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 OF OWNERS' COUNSEL OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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August 2026

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INTERESTS OF *AMICUS CURIAE*

Owners' Counsel of America (OCA) is an invitation-only national network of the most experienced eminent domain and property rights attorneys.[1] They have joined together to advance, preserve and defend the rights of private property owners, and thereby further the cause of liberty, because the right to own and use property is "the guardian of every other right," and the basis of a free society. *See* JAMES W. ELY, THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS (2d ed. 1998). As the lawyers at the front lines of takings law, OCA's members understand the importance of the issues in this case, and how the rule adopted by the Eighth Circuit, if allowed to stand, will undermine the constitutional right to "just compensation."

OCA brings unique expertise to this task. OCA is a non-profit 501(c)(6) organization sustained solely by its members. Only one member lawyer is admitted from each state. Since its founding, OCA has sought to use its members' combined knowledge and experience as a resource in the defense of private property ownership, and OCA member attorneys have been involved in landmark property law cases in nearly every jurisdiction nationwide. Additionally, OCA members and their firms have been counsel for a party or amicus in many of the property cases this Court has considered in the past forty years.[2]

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1. No counsel for any party authored this brief in whole or in part, and no monetary contribution intended to fund the preparation or submission of this brief was made by any person or entity other than the *amicus curiae*, its members, or its counsel.

2. *See, e.g., Kaiser Aetna v. United States*, 444 U.S. 164 (1979); *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *First English*

OCA members have also authored and edited treatises, books, and law review articles on property law and property rights.

SUMMARY OF ARGUMENT

The realities of Natural Gas Act takings belie theory. In 2016, under the auspices of the Natural Gas Act ("NGA"), the Sabal Trail natural gas pipeline project in Florida took land from Ryan B. Thomas and offered him $6,800 in exchange. *See* Andrew Prince Brigham & Lindsey Brigham Knott, *A Practitioner's Perspective on How Best to Avoid the Risk of Unjust Compensation*, 10 Brigham-Kanner Prop. Rts. J 351, 379 (2021). A Florida jury later determined that the measure of compensation for Sabal Trail's taking was $463,439. *Id*. Sabal Trail had thus initially offered Mr. Thomas 1.4% of his land's value. Between the initial offer and the jury's determination of compensation lay months of litigation work by Mr. Thomas and his attorney.

Under Florida law, Thomas is entitled to recover his attorneys' fees for having to undertake litigation to

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Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304 (1987); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Yee v. City of Escondido*, 503 U.S. 519 (1992); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005); *Kelo v. City of New London*, 545 U.S. 469 (2005); *Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008).

vindicate the value of his property. The Eighth Circuit's rule in this matter would strip him of that value. It would overrule Florida law and require Mr. Thomas, and landowners like him, to pay for their own attorneys when declining to voluntarily submit their land to private enterprise in exchange for a modicum of its value.

Congress knows how to itself require the Eighth Circuit's result and require landowners like Mr. Thomas to pay their own way if they decline voluntary submission. In the NGA, Congress has not done so. It remains for petitioner and respondent to address whether the Eighth Circuit's rule is the legally- or theoretically-just one. This brief will show that the Eighth Circuit's rule is unjust in practice.

ARGUMENT

The Fifth Amendment to the United States Constitution (the "Fifth Amendment") provides that private property shall not "be taken for public use, without just compensation." U.S. Const, amend. V; *see also U.S. v. Reynolds*, 397 U.S. 14, 15 (1970) (stating that the Fifth Amendment to the United States Constitution provides that "private property shall not be taken for public use without just compensation").

The question of what constitutes "just compensation" has resulted in a body of federal case law interpreting this fundamental right. Until the Eighth Circuit's ruling, federal circuit courts concluded that when a statute is silent as to the meaning of "compensation," federal courts define "compensation" using state law. *See generally Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy*

Cnty., 59 F.4th 1158, 1163 (11th Cir. 2023) (determining that state law supplies the definition of "compensation" for eminent domain actions taken by licensees under the Natural Gas Act); *see also Ga. Power Co. v. Sanders*, 617 F.2d 1112 (5th Cir. 1980) (concluding that state law supplies the definition of "compensation" for eminent domain actions taken by licensees under the Federal Power Act).

The Eighth Circuit's rule broke with four sister circuits. Its rule is flawed both legally and practically. As a legal matter, it overrides state-law compensation protections in an area where Congress chose not to impose a uniform federal rule. Practically, it alters the balance between private condemnors and property owners in the very proceedings used to determine the measure of compensation.

The Eighth Circuit's rule presses landowners into submitting their lands to private enterprise at a sliver of its value. It does so not merely by reducing owners' measure of compensation in the amount of attorneys' fees required to obtain that compensation, but also by magnifying the discrepancy in the bargaining power between condemnor and condemned. This discrepancy is not hypothetical, but exemplified in NGA procedures, practices, and several examples, all of which can be expected to flourish in the twenty-one states where state-law protections would be stripped under the Eighth Circuit's rule.

a. Natural Gas Act procedures and practices magnify the landowner's practical disadvantage.

Pre-taking negotiations under the NGA take place against a powerful statutory backdrop. What begins as a voluntary acquisition discussion is backed by the condemnor's ability to take the property if negotiations fail. If a gas provider's offer is untenable, it need not abandon the project; it will simply take the land and push landowners into court. 15 U.S.C. § 717f(h) (stating that when the provider "cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way . . . and the necessary land or other property, in addition to right-of-way . . . it may acquire the same by the exercise of the right of eminent domain . . . ."). Thus, when a landowner declines an offer, the natural gas provider need not walk away. It may instead file a condemnation action and acquire the property by the right of eminent domain.

That statutory leverage is significant. Without voluntary submission, and once pushed into just-compensation litigation, landowners cannot insist that the measure of compensation be paid *before* their property is taken, or that the natural gas provider pay for the land before profiting from it. Since 2004, condemnors under the NGA have been able to obtain immediate possession of the property—and begin to profit from the land—while the measure of compensation to the landowner remains subject to litigation and undetermined. As the Fourth Circuit held, once the gas company establishes its substantive right to condemn under the NGA, a district court may grant immediate possession through the issuance of a preliminary injunction. *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 828 (4th Cir. 2004).

The practical result is substantial. As a threshold matter, landowners begin the takings exercise with no bargaining power and nothing more than the prospect of having to spend significant money to defend the value of their land *after* it has been taken from them. The landowner is left to litigate the amount of compensation owed for the property already taken or burdened. It requires the landowner to respond to the condemnor's appraisal evidence, retain experts, develop valuation theories, and prove the value of the property interest taken. In practice, defending the value means defending against the condemnor's appraisals and providing competing appraisals.

Reported NGA cases confirm that compensation litigation is, in practice, a battle of valuation evidence. In *Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County*, for example, the parties tried the amount of compensation over four days, with each side presenting real-estate expert appraisal testimony concerning the value of permanent and temporary easements and severance damages to the remainder. 947 F.3d 1362, 1365–68 (11th Cir. 2020). Sabal Trail's appraiser valued total compensation at $56,800, while the landowner's appraiser valued compensation at $315,039. *Id.* at 1365–66. This disparity was driven largely by severance damages, which Sabal Trail's appraiser valued at $43,700 and the landowner's appraiser valued at $273,777. *Id.* at 1633.

Condemnors' appraisals are weighty adversaries. In the Sabal Trail pipeline litigation, condemnors spent a combined $8.3 million on appraisal work alone across the project. Andrew Prince Brigham & Lindsey Brigham Knott, *A Practitioner's Perspective on How Best to Avoid the Risk of Unjust Compensation*, 10 Brigham-Kanner Prop. Rts. J 351, 377 (2021).

Landowners may also have to fight for "severance" damages. Severance damages compensate a landowner for the reduction in value suffered by the portion of the property that remains after a part of the property is taken. *See Bauman v. Ross*, 167 U.S. 548, 574 (1897) (explaining that compensation in a partial taking includes injury to the remainder resulting from the taking). Determining those damages also often requires competing appraisal testimony and expert analysis. *See e.g., Sabal Trail Transmission, LLC v. 3.921 Acres of Land*, 947 F.3d 1362, 1365–68 (11th Cir. 2020) (involving a dispute over severance damages ranging from $43,700 to $273,777).

The federal rules reflect that condemnation compensation is a fact-intensive adjudication. Rule 71.1 provides the procedure for federal condemnation actions but does not define the substantive measure of compensation. *See* Fed. R. Civ. P. 71.1(h). Specifically, Rule 71.1 governs "practice and procedure," rather than the substantive law resolving the measure of compensation. *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy County*, 59 F.4th 1158, 1174 (11th Cir. 2023).

That distinction matters. The Eighth Circuit's rule would not only deny the landowner's recovery of fees at the end of litigation, but it would alter the landowner's position at the outset. The condemnor may invoke federal power, obtain possession, build the project, and force the landowner to bear significant costs to prove the valuation of what has been taken. State fee-shifting rules cater to that practical reality. They further embody the traditional authority of the States to define and protect property rights, reflecting each State's judgment as to what compensation is necessary to make its citizens whole when they are compelled to surrender their property.

b. Natural Gas Act cases demonstrate the consequences landowners face when they must litigate to obtain compensation.

Reported Natural Gas Act cases show that the difference between a pipeline company's award and the ultimate compensation award can often be extreme. They also illustrate why state-law fee protections matter. Without them, the landowner's recovery is reduced by the very litigation expenses required to prove the value of the property taken.[3]

In 2016, Sabal Trail Transmission, LLC, invoked the NGA to condemn easements across two properties: an 837-acre farm owned by Lee Thomas and a 40-acre residential tract owned by Ryan Thomas. *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 59 F.4th 1158, 1161 (11th Cir. 2023). The district court granted immediate possession once Sabal Trail filed the condemnation actions, and Sabal Trail built a pipeline across the two properties before final compensation was determined. *Id.* at 1161–62. Sabal Trail initially offered $6,800 to Ryan Thomas and $59,700 to Lee Thomas. *See* Brigham & Knott, supra, at 382. A jury, however, ultimately awarded $861,264 to Lee Thomas, including $782,083 in severance damages, and $463,439 to Ryan Thomas, including $451,654 in severance damages. *Levy Cnty.*, 59 F.4th at 1161. The

3. This brief does not concede that litigation expenses and fees are not recoverable under the United States Constitution. Indeed, Pacific Legal Foundation asserts that the Constitution, including the right to due process, mandates reimbursement for fees and costs when they are necessary to make sure owners are made whole as required by the Constitution's protection of private property.

court "also ruled the Thomas family would be entitled to attorney's fees and costs." *Id.* Sabal Trail's initial valuation represented a miniscule fraction of the compensation the jury ultimately determined was owed. *See* Brigham & Knott, supra, at 382.

Those awards arose from litigation, not a windfall. Ryan and Lee Thomas were forced to defend against Sabal Trail's valuation, present its own evidence, and maintain the verdict on appeal. The Eleventh Circuit later determined that state law supplied the measure of compensation under the NGA and affirmed an award of more than $765,000 in fees and costs for the Thomas actions. *Sabal Trail Transmission*, 59 F.4th at 1162, 1175. Under Florida law, those fees and costs were part of the compensation owed, *id.* at 1160, but under the Eighth Circuit's rule, they would not be.

A different case involving the Sabal Trail pipeline project case tells the same story. In a case involving Sunderman Groves, Inc., Sabal Trail condemned easements across a 40-acre parcel. *Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake County*, 947 F.3d 1362, 1364–65 (11th Cir. 2020). At trial, Sabal Trail's expert appraiser valued total compensation at $56,800, while Sunderman Groves's appraiser testified that compensation was $315,039. *Id.* at 1365–66. The jury awarded $309,500, including severance damages, and the district court concluded that Sunderman Groves was entitled to recover attorney's fees and costs as part of the compensation award. *Id.* at 1364.

Taken together, these cases illustrate the practical consequences of the Eighth Circuit's rules on landowners. As shown, substantial differences can arise between a condemnor's initial valuation and the compensation ultimately awarded after litigation. The condemnor may obtain possession, construct the project, and leave the amount of compensation to be resolved through a lengthy, appraisal-driven process. Where state law generally treats the cost of that process as part of compensation, the Eighth Circuit's rule eliminates the protection that states choose to provide. As a result, the ultimate award is reduced, and the parties' positions during negotiations and litigation changes, as the landowner wanting to challenge a valuation must consider that the attorney and expert expenses necessary to establish compensation may ultimately be borne by the landowner, rather than the condemnor.

c. State law protections would be stripped in twenty-one states.

The Eighth Circuit's decision thus has a real, tangible impact on landowners. Indeed, it is OCA's experience that the accounts from the Sabal Trails matters above resemble NGA takings actions in many other states.

Below is a summary of states where landowners facing eminent domain are entitled to recover attorneys' fees under state law, but where that protection would be lost if this Court upholds the Eighth Circuit's decision. For each such state this chart summarizes landowners' rights to recover attorneys' fees in condemnation actions and thus summarizes what the Eighth Circuit's decision would strip away.[4]

State	Applicable Law for Recovering Attorneys' Fees and Costs
Alaska	The condemnor is required to pay the owner's attorneys' fees and costs when (1) the taking of the property is denied, (2) the condemnor appeals from the master's award and the landowner does not appeal, (3) the award of the court was at least ten (10) percent larger than the amount deposited by the condemning authority or the allowance of the master from which an appeal was taken by the defendant, (4) the action was dismissed, or (5) the allowance of costs and attorney's fees appears necessary to achieve a just and adequate compensation of the owner. ALASKA R. CIV. PRO. 72.
Arkansas	Owner's costs, expenses, and reasonable attorney's fees related to the final hearing if the award awarded is greater than the condemning entity's offer by 20% or more. ARK. CODE ANN. § 18-15-103(11).

4. The issue of reimbursement of fees and costs to property owners under North Carolina state law is pending in a case of first impression currently before the North Carolina Court of Appeals. The trial court there held that the Constitution of North Carolina requires reimbursement to an owner when the condemnor forces the owner to litigate to receive the value of the property taken. *See Department of Transportation v. Rite Touch Investments, LLC*, No. COA26-413.

Colorado	Litigation costs can be recovered if the costs were reasonably incurred, but the landowner must prove their reasonableness. If immediate possession is taken and the award exceeds the deposit, the owner can receive interest on the difference of those amounts. Reasonable attorneys' fees can be recovered if the court finds the government lacking authority to condemn the property and/or if the award is over $10,000 and at least 30% more than the last written offer before filing suit. Colo. Rev. Stat. § 38-11-22.
Florida	Reasonable attorneys' fees and costs are part of Florida's constitutional standard of "full compensation" to be paid by the condemnor. *Dade Co. v. Brigham*, 47 So. 2d 602 (Fla. 1950). In actions where the property is acquired, Fla. Stat. § 73.092 sets attorneys' fees based upon a percentage of the benefit achieved as a difference between the initial offer and settlement or final judgment (including monetary and non-monetary benefits for the owner). If the owner defeats a taking or attorneys' fees are incurred in a supplemental proceeding, the court will award fees based upon facts set forth in Fla. Stat. §73.092.
Idaho	The court determines if the owner will receive reasonable costs and fees. Idaho Code § 7-711A(8). This is determined by whether the owner obtained a trial judgment at least 10% higher than the condemner's last timely offer before filing suit or whether the owner contested the taking or possession of the property. *Id.*

Iowa	If the appraisement by the compensation commission exceeds by 110% the last and final offer of condemnor, the compensation commission is entitled to award the condemnee reasonable attorneys' fees and costs, including the reasonable cost of one appraisal. Iowa Code § 6B.33. All costs of the appeal, including reasonable attorney's fees and costs, as well as "the reasonable cost incurred by the property owner for one appraisal" is recoverable, "unless on the trial thereof the same or a lesser amount of damages is awarded than was allowed" by the commission. Iowa Code § 6B.33. Under a 2006 amendment to § 6A.24(3), attorneys' fees and costs are awarded to the prevailing challenger of condemnation authority or proceedings. When a condemnation is abandoned or the condemnor refuses to pay final award, attorneys' fees, costs and actual damages are awarded. Iowa Code § 6B.34.
Louisiana	An award of reasonable attorneys' fees is authorized in connection with expropriation proceedings if certain conditions are met: (1) if the amount of compensation awarded to owner is higher than the highest offer from the expropriating authority, La. Rev. Stat. § 19:8(A)(3), or (2) in a "quick take" the court may award reasonable attorneys' fees if the compensation deposited with the court "is less than the amount of compensation awarded in the judgment[,]" LA. REV. STAT. § 48:453(E).

Michigan	Attorneys' fees, expert fees, and costs incurred in the condemnation action may be awarded. *See* MICH. COMP. LAWS SERV. § 213.66.
Minnesota	If final judgment or award is more than 40% greater than condemning authority's last written offer before condemnation petition is filed, then award of "reasonable attorney fees, litigation expenses, appraisal fees, other experts fees, and other related costs" is mandatory. *See* MINN. STAT. § 117.031(a). If the award is 20–40% more than the final offer, the court chooses the recoverable amount. *Id.*
Montana	If the court denies the condemnation or the owner is awarded more than a final offer from the comdenmor, the owner is entitled to the "necessary expenses of litigation[.]" MONT. CODE ANN. § 70-30-305. "Necessary expenses of litigation" is defined as including, among other expenses, attorneys' fees, exhibit costs, expert witness fees, and court costs. *Id.* at § 70-30-306.
Nebraska	A district judge must award the owner a reasonable amount for attorney fees and the fees of two expert witnesses, if: (1) the owner appealed and the final judgment is at least 15% more than Board of Appraisers' award, or (2) condemning authority appealed and the final judgment is not less than 85% below the Board of Appraisers' award, or (3) both appealed and the final judgment is more than the Board of Appraisers'. NEB. REV. STAT. § 76-720.

New York	Fees, including reasonable attorneys' fees, can be recovered if the court's award is substantially higher than the condemnor's offer and if the court finds extra payment to be necessary for the owner to receive fair compensation. N.Y. Em. Dom. Proc. Law § 701.
North Dakota	The court has discretion to determine the amount in attorneys' fees, court costs, expert fees, and interest to award the owner. N.D. Cent. Code §§ 32-15-32, 32-15-35.
Oklahoma	All fees can be recovered if the "final judgment is that the real property cannot be acquired by condemnation," "the proceeding is abandoned," or if the jury verdict is at least 10% higher than the commissioners' award. The condemnor is always responsible for filing and commissioners' fees. Even if the owner loses, they don't have to pay attorney or expert fees. Okla. Stat. tit. 27, §§ 11–12.
Oregon	Fees may be recovered if the final award is higher than the condemnor's last written offer, the court finds the first written offer was not made in good faith or unreasonably low, or the condemnor fails to take the property within 60 days or abandons it. Or. Rev. Stat. §§ 35.300; 35.346(7).

South Carolina	In actions wherein the condemnor's right to take is challenged, if the court determines that the condemnor has no right "to take all or any part of the property, the landowner's reasonable costs and litigation expenses . . . must be awarded" to the owner. S.C. Code Ann. § 28-2-510(A). A landowner that prevails in a condemnation action may recover "reasonable litigation expenses by serving on the condemnor and filing with the clerk of court an application within fifteen days of the entry of judgment" showing that he prevailed; stating the amount sought; including an "itemized statement from an attorney or expert witness" stating and explaining the fees charged; and explaining "all actual expense for which recovery is sought." S.C. Code Ann. § 28-2-510(B)(1). "If the condemnor abandons or withdraws the condemnation action," the owner is "entitled to reasonable attorney fees, litigation expenses, and costs as determined by the court." S.C. CODE ANN. § 28-2-510(B)(2).
South Dakota	If the final award is at least 20% higher than the condemnor's last offer, the owner can recover reasonable attorneys' fees and up to two expert witness fees. If the owner is the prevailing party, they may also recover litigation expenses. S.D. Codified Laws § 21-35-23.

Utah	If the owner makes an offer and award is more than their offer, they can recover attorneys' fees and costs may not exceed one-third the difference between the compensation awarded and the condemnor's settlement offer. UTAH CODE ANN. §§ 78B-6-509(7).
Washington	After trial, the condemnor pays for reasonable attorney and expert fees if the award is at least 10% higher than the condemnor's best offer made 30 days before trial. WASH. REV. CODE § 8.25.070(1)(b).
Wisconsin	Fees can be recovered if the owner wins, the condemnor abandons the property, or if the award is at least 15% or $2,700 (subject to adjustment by the Department of Administration) higher than the condemnor's offer before the taking. WIS. STAT. § 32.28(3).
Wyoming	The condemnor must pay the owner's attorneys' fees and costs when the final award exceeds the condemnor's presuit offer by 115%. WYO. STAT. ANN. §§ 12-65-02 to 1-26-817.

d. The difference between state and federal law is not limited to recovery of litigation expenses.

Other significant differences exist between the applicability of state and federal law. These differences may greatly impact the measure of compensation. Indeed, they may result in the difference between compensation for property actually taken and no compensation.

For example, many states apply the state rule for determining the measure of compensation. Under this rule, the measure of compensation is determined by (1) determining the value of the property taken and (2) then determining the difference in the value of the remainder[5] before the taking versus the value of the remainder after the taking. The sum of these two numbers is the measure of compensation. Importantly, this rule ensures an owner always receives compensation for any property actually taken.

Under the federal rule, the measure of compensation is determined based on the difference in the value of the entire property before the taking and the value of the property remaining after the taking. Under this rule, an owner may receive no value for the property taken if the project enhances or increases the value of the property remaining after the taking. For example, suppose the government takes one of two acres from a rural property worth $10,000 an acre to construct a new road. Suppose the remaining acre is not worth $20,000 because the highest and best use after the taking is commercial. Under the federal rule, the owner would receive no compensation for the acre actually taken. Under the state rule, the owner would receive $10,000—the value of the acre taken. This real-life example further demonstrates the importance of federalism and respect for state's rights in the context of eminent domain.

5. The remainder is the property remaining after a portion of the property was taken.

CONCLUSION

OCA has been on the front lines of critical just-compensation litigation nationwide, and across the country has argued against abrogation of critical property rights specifically established by states or constitutions to protect citizens from unlawful government takings. The Eighth Circuit's decision is precisely such an abrogation. Strikingly, the Eighth Circuit's abrogation is of the North Dakota *constitution's* guarantee of just compensation, which as early as 1905 meant that the landowner must receive "just compensation for his property, and not that the just compensation assessed by a jury shall be diminished to the extent of his costs." *Petersburg Sch. Dist. v. Peterson*, 103 N.W. 756, 759 (N.D. 1905). Put succinctly, "if the owner must disburse for costs the money received for his land, the compensation cannot be regarded as 'just,' within the meaning of the constitutional provision." *Id.* at 759 (citation omitted). The Eighth Circuit's decision slashes this constitutional guarantee and like guarantees across its jurisdiction, diminishing the measure of compensation lawfully owed when private property is taken.

Without correction by this Court, the Eighth Circuit's upturned rationale similarly exposes landowners in other circuits across the country. Paying the full and complete amount of just compensation required under state law—equivalent to the compensation required when the condemnor is a state or local government—is an important check and balance against unrestrained private takings by for-profit enterprise. Without such a check, landowners are exposed to for-profit ravaging, taking more from them than when the same taking is exercised by those landowners' own elected state and local officials. Indeed, the Eighth Circuit's decision means that private condemnors under the NGA can take land in several states more cheaply than those states' own governments could—and thus that private landowners in those states are less compensated when the condemnor is a for-profit enterprise than they would be had their state or local government taken the land. Subjecting American landowners to discounted land grabs by private parties not only contravenes those landowners' guarantees under their states' constitutions and laws but has no basis in rational government.

This Court should reverse the judgment of the Eighth Circuit.

Respectfully submitted,

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