seize the property they needed, leaving courts to incorporate Fifth Amendment just compensation as a way to save the statute from unconstitutionality. Instead, property owners' rights to compensation under § 717f(h) flow from the fact that the statute authorizes the filing of a lawsuit whose purpose is to adjudicate how much they must be paid for their land. It just says nothing about the source of law a court should look to in making that judgment.

And that silence is not automatically filled by the Fifth Amendment. The lower court held that it must be because the Fifth Amendment provides the rule of decision when the United States takes property in its own name, and the same standards must apply to a private delegee. But that isn't so. Different legal principles control when the United States takes property in its own name. When the sovereign takes property itself, through whatever mechanism, the "law will imply a promise to make the [compensation] required" by the Fifth Amendment. *United States* v. *Great Falls Mfg. Co.*, 112 U.S. 645, 656 (1884).

That promise is necessarily bounded on both sides: On the one hand, it cannot be less than the constitutional minimum of the Fifth Amendment. *Ibid.* On the other, it cannot be more than that, since the United States, "in the absence of its consent, is immune from suit." *Library of Congress* v. *Shaw*, 478 U.S. 310, 315 (1986). This is why, for example, prejudgment interest (which this Court has held is required by the Takings Clause) is recoverable in takings cases but requires express statutory authorization in all other contexts. *Id.* at 317 & n.5. Congressional silence about compensation when it authorizes condemnations by the sovereign itself, then, would necessarily mean that only constitutionally mandatory just compensation could be awarded.

But there is no reason to assume the same thing is true in a private condemnation suit. Indeed, there are strong background reasons to assume otherwise. For one, sovereign immunity is off the table—a private condemnor is neither sovereign nor immune. And for another, private delegees under § 717f(h) aren't creating an implicit contract to pay for what they've taken. They are instead creating an option contract for what they *might* take by asking a court to adjudicate the fair value of the land.

Simply put, there is nothing on the face of the statute that requires the conclusion that courts hearing private condemnations under § 717f(h) must necessarily apply the same valuation rules that would apply in public condemnations. Read in a vacuum, § 717f(h) does not command courts to follow either federal or state compensation law. But courts don't read statutes in a vacuum: They read them in light of the common law. And common law weighs heavily in favor of state law.

2. Congress would have expected courts to read the text in light of the common law, which favors state-law compensation rules.

"Congress . . . legislate[s] against a background of common-law adjudicatory principles," which it expects "will apply except when a statutory purpose to the contrary is evident." *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino*, 501 U.S. 104, 108 (1991) (quotation marks omitted). And the background legal principles of which Congress would have been aware in 1947 point consistently to state law as the source of law for property valuation.

Chief among those principles is that state law *usually* controls questions about property. That is true today, as this Court recognizes that real-property law "lies at the core of traditional state authority." *Sackett* v. *EPA*, 598 U.S. 651, 679 (2023). And it was equally true in 1947. Then, as now, "[t]he great body of law in this country which controls . . . transfer of property[] and defines the rights of its owners . . . [was] found in the statutes and decisions of the state[s]." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 155 (1944). And those laws differed meaningfully from state to state because "[c]oncepts of real property [were] deeply rooted in state traditions, customs, habits, and laws." *Reconstruction Fin. Corp.* v. *Beaver County*, 328 U.S. 204, 210 (1946).

Since Congress would have known that state law generally defined "the transfer of property . . . [and] the rights of its owners," *Davies*, 321 U.S. at 155, Congress would have expected that same law to govern the transfer of property it authorized in

§ 717f(h). And rightly so. The variations in state real-property law *matter* in the eminent-domain context. The specific issue in this case is about North Dakota's rule that property owners cannot be made to bear the cost of their own condemnation, but the question presented sweeps far broader than that.

Just take the dispute that caused the underlying litigation here. Below, the pipeline company contended that the only evidence relevant to the value of the land it was taking was a before-and-after comparison of the fair market value of land *with* a pipeline easement versus land *without* a pipeline easement. *WBI Energy Transmission, Inc.* v. *189.9 rods, more or less*, No. 1:18-cv-078, 2021 WL 1234585, at *2–3 (D.N.D. Apr. 1, 2021). The property owners disagreed, arguing that they must be allowed to introduce market evidence of the prices paid for similar easements in real-world arm's-length transactions. *Id.* at *4. As the district court noted, there is federal authority pointing in both directions on that question, but the law in North Dakota (a state with a robust tradition of oil pipelines built through market transactions rather than eminent domain) does not categorically exclude this kind of market evidence. *Id.* at *4, *8. Is North Dakota's choice constitutionally required in all jurisdictions? This Court's jurisprudence doesn't clearly say. But nothing in the text of § 717f(h) tells us that courts must disregard North Dakota's hard-won local wisdom on the question.

Other differences in states' experience and treatment of real property abound. In some (but not most) states, an ongoing business that is located on a piece of land is a separately compensable piece of property. *Pinewood Manor, Inc.* v. *Vt. Agency of Transp.*, 668 A.2d 653, 657 (Vt. 1995); see also Va. Const. art. I, § 11 (requiring compensation for lost profits). Other states hold that rental losses caused by a taking are compensable property. *Luber* v. *Milwaukee County*, 177 N.W.2d 380, 386 (Wis. 1970). And "each state has its own rules regarding setoff damages[,]" which establish how to account for takings that create benefits for an owner's remaining land. 3 *Nichols on Eminent Domain* § 8A.03[1]. Each of these reflects a state's considered judgment about the wisest treatment of land that lies within its borders. Some state rules go beyond the federal constitutional minimum; others address questions that this Court has yet to conclusively settle as a constitutional matter. But Respondent's view of the statute is that all of them must be ignored in favor of following (or generating) a replacement federal rule that ignores longstanding state property law. The nation's legal traditions suggest otherwise.

But even setting aside states' traditional role in defining property rights, Congress also would have known that private delegations of eminent domain are—historically and almost universally—disfavored and read more narrowly than legislative delegations to public officials. When a statute uses "broad language . . . to authorize officials to exercise the sovereign's power of eminent domain on behalf of the sovereign itself," such an "authorization . . . carries with it the sovereign's full powers except such as are excluded expressly or by necessary implication." *United States* v. *Carmack*, 329 U.S. 230, 243 n.13 (1946). But things are different when it comes to "statutes which grant to others, such as public utilities, a right to exercise the power of eminent domain on behalf of themselves." *Ibid.* "These are, in their very nature, grants of limited powers" and thus "do not include sovereign powers greater than those expressed or necessarily implied[.]" *Ibid.* The common-law rule articulated in *Carmack* was widely acknowledged—indeed, "[a]lmost all states have at least paid lip service" to the venerable rule. Dana Berliner, *Strict Construction in Eminent Domain Statutes*, 34 No. 5 Prac. Real Est. Law. 25 (2018) (collecting cases).

This rule makes private takings a kind of mirror-image of sovereign takings. When the sovereign takes property, courts look for an express command requiring the government to follow any rules beyond the minimum required by the Constitution. *Shaw*, 478 U.S. at 317 & n.5. But when a private delegee takes property, common-law principles counsel courts to look for an express command allowing the condemnor to *set aside* rights that the property owner would otherwise enjoy. See *Carmack*, 329 U.S. at 243 n.13. They will not find one here. Instead, the only "power[] . . . expressly or necessarily implied" is the power to file straight-condemnation lawsuits, not the power to ignore substantive rights property owners would otherwise enjoy in those lawsuits. *Ibid.*

The opinion below ignores all of these principles to read § 717f(h) as automatically delegating the federal government's power to disregard state law—as meaning that a private delegee "step[s] into the federal government's shoes" for purposes of eminent domain. But that is not how delegations work in general: An agent is not automatically vested with all the powers of a principal. Indeed, the United States gives private individuals the authority to act in its interests or even on its behalf all the time, but this Court does not assume that those private actors take with them the full scope of the sovereign's powers and immunities.

Consider state-law taxation. The United States is, of course, immune from state tax laws because "the power to tax involves the power to destroy[.]" *McCulloch* v. *Maryland*, 4 Wheat. 316, 431 (1819). But its agents only share that immunity sometimes. Generally speaking, a federal contractor is immune from state taxation only when it "stand[s] in the government's shoes." *United States* v. *New Mexico*, 455 U.S. 720, 736 (1982) (citation omitted). But unlike the court below, Pet. App. 4a, this Court operates from the presumption that the delegee ordinarily stays in its own shoes, not the government's. Instead, to stand in the government's shoes requires the private party to be "virtually an arm of the Government" or "so incorporated into the government structure as to [have] become instrumentalities of the United States[.]" *New Mexico*, 455 U.S. at 736–37 (quotation marks and ellipsis omitted).

That is not an easy test. The contractors in *New Mexico* flunked it because they were "privately owned corporations" that ran their own "day-to-day operations" and in which "the Government [did not] have any ownership interest." *Id.* at 740. They flunked, too, because "[t]he congruence of professional interests between the contractors and the Federal Government [was] not complete" and because the contractors' only "relationships with the Government [had] been created for limited and carefully defined purposes." *Id.*

at 740–41. If that is the test for what it means to stand in the government's "shoes," then private pipeline companies fail here for exactly the same reasons.

But that is, of course, just the baseline constitutional rule. This Court recognizes that the United States *can* delegate its supremacy over state tax law if it wants, but only if Congress "take[s] responsibility for the decision" to set aside state law by "expressly providing" for it. *Id.* at 737. Congressional silence is insufficient, as is merely authorizing someone to act in the United States's interests or even on its behalf. In short, this Court imposes what amounts to a clear-statement rule under which traditional state law controls unless set aside—either expressly or by a governmental relationship so inextricably intertwined that the preemption is obvious. *Ibid.*

That should be at least as true when it comes to eminent domain, where private delegations are disfavored and read more narrowly than other delegations of authority. Neither Respondent nor the government has mustered any authority in favor of taking the broader reading of federal preemption here rather than the traditional one. The closest they come is Respondent's repeated invocation of a law-review article's assertion that a private condemnor "essentially put[s] the private actor . . . in the place of the government with regard to the law of eminent domain." BIO 5 (quoting Abraham Bell, *Private Takings*, 76 U. Chi. L. Rev. 517, 545 (2009)); see also *id.* at 22 (making the same assertion without citation). But the statutory text falls far short of delegating Congress's full eminent-domain authority, and this Court should respect that congressional choice.

3. Congress would have expected courts to read the text in light of this Court's practice of using state substantive rules when reading federal statutes.

The Congress of 1947 would also have been aware of this Court's longstanding practice of using substantive state laws in litigation under federal statutes. Of course, this Court had never (and still has not) decided what law should govern compensation when a private delegee condemns land, but there was nothing in this Court's precedents to suggest that the delegee would not be bound by state law. After all, at the time § 717f(h) was adopted, state law had until recently been the *only* source of land valuation in state territory. Until 1875, it was unsettled whether federal eminent-domain power existed in the States (as distinct from areas like the District of Columbia where the federal government acted as sole sovereign). William Baude, *Rethinking the Federal Eminent Domain Power*, 122 Yale L.J. 1738 (2013).

And even once the federal government began condemning land in its own name, this Court did not uniformly impose a federal rule of compensation. In *Brown* v. *United States*, for example, this Court affirmed a district-court decision applying an Idaho rule requiring a condemnor to pay interest dating to the issuance of the condemnation summons rather than dating to the taking itself. 263 U.S. 78, 85–87 (1923). This Court recognized that the Conformity Act (which, like § 717f(h), directed federal courts to conform to the "practice and procedure" of the state in which they sat) did not control the interest question because it was substantive rather than procedural.

Id. at 86–87. But it nonetheless ratified following Idaho's substantive law because "the disposition of federal courts should be to adopt the local rule, if it is a fair one[.]" *Id.* at 87. Put differently, "[i]t is better, when possible, to act in harmony rather than in conflict with the established policy of a state." *Id.* at 88 (quoting *United States* v. *Sargent*, 162 F. 81, 89 (8th Cir. 1908)).[2]

Moving beyond the specific context of eminent domain, Congress would also have known that this Court routinely interpreted federal causes of action by applying substantive terms from state law—and had done so for over a century. Starting in 1830, this Court consistently held that a federal cause of action without its own statute of limitations would carry with it the statute of limitations of the State in which it was filed. See *McCluny* v. *Silliman*, 3 Pet. 270, 276, 278 (1830) (applying state limitations period even though "plaintiff's rights accrued to him under a law of congress"); accord *Campbell* v. *City of Haverhill*, 155 U.S. 610, 618 (1895) (same for patent-infringement suits); *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390, 397 (1906) (same for private lawsuits under the Sherman Act); *O'Sullivan* v.

[2] To be sure, this Court's early-twentieth-century jurisprudence did not uniformly *require* lower courts to adopt substantive state-law rules. See *United States* v. *Miller*, 317 U.S. 369, 379–80 (1943) (declining respondent's request to follow state law where lower court had not). But regardless of whether the principles embraced in *Brown* remain good law today, they provide ample reason to doubt that a reasonable reader in 1947 would view congressional silence on just compensation as suggesting that uniform federal valuation rules would control.

Felix, 233 U.S. 318, 322 (1914) (same for cases under the Civil Rights Act).

And the reliance on state law went far beyond statutes of limitation. Perhaps most relevant here is that the 1947 Congress would have known that this Court used state law when it came to real property as well. In *Reconstruction Finance Corp.* v. *Beaver County*, this Court construed a statute providing that the Reconstruction Finance Corporation was immune from state and local taxes except for its "real property," which was taxable. 328 U.S. 204, 209 (1946). Rather than construct a uniform federal definition of real property, this Court held that state-law definitions controlled: It thought "the Congressional purpose [could] best be accomplished by application of settled state rules as to what constitutes 'real property'" with two caveats—"that the state rules [did] not effect a discrimination against the government" and that they did not "patently run counter to the terms of the Act." *Id.* at 210. This was because "[c]oncepts of real property are deeply rooted in state traditions, customs, habits, and laws." *Ibid.* There is no reason to assume that Congress meant to reject those same "deeply rooted" "[c]oncepts" when it adopted § 717f(h) just a year later.

In other words, Respondent's position is that the only way to read § 717f(h) is to assume that it meant to sweep aside (1) the primary source of law about land valuation that (2) had, within living memory, been the only source of law about land valuation in the States by (3) authorizing condemnation lawsuits that, in many states, were already authorized while (4) saying nothing at all about compensation. But surely there would have been an easier way to convey that intended change—by saying something about it—and Congress conspicuously failed to do so.

4. This Court's historical practice of using state substantive law when interpreting federal statutes is a guide to answering the question presented.

Finally, this Court's longstanding practice of borrowing state substantive law is not just useful as context Congress would have known. It also provides the correct reading of the statutory text as a matter of law because it demonstrates that the question is not whether § 717f(h) incorporates state land-valuation rules. The question is whether the statute preempts them.

The best place to start is Justice Scalia's explanation of the long tradition of "borrowing state statutes" in his concurrence in *Agency Holding Corp.* v. *Malley-Duff & Associates, Inc.*, 483 U.S. 143, 158 (1987) (Scalia, J., concurring in the judgment). As Justice Scalia put it, calling the practice "borrowing" is itself something of a misnomer. This Court's early cases borrowed nothing. Instead, this Court recognized that "state statutes of limitations whose terms appear to cover federal statutory causes of action apply as a matter of state law to such claims[.]" *Id.* at 161. Laws that were written broadly enough to cover federal causes of action presumptively covered them, whether the state legislature had that object in mind or not. *Ibid.*

This meant the question was not whether Congress intended to *borrow* the state statute of limitations but whether Congress intended to *preempt* the state statute of limitations. *Id.* at 162. And, in the normal course of things, "congressional silence on the limitations issue is ordinarily insufficient to pre-empt state statutes" unless the statute "discriminates against federal rights or is too short to permit the federal right to be vindicated." *Ibid.* As Justice Scalia explained, the Rules of Decision Act simply ratified this background principle that, unless preempted, state law controls whatever it controls, including in the context of federal causes of action. *Ibid.* Of course, this Court's statute-of-limitations jurisprudence eventually drifted from the view that state law presumptively controlled, shifting to a rule under which courts should borrow the "appropriate" state statute of limitations, but Justice Scalia maintained that the earlier view of state law as the controlling default was the "right reason" for the rule. *Id.* at 164–65.

Here, where this Court has never articulated a rationale for adopting or displacing state land-valuation rules in private condemnations, there is no barrier to simply following Justice Scalia's rule for Justice Scalia's reasons. And that rule maps perfectly onto the question presented here. As in the statute-of-limitations context, state law purports to regulate broadly: North Dakota eminent-domain law does not distinguish between federal and state causes of action but speaks about the eminent-domain power more broadly. A "condemnor" under North Dakota law is "a person empowered to take property under the power of eminent domain." N.D. Cent. Code § 32-15-01; accord *id.* § 32-15-02 (specifying that eminent domain can be used for "[a]ll public uses authorized by the government of the United States"). Under the traditional view articulated by Justice Scalia, that means state law governs federal and state condemnations alike unless it is preempted. Since the federal statute is silent about compensation, state-law compensation rules would presumptively govern. And nothing in the statute suggests that it implicitly preempts those ordinary rules. That means under this Court's historical approach as explicated by Justice Scalia's *Agency Holding Corp.* concurrence, a court should be expected to follow state valuation rules.

Notice, though, that this historical approach does not require the application of state law in every case, just as it wouldn't in the statute-of-limitations context. This Court borrows state law for statutes of limitations only when private parties bring suit; the United States, as sovereign, is immune from them. *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U.S. 120, 125 (1886) ("It is settled beyond doubt or controversy . . . that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations unless congress has clearly manifested its intention that they should be so bound."). In other words, in the statute-of-limitations context, this Court treats the assumption that private litigants necessarily stand in the shoes of the United States as not just false but *obviously* false. See *United States* v. *Beebe*, 127 U.S. 338, 344–45 (1888).

It is false here, too. As discussed above, the fact that the United States *as sovereign* is not automatically bound by state valuation rules does not mean a private party can necessarily ignore those same rules.

And the Court applies state statutes of limitations only when those statutes do not frustrate the federal objectives—that is, it applies them unless a federal statute should be read to implicitly preempt the state rule. *Agency Holding Corp.*, 483 U.S. at 162 (Scalia, J., concurring in the judgment). Again, the same would be true here: This Court can hold that § 717f(h) does not preempt ordinary state-law rules about land valuation without accepting state-law rules that discriminate against federal projects or otherwise render them impossible.

B. The statute's structure points to state-law compensation rules.

Not only does the statute fail to textually displace state law, but its structure strongly suggests that Congress had no intention of doing so. At least two different structural clues point toward state law. For starters, many condemnations authorized by § 717f(h) could not be filed in federal court: Unless a condemnor was taking an easement worth more than $3,000,[3] the action could be filed only in state court. If Congress expected those state courts to look to a source of law other than the one they would ordinarily look to in a property case, one could expect it to have left some hint to that effect in the text. But there isn't one.

Instead, the only instruction about state law in the statute orders district courts to follow it. The statute instructs district courts that "[t]he practice and

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[3] Over $45,000 in today's money. See CPI Inflation Calculator: U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm.

procedure" in any condemnation authorized by the statute "shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated[.]" 15 U.S.C. § 717f(h). To be sure, that language no longer controls the procedures in federal court—Rule 71.1 does that today—but it does suggest that Congress had no desire to sweep aside state rules. Instead, the statute goes out of its way to ensure that, even though federal courts will be available for (some) condemnations under the Act, local rules will continue to govern local property. As, again, they usually do. *Supra* 17.

Congress also would have expected state law to govern the statutory language it chose because state law *already* governed that very language. Recall that § 717f(h) deliberately adopts the eminent-domain language from the Federal Power Act. See *supra* 2 (citing 16 U.S.C. § 814). And, while this Court had never (and still has not) decided a case about compensation in private condemnations under § 814, lower courts had decided plenty by 1947. Not one adopted the interpretation urged by Respondent here. To be sure, sometimes, when choice of law was not dispositive, courts hearing condemnations under § 814 cited both federal and state cases. See, *e.g.*, *Grand River Dam Auth.* v. *Thompson*, 118 F.2d 242, 244–45 (10th Cir. 1941); *Union Elec. Light & Power Co.* v. *Snyder Est. Co.*, 65 F.2d 297, 304 (8th Cir. 1933). But when forced to choose a source, the lower courts uniformly picked state law. The Eighth Circuit did it repeatedly. See, *e.g.*, *Cent. Neb. Pub. Power & Irrigation Dist.* v. *Fairchild*, 126 F.2d 302, 304 (8th Cir. 1942) ("Nebraska law is controlling[.]"); *Feltz* v. *Cent. Neb. Pub. Power &*

Irrigation Dist., 124 F.2d 578, 583 (8th Cir. 1942) ("Nebraska law is applicable[.]"). A reasonable reader in 1947 would therefore have expected the same language to meet the same fate.

C. The statute's history and purpose point to state-law compensation rules.

Congress's decision not to preempt state-law valuation rules makes sense because the history and purpose of § 717f(h) have nothing to do with changing the valuation rules. Instead—and, again, all parties agree about this—Congress's goal in adopting § 717f(h) was to make sure natural-gas suppliers had the right to condemn easements necessary to build their facilities. As this Court has discussed, the Natural Gas Act initially "did not identify a mechanism for certificate holders to secure property rights necessary to build pipelines." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 489 (2021). Pipeline "companies were instead left to rely on state eminent domain procedures, which were frequently made unavailable to them." *Ibid.* "Congress acted to remedy this defect." *Ibid.*

Petitioners' interpretation of the statute would read it to do that—remedy the defect. Petitioners read the statute to extend the right to file condemnation actions across all 50 states in order to make what was working in many places work everywhere. But Respondent's reading sweeps far broader. Respondent says that Congress fixed the problem at which it aimed, yes, but it also simultaneously and for no apparent reason effected a massive wealth transfer from private landowners to private pipeline companies. Landowners in states where pipeline companies already had the right to condemn land for interstate projects, Respondent says, woke up poorer the day after § 717f(h) passed. And Congress did this to them without ever even mentioning it in public—or, indeed, in the statutory text. In short, Respondent suggests that Congress, out of a desire to fix a problem in Missouri (where interstate natural-gas companies lacked an eminent-domain cause of action), also decided to take some money away from farmers and ranchers in places like Iowa (where the companies already had a cause of action). Surely not.

To be clear, none of this discussion of legislative purpose is to suggest that Congress's secret, subjective intentions govern the interpretation here. Instead, it matters because this Court "define[s] the scope of delegated authority" by "look[ing] to the text in 'context' and in light of the statutory 'purpose.'" *Gundy* v. *United States*, 588 U.S. 128, 141 (2019) (plurality opinion); accord *Biden* v. *Nebraska*, 600 U.S. 477, 511–13 (2023) (Barrett, J., concurring) (collecting cases).

As Justice Barrett illustrated in *Biden*, a parent's request to a babysitter to "Make sure the kids have fun" might literally encompass taking the kids on a two-day road trip to an amusement park, but no reasonable babysitter would understand it that way. *Id.* at 513–14. At the same time, Justice Barrett's opinion cautions, one can imagine "obvious contextual evidence that the babysitter's jaunt was permissible" like the parents' leaving tickets to the park on the counter. *Id.* at 514.

The same logic applies to the delegation here. Take the babysitter in Justice Barrett's hypothetical:

Perhaps a family living in a condominium retains a sitter to take care of the children after school on weekdays, making sure building security lets her into the unit—only to later discover that building security won't let her up when they need her on weekends. The family issues a request to the building staff: Their sitter is to have access to their unit seven days a week. Does this directive mean she now has the run of the place—free to raid the liquor cabinet or throw a party? Or is the more reasonable reading that this is an extension of the access she already had—limited to the scope of her babysitting duties? Petitioners (and common sense) say the second thing: The delegation is meant to ensure that something that was working well some of the time works the same way all the time. Respondent says the first—that a delegation should be read broadly regardless of what came before. But this Court's cases have historically sided with common sense, and the Court should do the same here.

D. This reading of the statute matches the behavior of contemporaneous courts and of Congress.

Finally, this explanation of the law also matches up with how courts and Congress have behaved since § 717f(h) was adopted.

Start with the courts. As explained above, § 717f(h) was aimed at remedying a specific defect: In some states, natural-gas companies were not allowed to use eminent domain to build federally authorized pipelines. But that wasn't a problem in every state; many states' eminent-domain laws allowed condemnations in service of purely interstate pipelines.[4] And so, a judge in those states might reasonably look at the new law and decide it didn't change anything about the laws governing those condemnations.

Which is exactly what seems to have happened. In 1961, the New Mexico Supreme Court considered "the proper amount of compensation to be awarded in condemnation proceedings" under § 717f(h), and it relied exclusively on state-law cases. *Transwestern Pipe Line Co.* v. *Yandell*, 367 P.2d 938, 942 (N.M. 1961). Louisiana courts did the same thing. See, *e.g.*, *Transcon. Gas Pipe Line Corp.* v. *Tieman*, 112 So. 2d 724, 725–26 (La. Ct. App. 1959) (relying exclusively on state-law authority to determine compensation in condemnation under § 717f(h)). So did Kentucky courts. See *Gulf Interstate Gas Co.* v. *Garvin*, 303 S.W.2d 260, 261–62 (Ky. 1957). In other words, contemporaneous courts looked at § 717f(h) and saw no reason to think it displaced ordinary state land-valuation rules. If Respondent's broader reading were the natural one, surely someone could have been expected to notice it at the time. As far as the evidence reveals, nobody did—for years.

Instead, contemporaneous jurists understood § 717f(h) to do what it textually does—ensure the existence of a cause of action. This Court should not lightly read the text to go beyond that to upend common law or the primacy of state law in defining property, particularly when nothing would have hinted to

[4] Many states still do today. See, *e.g.*, *Puntenney* v. *Iowa Utils. Bd.*, 928 N.W.2d 829, 849–50 (Iowa 2019).

the law's drafters or implementers that such a change was warranted. Cf. Samuel Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 974 (2021) ("Although the optimal amount of surprise for the enacting legislature and the reasonable contemporaneous reader is not zero, it is probably not massive.").

And the (limited) congressional response to judicial decisionmaking similarly points in favor of retaining the majority rule (and state law along with it). As discussed above, lower courts have interpreted the Federal Power Act's analogous language as incorporating state just-compensation rules since before § 717f(h) was ever adopted, and the appellate courts for decades had consistently held that this language incorporated state law. *Ga. Power Co.* v. *Sanders*, 617 F.2d 1112 (5th Cir. 1980) (en banc). Congress responded to the lower-court consensus by amending that Act—but only in part. In 2005, for example, Congress amended the Act to define the just compensation due when rights-of-way are condemned for interstate electric facilities. See Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (codified at 16 U.S.C. § 824p(f)) ("Just compensation shall be an amount equal to the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority."). It has never made similar amendments to the Federal Power Act's general eminent-domain language or to the analogous language in the Natural Gas Act. And, as this Court has recognized, "Congress' failure to disturb a consistent judicial interpretation of a statute may provide some indication that 'Congress at least acquiesces in, and apparently affirms, that [interpretation].'" *Monessen Sw. Ry. Co.* v. *Morgan*, 486 U.S. 330, 338 (1988) (citation omitted).

The government has insisted on a contrary inference—suggesting that, in § 824p(f), "Congress understandably enacted an express definition of 'just compensation' that prevents repetition of the Fifth Circuit's interpretive error." U.S. Br. 17. But surely if Congress thought lower courts had been getting the Federal Power Act wrong for decades, it would have repudiated that interpretation by amending the part of the Federal Power Act the courts were getting wrong, not by expressly departing from the prevailing interpretation only in a different part of the statute. To the extent § 824p(f) indicates anything, it indicates that Congress understood the prevailing lower-court interpretation of the language in § 717f(h) and avoided that interpretation *when it wanted to*—something it has declined to do here.

To be sure, Congress has adopted other laws (applicable to both the United States itself and private delegees) that authorize compensation beyond the minimum required by the Fifth Amendment. See, *e.g.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601 *et seq*. But § 824p(f), which applies only to private delegees and only under the Federal Power Act, is the most directly analogous legislative change Congress has made since lower courts began interpreting congressional silence to require them to turn to state law in this context. It is, in short, the best evidence of Congress's response to the lower courts' interpretations of this language in this context—and it is evidence that cuts squarely in Petitioners' favor.

So does all the other evidence. Nothing in the text, legal context, structure, history, or purpose of § 717f(h) supports the idea that it's meant to sweep aside state-law land-valuation rules. There is no evidence that anyone at the time—including courts construing the statute in the years immediately after its passage—understood it to sweep aside state-law land valuation rules. And there is substantial background evidence in the form of common-law principles and decisions from this Court to suggest that any reasonable reader in 1947 would have expected the law to carry with it compensation principles drawn from the states' laws governing real property. The decision below should therefore be reversed.

II. The *Kimbell Foods* analysis would lead to the same place.

As explained above, the ordinary tools of statutory interpretation are enough to conclude that the statute's silence about just compensation requires courts to apply state-law valuation rules. To the extent the Court disagrees with that analysis, though, that still leaves statutory silence that must be filled either with federal or state law. Here, too, this Court's precedents guide the way—and here, too, this Court's precedents point to state law.

The canonical case guiding that choice is *United States* v. *Kimbell Foods, Inc.*, where this Court asked whether (in the absence of any specific congressional instruction) the priority of certain federal contractual liens for SBA or Farmers Home Administration loans should be governed by state law or by existing federal common law. 440 U.S. 715, 718 (1979).

The mere fact that the loans were authorized by federal statute was not enough to answer that question. The Court cautioned that "[c]ontroversies directly affecting the operation of federal programs . . . do not inevitably require resort to uniform federal rules." *Id.* at 727–28. Instead, the question is whether the program at issue is one that "by [its] nature [is] and must be uniform in character throughout the Nation." *Id.* at 728 (citation omitted). If it is, it requires "controlling federal rules"; if not, not. *Ibid.* And this Court "decline[d] to override intricate state laws of general applicability" for three reasons—each of which applies equally here. *Id.* at 729.

First, the Court asked whether relying on state law would "hinder administration" of the federal programs. *Ibid.* There, it wouldn't. After all, the process of awarding loans to "responsible debtors necessarily required individualized selection procedures," which meant the agencies already treated people as individuals, not monolithically. *Id.* at 732. In practice, the agencies' employees "negotiate[d] personally with borrowers, investigate[d] property offered as collateral for encumbrances, and obtain[ed] local legal advice on the adequacy of proposed security arrangements." *Id.* at 732–33. And, in practice, the agencies followed state substantive law in a wide variety of other ways. *Id.* at 730–31.

So too here. As a practical matter, pipeline projects are not nationally uniform: They require individual engagement with state and local government as well as with individual property owners. FERC's own guidance materials for the industry repeatedly warn companies of the importance of engaging with groups like “state[] and local elected representatives; permitting agency officials; and other community leaders.” FERC, *Suggested Best Practices for Industry Outreach Programs to Stakeholders* 12, https://www.ferc.gov/sites/default/files/2020-04/stakeholder-brochure.pdf.

That is true legally as well. A certificate from FERC is necessary for the construction of a natural-gas pipeline or related facility, but it is not sufficient. A would-be pipeline company must satisfy other state-law environmental requirements. See *Del. Riverkeeper Network* v. *Sec’y Pa. Dept. of Env’t Prot.*, 833 F.3d 360, 368 (3d Cir. 2016) (noting that states retain regulatory authority over interstate natural-gas pipelines under three different federal statutes). None of those is subject to a nationally uniform rule.

And it is all the more true as to individual property owners over whose land a pipeline will be built. The statute directly commands pipeline companies to negotiate with these owners individually: The right to file a condemnation action kicks in only when a regulated company is “unable to agree with the owner of property to the compensation to be paid” for a necessary easement. 15 U.S.C. § 717f(h).

If those negotiations succeed, they result in contracts—which are governed by state law. *Swango Homes, Inc.* v. *Columbia Gas Transmission Corp.*, 806 F. Supp. 180, 184 (S.D. Ohio 1992) (“The parties agree that the law of Ohio furnishes the rule of law with respect to the interpretation of the easement.”). When the companies acquire easements (either through those negotiations or by filing an eminent-domain action), those easements must be recorded according to the law of the state where the property sits. See *Close Armstrong, LLC* v. *Trunkline Gas Co.*, 667 F. Supp. 3d 908, 918 (N.D. Ind. 2023) (noting recordation of pipeline deed). And if a dispute arises over the scope of the easement? Again, that's a state-law question. See, *e.g.*, *Columbia Gas Transmission, LLC* v. *Haas*, 341 F. Supp. 3d 607, 614 (D. Md. 2018) (applying Maryland law to determine scope and potential abandonment of natural-gas-pipeline easement). In short, state law governs almost every aspect of a pipeline company's easement, even if that easement is acquired through eminent domain. It can hardly hinder the administration of the program for the value of the easement in the condemnation case to be governed by the same law that governs everything else about it.

Second, this Court in *Kimbell Foods* asked whether applying state law would "conflict with program objectives." 440 U.S. at 733. The government said yes: After all, there was no practical difference between a dollar collected in loan repayment and a dollar collected through taxation, which meant that federal loan liens should receive the same priority that this Court had already held must be accorded to federal tax liens. *Id.* at 734.

But this Court said no. "The overriding purpose of the tax lien statute obviously [was] to ensure prompt revenue collection[,]" which necessarily required a revenue-maximizing uniform federal rule. *Id.* at 734–35. But the purpose of the lending programs was to "assist farmers and businesses that cannot obtain funds from private lenders on reasonable terms." *Id.* at 735. Reading the statute to preempt state law would foist a large portion of the burden of that program onto a discrete group—the private creditors who would lose out when federal liens were prioritized over theirs—rather than the "taxpayers in general" who would ordinarily be expected to foot the bill. *Ibid.* And, importantly, the Court refused to assume that state law would frustrate congressional objectives: It insisted that state law must apply unless the proponent of federal law could make "a showing that application of state laws would impair federal operations." *Id.* at 738.

Again, so too here. Reading § 717f(h) to eliminate state-law protections for real property would burden a discrete group: landowners in the pipeline's pathway. And, just as in *Kimbell Foods*, nothing in the statute suggests that Congress meant to burden these private landowners, much less to burden them so that it could enrich other private parties. Instead, the statutory scheme is aimed at ensuring the availability of interstate natural-gas transportation, and the rate at which that gas may be transported is governed based on longstanding criteria set by FERC itself. See generally *Gas Transmission Nw., LLC* v. *FERC*, 157 F.4th 674, 688–90 (5th Cir. 2025) (describing pipeline approval and rate-setting process). Minimizing the compensation available to affected landowners would surely enrich someone—either the companies themselves or (perhaps) their customers—but nothing in the statute suggests that this sort of one-to-one wealth transfer was the point.

Third, the Court in *Kimbell Foods* asked whether commercial interests that relied on state law "would have their expectations thwarted" by substituting federal for state law. 440 U.S. at 739. There, they would: "In structuring financial transactions, businessmen depend on state commercial law to provide the stability essential for reliable evaluation of the risks involved." *Ibid.* And applying federal law to loan-lien priority might "undermine that stability." *Ibid.* To be clear, the Court did not hold that a federal rule necessarily would upend settled interests—it did not conduct a quantitative analysis. Instead, it "hesitate[d] to create new uncertainties, in the absence of careful legislative deliberation." *Id.* at 739–40. As with the other factors, the burden was on the party that wanted to set aside settled state law, and (in the absence of evidence to carry that burden) state law carried the day.

Once again, the same is true here. Property owners rely on state law to define their property rights—and justly so, since this Court has repeatedly told them to do just that. A Vermont businessman relies on the fact that his business is a compensable piece of property distinct from the land it sits on just as a North Dakota rancher relies on the fact that he cannot be made to pay the costs of his condemnation out of the value of his ranchland. Applying state law promotes that reliance just as much here as it did in *Kimbell Foods*.

Understandably, then, every single court to apply the *Kimbell Foods* factors in this context before this case held that they point to state rather than federal law. *Supra* 3–4.[5]

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[5] And those decisions are in keeping with a long line of this Court's precedents that start from the presumption that

More broadly, it is worth noting that *Kimbell Foods*, in form if not in explanation, looks a lot like the preemption analysis Justice Scalia advocated in *Agency Holding Corp*. See *supra* 26–29. To be sure, Justice Scalia's rule was grounded in history while *Kimbell Foods* spoke in language that echoed policy concerns, but each approach asks similar questions. They both insist that congressional silence is insufficient on its own to set aside state law and instead ask if Congress created a program that, by its very nature, requires courts to set aside state rules that would otherwise control a question of law. Those are exactly the sort of questions that the Congress of 1947 would have expected courts to ask when deciding whether to apply state real-property law here. Again, just a year prior, this Court had held that courts construing the Reconstruction Finance Corporation Act should use state-law definitions of "real property" unless "the state rule[] . . . effect[ed] a discrimination against the government" or "patently [ran] counter to the terms of the Act." *Reconstruction Fin. Corp.* v. *Beaver County*, 328 U.S. 204, 210 (1946). However one frames

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state law should govern even in federal litigation. See, *e.g.*, *Rodriguez* v. *FDIC*, 589 U.S. 132, 137 (2020) ("[S]tate law is well equipped to handle disputes involving corporate property rights."); *O'Melveny & Myers* v. *FDIC*, 512 U.S. 79, 87–88 (1994) (noting that both "the permissibility [and] the scope of judicial displacement of state rules turns upon" a "significant conflict between some federal policy or interest and the use of state law" (citation omitted)); *Butner* v. *United States*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently because an interested party is involved in a bankruptcy proceeding.").

the question—asking whether state-law rules would *hinder the federal program* or whether state-law rules are *preempted by the statute* or whether state-law rules *run counter to the terms of the statute*—the answer is the same. Of course not. The decision below should therefore be reversed.

III. Respondent's remaining arguments fail.

None of the other arguments mustered in support of the rule adopted below displace the substantial evidence that Congress would (and should) have expected state law to provide the rules for valuing land in private condemnations under § 717f(h).

1. First, *PennEast.* The lower court—along with Respondent and the government's cert.-stage amicus brief in this case—pointed to this Court's decision in *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482 (2021) as supporting the view that § 717f(h) delegates the "*entire* federal eminent-domain power" to private pipeline companies. *E.g.*, U.S. Br. 12 (quoting Pet. App. 8a). On this view, there is no line to draw between the sovereign and a private delegee because *PennEast* means the private delegee simply "step[s] into the federal government's shoes" when it takes property. Pet. App. 4a.

But that's not what *PennEast* holds. It isn't even what *PennEast* says.

The question in *PennEast* was "whether the Federal Government can constitutionally confer on pipeline companies the authority to condemn necessary rights-of-way in which a State has an interest." 594 U.S. at 488. New Jersey's argument was that the answer was no because it retained sovereign immunity and could not be sued in eminent domain. *Ibid.* This Court held otherwise: The States surrendered their immunity from the federal eminent-domain power as part of the plan of the convention. *Id.* at 501.

That question was disputed, as the dissents in *PennEast* make clear. In the dissenting Justices' views, states could not be sued in private eminent-domain suits—either because the Eleventh Amendment stripped federal courts of jurisdiction over suits against States by diverse parties, *id.* at 509 (Gorsuch, J., dissenting), or because Congress lacks the power to abrogate state sovereign immunity via the Commerce Clause power, *id.* at 512 (Barrett, J., dissenting). As Justice Barrett's dissent argued, the Natural Gas Act is a workaday exercise of Congress's commerce power, under which (as it often does) it had authorized private parties to file lawsuits. *Ibid.* Because "the Commerce Clause does not permit Congress to strip the States of their sovereign immunity," those private suits could not be brought against states without their consent. *Id.* at 512–13. The majority disagreed—but not because it disagreed that this was an exercise of the Commerce Clause power authorizing a private suit. Instead, it held that, in the context of eminent domain, there was no sovereign immunity that needed to be stripped away in the first place. *Id.* at 501 (majority op.).

Nothing about that dispute illuminates the statutory question here. Nothing in the majority opinion disputes that § 717f(h) is an exercise of the commerce power creating a private cause of action. And nothing in any of the *PennEast* opinions addresses the many other Commerce Clause-authorized private lawsuits that adopt substantive terms of state law. *Supra* 23–25. Nothing addresses the longstanding common-law tradition of reading private delegations of eminent domain narrowly. *Supra* 19–20. Nothing addresses the long history of lower courts' reading this specific delegation as preserving state-law compensation rights. *Supra* 30–31, 34–35.

And they do not address any of that because none of it was at issue. No one "dispute[d] that [§ 717f(h)] empowers certificate holders to condemn private property." *PennEast*, 594 U.S. at 499. Nor could they: On its face, the statute authorizes certificate holders to file condemnation suits. And if (as the majority held) the States enjoy no immunity from eminent-domain suits by private delegees, then that authorization is plainly enough to authorize the filing of condemnation suits against a State. But a case about whether a private party can file a lawsuit does not tell us anything about what substantive law governs that lawsuit once it is filed. Nothing in *PennEast* pretends to do so.

To be sure, *PennEast* speaks of § 717f(h)'s delegation of the eminent-domain power as "categorical." *Id.* at 498. But, read in context, that word refers to the delegation of the power *to sue*—not necessarily the full power of the sovereign. *Ibid.* That is because the question in *PennEast* was only about the power to sue, and *PennEast* answered the question presented in that case, not the question presented in this one.

2. The remaining evidence mustered by Respondent in support of its reading of the statute at the certiorari stage similarly falls short.

Both the government and Respondent have invoked the American Rule, under which parties generally must bear their own litigation costs. See BIO 14–17; U.S. Br. 15. But that rule tells us nothing about the outcome of this case because the question presented is not about fee-shifting. It is about just compensation. Some states define condemned land's value as including the costs of litigating a condemnation action because that definition "make[s] certain that the landowner received the full 'just compensation' for his land, without diminution by attorney fees." *City of Bismarck* v. *Thom*, 261 N.W.2d 640, 647 (N.D. 1977) (Vogel, J., dissenting); see also *Dade County* v. *Brigham*, 47 So. 2d 602, 604–05 (Fla. 1950) ("[T]he spirit of the Constitution clearly requires that he shall not be thus compelled to part with what belongs to him without the payment, not alone of the abstract value of the property, but of all the necessary expenses incurred in fixing that value."). In other words, state courts holding that costs are part of just compensation are not adopting rules about litigation costs. They are adopting rules about land valuation—and specifically rules about whether transaction costs in acquiring land are part of that land's fair price. Some states say the transaction costs must be borne by the unwilling seller, while others insist on leaving the property owner "in as good a position pecuniarily as if his property had not been taken[.]" *Olson* v. *United States*, 292 U.S. 246, 255 (1934).[6]

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[6] To be sure, this Court has also held that the Fifth Amendment is no obstacle to saddling a property owner with the costs of his own condemnation. *United States* v. *Bodcaw Co.*, 440

Similarly, the government has urged this Court to hold that the statute's requirement that district courts conform to the "practice and procedure" of the state where they sit, by negative implication, represents a congressional command to ignore state substantive law. U.S. Br. 13–14. But longstanding principles already called for applying substantive state-law property rules, see *supra* 17–29, so there was no need to separately invoke them and thus no inference to draw from Congress's not doing something it didn't need to do. In any event, the government's proposed reading makes no sense. The quoted language applies only to actions filed in "district court," not those filed in state court. 15 U.S.C. § 717f(h). On the government's reading, then, Congress was directing federal courts—but only federal courts—to apply federal substantive law in these condemnations while leaving state courts to apply their own laws. Given that many condemnations under the statute would proceed in state court (and that some must proceed in state court), it would be odd for Congress to adopt such a two-track system of substantive law—and far odder for it to do so by negative implication.

Finally, both Respondent and the government have invoked various policy arguments in support of their broad reading of the statute, suggesting that the stingiest possible compensation (consonant with constitutional guarantees) is necessary to ensure

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U.S. 202, 203 (1979) (per curiam). But the fact that states have made a contrary decision to hold that the value of condemned land should include the transaction costs of transferring that land isn't a difference of opinion about the optimal allocation of litigation costs. It's a difference of opinion about land valuation.

industrial development or the free flow of natural gas to consumers. With respect, these premonitions of doom are mistaken—even obviously so. The rule advocated by Petitioners is the majority rule. It was (until the decision below) the unanimous rule governing the Natural Gas Act and the analogous Federal Power Act, and it had been since at least 1980. If Petitioners' rule were going to cause the sky to fall, the nation would already be knee-deep in sky. It is not. That is because Respondent's and the government's policy arguments are wrong: The states have well-developed rules about how to determine land values, and those rules—by definition—do not make the states' own infrastructure projects impossibly expensive. There is therefore no policy reason for this Court to upend the long-settled understanding of the lower courts about how to best interpret these statutes—and, with no policy reason to do so, there is no reason at all.

* * *

This case would be easy if the face of the statute commanded a result. It does not. The lower court's solution to that silence was to assume that the delegation of the United States's power to sue necessarily carries with it all the rights and duties that the United States would carry. But that assumption simply isn't true. Instead, all the presumptions run the other way. Courts presume that private delegations of eminent domain do not take away any property owners' rights except those expressly named. Courts presume that state law is the primary source of property rules. Courts presume that substantive state rules—ranging from statutes of limitations to definitions of real property—control even in the context of federal statutes. And courts presume that congressional silence is insufficient to preempt those otherwise-binding state rules. Affirming the rule below would sweep aside all these presumptions and replace them with a rule that says a federal cause of action carries federal law with it in all respects (except, apparently, for all the times it doesn't). But there is no need to adopt that rule. For decades, lower courts have successfully applied state land-valuation rules to eminent-domain lawsuits under § 717f(h)—because those lawsuits are about the value of land in that state. They are right to do so, and the lower court erred in departing from that practice.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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