No. 25-159

In the

Supreme Court of the United States

LEONARD W. HOFFMAN, 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 FLORIDA PROPERTY OWNERS RYAN THOMAS, LEE THOMAS TRUST, AND SUNDERMAN GROVES, INC. AS *AMICI CURIAE* IN SUPPORT OF 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?

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INTEREST OF *AMICI CURIAE*[1]

Florida property owners Ryan B. Thomas and Lee A. Thomas, as Trustee of the Lee A. Thomas Trust, were the appellees in appeals before the Eleventh Circuit in *Sabal Trail Transmission, LLC v. 18.27 Acres of Land,* 59 F.4th 1158 (11th Cir. 2023) and *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 824 Fed.Appx. 621 (11th Cir. 2020) *(unreported).*

Florida property owner Sunderman Groves, Inc., whose principal is Sara K. Wilson, the daughter of Charles A. ("Chuck") and Janice E. ("Jan") Sunderman, both recently deceased, was the appellee in appeals before the Eleventh Circuit in *Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County*, 74 F.4th 1346, 1347 (11th Cir. 2023) and *Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County*, 947 F.3d 1362 (11th Cir. 2020).

On or about August 3, 2026, Florida property owners, including *amici curiae*, received notice from Sabal Trail Transmission, LLC, ("Sabal Trail") that the interstate natural gas transmission company is evaluating a potential expansion and extension of its interstate natural gas pipeline system as part of a new project called the Sabal Trail Extension and Sabal Trail Expansion ("Project"). As described, the Project contemplates "the expansion of the existing

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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 *amici curiae*, its members, or its counsel.

pipeline from Alexander City, Alabama, to Reunion, Florida by constructing a new pipeline generally alongside or near to the existing pipeline route for a distance of approximately 482 miles."

A little over ten years ago, in March of 2016, Sabal Trail filed condemnation lawsuits against Florida property owners, including *amici curiae*, to take pipeline easements for its initial project. While the popular myth has it that lighting doesn't strike twice, it seems that natural gas pipelines do.

Having already litigated with Sabal Trail over the compensation to be paid regarding the taking of pipeline easements for its initial project, and now having been provided notice of Sabal Trail's new project, the interest of *amici curiae* is that the judicial branch safeguard their civil right of private property ownership and, for takings under the Natural Gas Act, continue to require, consistent with long-standing judicial precedent, that the measure of compensation be determined by state law when private interstate natural gas transmission companies file condemnation lawsuits in either federal district courts or state courts.

SUMMARY OF ARGUMENT

The distinction between (a) private, for-profit companies acting under a delegation of the right to exercise eminent domain and (b) the federal government acting directly, and in its own name, is especially applicable to condemnations of private property taken pursuant to the NGA. A limited delegation of eminent domain authority to a licensee neither confers upon the licensee the sovereignty of the United States nor implicate the same federal interests that arise when the national government itself condemns property for a federal infrastructure project using federal labor and public funds. Moreover, these private licensee companies are not sworn to uphold the Constitution, exist primarily to generate private profit, and are accountable only to their shareholders, not the public-at-large. As such there is nothing woven into the fabric of these private licensee companies or existent in their corporate DNA that safeguards the civil right of private property ownership when acquiring private property by a compulsory taking.

Property rights matter. As such, the Court should not be blind to the realities of the condemnation process when private licensee companies are delegated the right of eminent domain. Without embellishment, the private licensee companies in these NGA takings cases are characteristically extremely profitable energy concerns, worth billions of dollars, that possess unlimited resources with which to litigate with private citizens over the measure of compensation when exercising eminent domain. In the context of NGA takings cases pursuant to § 717f(h), the private licensee companies condemning easements for natural gas pipeline typically and forcefully contend that there are "zero severance damages" to the property owners' remainder properties resulting from proximity, market fear, perception, or stigma caused by a NIMBY ("Not-In-My-Backyard") easement use.

Consequently, property owners who are without economic wherewithal proceed in an unrepresented fashion and are typically forced to accept a compromise close to the amount of the private licensee company's low offers because they are not otherwise with the means to prepare their own valuation estimates and defend their respective constitutional entitlement to compensation. Unless having the practical means to engage in litigation, private citizens whose properties are taken by private licensee companies for natural gas pipeline easements are substantially undercompensated for such a NIMBY use and, therefore, do not receive a just or equitable measure of compensation for these takings by private licensee companies.

State law, which defines property, may provide more substantial protection of property rights than does federal law. This is so, in part, because the measure of compensation in many states includes the requirement that the condemnor pay for the attorney's fees and costs of the owner. Because in these states, property owners have an "equal footing" with these private licensee companies to litigate over the measure of compensation, the compensation awarded for these private licensee companies to pay is more often than not a just or equitable measure because, provided there is a preponderance of market evidence to support the property owners' valuations, the compensation awarded includes severance damages for the NIMBY use associated with easements for underground natural gas pipelines.

Although it is only North Dakota's guarantee of attorneys' fees in condemnation cases that is specifically at issue in this case, state-created rights to attorneys' fees will be stricken in six of the seven states of the Eighth Circuit, and will be at serious risk in at least 15 other states if the Eighth Circuit's new-fashioned split widens. *See* Andrew Prince Brigham & Lindsey Brigham Knott, A Practitioner's Perspective on How Best to Avoid the Risk of Unjust Compensation, 10 PROP. RTS. J. 351, 361–65 (2021). The threat to property owners and their private property rights thus spans the nation. To protect those owners in at least these 21 states the circuit split should be resolved, and resolved in favor of having state law control the measure of compensation in NGA takings cases.

Operatively speaking, when private licensee companies exercise the eminent domain power under the NGA, the Fifth Amendment's measure of compensation should serve as a floor and not a ceiling and, further still, if state law affords greater protection to property owners within a state to which a private licensee company has commercially entered into in order to construct an interstate pipeline, the private licensee company should pay the measure of compensation required by state law when eminent domain is used to take necessary pipeline easements.

ARGUMENT

I. THERE IS A DISTINCTION BETWEEN FEDERAL AND PRIVATE ACTORS EXERCISING EMINENT DOMAIN.

The Natural Gas Act ("NGA"), 15 U.S.C. § 717(f), was amended by Congress in 1947 in order to delegate the right of eminent domain to private licensee companies to enter into a state and file condemnation actions in either federal district court or state courts in order to construct natural gas transmission pipelines, but Congress was silent as whether state or federal law controls the determination of the measure of compensation owed for the property taken. *See* S. Rep. No. 429, at 2.

Consequently, in the course of the past forty years, the Third, Fifth, Sixth, and Eleventh Circuits have consistently held that the measure of compensation in condemnations filed by these private licensee companies under the NGA must therefore be determined by reference to state law, which often mandates higher compensation than the floor set by the Fifth Amendment in takings where it is characteristically the federal government that is the condemnor. *S*ee *Tenn. Gas Pipeline Co. v. Permanent Easement for 7.053 Acres,* 931 F.3d 237 (3d Cir. 2019); *Miss. River Transmission Corp. v. Tabor,* 757 F.2d 662 (5th Cir. 1985); *Columbia Gas Transmission Corp. v. Exclusive Nat. Gas Storage Easement,* 962 F.2d 1192 (6th Cir. 1992); *Sabal Trail Transmission, LLC v. 18.27 Acres of Land,* 59 F.4th 1158 (11th Cir.

2023). Only recently, in this case, the Eighth Circuit expressly split with its sister circuits and instead held that, with the delegation of the eminent domain power, these private licensee companies "step in the shoes" of the federal government and need only pay the federal baseline or constitutional minimum of compensation required by the Fifth Amendment. *See WBI Energy Transmission, Inc. v. 189.9 Rods in Township 149,* No. 24-1693 (8th Cir. March 24, 2025).

As originally recognized by Fifth Circuit in *Georgia Power*, and later by both the Sixth Circuit in *Columbia Gas* and by the Third Circuit in *Tennessee Gas*, a private licensee who invokes the limited delegation of eminent domain authority conferred by either the Federal Power Act ("FPA"), 16 U.S.C. § 797(e), or the NGA is not equivalent to the United States of America. A limited delegation of eminent domain authority to a licensee does not confer upon the private licensee the sovereignty of the United States of America, and a limited delegation of eminent domain to a licensee does not implicate the same federal interests that arise when the national government itself condemns property for a federal infrastructure project using federal labor and public funds. *See Georgia Power Co. v. 138.3 Acres*, 617 F.2d 1112, 1118-24 (5th Cir. 1980) (FPA case); *Columbia Gas*, 962 F.2d at 1197-99.

Over time, *United States v. Miller*, 317 U.S. 369 (1943), and its progeny have developed and added content to the federal common law of just compensation, including its measure under the Fifth Amendment. *See Tennessee Gas,* 931 F.3d at 247-248. But nothing in *Miller* or its progeny expands its reach to condemnations by private entities. *See* id. Indeed, *Miller* itself only concerned a condemnation by the federal government. *See* id. citing *Miller* at 317 U.S. at 370. The same is true of Miller's progeny. One need look no further than the case caption. If the caption is "*United States v. So Many Acres of Land*" or "*United States v. a Property Owner*," the analysis concerns the measure of compensation under the Fifth Amendment when eminent domain is exercised by the federal government and not private licensee companies. As remains true to this day, the Third Circuit expressly found that Tennessee Gas was unable to muster any binding authority for the proposition that *Miller* applies beyond instances where it is the federal government that is the condemnor. *See* id. Stated otherwise, every one of the cases cited by Tennessee Gas for the determination of compensation in a condemnation lawsuit filed pursuant to what it called the federal power of eminent domain was to only cite cases in which the condemnor was the federal government. *See* id.

The distinction between (a) private, for-profit companies acting under a limited delegation of eminent domain power and (b) the federal government acting directly, and in its own name, should not be overlooked when intending to safeguard the civil right of private ownership. Federal actors are ultimately accountable to federal officials, sworn to uphold the Constitution, charged with promoting the public good, and held accountable by the voters on Election Day. Private licensee companies delegated with the right of eminent domain are not sworn to uphold the Constitution, exist primarily to generate private profit, and are accountable only to their shareholders, not to the public-at-large. Direct federal condemnations require expenditure of taxpayer dollars; private licensee companies are spending corporate money. Direct federal condemnations often require ongoing federal participation, via federal employees and contractors, in construction and maintenance efforts; private licensee condemnations do not. And, in direct federal condemnations, the federal government retains a continued ownership interest in the property taken; no such federal ownership interest exists in the property taken via eminent domain by a private licensee company. This fundamental distinction is inherent and neither dissolves or fades away even if private entities are found to wear the same shoes as government.

Practically speaking, the distinction has found proper resolution in weighing the three factors in Kimbell Foods: (i) fashioning a nationally uniform rule is unnecessary, (ii) incorporating state law does not frustrate the NGA's objectives, and (iii) application of a uniform federal rule would upset commercial relationships. *See, e.g., Tennessee Gas*, 931 F.3d at 251-256. Indeed, apart from carving out a separate set of rules or creating an artificial wedge, there is a sound reason for a private licensee company who enters a state for private gain in the development of an interstate pipeline to pay compensation under the measure guaranteed property owners under that state's law when eminent domain is exercised to divest them of their private property. *See, contra, Tennessee Gas,* 931 F.3d at 257-258 *(Chagares, J., dissenting).* The sound reason is that private citizens need greater protection of their property rights when it is a private entity exercising eminent domain.

Eminent domain is one of the harshest powers known to law as it deprives the owner of the right to say, "No, thank you!", to an encumbrance that allows another entity to put something completely undesirable in one's backyard, in this instance, an interstate pipeline capable of transmitting vast amounts of cubic feet of natural gas a day at high pressure, without there being consent or an agreed price. This Court has previously found that one of the NGA's primary aims was *"to protect consumers against exploitation at the hands of natural gas companies." Sunray Mid-Con. Oil Co. v. Fed. Power Comm'n*, 364 U.S. 137, 147 (1960). Because there is nothing woven into the fabric of these private licensee companies or existent in their corporate DNA that safeguards the civil right of private property ownership when acquiring private property by a compulsory taking, the Court needs to be discerning concerning the distinction between federal actors and private entities that wield the eminent domain power. Because men are not angels, and even less so given that private entities are without the moorings of a constitutional government and prioritize corporate cost savings and profit over people and their individual property rights, it cannot be said that Congress was unaware of such distinction when amending the Natural Gas Act in 1947 and delegating the right of eminent domain to private licensee companies to file condemnation actions in either federal district court or state courts. *See* Madison, J. *Federalist No. 51* (1788); *see, supra,* S. Rep. No. 429, at 2.

II. PRIVATE LICENSEE COMPANIES UNDER THE NGA CONTEND THAT THERE ARE NO SEVERANCE DAMAGES RESULTING FROM THE USE OF THE EASEMENTS TAKEN FOR A NIMBY USE.

"[T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights[, such as t]he right to enjoy property without unlawful deprivation . . . . That rights in property are basic civil rights has long been recognized." *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972) (citations omitted).[2] Those basic civil rights also dictate that private property owners must be compensated when their property is taken for public use.

The freedom to own and hold property is a valued and guarded right under social contract with *"a government of the people, by the people, and for the people." See* Lincoln, Abraham (1863, November 19) *Gettysburg Address*, National Archives. Property rights matter. The measure of compensation paid to those whose private property is divested from them by eminent domain likewise matters. The amount of money actually received by property owners in

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[2] *See Sabal Trail Transmission, LLC v. Real Estate,* No. 1:16-CV-063-MW-GRJ, 2017 U.S. Dist. LEXIS 99370 (N.D. Fla. June 27, 2017) (order entered in federal district court in Florida concerning condemnation cases for the Sabal Trail Natural Gas Pipeline Project regarding the controlling law issue; *see also Sabal Trail Transmission, LLC v. 1.127 Acres of Land,* No. 3:16-CV-263-J-20PDB, 2017 U.S. Dist. LEXIS 92003 (M.D. Fla. June 15, 2017*)*.

exchange for the taking of pipeline easements without consent also matters. As such, the Court should not be blind to the realities of the condemnation process when private licensee companies are delegated the right of eminent domain.

Empirical evidence of just what goes on in takings cases under the Natural Gas Act, 15 U.S.C. § 717f, is more often obscured and intentionally left without trace. If negotiating a settlement, whether in the context of a voluntary transaction prior to filing a condemnation lawsuit or after litigation is underway, the private licensee companies insist almost without exception that the terms of settlement remain confidential.[3] Thus so, a majority of cases are closed without public documentation of the total amount of compensation paid or how such compensation is allocated. Contrastingly, such detailed facts come into focus when an NGA takings case proceeds through litigation and concludes with a public trial, verdict, and final judgment; under such circumstances, there is transparency.

Before the Eighth Circuit's ruling in *WBI Energy Transmission, Inc. v. 189.9 Rods in Township 149,* No. 24-1693 (8th Cir. March 24, 2025), the Eleventh Circuit decided that "state law provides the measure of compensation in proceedings that arise under Section 717(f) of the Natural Gas Act." *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 59 F.4th 1158, 1163 (11th Cir. 2023); *see*

[3] *See, e.g.,* Andrew Prince Brigham & Lindsey Brigham Knott, A Practitioner's Perspective on How Best to Avoid the Risk of Unjust Compensation, 10 PROP. RTS. J. 351, 380, n. 63 (2021).

also Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County, 74 F.4th 1346, 1347 (11th Cir. 2023).

Three of the NGA takings cases appealed to the Eleventh Circuit were subject to two jury trials.[4] *See ibid; see also, generally, Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County*, 947 F.3d 1362 (11th Cir. 2020); *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 824 Fed.Appx. 621 (11th Cir. 2020) *(unreported).* These cases are illustrative of what occurs in NGA takings cases.[5]

As background, commencing in March 2016, Sabal Trail Transmission, LLC ("Sabal Trail")[6] filed 263 condemnation cases in federal courts for a lineal corridor of some 247 miles through Florida needed to construct a 36-inch diameter pipeline capable of transmitting up to one billion cubic feet of natural gas

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[4] *See* 10 PROP. RTS. J., *supra,* at 361–65; *see also, generally,* Andrew Prince Brigham, Natural Gas Pipeline Easements: An Overview of the Takings Jurisprudence Associated with the Acquisition of a Lineal Corridor when the Condemnor is a Private Licensee of the Eminent Domain Power under the Natural Gas Act, 8 PROP. RTS. J. 121 (2019).

[5] Moreover, far from fictional accounts, these cases set forth what really happened in the lives of the *amici curiae* who submit this brief in support of the Petitioners.

[6] *See* 10 PROP. RTS. J., *supra*, at 367-369. Initially, Sabal Trail was a joint venture of Spectra Energy Partners, NextEra Energy, Inc., and Duke Energy, but, upon completion of its pipeline, was acquired by Enbridge, Inc. having an enterprise value of $126 billion.

a day.[7] Consequently, the dispute concerning valuation was aptly described as follows:

> In nearly all pipeline easement acquisitions, there is a substantial dispute as to the measure of compensation insofar as the issue of damages to the remainder property is concerned—particularly when purported damages result from *proximity to the pipeline in and of itself*, or based on *market fear, perception, or stigma*.
>
> Simply put, most in the pipeline industry maintain that, because the pipeline's infrastructure is located underground, severance damages of this kind or nature are extremely minimal or non-existent. Their mantra, effectively, is: *out of sight, out of mind*. The industry maintains that property owners are compensated sufficiently by pipeline companies that only pay a percent of the fee value for the land acquired within the right of way because there are no damages to the remainder property based upon proximity to the pipeline.
>
> Property owners, however, disagree. They contend that a pipeline transmitting one billion cubic feet of

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[7] *See* id. (Counsel of record for *amici curiae* represented property owners in 51 of the 263 cases filed by Sabal Trail.)

> natural gas a day just three to four feet underground is a classic "Not-In-My-Backyard" ("NIMBY") use and that property encumbered with a natural gas pipeline easement is less valuable than property not so encumbered.[8]

How do private licensee companies estimate the measure of compensation to be paid for their pipeline easements?

In Florida, Sabal Trail paid appraisers an extraordinary amount of over $8.3 million for appraisal services which, in part, led each of three respective appraisers to conclude within every one of their project appraisals that "zero severance damages" result from *proximity, market fear, perception, or stigma* caused by a NIMBY use.[9] Two of Sabal Trail's appraisers had more than twenty years of experience in natural gas pipeline projects; however, these same appraisers over the past twenty years had always prepared appraisals for the pipeline companies, always opined to "zero damages," and

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[8] *See* id. at 370-371.

[9] *See* id. at 376-378. (An opinion of "zero severance damages" allows the private licensee condemnor to start at the lowest point conceivable in each and every case. At the start of negotiations and, in most cases, continuing on to trial, these pipeline companies only offer to pay a percent of fee value for the encumbered area within their easement, leaving out entirely any severance damages to the remainder. It is a pervasive and perpetual "industry bias" which occurs in almost every pipeline condemnation case across the nation. It is the billion dollar private energy company using eminent domain against small and large private property owners alike and basically saying, "*just you go ahead and try to stop us.*" *See* id. at 377, fn. 55.)

never found in their studies any market data which showed a negative perception of pipelines that affected the price negotiated between willing buyers and willing sellers.[10]

Unless accepting settlement terms decidedly in favor of the private licensee company's appraisal estimate, the private property owner's only option is to run the gauntlet of litigation, starting with prolonged discovery and motion practice prior to trial. Only if the private property owner is able to outlast a condemning authority with unlimited resources during the earlier stages of the litigation can the owner finally proceed to trial.[11] Record citations to *Daubert* challenge briefs presented in the table further example that Sabal Trail's appraisers concluded that "zero severance damages" result from *proximity, market fear, perception, or stigma* caused by a NIMBY use in no less than 40 cases including the pipeline easement takings from the three *amici curiae*.

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[10] *See* id.
[11] *See* id. at 376-380.

Table 1

Case Style	***Case #***	***Docket #***
Sabal Trail v. +/- 1.76 Aces of Land in Levy County Florida (Alice Allen)	*1:16-cv-00073-MW-GRJ*	*53*
Sabal Trail v. +/- 3.984 Acres of Land in Suwannee County Florida (Suzanne Bass)	*3:16-cv-00301-HES-MCR*	*68, 83*
Sabal Trail v. +/- 0.0752 Acres of Land in Hamilton County Florida (Minnie Bell)	*3:16-cv-00269-HES-JBT*	*62, 80*
Sabal Trail v. +/- 3.504 Acres of Land in Suwannee County Florida (Elizabeth Bolton)	*3:16-cv-00302-MMH-PDB*	*91*
Sabal Trail v. +/- 0.758 Acres of Land in Suwannee County Florida (Marlon Brammer)	*3:16-cv-00288-TJC-JRK*	*87, 105*
Sabal Trail v. +/- 3.522 Acres of Land in Hamilton County Florida (Clint Carter)	*3:16-cv-00266-HLA-JRK*	*82*
Sabal Trail v. +/- 1.823 Acres of Land in Hamilton County Florida (Danny Carter)	*3:16-cv-00267-TJC-MCR*	*94, 107*

Sabal Trail v. +/- 0.834 Acres of Land in Suwannee County Florida (Clyde Bass Family LP	*3:16-cv-00303-HES-MCR*	*70, 87*
Sabal Trail v. +/- 1.211 Acres of Land in Levy County Florida (Vince Dean)	*1:16-cv-00124-MW-GRJ*	*80*
Sabal Trail v. +/- 0.7 Acres of Land in Suwannee County Florida (Manuel Deguzman)	*3:16-cv-00300-MMH-PDB*	*99, 120*
Sabal Trail v. +/- 7.684 Acres of Land in Suwannee County Florida (Donna Ellison)	*3:16-cv-00289-BJD-MCR*	*82*
Sabal Trail v. +/- 2.215 Acres of Land in Suwannee County Florida (Burton Fletcher)	*3:16-cv-00304-BJD-PDB*	*82*
Sabal Trail v. +/- 0.507 Acres of Land in Suwannee County Florida (Mary Fridman)	*3:16-cv-00317-MMH-MCR*	*92*
Sabal Trail v. +/- 1.127 Acres of Land in Hamilton County Florida (Hamilton Energy Resource Opportunities, LLC)	*3:16-cv-00263-HES-PDB*	*71*

Sabal Trail v. +/- 0.89 Acres of Land in Suwannee County Florida (Debra Kolwyck)	*3:16-cv-00314-TJC-PDB*	*77, 88*
Sabal Trail v. +/- 1.401 Acres of Land in Hamilton County Florida (Violeta Lara)	*3:16-cv-00278-BJD-JBT*	*78*
Sabal Trail v. +/- 1.203 Acres of Land in Suwannee County Florida (Alfreda Lusk)	*3:16-cv-00309-BJD-PDB*	*81*
Sabal Trail v. +/- 7.593 Acres of Land in Hamilton County Florida (Carolyn McCulley)	*3:16-cv-00276-TJC-JRK*	*77, 89*
Sabal Trail v. +/- 0.76 Acres of Land in Suwannee County Florida (Georgette McDowell)	*3:16-cv-00286-HLA-MCR*	*70*
Sabal Trail v. +/- 3.956 Acres of Land in Levy County Florida (Mitchell Madden)	*1:16-cv-00081-MW-GRJ*	*72, 100*
Sabal Trail v. +/- 3.679 Acres of Land in Levy County Florida (Carolyn Mikell)	*1:16-cv-00111-MW-GRJ*	*93*

Sabal Trail v. +/- 0.589 Acres of Land in Hamilton County Florida (Samuel Panilag)	*3:16-cv-00277-MMH-JBT*	*96*
Sabal Trail v. +/- 0.72 Acres of Land in Lake County Florida (Juan Quintana)	*5:16-cv-00162-BJD-PRL*	*75*
Sabal Trail v. +/- 0.046 Acres of Land in Suwannee County Florida (Homer Ratliff)	*3:16-cv-00291-HES-JRK*	*62, 82*
Sabal Trail v. +/- 2.064 Acres of Land in Suwannee County Florida (Teddy Rucker)	*3:16-cv-00318-TJC-JRK*	*89, 106*
Sabal Trail v. +/- 0.587 Acres of Land in Hamilton County Florida (Richard Sheehy)	*3:16-cv-00268-HLA-JBT*	*80*
Sabal Trail v. +/- 1.108 Acres of Land in Hamilton County Florida (Asa Smith)	*3:16-cv-00275-TJC-MCR*	*77, 89*
Sabal Trail v. +/- 13.386 Acres of Land in Lake County Florida (Rex Smith)	*5:16-cv-00147-CEM-PRL*	*81, 92, 133*
Sabal Trail v. +/- 2.867 Acres of Land in Levy County Florida (Charles Stoel)	*1:16-cv-00100-MW-GRJ*	*77*

Sabal Trail v. +/- 0.518 Acres of Land in Hamilton County Florida (Maxine Sullivan)	*3:16-cv-00265-TJC-PDB*	*79, 90*
Sabal Trail v. +/- 3.921 Acres of Land in Lake County Florida (Sunderman Groves, Inc.)	*5:16-cv-00178-JSM-PRL*	*65*
Sabal Trail v. +/- 18.27 Acres of Land in Levy County Florida (Lee A. Thomas Trust)	*1:16-cv-00093-MW-GRJ*	*120*
Sabal Trail v. +/- 2.468 Acres of Land in Levy County Florida (Ryan Thomas)	*1:16-cv-00095-MW-GRJ*	*92*
Sabal Trail v. +/- 0.851 Acres of Land in Suwannee County Florida (Vincent Thornton)	*3:16-cv-00287-HES-JBT*	*64*
Sabal Trail v. +/- 1.692 Acres of Land in Suwannee County Florida (United Vision Ventures, LLC)	*3:16-cv-00297-BJD-PDB*	*80*
Sabal Trail v. +/- 0.728 Acres of Land in Suwannee County Florida (Thomas Van Brunt)	*3:16-cv-00315-HLA-JBT*	*81*

Sabal Trail v. +/- 1.51 Acres of Land in Suwannee County Florida (Paul Vezina)	*3:16-cv-00311-HES-JBT*	*71, 89*
Sabal Trail v. +/- 1.76 Acres of Land in Suwannee County Florida (James Voss)	*3:16-cv-00313-BJD-JRK*	*97*
Sabal Trail v. +/- 0.981 Acres of Land in Levy County Florida (Eileen Wynne)	*1:16-cv-00097-MW-GRJ*	*67, 92*

Accordingly, one is able to see why the district court rulings in the Sabal Trail cases in Florida on the controlling law issue, affirmed by the Eleventh Circuit, were so significant to the property owners in applying state law which, under Florida's constitutional measure of "full compensation," includes the attorney's fees and costs incurred by the owner in defense of eminent domain. *See Dade County v. Brigham*, 47 So. 2d 602, 604-605 (Fla. 1950). As a result, the owners had both "equal footing" with the condemnor in the Sabal Trail case in Florida and staying power to defend their case. *See* id. at 603; *Joseph B. Doerr Trust v. Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1216-1217 (Fla. 2015); *see also Jacksonville Expressway Authority v. Dupree,* 108 So. 2d 289 (Fla. 1959), 69 A.LR. 2d 1445, *concurrence,* Drew, J.J., at 293; *accord, Petersburg Sch. Dist. v. Peterson*, 103 N.W. 756, 759 (N.D. 1905).

The scope and nature of just what is at stake concerning takings of pipeline easements under the NGA and the persons whose property rights were subject to condemnation lawsuits is clearly understood from the examples of the cases that proceeded to the two jury trials.

In the jury trial commencing on February 26, 2018, Sabal Trail was taking a pipeline easement of 3.921 acres from a 40-acre rural residential tract of land owned by *amicus curiae* Sunderman Groves, Inc., a holding company whose principals were Chuck and Jan Sunderman.[12] The property is located in Bay Lake, Florida, near the metropolitan area of Orlando, Florida. Sabal Trail's pipeline easement is 50 feet in width and cuts diagonally through the center of the tract for a distance of 1,336 lineal feet as depicted in the aerial and ground photograph trial exhibits[13] below:

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[12] *See* 8 PROP. RTS. J. 121, *supra,* at 177-189.
[13] *See* 10 PROP. RTS. J., *supra,* at 371-372.

Sunderman Groves, Inc.

Before Taking

After Taking


Sabal Trail's appraisal estimate of $56,800, included $43,700 in severance damages for the diagonal bifurcation of the easement through the tract but "zero damages" resulting from *proximity to the pipeline in and of itself, or based on market fear, perception, or stigma.*[14] After over two years of litigation and a four-day trial, a Florida jury awarded $309,500 including $282,000 in severance damages. *See Sabal Trail Transmission, LLC v. 3.291 Acres of Land in Lake County,* 947 F.3d 1362, 1365-68 (11th Cir. 2020). The total award is 5.4 times Sabal Trail's appraiser's estimate at trial.[15]

In the jury trial commencing on November 5, 2018, Sabal Trail was taking a pipeline easement of 2.46 acres from a 40-acre rural homestead owned by *amicus curiae* Ryan Thomas.[16] Sabal Trail was also taking a pipeline easement of 18.27 acres from an 837-acre farm owned by *amicus curiae* Lee A. Thomas Trust. The adjacent properties are located in Levy County, Florida. Sabal Trail's pipeline easements are

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[14] *See* 8 PROP. RTS. J. 121, *supra,* at 177-189.
[15] *See* 10 PROP. RTS. J., *supra,* at 379.
[16] *See* 8 Prop. Rts. J. 121, *supra,* at 189-210.

50 feet in width and cut diagonally for a distance of 837 lineal feet through Ryan Thomas' homestead, within 500-feet of his house, and for a distance of 5,643 lineal feet through portions of the Lee A. Thomas Trust's farm, including a grove of mature oak trees next to a twenty-acre pond and Ryan Thomas' house, and through agricultural fields. As a result of the taking, 25 oak trees were removed from the grove. The takings are depicted in the aerial and ground photograph trial exhibits[17] below:

Ryan Thomas

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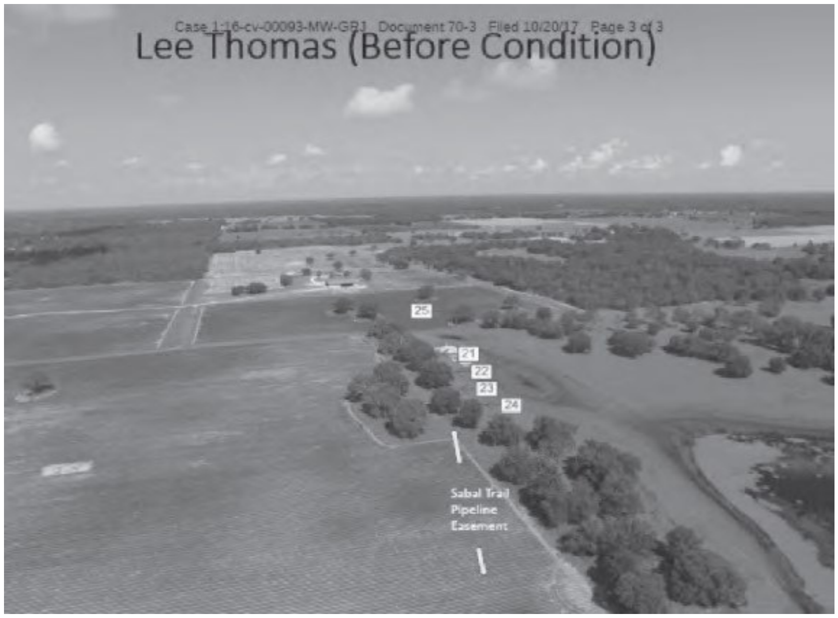
[17] *See* 10 PROP. RTS. J., *supra,* at 373-375.

Before Taking

After Taking

Lee A. Thomas Trust

Before Taking



After Taking

Regarding Ryan Thomas, Sabal Trail's appraisal estimate of $6,800, included "zero damages" resulting from *proximity to the pipeline in and of itself, or based on market fear, perception, or stigma.*[18] Regarding the Lee A. Thomas Trust, Sabal Trail's appraisal estimate of $59,700, also included "zero damages" resulting from *proximity to the pipeline in and of itself*, or based on *market fear, perception, or stigma.*[19] After over two years of litigation and a five-day trial, a Florida jury awarded Ryan Thomas $463,439, including $451,654 in severance damages, and Lee A. Thomas Trust $861,264, including $782,083 in severance damages. *See Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 824 Fed.Appx. 621, 623-24 (11th Cir. 2020) *(unreported)*. The total award for Ryan Thomas was 68 times Sabal Trail's appraiser's estimate at trial and the total award for Lee A. Thomas Trust was 14.4 times Sabal Trail's appraiser's estimate at trial.[20]

From the Sabal Trail cases in Florida, one is not only able to perceive the disparity between the condemnor's "zero severance damages" contention and final jury award but how the protection of the private citizen's property rights absolutely depended upon a property owner having an "equal footing" in regards to the litigation over the measure of compensation with the private licensee company. Under state law, in addition to the compensation awarded by these jury verdicts, Sabal Trail was required to pay for the attorney's fees and costs

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[18] *See* 8 PROP. RTS. J. 121, *supra,* at 189-210.
[19] *See* id.
[20] *See* 10 PROP. RTS. J., *supra,* at 379.

incurred by the property owners in defense of eminent domain. Jury verdicts were rendered. Final judgments were entered, appealed, and affirmed. Once again, Sabal Trail's initial offers of $6,800, $59,700, and $56,800, respectively, are held for comparison to corresponding jury verdicts of $463,469, $861,254, and $309,500.[21] *See* id. at 377, 382.

III. STATE LAW, WHICH DEFINES PROPERTY, MAY PROVIDE MORE SUBSTANTIAL PROTECTION OF PROPERTY RIGHTS THAN FEDERAL LAW AND, THEREFORE, SHOULD CONTROL THE MEASURE OF COMPENSATION IN NGA TAKINGS CASES

Whether a respective state's law controls the measure of compensation under (a) the best reading of the § 717f(h)text, (b) the finding that § 717f(h) does not preempt state law as neither a federal objective nor a federal project is frustrated, or, (c) the filling an interstitial "gap" in a federal statute according to the three-factor analysis articulated in *United States v. Kimbell Foods, Inc.,* 440 U.S. 715 (1979), state law should control the measure of compensation in takings cases under the NGA. If Congress had intended for the measure of compensation for NGA takings pursuant to § 717f(h) to be controlled by the Fifth Amendment, it would have provided same

[21] *See* id. at 379 (Of the 51 cases represented by counsel of record for *amici curiae*, 32 cases were resolved in settlement with Sabal Trail after one or both of the two jury trials.)

within the plain text of the federal statute. Rather, Congress, here, was silent and has remained silent through historic amendment to the NGA.

CONCLUSION

Given that neither a federal objective nor federal program is frustrated in the least, following sound principles of federalism allowing the sovereignty of each state to govern within their respective orbits, if state law affords greater protection of property rights or higher compensation over the minimum compensation under the Fifth Amendment, private licensee companies which are constructing a portion of their interstate pipeline infrastructure within a state under the NGA should be required to compensate property owners for the involuntary takings of easements under the measure of compensation defined by that state jurisdiction's property law.

This Court should reverse the judgment of the Eighth Circuit.

Respectfully submitted,

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