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 THE LANDOWNER GROUPS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICI*[1]

"[I]n any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government." *Monongahela Nav. Co. v. U.S.*, 148 U.S. 312, 324 (1893). The force of that principle is felt most directly where private property rights intersect with the demands of infrastructure serving the public interest. Protecting those securities is central to the mission of the *Amici*, which consist of 15 associations representing communities of agricultural landowners (collectively referred to as the "Landowner Groups") whose ranches and farms are crossed by interstate pipelines, pore space projects, transmission lines, and other infrastructure projects throughout the western United States.

Collectively, the Landowner Groups represent more than 2,150 private landowners who have granted more than 1,500 miles of easement rights and more than 650,000 acres of other property rights across seven states — Wyoming, Colorado, Kansas, Montana, Nebraska, North Dakota, and South Dakota:

- ***Progressive Pathways, LLC*** represents 122 landowners whose properties encompass approximately 175 miles of liquid natural gas pipeline easements in Wyoming.

1. Pursuant to Supreme Court Rule 37, this brief was not authored by counsel for any party in this action. No party or person not related to *Amici* made any kind of monetary contribution to the preparation or submission of this brief. All funding for this brief came from the *Amici* or their members.

- ***Cowboy State Pathways, LLC*** represents 218 landowners whose properties encompass approximately 200 miles of liquid natural gas pipeline easements in Wyoming.

- ***NioCon Landowner Alliance, LLC*** represents 38 landowners whose properties encompass approximately 58 miles of liquid natural gas pipeline easements in Wyoming.

- ***Pro Colorado Pathways, LLC*** represents 97 landowners whose properties encompass approximately 84 miles of liquid natural gas pipeline easements in Colorado.

- ***Property Rights Organization, LLC*** represents 124 landowners whose properties encompass approximately 96 miles of liquid natural gas pipeline easements in Montana.

- ***PRO Montana Gas Storage Stewardship Group*** represents 129 landowners whose properties encompass approximately 21,195 acres of natural gas storage field easements in Montana.

- ***Kimball, Cheyenne, Weld and Logan Pore Space Owners Association*** represents 315 landowners whose properties encompass approximately 436,890 acres of pore space for carbon dioxide storage easements in Colorado and Nebraska.

- ***Wyoming Nebraska Pore Space Owners Association, LLC*** represents 332 landowners whose properties encompass approximately

213,639 acres of carbon dioxide storage easements in Wyoming and Nebraska.

- ***Eastern Wyoming Transmission Line Landowner Association, LLC*** represents 85 landowners whose properties encompass approximately 109 miles of power transmission line easements in Wyoming.

- ***PRO North Plains Connector Association*** represents 202 landowners whose properties encompass approximately 217 miles of power transmission line easements in Montana and North Dakota.

- ***3 State Pipeline Association*** represents 229 landowners whose properties encompass approximately 335 miles of crude petroleum pipeline easements in Montana, South Dakota, and Wyoming.

- ***PRO KanCo, LLC*** represents 108 landowners whose properties encompass approximately 100 miles of crude petroleum pipeline easements in Kansas and Colorado.

- ***TGGB*** represents 34 landowners whose properties encompass approximately 39 miles of crude petroleum pipeline easements in Colorado and Wyoming.

- ***KM Landowner Association, LLC*** represents 19 landowners whose properties encompass approximately 20 miles of jet fuel pipeline easements in Kansas.

- ***Sentinel Landowner Association*** represents 98 landowners whose properties encompass approximately 170 miles of right of way for fiber optic lines in Colorado, Nebraska, and Wyoming.

Their members seek both to protect their private property rights and to facilitate reasonable infrastructure development. Each Landowner Group was formed to negotiate easement agreements, seeking to increase the marketability of their members' land and combining their resources to increase their negotiating power. They continue to advocate for landowners through legislation, public education, litigation, and other forums that advance those interests.

The Landowner Groups regularly negotiate with companies that possess eminent domain authority. Because a landowner cannot simply refuse a project that the company has the power to condemn, the respective landowner group negotiates collectively on behalf of its members to secure the best available terms and compensation. Although their members are rarely forced into condemnation, the legal rules governing condemnation remain an important part of those negotiations. Condemnation laws establish the company's fallback position, which in turn affects the terms that the company offers to obtain a voluntary easement.

The Eighth Circuit's decision threatens to alter that bargaining framework well before any condemnation proceedings begin. If a company exercising eminent domain authority under the Natural Gas Act may disregard state compensation protections and pay only the federal constitutional minimum, its fallback position becomes less costly, changing the baseline against which voluntary easement negotiations occur. Therefore, the practical consequence reaches every landowner negotiating with an entity entitled to take their property, not merely those who ultimately litigate compensation. The issue presented in this case reaches the heart of the Landowner Groups' mission: ensuring that infrastructure serving the public interest can move forward without leaving behind the protections that give private property its security.

SUMMARY OF ARGUMENT

The states have long served as the primary architects of the law governing property within their borders. *See Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944) ("The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state."). States define the interests that landowners hold, the protections that attend those interests, and the rules that govern their valuation. See *Georgia Power Co. v. Sanders*, 617 F.2d 1112, 1123 (5th Cir. 1980) (en banc) ("[w]e think it consistent that the value of those rights also be determined with reference to state law."). Congress may displace state law judgments, but it must do so clearly. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (explaining that, in fields traditionally occupied by the states, federal law does not supersede state authority absent Congress's "clear and manifest purpose"). The Natural Gas Act does not clearly displace the states' authority to determine compensation for property taken by means of eminent domain.

The Natural Gas Act confers an extraordinary power — the power to take private property for interstate natural gas infrastructure — but it does not prescribe the compensation owed when that power is exercised. *See* 15 U.S.C. § 717f(h). Nothing in the Natural Gas Act's grant of eminent domain authority suggests that Congress's silence on compensation should be transformed into a command to displace the state's traditional role in determining what landowners are entitled to receive for their property.

The Eight Circuit's rule would extend far beyond the particular compensation provision at issue. It would displace state-law judgments about the value and consequences of taking property within a state, even though Congress has never enacted a comprehensive federal compensation regime for condemnations under the Natural Gas Act. Respecting those state-law judgments would not diminish federal authority over interstate natural gas infrastructure; federal law would continue to determine whether a project may proceed and whether the company may exercise eminent domain authority, while state law would determine what the company must pay for the interest. The Court should therefore preserve both sides of that line: federal authority to condemn and state authority to define the compensation owed for property.

ARGUMENT

I. States are Best Positioned to Define the Value and Consequences of Taking Property Within Their Borders.

It is a "basic axiom that '[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'" *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984) (internal citation omitted); *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378–79 (1977) ("Under our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States. … This is particularly true with respect to real property[.]"). The Fifth Amendment establishes the minimum compensation constitutionally required when private property is taken for public use, but it does not necessarily define the maximum compensation Congress or the states may authorize by statute. *See* U.S. Const. amend. V; *see also United States v. 50 Acres of Land*, 469 U.S. 24, 30 n.14 (1984); *WBI Energy Transmission, Inc. v. 189.9 rods*, 132 F.4th 1058, 1061 (8th Cir. 2025), *cert. granted sub nom. Hoffmann v. WBI Energy Transmission, Inc.*, No. 25-159 (U.S. June 29, 2026) ("Under the Fifth Amendment, property owners cannot recover for 'indirect costs' like attorney fees and expenses."). Thus, the operative question here is not whether the Fifth Amendment itself awards more, but whether Congress silently stripped states of their chosen compensation rules when it delegated condemnation power to private companies.

That distinction matters here because Congress did not enact a federal compensation rule when it granted natural gas companies eminent domain authority. "[T]he original enactment of the Natural Gas Act did not include an eminent-domain provision because it assumed licensees would be able to institute condemnation proceedings for necessary property under state statutes or constitutions." *See Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 59 F.4th 1158, 1169 (11th Cir. 2023). Congress later amended the Natural Gas Act to expressly confer federal eminent domain authority for natural gas projects. *Id.*; *see* 15 U.S.C. § 717f(h). But in doing so, Congress prescribed no federal measure of compensation. That omission is particularly significant because Congress demonstrated elsewhere in the Natural Gas Act that it knew how to specify the compensation standard it wanted applied. *Compare* 15 U.S.C. § 717y(b)(2) (tasking the commission with "determin[ing] the maximum consideration permitted as just compensation") *and* 15 U.S.C. § 717f(h) (conferring eminent domain authority without specifying a measure of compensation); *see Sabal Trail Transmission, LLC*, 59 F.4th at 1163 ("Section 717y shows that Congress knew how to expressly designate a federal standard as the measure of compensation under the Natural Gas Act. Yet it did not do so in the context of condemnation proceedings.").

Congress's choice is consequential. The absence of a federal compensation rule does not leave a gap that the Fifth Amendment must fill. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal citation omitted). It leaves room for the states' traditional rules governing the value of property and the consequences of taking it. Had Congress intended the federal constitutional "just compensation" minimum to become the exclusive measure of compensation when a natural gas company exercises the extraordinary power delegated by 15 U.S.C. § 717f(h), it could have said so. Instead, Congress granted the power to condemn without prescribing what the property is worth.

That conclusion is especially appropriate where, as here, the condemnor is a private company rather than the Federal Government itself. "[W]here the federal government is the condemnor, there exists a significant concern about the spending of federal dollars, one that does not exist when a private entity is the condemnor." *Tennessee Gas Pipeline Co., LLC v. Permanent Easement for 7.053 Acres*, 931 F.3d 237, 249 (3d Cir. 2019); *see also WBI Energy Transmission, Inc.*, 132 F.4th at 1062 (acknowledging the same). The statute does not authorize the Federal Government to acquire property with federal funds; it delegates private companies the power to take property for a federally approved purpose. Nothing in that delegation suggests that Congress intended to give those companies the additional benefit of a federally imposed ceiling on compensation.

Nor is there reason to assume that a single federal measure of compensation would better account for the value of property in every state. States regulate the property interests they create and the consequences that follow from altering or taking those interests. *See Georgia Power*, 617 F.2d at 1123. Their compensation rules reflect judgments about local property markets, the effects of easements and other encumbrances, and the extent to which a taking diminishes the use and value of the property that remains. *See e.g.,* Wyo. Stat. Ann. § 1-26-709 (creating statutory compensation rights for crop damages). In the absence of a federal rule governing compensation, the states continue to reign over the value of property within their borders. *See Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement*, 962 F.2d 1192, 1199 (6th Cir. 1992) ("[A]lthough condemnation under the Natural Gas Act is a matter of federal law, § 717f(h) incorporates the law of the state in which the condemned property is located in determining the amount of compensation due.").

a. Wyoming's condemnation laws illustrate that the value of a pipeline easement extends beyond the pipeline's physical footprint.

Compensation should not be confined to the Fifth Amendment's constitutional floor where a state has deliberately adopted broader valuation rules based on the Legislature's judgment that the constitutional minimum does not adequately account for the value of property taken. *See United States v. Fuller*, 409 U.S. 488, 494 (1973) ("Congress may, of course, provide in connection with condemnation proceedings that particular elements of value or particular rights be paid for even though in the absence of such provision the Constitution would not require payment"). Wyoming's condemnation laws provide one such example.[2]

2. The *Amici* focus on Wyoming law because the majority of the represented Landowner Groups operate in Wyoming. However, Wyoming's approach reflects the broader role states retain in defining the value of property taken within their borders.

Wyoming law generally measures compensation by the fair-market value of the property taken. *See* Wyo. Stat. Ann. § 1-26-702(a). For a partial taking, however, the Legislature requires the landowner to receive the greater of the value of the property rights taken or the diminution in the fair-market value of the remainder immediately afterward. *Id.* § 1-26-702(b). The Wyoming Supreme Court has explained that the Legislature adopted this rule "to cure the mischief it perceived had resulted when just compensation for condemned property was measured using only the before and after value of the remaining property." *Barlow Ranch, Ltd. Partnership v. Greencore Pipeline Co. LLC*, 2013 WY 34, ¶ 30, 301 P.3d 75, 86 (Wyo. 2013). Thus, Wyoming law expressly rejects the proposition that compensation for a partial taking should be invariably confined to before-and-after valuation.[3] *Id.* ¶ 44, 301 P.3d at 89.

Instead, Wyoming law recognizes that, under some generally accepted appraisal techniques, a partial taking may produce little or no measurable reduction in the value of the remaining property and, in light of that limitation, separately permits compensation based on the value of each of those property rights taken. *Id.* ¶ 24, 301 P.3d at 85. Depending on its terms, a pipeline easement may grant the condemnor substantial and continuing rights

3. Other states similarly account for the effects of a partial taking on the remainder. *See, e.g.,* Kan. Stat. Ann. § 26-513(c)–(d) (measuring compensation for a partial taking by the change in value of the entire property and requiring consideration of factors including access, productivity, convenience, and use of the remaining property); N.D. Cent. Code § 32-15-22(2)–(3) (requiring compensation for severance damages to the remainder and for property damaged by construction of the proposed improvement).

to enter the property and to construct, operate, inspect, repair, replace, or remove facilities.

Those rights also alter the risks associated with continued use of the property. An agricultural landowner is accustomed to the risks inherent from farming and ranching operations, but the presence of an industrial pipeline introduces industrial-sized risk and liability onto agricultural property — risks that would not otherwise exist. Ordinary activities such as installing a waterline, maintaining fences, or working the land suddenly require additional precautions and carry significantly greater risk because interference with the pipeline can carry consequences amounting in millions of dollars in liability, potentially placing the farm or ranch itself at risk. The value of the easement therefore cannot be understood solely by measuring the strip of ground occupied by the pipeline; it must account for the additional burdens and risks the easement places on the landowner's continued use of the property. Wyoming law recognizes some of those rights as compensable interests rather than treating the physical footprint of the pipeline as the sole measure of its value. *See, e.g.,* Wyo. Stat. Ann. § 1-26-704(a)(iii).

Wyoming's valuation rules further demonstrate that state compensation law determines not only what property interests are compensable, but how their value may be established. The Legislature expressly permits consideration of the "[v]alues paid for transactions of comparable type, size and location by other public or private entities in arm's length transactions for comparable transactions on the same or similar property" in determining fair market value.[4] Wyo. Stat. Ann. § 1-26-704(a)(iii). This provision reflects a deliberate legislative judgment that comparable voluntary easement transactions may provide better evidence of the value of the rights actually taken than simple adherence to the constitutional minimum established by the Fifth Amendment. *See generally*, *Barlow Ranch, Ltd. Partnership*, 2013 WY 34, ¶¶ 45-46, 301 P.3d at 90. The Legislature has accordingly recognized "the market for comparable easements as a tool to determine fair market value in pipeline condemnation cases." *Id.* ¶ 61, 301 P.3d at 95.

The significance of these rules is not limited to Wyoming. State compensation law can determine both the interests for which a landowner is entitled to compensation and the evidence relevant to establishing their value. *See e.g.,* Kan. Stat. Ann. § 26-513. A federal rule displacing state law could therefore do more than prescribe a different measure of recovery; it could render irrelevant evidence that state law recognizes as probative of the value of the property taken. *See e.g.,* Wyo. Stat. Ann. § 1-26-704 (outlining the appropriate valuation methods that may be considered for the taking of private property in Wyoming).

Wyoming's condemnation framework also recognizes that the costs of establishing fair market value may form part of the consequences of a forced acquisition. The Legislature provides for recovery of reasonable litigation

4. New Mexico likewise recognizes comparable transactions as relevant evidence of an easement's value, permitting courts to consider the "price paid for similar property." *See* NMSA § 42A-1-24F.

expenses in specified circumstances, including where the adjudicated value of the property materially exceeds the condemnor's final offer.[5] Wyo. Stat. Ann. § 1-26-509(j). That rule, like Wyoming's valuation provisions, reflects a legislative judgment about how the costs of an involuntary acquisition should be allocated between the condemnor and the landowner. It does not alter the landowner's property interest or the authority to condemn; it governs the consequence of exercising that authority.

Much like Wyoming and the other states described above, North Dakota has made its own legislative judgments concerning compensation when natural gas companies exercise eminent domain authority. *See WBI Energy Transmission, Inc.*, 132 F.4th at 1060. The question before the Court is whether the Natural Gas Act silently displaced those judgments. Section 717f(h) contains no federal measure of compensation, and nothing in its grant of eminent domain authority indicates that Congress intended to displace the state's substantive rules governing the value of property taken

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5. Other jurisdictions in which the Landowner Groups operate likewise provide for the recovery of attorney's fees or litigation costs in condemnation proceedings. *See, e.g.,* Colo. Rev. Stat. § 38-1-122(1) (requiring an award of reasonable attorney's fees when the condemnor is not authorized by law to acquire the property sought); Neb. Rev. Stat. § 76-720 (authorizing attorney and expert-witness fees when the landowner obtains a qualifying increase over the appraisers' award and requiring attorney's fees when the condemnor failed to negotiate in good faith); S.D. Codified Laws § 21-35-23 (requiring reimbursement of reasonable attorney's fees and compensation for up to two expert witnesses when the final award exceeds the condemnor's final offer by twenty percent and the total award exceeds $700).

within their borders. *See* 15 U.S.C. § 717f(h). Congress granted the power to condemn but left the measure of compensation unspecified. That silence provides no basis for transforming a constitutional floor into a federal rule that displaces the state's judgments about the value of property within their borders.

II. The Consequences of the Eighth Circuit's Reasoning Extend Beyond the Compensation Measure at Issue Here.

The question presented in this case has implications beyond the availability of attorneys' fees. State eminent domain laws commonly allocate liability, damages, and other consequences of a forced acquisition. Wyoming, for example, imposes liability for "physical injury to" or "substantial interference with" the landowner's possession or use of the property caused by the condemnor's entry and activities. *See* Wyo. Stat. Ann. § 1-26-508(a). Another provision requires the condemnor to restore and reclaim the land acquired through condemnation. *See* Wyo. Stat. Ann. § 1-26-714. It also provides rules governing compensation for damages to crops, improvements and other property. *See* Wyo. Stat. Ann. § 1-26-709. These provisions reflect the same basic legislative judgment: when a private entity compels an owner to surrender property rights for an infrastructure project, state law may allocate the resulting burdens between the condemnor and the landowner.

If the Natural Gas Act's silence on compensation authorizes a federal constitutional rule that completely displaces state law, the same reasoning could threaten other state law protections that govern the condemnation of property within the state. Nothing in 15 U.S.C. Section 717f(h), however, suggests that Congress intended to establish a comprehensive federal code governing every consequence of a private company's acquisition of a private company's acquisition of property rights protected by state law. *See Sabal Trail Transmission, LLC*, 59 F.4th at 1170 ("[W]e do not find the legislative intent behind the Natural Gas Act's eminent-domain provision to be 'contrary' to application of state law on the substantive meaning of 'compensation.' Rather . . . we think congressional intent supports the application of state law here."). In turn, the Court should not disrupt the traditional role of the states to determine the scope and breadth of property rights within its jurisdiction and reject the Eighth Circuit's premise that federal eminent domain authority necessarily carries with it a complete federal compensation regime.

III. Applying State Compensation Laws Would Preserve Federal Eminent Domain Authority Without Giving States a Veto Over Federally Approved Pipelines.

The distinction between authority to condemn and the compensation that is owed for what is condemned resolves any federalism concerns. A Federal Energy Regulatory Commission (FERC) certificate determines whether the project may proceed and whether the company may invoke eminent domain. *See* 15 U.S.C § 717f. State compensation law, by contrast, determines what the private company must pay for the for the property interests it acquires. *See e.g.,* Wyo. Stat. Ann. § 1-26-702. Therefore, applying North Dakota's compensation laws would not alter WBI Energy Transmission, Inc.'s certificate, reroute the project, or give North Dakota a veto over interstate gas infrastructure. It would simply require the private condemnor to pay the compensation the state assigns to compensate for the burden imposed on the subject property rights. As stated by the 11th Circuit:

> The upshot of our discussion is that we do not find the legislative intent behind the Natural Gas Act's eminent-domain provision to be 'contrary' to application of state law on the substantive meaning of "compensation." Rather—and especially given our reading of the Federal Power Act's materially indistinguishable provision—we think congressional intent supports the application of state law here.

Sabal Trail Transmission, LLC, 59 F.4th at 1170; *see also Georgia Power Co.*, 617 F.2d at 1124 (concluding that "the law of the state where the condemned property is located is to be adopted as the appropriate federal rule for determining the measure of compensation when a licensee exercises the power of eminent domain pursuant to Section 21 of the Federal Power Act.").

The federal interest in constructing natural gas infrastructure is fully protected when federal law determines the company's authority to condemn. State compensation laws cannot reopen the FERC's "public convenience and necessity determination" nor otherwise block the exercise of eminent domain power delegated to it by Congress. *See* 15 U.S.C. § 717f. Instead, state laws govern the separate question of what the condemnor must pay once that authority is executed. Applying state compensation law does not give a state power to stop a federally approved project. It simply prevents a private, profit-seeking company from acquiring state-defined property interests at a price lower than the state has determined those interests are worth when taken by means of eminent domain.

For decades, states have exercised their traditional authority to define the property rights within their borders and the compensation owed when those rights are taken; that exercise of state authority has not prevented the development of interstate natural gas infrastructure. *See generally Sabal Trail Transmission, LLC*, 59 F.4th at 1174. The Landowner Groups have relied on their respective states to protect their property rights and to determine what compensation is appropriate when the government or a private party takes them. The states are best positioned to account for the value and scope of protection afforded to the property interests they recognize. *See generally Ruckelshaus*, 467 U.S. at 1001 (recognizing that property law is shaped by the states' "existing rules or understandings"). Displacing those traditional state standards will not advance the federal interest in natural gas infrastructure but would instead unsettle the protections on which landowners have long relied. The federal interest in building the nation's energy infrastructure does not require sacrificing the state's traditional role in ensuring that those whose property is taken receive the protections their states have deemed appropriate.

CONCLUSION

For the reasons set forth herein, the Court should reject the Eighth Circuit's rule and hold that state law may supply the measure of compensation for property condemned pursuant to the Natural Gas Act. Such a rule preserves the federal government's authority over interstate natural gas infrastructure while respecting the states' traditional role in defining the compensation owed for property taken within their borders. The Landowner Groups therefore support the Petitioner's case and respectfully urge the Court to reverse the judgment below.

Respectfully submitted,

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