No. 25-159

In the Supreme Court of the United States

LEONARD W. HOFFMANN, et al.,

Petitioners,

v.

WBI ENERGY TRANSMISSION, INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

In 1947, Congress amended the Natural Gas Act to allow pipeline developers to acquire property through "the right of eminent domain." See 15 U.S.C. § 717f(h). Previously, private companies whose projects were approved by federal agencies had to rely on eminent domain authority originating in state law. Because numerous States imposed state-specific restrictions on condemnations that were difficult for pipeline projects to fulfill, a federal certificate to construct a pipeline often provided "only an illusory right to build." *PennEast Pipeline Co*. v. *New Jersey*, 594 U.S. 482, 489 (2021). To fix this problem, Congress enacted a "categorical" delegation of the federal eminent domain power, allowing certificate-holding companies to condemn land under a federal cause of action when good-faith negotiations would not yield the access needed for their pipeline projects. *Id.* at 498.

The question presented is:

By delegating "the right of eminent domain" to natural gas companies in order to clear away state-law obstacles to pipeline construction, did Congress require compensation measured by the federal standard or by the standards of each individual State?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

This case arises out of a condemnation action filed by respondent WBI Energy Transmission, Inc., which was the plaintiff in the district court and the appellant in the Eighth Circuit. WBI Energy Transmission, Inc., is a wholly owned subsidiary of WBI Energy, Inc., which is a wholly owned subsidiary of WBI Holdings, Inc., which is a wholly owned subsidiary of CEHI, LLC, which is a wholly owned subsidiary of MDU Resources Group, Inc., a publicly traded corporation (NYSE:MDU).

As an eminent domain proceeding, this suit was styled as an action against certain real property in North Dakota and "all unknown owners" of that land. The real parties in interest were the known owners of the land, who were named in the complaint: Leonard W. Hoffmann (as Trustee of the Hoffmann Living Trust dated March 8, 2002); Margaret A. Hoffmann (as Trustee of the Hoffmann Living Trust dated March 8, 2002); David L. Hoffmann; Denae M. Hoffmann; Rocky & Jonilla Farms, LLP; and Randall D. Stevenson, all of whom were defendants in the district court and appellees in the Eighth Circuit. David Hoffmann's interests in these proceedings have passed to his wife, Denae Hoffmann, who is a petitioner.

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INTRODUCTION

Congress added Section 717f(h) to the Natural Gas Act in 1947 to eliminate state-law impediments to critical, federally approved, federally regulated interstate pipeline projects. Before Section 717f(h), a company holding a federal certificate to build a pipeline could acquire the necessary right-of-way only by relying on the eminent domain laws of each State the project would cross. Because many States denied that power for interstate projects, the federal certificate provided "only an illusory right to build." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 489 (2021). Congress addressed that problem at its source, authorizing certificate-holders to "exercise * * * the right of eminent domain." 15 U.S.C. § 717f(h). In doing so, Congress effected a "categorical" delegation of "the federal eminent domain power" to pipeline companies, who may therefore take property on the government's behalf. *PennEast*, 594 U.S. at 498, 508.

Petitioners contend that, in the very statute designed to free interstate pipelines from a patchwork of parochial state laws, Congress enacted a loophole that would nonetheless leave projects subject to the whims of state regulation. On petitioners' reading, a certificate-holder wielding the federal eminent domain power must pay whatever measure of compensation a State chooses to impose. Here, they say, that means paying attorneys' fees—despite clear evidence that Congress intended to foreclose fee shifting. In other cases, it would empower States to price federally approved pipelines out of existence, achieving through a compensation rule what a State may not do directly.

Nothing in the statute allows, much less commands, that self-defeating result; to the contrary, every tool of construction forecloses it. When Congress chose to delegate "the right of eminent domain" in 1947, that phrase was a term of art carrying settled consequences. The federal power had never been subject to state control, and the Fifth Amendment's fair-market-value measure of compensation governed its exercise. Congress knew how to depart from that rule when it wished: One year before enacting Section 717f(h), in the General Bridge Act of 1946, Congress authorized private parties to condemn land for bridges and expressly required that compensation "be ascertained and paid according to the laws of [the] State" where the property sits. 33 U.S.C. § 532.

But when Congress turned to pipelines the next year, it wrote no such provision; instead, it used a formulation it knew carried a settled legal conclusion: The federal measure controls. This Court had already held that the same formulation in a different statute yielded that result. *United States* v. *Miller*, 317 U.S. 369, 380 (1943). And Congress in Section 717f(h) borrowed from state law for "practice and procedure" only, confirming that substantive matters like compensation would be determined by federal standards.

As the United States agrees, federal law supplies the measure of just compensation when its delegatee exercises the federal power. Congress made a considered judgment to supplant the state-law patchwork that resulted from reliance on state eminent domain authority with a uniform federal rule. If petitioners believe that judgment unwise and seek to reallocate the burdens of necessary federal infrastructure projects, "then Congress, not this Court, is [their] proper audience." *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 463 (2015).

STATEMENT

A. Legal background

1. Sovereign governments have possessed the right of eminent domain since time immemorial. Abraham Bell, *Private Takings*, 76 U. Chi. L. Rev. 517, 524 (2009) (citing 1 Samuel 8:14). This inherent aspect of sovereignty "appertains to every independent government." *Mississippi & Rum River Boom Co.* v. *Patterson*, 98 U.S. 403, 406 (1878). The federal government has "exercis[ed] its eminent domain authority" since "[s]hortly after the founding." *PennEast*, 594 U.S. at 494.

Early in the Nation's history, the Court confirmed that the United States could exercise eminent domain over property within state borders. *Kohl* v. *United States*, 91 U.S. 367, 368 (1875). Such an "authority is essential to [the federal government's] independent existence and perpetuity" because "[t]hese cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed." *Ibid.* So long as "the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear." *Berman* v. *Parker*, 348 U.S. 26, 33 (1954).

The power of eminent domain has been central to Congress's fulfillment of its constitutional obligations, including the construction of critical infrastructure. Congress has condemned land to build canals (*United States* v. *Jones*, 109 U.S. 513 (1883)), erect dams (*United States* v. *Great Falls Mfg. Co.*, 112 U.S. 645 (1884)), and construct railroads (*Cherokee Nation* v. *Southern Kan. Ry.*, 135 U.S. 641 (1890)). See Env't & Natural Res. Div., *History of the Federal Use of*

Eminent Domain, U.S. Dep't of Justice (Jan. 30, 2024), perma.cc/N5XR-6B4Q.

2. "For as long as the eminent domain power has been exercised by the United States, it has also been delegated to private parties." *PennEast*, 594 U.S. at 495.

Such delegations were ubiquitous throughout the nineteenth century. Bell, *supra*, at 545. When Congress authorized the projects that would reshape the country, it often delegated execution to private corporations, empowering them to exercise the federal eminent domain power as they made Congress's vision a reality. Private delegatees, on Congress's behalf, knitted together the expanding Nation by building railroads, bridges, roads, and telegraph and telephone lines. In assessing these projects, the Court concluded that Congress "may, at its discretion, use its sovereign powers, directly or through a corporation * * * for the accommodation of interstate commerce." *Luxton* v. *North River Bridge Co.*, 153 U.S. 525, 530 (1894).

3. The Natural Gas Act (NGA) "follows this path." *PennEast*, 594 U.S. at 498. "Natural gas has been a part of the Nation's energy supply since at least the 1820s." *Id.* at 488. As technology improved, companies began to develop pipelines to carry natural gas across the country. *Id.* at 488-489. Congress thus enacted the NGA in 1938 "to regulate the transportation and sale of natural gas in interstate commerce." *Id.* at 489. The NGA gave the Federal Power Commission (now the Federal Energy Regulatory Commission, FERC) exclusive jurisdiction to regulate the rates and facilities of natural gas companies. *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 300-301 (1988).

Before a natural gas company can construct, extend, acquire, or operate any facility for the transportation of natural gas in interstate commerce, it must obtain from FERC a "certificate of public convenience and necessity." 15 U.S.C. § 717f(c)(1)(A). A certificate will issue only if FERC finds the substantive standards satisfied after notice and hearing, at which members of the public and affected property-holders may object. 15 U.S.C. § 717f(c)(1)(B), (e).

The NGA was largely modeled after the Federal Power Act (FPA). From its inception as the Federal Water Power Act of 1920, the FPA has authorized certificate-holders to exercise "the right of eminent domain" to acquire necessary rights-of-way for the transmission of electric power. 16 U.S.C. § 814. The NGA initially lacked such a mechanism. *PennEast*, 594 U.S. at 489.

Instead, NGA certificate holders were forced to rely on state eminent domain procedures to secure the property rights they needed to develop pipelines. *PennEast*, 594 U.S. at 489. But those state procedures were frequently unavailable. Some States limited eminent domain to projects that would demonstrably benefit the States' residents. S. Rep. No. 80-429, at 2 (1947) (collecting cases). Pipelines, which move natural gas across numerous States, could not always satisfy those requirements. *Ibid.* Other States denied eminent domain power to out-of-state corporations. *Id.* at 2-3. And still others restricted eminent domain to corporations that distributed natural gas within the State. *Ibid.* The result of these inconsistent, if not obstructionist, state approaches was "that certificate holders often had only an illusory right to build." *PennEast*, 594 U.S. at 489.

Congress amended the NGA in 1947 to remedy this problem. Rather than resorting to state eminent domain authority, Congress provided that "any holder of a certificate of public convenience and necessity" may acquire necessary property rights "by the exercise of the right of eminent domain." 15 U.S.C. § 717f(h); Pub. L. No. 80-245, 61 Stat. 459 (1947). If a certificate-holder "cannot acquire by contract" the property needed for the project, it may do so by condemnation in "the district court of the United States for the district in which such property may be located, or in the State courts." *Ibid.*

Under the NGA, takings are usually non-possessory: Rather than divest the owner of the property entirely, they generally secure an easement to install, inspect, and maintain an underground pipeline.

B. Factual and procedural background

1. WBI is an interstate natural gas company under the NGA. See 15 U.S.C. § 717a. Since 1985, WBI has held a certificate of public convenience and necessity from FERC authorizing it to construct, acquire, and operate interstate pipeline facilities. Pet. App. 28a.

To meet growing customer demand for natural gas produced in the Bakken Formation of Montana and North Dakota—and to avoid wasteful flaring that results from insufficient transportation infrastructure—in 2017 WBI filed with FERC a prior notice request for authorization to construct and operate an expansion of its Line Section 27. COA App. 12-13, 44. The expansion consists of an underground, 24-inch-diameter pipeline running approximately 12 miles between existing WBI natural gas infrastructure elements within McKenzie County, North Dakota. *Id.* at

12-13. It transports gas processed at the Wild Basin and Garden Creek Plant to an interconnection with the Northern Border Pipeline, a 42-inch, 1400-mile pipeline that supplies natural gas to much of the Midwest. *Ibid*. Neither petitioners nor anyone else protested WBI's application. COA App. 44.

WBI designed the pipeline expansion to run immediately parallel to WBI's preexisting, 16-inch underground Garden Creek II pipeline. COA App. 14; D. Ct. Dkt. 1-8 (map depicting the pipeline essentially overlaid on top of Garden Creek II pipeline, in addition to another pipeline following a different path); FERC CP18-21-000, 20171130-5145, at 45 ("To minimize potential impacts, WBI Energy will closely parallel" the existing pipeline). The extension also parallels other pipelines; for example, across the Hoffmann Trust's property, the pipeline is one of four parallel underground pipelines, each separated by approximately 50 feet.[1] Compare, *e.g.*, FERC CP18-21-000, 20180116-5066, Attch. A at PDF p. 25 (Jan. 16, 2018), with D. Ct. Dkt. 1-5.

WBI obtained the majority of the rights it needed through voluntary agreements with property owners. COA App. 45; compare Pet. App. 16a (approximately 12 miles of pipeline in total), with COA App. 144 (17,730 linear feet condemned, approximately 28% of the total length). Despite having earlier reached voluntary agreements for WBI's immediately parallel pipeline at substantially lower rates, petitioners rejected WBI's compensation offers. COA App. 109-110

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[1] Several above-ground oil and gas wells are also present on petitioners' properties. See, *e.g.*, FERC CP18-21-000, 20171130-5145, at 71.

(Nielsen Dep. 161:8-162:13, 166:1-7). WBI thus brought an NGA condemnation action to obtain a 50-foot-wide easement to install and maintain the pipeline. Pet. App. 16a.

Petitioners and WBI stipulated that WBI could immediately use and possess the easements, with the amount of compensation to be determined. Pet. App. 29a; COA App. 48-54. Later, the parties settled the compensation amount, leaving only attorneys' fees in dispute. Pet. App. 29a-30a. The district court entered a judgment condemning the pipeline easements, and petitioners moved for attorneys' fees and expenses.

2. Asserting that "Rule 71.1 and the Natural Gas Act are silent," the district court determined that takings by delegatees are "distinct, unique, and separate from circumstances in which the United States" itself "is filling the role of the condemner." Pet. App. 31a. Applying *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979)—which the court acknowledged requires "judicial policy" and "common lawmaking" (Pet. App. 34a)—the court concluded that state law controls compensation. *Id.* at 43a-44a.

3. The Eighth Circuit reversed. The NGA's delegation of eminent domain authority is "categorical." Pet. App. 4a (quoting *PennEast*, 594 U.S. at 498). As the delegatee exercising the federal government's eminent domain power, WBI "inherited all its rights and obligations." *Ibid.* WBI thus possessed power to take property, and its corresponding obligation was to pay just compensation. *Ibid.*

"Just compensation" under the Fifth Amendment, the court observed, "has a well-established legal meaning." Pet. App. 4a. It depends on the value of the property, not the cost to the condemnee. Just compensation under federal law thus normally excludes attorneys' fees. Pet. App. 5a; see *United States* v. *Bodcaw Co.*, 440 U.S. 202, 203 (1979) ("[A]ttorneys' fees and expenses are not embraced within just compensation."). While Congress may provide otherwise by statute, it had not done so here. Pet. App. 5a. The court thus concluded that Section 717f(h) compensation does not include attorneys' fees.

The court rejected application of *Kimbell Foods*. Pet. App. 7a. That analysis fills statutory "gaps," but "when it comes to eminent domain," there are "no 'gaps' to fill." *Ibid.* Because "the gas company received what amounted to the *entire* federal eminent-domain power, not just some diluted form of it," the compensation standard should not change "when the federal government hands the keys over to a private party." *Id*. at 8a.[2]

SUMMARY OF ARGUMENT

In Section 717f(h), Congress categorically delegated the federal eminent domain power—the power the United States exercises when it condemns land in its own name. As this Court made clear in *United States* v. *Miller* in 1943, when Congress delegates this power, it has a choice to make: It may adopt the Fifth Amendment's compensation requirements—or it may select some greater alternative measure, including by reference to state law. In 1946, Congress chose explicitly to adopt state measures of compensation in the

[2] The Eighth Circuit had no occasion to reach WBI's alternative argument that attorneys' fees are not an element of just compensation under North Dakota law (see BIO 12-21; U.S. Cert. Br. 22), a potential issue for remand (see WBI Suppl. Br. 1).

General Bridge Act. But in 1947, Congress used language to ensure that Section 717f(h) would confer the federal standard for just compensation. Petitioners' contrary position cannot be squared with the text Congress wrote, with its purpose in writing it, or with a century of precedent.

I.A. Every traditional tool of interpretation yields the same result: Congress selected the federal measure of compensation.

When Congress enacted Section 717f(h) in 1947, this Court's precedents established that the federal eminent domain power was an incident of sovereignty not subject to enlargement or diminution by state law. When land was federally condemned, the Fifth Amendment's requirement of fair-market-value compensation applied. Congress could—and demonstrably knew how to—deviate from this rule when it wished. In 1946, Congress did just that in the General Bridge Act. But the next year, in enacting Section 717f(h), Congress adopted an approach that the Court had already construed to carry with it the federal measure.

In the NGA itself, Congress elsewhere specified when it wished to deviate from the Fifth Amendment requirement for compensation. 15 U.S.C. § 717y. And within Section 717f(h), Congress expressly adopted state procedural rules. But Congress subjected the substance of the eminent domain power—including the measure of compensation—to federal standards.

This is the only rule that even plausibly comports with the purpose underlying Section 717f(h). Congress enacted this provision to supplant a patchwork of varied and often parochial state condemnation regimes with uniform federal authority, ensuring critical infrastructure projects could be built. Reading the NGA to reintroduce fifty divergent state measures of compensation would reimpose the very obstacle Congress "acted to remedy" (*PennEast*, 594 U.S. at 489), shifting the resulting costs onto the ratepaying public the Act was designed to serve.

B. Petitioners' contrary rule would contravene the clear statutory text, upend more than a century of precedent, and undermine the statute's purpose.

Petitioners' theory that a Section 717f(h) proceeding is a mere "option contract" governed by state law mistakes timing for substance: The "option" feature of straight condemnation concerns *when* title passes, not *what law* measures compensation, and is a commonplace feature of federal takings by the United States itself.

Petitioners' reliance on the proposition that state law defines property interests is likewise misplaced—state law answers what the owner had, while federal law answers what the condemnor must pay for it. That division holds equally for direct and delegated takings. Delegating the eminent domain power to private parties in aid of public works is an "unexceptional" practice as old as the Nation. *PennEast*, 594 U.S. at 493. The delegated power "is complete in itself," carrying all its incidents without separate enumeration—so much so that it can be exercised irrespective of state sovereign immunity. *Id.* at 508. And because Congress could have accomplished the identical taking by directing FERC to condemn directly and convey, there is no logical basis to make the measure of compensation turn on which of two interchangeable mechanisms Congress selected.

II. The district court reached the opposite conclusion only by misreading Section 717f(h) to leave a gap to be filled with federal common law under *Kimbell Foods*. But *Kimbell Foods* has no role to play where ordinary construction already supplies the answer: The "authority to construe a statute is fundamentally different from the authority to fashion a new rule." *Northwest Airlines, Inc.* v. *Transport Workers Union of Am.*, 451 U.S. 77, 97 (1981). Moreover, even the *Kimbell Foods* framework favors a uniform federal rule. A single national standard is necessary to the NGA's operation, consistent with its objectives, and disrupts no settled expectations.

The Court should affirm.

ARGUMENT

I. SECTION 717F(H) MAINTAINS THE FEDERAL MEASURE OF JUST COMPENSATION.

The text, structure, history, and purpose of Section 717f(h) all point in the same direction: Congress intended to adopt the Fifth Amendment measure of compensation for federal condemnations. It was settled in 1947 that, while Congress *could* elect to incorporate state compensation law (with the Fifth Amendment serving as the base requirement), in the absence of explicit language doing so, the federal standard would govern federal takings. Here, Congress adopted language in Section 717f(h) that provides for the federal compensation standard, not the differing law of each State. And to leave no doubt, Congress did adopt state law in Section 717f(h)—but only for matters of "practice and procedure," not matters of substance like the measure of compensation.

Petitioners offer no compelling justification for turning federal takings law on its head and exposing interstate pipeline infrastructure to the patchwork of parochial, unpredictable state law that Congress explicitly sought to eliminate with Section 717f(h).[3]

A. The text, structure, history, and purpose of Section 717f(h) confirm that compensation is determined by federal law.

1. It was established in 1947 that federal law controls compensation for federal eminent domain.

The NGA empowers a certificate-holder to "acquire [property] by the exercise of the right of eminent domain" (15 U.S.C. § 717f(h))—a legal term of art meaning "[t]he power to take private property for public uses" as "an incident of sovereignty." *Jones*, 109 U.S. at 518. Where, as here, "Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." *Morissette* v. *United States*, 342 U.S. 246, 263 (1952). "In such case, absence of contrary direction" indicates Congress's "satisfaction

[3] Beyond the court below (Pet. App. 1a-10a), judges across the country have reached this same result for these same reasons. See, *e.g.*, *Sabal Trail Transmission, LLC* v. *3.921 Acres of Land*, 74 F.4th 1346, 1350 (11th Cir. 2023) (Grant, J., concurring); *Sabal Trail Transmission, LLC* v. *18.27 Acres of Land*, 59 F.4th 1158, 1175 (11th Cir. 2023) (Jordan, J., concurring); *Tennessee Gas Pipeline Co.* v. *Permanent Easement for 7.053 Acres*, 931 F.3d 237, 257 (3d Cir. 2019) (Chagares, J., dissenting); *Georgia Power Co.* v. *Sanders*, 617 F.2d 1112, 1129 (5th Cir. 1980) (Rubin, J., dissenting).

with widely accepted definitions," not "departure from them." *Ibid.*

By the time Congress delegated "the right of eminent domain" to natural gas companies in 1947, three things were abundantly clear about that right:

- *First*, the federal right of eminent domain is an aspect of federal sovereignty not subject to subordination to state law.
- *Second*, the Fifth Amendment's measure of compensation focuses on fair market value of the property, not loss to the owner, and therefore excludes secondary costs like attorneys' fees.
- And *third*, unless Congress specifies otherwise—which it has not hesitated to do where appropriate—the Fifth Amendment provides the sole measure of compensation.

The text of Section 717f(h) reflects each of these features. Together they establish that Congress did not incorporate state law into federal NGA condemnations.

a. To begin, the federal eminent domain power has never been subject to regulation by the States. As "an attribute of sovereignty" that required "no constitutional recognition," it is an inherent power "to take private property for public uses." *Mississippi & Rum River Boom Co.*, 98 U.S. at 406. The federal "right of eminent domain" must therefore "be complete in itself," and "can neither be enlarged nor diminished by a State[,] [n]or can any State prescribe the manner in which it must be exercised." *Kohl*, 91 U.S. at 373-374. Its exercise is subject only to the Constitution and any limitations Congress imposes.

b. The Fifth Amendment, with its requirement of just compensation, is the chief "limitation upon the use of the [eminent domain] power." *Jones*, 109 U.S. at 518. The Takings Clause exists because the common law did not provide a sufficient right to compensation for takings. See generally, *e.g.*, William Michael Treanor, *The Origins and Original Significance of the Just Compensation Clause of the Fifth Amendment*, 94 Yale L.J. 694, 695 (1985) ("Eighteenth-century colonial legislatures regularly took private property without compensating the owner.").

The contours of the Fifth Amendment's requirement of "just compensation" were well understood by 1947: fair market value of the taken property. "[T]he courts early adopted, and have retained, the concept of market value" as the appropriate compensation. *United States* v. *Miller*, 317 U.S. 369, 374 (1943). This long-held federal measure of compensation "has been chosen to strike a fair 'balance between the public's need and the claimant's loss' upon condemnation of property for a public purpose." *United States* v. *564.54 Acres of Land*, 441 U.S. 506, 512 (1979). To award "[m]ore would be unjust to the United States, and less would deny the owner what he is entitled to." *United States* v. *New River Collieries Co.*, 262 U.S. 341, 344 (1923).

This fair-market-value approach is rooted in the text of the Fifth Amendment. By requiring "just compensation," the Amendment mandates that "compensation must be a full and perfect equivalent for the property taken," but not more. *Monongahela Nav. Co.* v. *United States*, 148 U.S. 312, 326 (1893). Under the text, "just compensation, it will be noticed, is for the property, and not to the owner." *Ibid.* This Court has accordingly explained that "indirect costs to the property owner caused by the taking of his land are generally not part of the just compensation to which he is constitutionally entitled." *Bodcaw*, 440 U.S. at 203.

Well before 1947, it was therefore clear that "[a]ttorneys' fees and expenses are not embraced within just compensation for land taken by eminent domain." *Dohany* v. *Rogers*, 281 U.S. 362, 368 (1930). Indeed, "[t]here are numerous * * * losses which result from condemnation of properties but which are not compensable under the Fifth Amendment." *United States ex rel. Tennessee Valley Auth.* v. *Powelson*, 319 U.S. 266, 281 (1943). The Court's decisions prior to and contemporaneous with Section 717f(h)'s enactment repeatedly rejected any federal constitutional requirement to compensate property owners for other out-of-pocket consequences of a taking. See, *e.g.*, *L. Vogelstein & Co.* v. *United States*, 262 U.S. 337, 340 (1923) (price increases); *Campbell* v. *United States*, 266 U.S. 368, 372 (1924) (diminished adjacent property values); *Mitchell* v. *United States*, 267 U.S. 341, 345 (1925) (consequential damages).

Thus, when Congress enacted Section 717f(h) (and even in 1920, when Congress enacted the precursor eminent-domain provision in the FPA), Congress understood that the "right of eminent domain" carried with it a measure of fair market value, and nothing more—certainly not attorneys' fees.[4]

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[4] Some *amici* cite cases in which the Court used broader language—for example, that "just compensation" puts the owner "in as good a position pecuniarily as he would have been if his property had not been taken." *Campbell*, 266 U.S. at 371. But this phrasing "has not been given its full and literal force"; instead, "the concept of fair market value has been chosen to strike a fair

c. Finally, by 1947, this Court had established that while Congress *can* impose additional constraints on the exercise of eminent domain, absent such direction, the Fifth Amendment provides the full measure of compensation.

In 1943, just a few years before Congress enacted Section 717f(h), the Court summarized existing law as providing that, "*[i]n absence of a statutory mandate*, the sovereign must pay only for what it takes, not for opportunities which the owner may lose"—that is, "the Fifth Amendment['s]" "measure of compensation" applies. *Powelson*, 319 U.S. at 281-282 (emphasis added) (collecting cases).

That same year, the Court affirmed that "the Constitution has never been construed" to consider benefits to neighboring tracts, "*unless the legislature so provides*, as it may." *Miller*, 317 U.S. at 376 (emphasis added). As the Court later summarized (relying entirely on pre-1947 cases), any compensation beyond the Fifth Amendment's baseline "is a matter of legislative grace." *Bodcaw*, 440 U.S. at 203-204.[5]

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balance between the public's need and the claimant's loss." *564.54 Acres*, 441 U.S. at 510-512.

[5] Petitioners cite (at 23-24) *Brown* v. *United States*, 263 U.S. 78, 85-87 (1923), as a supposed example of the Court adopting state measures of compensation. But even petitioners do not appear to really believe in their *Brown* argument (Pet. Br. 24 n.2), and for good reason: *Brown*'s date-of-interest holding was acknowledged as unusual in that it "flowed from the acceptance by this Court, without question, of the day of summons as the date for * * * the day of taking," seemingly based on the statute providing for borrowing of state procedure. *Danforth* v. *United States*, 308 U.S. 271, 285-286 (1939). That is, having borrowed the state procedural timing rule by statute, it "absorbed * * * state law" as to interest timing "not because state law was the source of the right

As a result of this existing settled law,[6] Congress would have been aware in 1947 that by authorizing pipeline companies to exercise "the right of eminent domain," it was providing that the Fifth Amendment obligations would govern. See, *e.g.*, *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 80 (2023) ("This Court generally assumes that, when Congress enacts statutes, it is aware of this Court's relevant precedents.") (quoting *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 700 (2022)).

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but because recognition of state interests was not deemed inconsistent with federal policy * * * [i]n the absence of explicit legislative policy cutting across state interests"—which is emphatically not absent here. *Board of Comm'rs of Jackson Cnty.* v. *United States*, 308 U.S. 343, 351-352 (1939).

In any event, just a few years before 1947, *Miller* eliminated any ambiguity by holding unequivocally that the "criterion of value" in a federal condemnation is a matter of federal "substantive right * * * grounded upon the Constitution," notwithstanding a more landowner-favorable "California rule." 317 U.S. at 379-380 & n.25. That was the immediate legal context for the adoption of Section 717f(h).

[6] Petitioners' two pre-*Miller* court of appeals decisions (Pet. Br. 30-31) did not alter Congress's understanding. *Feltz* v. *Central Neb. Pub. Power & Irrigation Dist.*, 124 F.2d 578, 583 (8th Cir. 1942), offered an unreasoned, conclusory assertion that state law applied; it does not appear that the issue was contested. And *Central Neb. Pub. Power & Irrigation Dist.* v. *Fairchild*, 126 F.2d 302, 304 (8th Cir. 1942), decided by the same panel 11 days later, merely restated *Feltz*. Neither case plausibly calls into question *Miller*'s subsequent clarity.

2. Congress made a deliberate choice between two statutory models, selecting the one held to incorporate federal compensation law.

Indeed, we *know* that if Congress had wanted to displace the federal compensation measure with state law in the NGA, it would have said so explicitly—because it did exactly that one year earlier, in 1946.

a. To recap, *Miller* and *Powelson* had each plainly stated, in 1943, that the Fifth Amendment's rule—fair market value of the property, not more—is the sole measure of compensation "[i]n absence of a statutory mandate" to the contrary (*Powelson*, 319 U.S. at 281-282), or "unless the legislature so provides, as it may" (*Miller*, 317 U.S. at 376).

Miller is especially telling. That case involved the Condemnation Act of 1888, a general-purpose eminent domain statute that shares the same essential features Congress later incorporated into Section 717f(h): It (1) authorized officers to "acquire" "real estate * * * for the United States by condemnation, under judicial process" in federal court; (2) said nothing to displace the federal measure of compensation that naturally attaches to an exercise of federal eminent domain; and (3) *did* adopt state law in one respect—as to "practice, pleading, forms and modes of proceeding." Condemnation Act of 1888, ch. 728, 25 Stat. 357.

Interpreting this text, the Court in *Miller* expressly rejected an argument that the Condemnation Act "adopted the local rule" as to "the criterion of value" for condemned land:

> [T]he federal statutes upon which reliance is placed require only that, in condemnation

> proceedings, a federal court shall adopt the forms and methods of procedure afforded by the law of the State in which the court sits. *They do not * * * affect questions of substantive right,—such as the measure of compensation*,—grounded upon the Constitution of the United States.

Miller, 317 U.S. at 379-380 (emphasis added).[7]

While *Miller* was extraordinarily clear, it was not itself an innovation. Prior to the passage of the Federal Power Act in 1920, the Court had repeatedly reached this conclusion. In 1884, Congress provided for "full compensation" for property appropriated by a private railroad company, and established a referee procedure, with appeal to federal court, to fix the amount of compensation; no source of law was specified for the amount. Act of July 4, 1884, ch. 179, 23 Stat. 73, 73-74. When this Court construed the statute, the question was simply whether the statutory procedure was "sufficient to secure the compensation to which, *under the constitution*, [the landowner] is entitled." *Cherokee Nation*, 135 U.S. at 659 (emphasis added). State law played no role. See also *United*

[7] Following *Miller*, but prior to the enactment of Section 717f(h), the courts of appeals repeatedly acknowledged its holding that compensation under the Condemnation Act was determined by federal substantive law. See *United States* v. *Certain Parcels of Land in Philadelphia*, 145 F.2d 374, 375 (3d Cir. 1944); *United States* v. *19.86 Acres of Land*, 141 F.2d 344, 346 (7th Cir. 1944); *John Hancock Mut. Life Ins.* v. *Casey*, 147 F.2d 762, 766 (1st Cir. 1945); *United States* v. *13,255.53 Acres of Land*, 158 F.2d 874, 876 (3d Cir. 1946); *Nebraska* v. *United States*, 164 F.2d 866, 867-868 (8th Cir. 1947); *Comparet* v. *United States*, 164 F.2d 452, 453 (10th Cir. 1947).

States v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 56 n.†, 76-81 (1913) (analyzing compensation under "[t]he requirement of the 5th Amendment" where statute provided for "condemnation proceedings * * * to determine what compensation shall be awarded," selected state-law "practice" for the action, but did not explicitly set the measure of compensation).

b. Accordingly, in 1943, *Miller* provided a roadmap for Congress in enacting eminent domain statutes: If the legislature wanted to maintain the federal "measure of compensation" (317 U.S. at 380), it could simply do what it had done in the Condemnation Act—authorize condemnation, say nothing further about valuation of the land, and even select state procedural law if preferable. If, by contrast, Congress wanted to select a state-law "measure of compensation," "the legislature" was free to affirmatively "so provide[]." *Id.* at 376, 379-380.

Shortly thereafter, in the General Bridge Act of 1946, Congress *did* "so provide": To deviate from the Fifth Amendment rule, Congress expressly required that "compensation" for the "condemn[ations]" authorized by that statute be "ascertained and paid according to the laws of [the] State" in which condemnation occurs. ch. 753, Title V, § 509, 60 Stat. 849 (codified at 33 U.S.C. § 532). Notably, this statute, like the NGA, was a delegation of eminent domain power to private "individual[s]," "corporation[s]" and other nonfederal actors (*ibid.*)—and to select state law as the measure of compensation, Congress did so explicitly in the text.[8]

[8] Similarly, in 1890, Congress empowered the North River Bridge Company to "acquire by * * * condemnation" the property

That is, the General Bridge Act proves that, "[i]f Congress had wanted" to provide for state-law compensation in the NGA, "it knew exactly how to do so—it could have simply borrowed from" an important statute on the same subject enacted just one year earlier. *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 364 (2018).

But rather than following the immediately contemporaneous model of the General Bridge Act, Congress in Section 717f(h) chose a different model: that of the Condemnation Act, which the Court had recently confirmed in *Miller* would result in application of the federal compensation measure. "Congress's choice to depart from the model of a closely related statute"—particularly when Congress instead selected the contrasting model of *another* closely related statute—"is a choice" the Court "may [not] disregard." *SAS Inst.*, 584 U.S. at 364.

3. Additional text and context confirm that Congress intended the federal measure of compensation to apply.

a. Not only did Congress conspicuously decline to adopt state-law compensation in Section 717f(h), it *did* adopt state law in one limited respect: only as to state "practice and procedure." 15 U.S.C. § 717f(h).[9] Even setting aside the Court's construction of similar language in *Miller* (see *supra*, at 19-20) and reading

necessary to build a railroad bridge across the Hudson River, "upon making proper compensation therefor, *to be ascertained according to the laws of the State* within which the same is located." Act of July 11, 1890, ch. 669, § 4, 26 Stat. 268, 269-270 (emphasis added).

[9] The incorporation of state procedural law "was clearly repealed" by what is now Rule 71.1. *United States* v. *93.970 Acres of Land*, 360 U.S. 328, 333 n.7 (1959).

the text on its face, the fact that Congress specified state law for one set of questions strongly indicates its intent that state law not govern elsewhere. See, *e.g.*, *Maine Cmty. Health Options* v. *United States*, 590 U.S. 296, 314 (2020) ("This Court generally presumes that when Congress includes particular language in one section of a statute but omits it in another, Congress intended a difference in meaning.").

Again, the General Bridge Act provides a useful contrast: There, where Congress wanted state law to govern both compensation and procedure, it enumerated each requirement separately. See 60 Stat. at 849 (providing both that "compensation [for condemned property] be ascertained and paid according to the laws of such State," *and* that "the proceedings therefor shall be the same as * * * in such State").

b. Other, later statutes also confirm that when Congress wants some other measure of compensation beyond the Fifth Amendment requirement, it expressly so provides. In the Uniform Relocation Assistance Act (URA), Congress expressly allowed fees and other expenses beyond fair market value in a narrow set of circumstances where federal agencies—defined to include private delegatees like WBI—exercise federal eminent domain authority. 42 U.S.C. §§ 4601(1), 4654(a). This provision applies to NGA proceedings (*Transwestern Pipeline Co.* v. *17.19 Acres of Prop.*, 627 F.3d 1268 (9th Cir. 2010)), but it is undisputed that it does not justify fees here.

Similarly, in the Equal Access to Justice Act, Congress required the federal government to pay attorneys' fees in certain condemnation actions that are not resolved by settlement. 28 U.S.C. § 2412(a)(1), (d)(2)(H). This is the exception, not the rule, because the United States "would not otherwise be liable" for these sums. *Ardestani* v. *INS*, 502 U.S. 129, 137 (1991).

In the Navajo-Hopi Relocation Act, Congress provided that tribal members would be compensated at fair market value, and "[i]n addition," paid "an amount which, when added to the fair market value" of their property "equal[ed] the reasonable cost of a decent, safe, and sanitary replacement dwelling." 25 U.S.C. § 640d-14(b)(2) (1974). And in 43 U.S.C. § 945a, Congress provided that when the Secretary of the Interior takes land for a canal, the government shall pay "just compensation, including severance damages" for the loss in value to the portion of the property not taken.

Indeed, the NGA itself is elsewhere explicit where it permits deviation from the federal compensation standard. In a provision governing the transfer of certain rights to receive natural gas, the NGA provides that FERC may determine by rule "the maximum consideration permitted as just compensation." 15 U.S.C. § 717y(b)(2). The section goes on to expressly define "just compensation" for the purposes of the section and rule as including "the reasonable costs * * * incurred" or "loss of revenue" under various circumstances relevant to the contracts. 15 U.S.C. § 717y(e)(2)-(3). That Congress provided a measure of just compensation that expressly deviated from the Fifth Amendment's base requirement in one section of the NGA, but included no such deviation in Section 717f(h), confirms that Congress intended the Fifth

Amendment measure to apply in the ordinary course. See *Russello* v. *United States*, 464 U.S. 16, 23 (1984).[10]

[10] Petitioners observe (at 35) that, in 2005, Congress amended the FPA (not the NGA) to expressly define "just compensation" to include "severance damages" for adjacent property, without amending Section 717f(h). See Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (codified at 16 U.S.C. § 824p(f)). As petitioners admit, Congress's amendment to the FPA followed two decisions (what petitioners call (at 35) a "lower-court consensus") applying *Kimbell Foods* to conclude that the FPA incorporated state law. Petitioners assert that Congress's decision to amend the FPA, *but not* Section 717f(h), represents a "failure to disturb a consistent judicial interpretation" incorporating state-law measures of compensation under Section 717f(h). Pet. Br. 35-36.

Even setting aside the developments between 1920 and 1947 that make plain what Congress intended in the NGA, this argument is a paradigmatic example of why "[c]ongressional inaction lacks 'persuasive significance'": "'[S]everal equally tenable inferences' may be drawn from such inaction, 'including the inference that the existing legislation already incorporated the offered change.'" *Pension Ben. Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 650 (1990). Congress may have amended the FPA to override the wholesale incorporation of state-law measures of compensation from judicial decisions it viewed as erroneous. In other words, Section 824p(f) was part of a newly created and distinct condemnation authority, and a later Congress's decision to state the governing measure expressly in a new provision does not ratify lower-court constructions of older provisions, particularly where those constructions rested on federal common law rather than statutory text. Similarly, petitioners' reference to post-Section 717f(h) state-court authority (at 34) is misplaced because none of those state cases affirmatively engaged with the question of federal versus state law. See *Transwestern Pipe Line Co.* v. *Yandell*, 367 P.2d 938, 942 (N.M. 1961); *Transcon. Gas Pipe Line Corp.* v. *Tieman*, 112 So. 2d 724, 725-726 (La. Ct. App. 1959); *Gulf Interstate Gas Co.* v. *Garvin*, 303 S.W.2d 260, 261-262 (Ky. 1957).

4. There is no basis for distinguishing private delegatees.

Congress's delegation of the eminent domain authority in Section 717f(h)—a common practice—does not change the calculus. As *PennEast* recently explained, "[f]or as long as the eminent domain power has been exercised by the United States, it has also been delegated to private parties," and "Section 717f(h) follows this path." 594 U.S. at 495, 498; see also *id.* at 508. Section 717f(h)'s "delegation" of the federal power "is categorical," and the delegated power "is complete in itself"—meaning that no extra delegation was needed in order to confer "the power to condemn States' property interests," as opposed to private interests, notwithstanding state sovereign immunity. *Id.* at 498, 508.

In other words, "the right of eminent domain" delegated in Section 717f(h) is the entire, self-contained federal power, and all its various aspects (like States' "consent[] to the exercise of that power * * * in the plan of the Convention" (*PennEast*, 594 U.S. at 508)) come along with it. If something with the gravity of States' waiver of sovereign immunity flows to the delegatee, then the federal measure of compensation likewise follows to the delegatee *a fortiori*. And there is no dispute that the federal government, if exercising this authority, would pay the compensation required by the Fifth Amendment, and no more. Pet. Br. 15.

Were it otherwise, the outcome of the issue presented here would differ depending on whether the federal government consummates the condemnation and then transfers the property rights to an NGA certificate-holder, or whether the certificate-holder acts directly. *PennEast* unqualifiedly rejected that any such distinction should exist. 594 U.S. at 497-498.

Statutory history confirms the conclusion. In private eminent-domain delegations prior to the NGA, just like direct exercises of that power by the government, Congress specified where it wished compensation to be determined by state law. See *supra*, at 21-24. *Cherokee Nation* addressed an act providing condemnation rights to railroads without specifying the measure of compensation—and the Court saw no role for state law. 135 U.S. at 659-660. Meanwhile, the North River Bridge Act (26 Stat. at 268, 269) and the General Bridge Act (60 Stat. at 849) did expressly provide, in delegations of the eminent domain power to private entities, for compensation set by state law.

When Congress delegates its eminent domain power to private entities, it establishes the Fifth Amendment requirement as the compensation measure—*unless*, as in the General Bridge Act and elsewhere, Congress specifies otherwise. Ultimately, "the choice of how to exercise the eminent domain power and what additional compensation to provide belongs to Congress alone." *Sabal Trail,* 74 F.4th at 1350 (Grant, J., concurring).

5. Petitioners' rule would frustrate the NGA's statutory purpose.

While the text and statutory history are sufficient to resolve the question presented, applying a federal measure of compensation also "advance[s], in a manner consistent with the statute's language, the statutory purposes that Congress sought to achieve." *County of Maui* v. *Hawaii Wildlife Fund*, 590 U.S. 165, 184 (2020).

a. In Section 717f(h), Congress wanted to eliminate state-by-state variation in NGA condemnations so that certificate-holders could efficiently construct interstate pipelines. S. Rep. No. 80-429, at 3. As *PennEast* explained, Congress enacted Section 717f(h) so that certificate-holders would not be impeded by varying and frequently hostile "state eminent domain procedures," rendering their federal "right to build" "illusory." 594 U.S. at 489-490.

Some state laws expressly or effectively denied natural gas companies the right of eminent domain if their pipelines crossed through the State but did not service that State. S. Rep. No. 80-429, at 3. As the Senate Report explained, "the right of an interstate natural gas pipe line to cross intervening States in which no service is performed is a necessary protection of the free flow of commerce among the States." *Ibid.* Construing the resulting uniform federal regime to nevertheless be subject to a patchwork of individual state compensation laws would recreate the very problem "Congress acted to remedy" in Section 717f(h). *PennEast*, 594 U.S. at 489.

This is not hypothetical. Individual state laws on the measure of compensation for a taking vary widely; some States have imposed special rules for particular types of land or particular types of takings.

In Missouri, for example, a property that has been owned by a family for more than 50 years, or is owned by a small business with fewer than 100 employees, is accorded a statutory "heritage value" requiring compensation at 150% of fair market value. Mo. Rev. Stat. §§ 523.001(2), 523.039.1(3). Indiana disfavors agricultural takings, requiring a condemnor to pay 125% of fair market value, as well as "other damages * * * and any loss incurred in a trade or business," and "payment of the owner's relocation costs." Ind. Code § 32-24-4.5-8(a)(1). Rhode Island residential tenants of buildings taken must receive at least 150% of one month's rent. R.I. Gen. Laws § 42-64.12-8.1. Minnesota requires compensation to a business owner not to exceed the three prior years' profit if a "loss of driveway access" reduces revenue "by 51 percent or greater." Minn. Stat. § 117.186 subd. 4. And several States require compensation for business goodwill, apart from the value of the property. See, *e.g.*, Cal. Civ. Proc. Code § 1263.510(a); Fla. Stat. § 73.071(3)(b); Ohio Rev. Code § 163.14(C); Nev. Rev. Stat. § 37.111.

Some States have even enacted compensation requirements targeted specifically at private delegatees. Missouri disfavors any taking of agricultural land by electrical companies, requiring those takings to be compensated at 150% of fair market value. Mo. Rev. Stat. § 523.039.2. Indiana provides that any CO_2 transmission pipeline company exercising delegated eminent-domain power must pay between 125% and 150% of fair market value, plus "any loss incurred in a trade or business." Ind. Code § 14-39-1-9. And in Arkansas, an electric utility that takes private land for transmission lines "shall compensate the private property owner at three (3) times the market value of the property taken by eminent domain." Ark. Code § 23-18-108(b).

Petitioners would authorize States to obstruct pipelines—for example, by requiring that any taking for a natural-gas pipeline compensate landowners at multiples of the market value of the taking, making all pipelines economically infeasible. And States have shown considerable interest in restricting eminent domain over pipeline projects to advance local policy. South Dakota recently banned the use of eminent domain for CO_2 pipelines, and other States have come close. See S.D. Codified Laws § 49-7-13.1; H.F. 943, 91st Gen. Assemb. (Iowa 2025) (passed but vetoed); H.B. 1414, 69th Legis. Assemb., Reg. Sess. (N.D. 2025) (Senate floor vote).

Attorneys' fees also display significant state-to-state variation. Twenty-one States, by *amicus*'s count, permit condemnees to recover fees and costs associated with condemnation. See Owners' Counsel Br. 10-18. The practical effect of importing attorneys' fees into Section 717f(h) would be profound. Such fees can dramatically increase the cost of condemnation, and the award of fees often accrues primarily to the benefit of the attorney, not the landowner. URA awards show that the fees often equal or exceed the value of the actual property, sometimes dwarfing it by orders of magnitude. See *Hippely* v. *United States*, 173 Fed. Cl. 389, 428, 446 (2024) (award of $284,642.14 in costs and fees, with total recovery of $1,869.09 for property); *Campbell* v. *United States*, 138 Fed. Cl. 65, 70 (2018) ("The amount of compensation ultimately agreed to, without interest, was only $122,466, compared to $1,187,470 claimed for attorney fees.").

Petitioners' state-by-state policymaking is exactly the type of legal balkanization Congress enacted Section 717f(h) to avoid. See *supra*, at 5-6. While petitioners' *amici* prefer the wild variation in state compensation regimes as a policy matter (see, *e.g.*, Owners' Counsel Br. 10-18; Landowner Grps. Br. 7-15; Nat'l Ass'n of Realtors Br. 11-24; Fla. Property Owners Br. 32-33), Congress has chosen a different path, and the choice of legislative policy "lies first and foremost with Congress." *Kimble*, 576 U.S. at 463. If petitioners and their *amici* believe Congress's decision in Section 717f(h) was unwise, "then Congress, not this Court, is [their] proper audience." *Ibid.*

b. This Court has long recognized that imposing elevated measures of compensation beyond the Fifth Amendment's is inequitable. The "just compensation" for a taking "is for the property, and not to the owner." *Monongahela Nav. Co.*, 148 U.S. at 326. A plaintiff is "not entitled to have more than that." *Campbell*, 266 U.S. at 371. In other words, a taking is not an auction at which a property owner can command his preferred price, and the Fifth Amendment does not require payment of any sum that "can be exacted" by the landowner as a result of the taking. *United States* v. *Cors*, 337 U.S. 325, 333 (1949).

As the Court has repeatedly explained, with respect to the constitutional measure of compensation, "the dominant consideration always remains the same: What compensation is 'just' both to an owner whose property is taken and to the public that must pay the bill?" *564.54 Acres of Land*, 441 U.S. at 512. In the railroad context, for example, the Court recognized that Congress sought to ensure private railroads' insulation from inappropriate costs in order *to benefit the public good*; railroads were correspondingly "equipped with the governmental power of eminent domain * * * in order to prevent advantage being taken of its necessities"—that is, to prevent them from "be[ing] compelled to pay more than [a property's] fair market value." *Simpson* v. *Shepard (Minnesota Rate Cases)*, 230 U.S. 352, 451 (1913).

This is especially true for condemnations under the NGA, where certificate-holders like WBI are extensively regulated by FERC. The NGA requires that "[a]ll rates and charges made * * * shall be just and reasonable," and any higher rate is "unlawful." 15 U.S.C. § 717c(a). It is established that pipeline rates appropriately "pass on to ratepayers" "legal costs that are connected with the construction of a pipeline," including "cost of attorneys" relating to "eminent domain rights." *Iroquois Gas Transmission Sys., L.P.*, 77 FERC ¶ 61,288, 62,281 (1996). The fees petitioners request, if allowed, would therefore fall to the Nation's ratepaying public—everyone who heats their homes or businesses with natural gas or who buys electricity generated using natural gas.

By providing for a uniform measure of federal compensation, Congress chose to further the development of natural-gas infrastructure in a manner that protects ratepayers—that is, "the public that must pay the bill[.]" *564.54 Acres of Land*, 441 U.S. at 512. That choice effectuates the core purpose of the NGA: "encourag[ing] the orderly development of plentiful supplies of * * * natural gas at reasonable prices." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 670 (1976). Petitioners' rule would undermine that legislative choice.

c. Petitioners' response is revealing. Even they cannot stomach the result of their construction, which empowers States to defeat Congress's manifest intent. Petitioners thus propose an escape hatch: State law governs, we are told, unless it "discriminate[s] against federal projects or otherwise render[s] them impossible." Pet. Br. 29. But state laws can materially frustrate interstate projects—violating the purpose of

Section 717f(h)—while remaining facially neutral and without rendering them literally "impossible." Nor is there any textual basis to invent an amorphous, project-by-project preemption inquiry, which, as petitioners appear to conceive it, seems little more than naked judicial lawmaking.

Ultimately, petitioners' theory is that state law applies—unless it doesn't. As petitioners see it, Congress adopted state law but then ran roughshod over it by (silently) enabling courts to freely preempt state choices. The far better conclusion is that Congress intended for the federal standard to govern.

B. Petitioners' arguments to the contrary fail.

The logic of our position is straightforward: Congress made a "categorical" delegation of the federal eminent domain power (*PennEast*, 594 U.S. at 498), with everything that goes along with it including the federal measure of compensation; by 1947, it was established that an eminent domain statute using language like Section 717f(h)'s invoked the Fifth Amendment compensation requirement, and when Congress intended to depart from that baseline—including for private delegatees—it did so explicitly. Congress followed the former path here.

Petitioners offer an entirely different chain of logic: Section 717f(h), they say, delegates only a limited power to file a lawsuit, meaning that (they say) there is no reason that federal law should supply the compensation measure; and they offer several supposed default rules that (they say) point toward importing state law to fill that purported gap. This reasoning fails at each step.

1. As to what *PennEast* called a "categorical" "delegation" of the eminent domain power in Section 717f(h), petitioners insist (at 13-17) that the procedural mechanism Congress specified—a lawsuit—somehow alters the nature of the delegation. Not so.

Petitioners first claim that Section 717f(h) is not "a delegation of the eminent-domain power" *at all*. That is inconsistent with both statutory text and *PennEast*. Section 717f(h) makes abundantly clear that "any holder of a certificate of public convenience and necessity" "may acquire" "the necessary right-of-way to construct, operate, and maintain a pipe line" "by the exercise of *the right of eminent domain*." 15 U.S.C. § 717f(h) (emphasis added); see also *Niz-Chavez* v. *Garland*, 593 U.S. 155, 166 (2021) ("using a definite article with a singular noun" "speak[s] of [that noun] as a discrete thing."). As *PennEast* said, "the Natural Gas Act delegates the federal eminent domain power to private parties." 594 U.S. at 488; see also *id.* at 497; *accord id.* at 516 (Barrett, J., dissenting).

Petitioners have little response. They try (at 46) to shrink *PennEast* to a holding about the power to sue, but the Court did not describe a categorical delegation of the right to file a lawsuit; it described a "categorical" delegation of "the federal eminent domain power"—the same sovereign power the United States exercises when it condemns land in its own name. 594 U.S. at 498, 508.

Petitioners' posited distinction between an action in "condemnation" and the power of eminent domain is both illusory and ahistorical. "Institut[ing] condemnation proceedings under various Acts of Congress providing authority for * * * takings" is one way the federal government itself exercises the federal right of eminent domain. *PennEast*, 594 U.S. at 498 (quoting *United States* v. *Dow*, 357 U.S. 17, 21 (1958)). "The same is true for private delegatees." *Ibid.* Thus, as the Court explicitly observed, a private delegatee's "condemnation action" under the NGA "*give[s] effect to* the federal eminent domain power." *Id.* at 502 (emphasis added). Or, as the Court put it over a century earlier, "[w]hy speak of condemnation at all, if Congress had not in view an exercise of the right of eminent domain, and did not intend to confer * * * the right to invoke it?" *Kohl*, 91 U.S. at 375.

PennEast therefore expressly rejected the mirror image of petitioners' current argument. The Court noted the "flaw" in New Jersey's argument that Section 717f(h) delegated the federal eminent domain power but not the federal authority to sue non-consenting States: "[I]t attempts to divorce the eminent domain power from the power to bring condemnation actions," but "the eminent domain power is inextricably intertwined with the ability to condemn." *PennEast*, 594 U.S. at 503. Just as in *PennEast*, petitioners' attempt to "[s]eparat[e] the eminent domain power from the power to condemn" fails. *Ibid.*

2. Petitioners' most specific attempt to recast the delegation as something less turns on the mechanics of "straight" condemnation, in which the condemnor does not take title at the outset but instead "asks a court to adjudicate the value of a piece of property," and the judgment affords it "an option to buy the property at the adjudicated price." Pet. Br. 14 (quoting *Kirby Forest Indus., Inc.* v. *United States*, 467 U.S. 1, 4 (1984)). From this, petitioners theorize that a Section 717f(h) proceeding is not a taking at all, but a private "option contract," to which the federal measure of compensation has no necessary application. Pet. Br. 15-16. The argument does not withstand scrutiny.

First, the feature petitioners seize on says nothing about *what* law measures compensation. The "option" characterization in *Kirby Forest* concerns *when* title passes and *when* the condemnor becomes bound—questions of timing relevant to the date of valuation and the accrual of interest, not to the source of the substantive standard. Straight condemnation is, in fact, the ordinary means by which the federal government exercises its own eminent domain power. Indeed, *Kirby Forest* was itself a condemnation by the United States, governed by federal just-compensation law from beginning to end. Petitioners thus take a commonplace feature of *federal* takings and offer it as proof that a Section 717f(h) taking is somehow *private* and governed by state law. But if the ability to decline the adjudicated price subjected a condemnation to state law, it would do so when the United States condemns in its own name—which no one contends.

Second, that a court fixes the number does not determine which law supplies the measure of compensation. A court adjudicates compensation in a Section 717f(h) action because that is the mechanism through which Congress directed that the federal power be exercised. 15 U.S.C. § 717f(h). But the selection of a judicial vehicle is a matter of procedure, and "the measure of compensation" is a "question[] of substantive right." *Miller*, 317 U.S. at 380. However the amount is set, the substantive right vindicated in a suit to "give effect to the federal eminent domain power" (*Penn-East*, 594 U.S. at 502) remains one "grounded upon the Constitution of the United States" (*Miller*, 317 U.S. at 380). Petitioners' insistence that the value adjudicated in the lawsuit is a state-law value assumes their preferred answer to the question presented.[11]

Finally, if the limitation to straight condemnation is meaningful, it shows that Congress knew how to define and cabin the mechanics of a taking—confining certificate-holders to straight condemnation rather than the immediate-title procedure of the Declaration of Taking Act, 40 U.S.C. § 3114. See Pet. Br. 14. That Congress specified the procedural channel with such care, while saying nothing to displace the compensation standard that has always attended the federal power (see *supra,* at 13-18), confirms that no displacement was intended. Where Congress "easily could have" included such a requirement but "did not do so," the Court is "bound to enforce only the language that Congress and the President enacted." *Bloate* v. *United States*, 559 U.S. 196, 211 n.13 (2010).[12]

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[11] Contrary to petitioners' contention (at 48), Congress's choice to allow suit in state or federal court does not create a "two-track" system. State and federal courts both apply federal substantive law when adjudicating a federal claim. See *Monessen Sw. Ry.* v. *Morgan*, 486 U.S. 330, 335 (1988). The amount-in-controversy limitation similarly concerns forum, not the content of the federal right when exercised through state proceedings.

[12] There is no relevance to petitioners' contention (at 45) that Section 717f(h) "is an exercise of the commerce power creating a private cause of action." Eminent domain is inherent in sovereignty, but statutes employing that tool for railroads, pipelines, and the like are rooted in the commerce power—whether the condemnation is performed directly or through a private delegatee. See *Cherokee Nation*, 135 U.S. at 658 ("The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from state to state, is essential to the complete control and regulation of interstate commerce."). The

3. Petitioners' reliance (at 17-19, 25) on supposed default rules favoring state law fares no better.

First, that state law may supply certain rules defining property rights (see *Butner* v. *United States*, 440 U.S. 48, 55 (1979); *Reconstruction Fin. Corp*. v. *Beaver Cnty.*, 328 U.S. 204, 210 (1946); *cf. Sackett* v. *EPA*, 598 U.S. 651, 679 (2023)) is beside the point. That is, petitioners' own quotations demonstrate that the scope of these cases is "application of settled state rules *as to what constitutes* 'real property.'" *Beaver Cnty.*, 328 U.S. at 210 (emphasis added). State law can determine title, the existence and dimensions of an easement, and other attributes of the property at issue—but the *definition* of a property interest is quite distinct from the measure of *compensation* owed when the federal government or its delegatee takes that interest. The first asks what the owner had; the second asks what the condemnor must pay to take it. State law naturally informs the former because property interests are creatures of state law. But "the measure of compensation" for a taking is a "question[] of substantive right" "grounded upon the Constitution of the United States." *Miller*, 317 U.S. at 380.[13]

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commerce-power characterization of Section 717f(h) was relevant in *PennEast* because Congress cannot "abrogate States' [sovereign] immunity pursuant to its Article I powers" (594 U.S. at 501; see also *id.* at 522 (Barrett, J., dissenting))—but state sovereign immunity is not at issue here.

[13] Petitioners also cite (at 17) *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 155 (1944), for the proposition that state law typically "controls * * * transfer of property[] and defines the rights of its owners." But the "great body of law" discussed in *Davies* is the state law of private ownership and voluntary conveyance. *Ibid.* That state law governs the voluntary transfer of property

Critically, the proper role of state law does not change between direct and delegated takings. Property is defined by state law when the United States condemns in its own name, and it is defined by state law when a Section 717f(h) delegatee condemns. By the same token, and absent contrary provision by Congress, the measure of compensation is federal in both settings, because the source of the compensation standard (the federal power and the Fifth Amendment that constrains it) is likewise the same. Petitioners' own authorities thus expose the flaw in their position: If state law's traditional dominance in the sphere of property meant that the measure of compensation should follow state law in Section 717f(h), it would have to do so when the United States condemns land as well—yet the Court has clearly rejected that argument. See *93.970 Acres*, 360 U.S. at 332-333.

Petitioners also invoke the principle that private delegations of eminent domain "do not include sovereign powers greater than those expressed or necessarily implied." Pet. Br. 19-20 (quoting *United States* v. *Carmack*, 329 U.S. 230, 243 n.13 (1946)). But the federal measure of compensation for eminent domain is not an additional or greater sovereign power; it is an incident of the power the grant expressly confers. Section 717f(h) plainly delegates "the right of eminent domain" for "pipe lines for the transportation of natural gas," a phrase that plainly and "categorical[ly]"

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between private parties does not mean that state law governs the involuntary transfer of property to the federal government and its delegatees. And the Court has elsewhere determined the timing of the transfer of title in a condemnation action as a matter of federal Fifth Amendment doctrine. See *Cherokee Nation*, 135 U.S. at 659-660.

delegates the federal power. *PennEast*, 594 U.S. at 490, 498. Construing that grant strictly still yields the federal power, free from state-law constraints.

Put differently, even if Section 717f(h) is a "grant[] of limited powers" (*Carmack*, 329 U.S. at 243 n.13)—an observation that is in obvious tension with *PennEast*—there is still no dispute that WBI had the power to condemn the easement here; the question is what law controls payment for the exercise of that undisputed power. That is quite different from *Carmack*, which discussed whether utilities held the power to condemn land already dedicated to "conflicting public uses" in the first place. 329 U.S. at 243 n.13; see, *e.g.*, *United States* v. *Jotham Bixby Co.*, 55 F.2d 317, 319-320 (S.D. Cal. 1932) (cited in *Carmack*). And that is why petitioners' babysitter hypothetical (at 32-33) makes little sense in this context—it conflates the scope of the delegated power with the law governing its exercise.

For similar reasons, petitioners' discussion of sovereign immunity (at 15-16, 20-22) is beside the point. Relying on *United States* v. *New Mexico*, 455 U.S. 720 (1982), petitioners assert that a private entity does not automatically "stand in the government's shoes" and inherit its "power to disregard state law." Pet. Br. 20-21. *New Mexico* asks whether a private party, by virtue of its relationship to the government, derivatively enjoys the sovereign's immunity from a body of law (state taxation) that would otherwise bind it.

But in the eminent-domain context, the immunity of the condemnor and the measure of compensation are independent questions; petitioners' argument depends on collapsing them. That is, the federal measure of compensation does not govern federal takings because of federal sovereign immunity from a greater state-law measure (cf. Pet. Br. 15-16); it applies because "[c]ondemnation involves essential government functions," and "where essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make state laws applicable." *93.970 Acres*, 360 U.S. at 332-333 (citing *Kohl*, *Miller*, and others in rejecting landowner-favorable state-law rule). "Condemnation involves essential government functions" (*id.* at 332) when delegated to private parties to further public purposes no less than when exercised directly. See *PennEast*, 594 U.S. at 495-497.

WBI therefore asserts no immunity; federal law supplies the measure of compensation not because WBI enjoys derivative immunity, but because the power WBI wields is governed by federal law unless Congress says otherwise, and Congress has not done so here.

4. Petitioners' final argument is a supposed presumption in favor of adopting state law generally. Pet. Br. 26-29 (citing *Agency Holding Corp.* v. *Malley-Duff & Assocs.*, 483 U.S. 143, 157-170 (1987) (Scalia, J., concurring)). Justice Scalia described a tradition specific to statutes of limitation and other housekeeping rules. See, *e.g.*, *Wilson* v. *Garcia*, 471 U.S. 261 (1985). By the same token, courts do *not* use state-law principles to define *substantive* aspects of the same federal statutes. See*, e.g.*, *F.D. Rich Co.* v. *Industrial Lumber Co.*, 417 U.S. 116, 126-127 (1974) (reversing award of attorneys' fees under the Miller Act because, while consistent with "public policy" of the forum state, where Congress "provides a federal cause of action, * * * the scope of the remedy as well as the substance of the rights created thereby is a matter of federal not state law"); *Dooley* v. *Korean Air Lines*, 524 U.S. 116, 124 (1998) (because Congress made the relevant remedial choices, its refusal to include additional remedies foreclosed state-law pain-and-suffering damages).

Even where Congress has required borrowing from state law, the Court has never let state law fix the measure of relief. *E.g.*, *Carey* v. *Piphus*, 435 U.S. 247, 257-258 (1978) (compensation in Section 1983 actions is governed by a federal "common law of torts"); *accord Memphis Cmty. Sch. Dist.* v. *Stachura*, 477 U.S. 299, 306 (1986); *see* 42 U.S.C. § 1988. Instead, the measure of damages under a federal statute is a substantive issue that "must be settled according to general principles of law as administered in the Federal courts" because it is "inseparably connected with the right of action." *Chesapeake & Ohio Ry.* v. *Kelly*, 241 U.S. 485, 491 (1916); *accord Monessen*, 486 U.S. at 335.

Nor does the Rules of Decision Act imbue Congress's chosen language with a preference for state law. By its own terms, that Act applies only where the "Constitution" or "Acts of Congress" do not "otherwise require or provide." 28 U.S.C. § 1652. But the "Fifth Amendment provides that private property shall not be taken for public use without 'just compensation,'" and "'just compensation' means" the federal measure as expounded by this Court. *Almota Farmers Elevator & Warehouse Co.* v. *United States*, 409 U.S. 470, 473-474 (1973). And Section 717f(h)—an "Act[] of Congress"—adopts that measure. More, "[s]ince *Erie*, no decision of this Court has held or suggested that the Act requires borrowing state law to fill gaps in federal substantive statutes." *DelCostello* v. *Int'l Bhd. of Teamsters*, 462 U.S. 151, 160 n.13 (1983).

Petitioners' "preemption" framing (at 27-29) thus inverts the proper ordering. Because a private delegatee's "condemnation action" under the NGA "give[s] effect to the federal eminent domain power" (*PennEast*, 594 U.S. at 502), federal law supplies the measure of that compensation unless Congress provides otherwise. See *supra*, at 17-24. State law cannot abridge, extend, or qualify the federal power—so there is simply no state law to preempt. Where, as here, "essential interests of the Federal Government are concerned, federal law rules unless Congress chooses to make state laws applicable." *93.970 Acres*, 360 U.S. at 332-333.

The operative question is thus not whether Section 717f(h) preempts state compensation law, but whether it affirmatively adopts it. And Congress, which has incorporated state measures in unmistakable terms when it wished (see *supra,* at 21-24), did no such thing here.

C. At the least, petitioners' arguments cannot justify fee-shifting in particular.

The parties' underlying dispute presents an unusually straightforward application of the principle that federal law governs compensation unless Congress says otherwise: The only disagreement concerns attorneys' fees. Under the federal measure, "attorneys' fees and expenses are not embraced within just compensation." *Bodcaw*, 440 U.S. at 203 (alterations omitted). And with respect to Section 717f(h), the American Rule and Congress's express treatment of litigation expenses in the surrounding statutory context independently confirm that result.

The American Rule is the "'basic point of reference' when considering the award of attorneys' fees": Each party bears its own fees "unless a statute or contract provides otherwise." *Hardt* v. *Reliance Standard Life Ins.*, 560 U.S. 242, 252-253 (2010) (quoting *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 683 (1983)). This Court "will not deviate from the American Rule absent explicit statutory authority." *Baker Botts LLP* v. *ASARCO LLC*, 576 U.S. 121, 126 (2015). Congress must provide a "specific and explicit" indication that it intends to authorize fee shifting; a statute's "mere failure to foreclose a fee award" is not enough. *Peter* v. *NantKwest, Inc.*, 589 U.S. 23, 30-31 (2019).

Section 717f(h) contains no such indication. Petitioners' theory thus turns yet another governing presumption on its head by treating Congress's lack of an express mechanism as permission to import a state fee-shifting rule into a federal cause of action.

In fact, Congress *has* specifically addressed litigation expenses for federal condemnations. The URA defines "Federal agency" to include "any person who has the authority to acquire property by eminent domain under Federal law," and "person" includes a corporation. 42 U.S.C. § 4601(1), (5). It then specifies a limited set of circumstances in which a court shall award attorneys' fees and other litigation expenses. 42 U.S.C. § 4654(a). Courts have accordingly applied URA fee-shifting to NGA condemnations. See *Transwestern Pipeline Co.*, 627 F.3d at 1268.

It is uncontested that the limited circumstances justifying fee-shifting under the URA are not present here. That Congress has elsewhere provided fee-shifting rules specific to condemnations—and applicable to private NGA condemnations—strongly implies that

Section 717f(h) did not adopt a different rule. See *United States* v. *Johnson*, 529 U.S. 53, 58 (2000).

In other words, petitioners' basic position is that federal law is silent about the measure of compensation for NGA condemnations, and that various tie-breakers or default rules should fill that silence in favor of state law. Whatever the merit of that position as a general matter (both premises are wrong, see *supra*, at 13-22, 38-40), it certainly cannot justify importing state law as to attorneys' fees, because federal law is *not* silent about fees for condemnations. It provides them sometimes, but not here—and the American Rule provides an additional strong default rule against fee-shifting in particular.[14]

II. *KIMBELL FOODS* DOES NOT WARRANT SUBORDINATING A UNIFORM FEDERAL REMEDY TO STATE LAW.

Kimbell Foods does not alter the result: Statutory construction supplies the rule of decision, precluding resort to *Kimbell Foods.* In any event, the *Kimbell Foods* analysis leads to the same conclusion.

A. *Kimbell Foods* provides the framework for answering a narrow question: "[W]hen Congress has not spoken in an area comprising issues substantially related to an established program of government operation," the courts must "fill the interstices" with federal common law and decide whether to adopt "uniform federal rules" or "incorporate[]" state law "as the

[14] Petitioners complain that "the question presented is not about fee-shifting." Pet. Br. 47. But the live controversy between the parties is *entirely* about fee-shifting; if the fee-specific authorities lead to a different rule than that applicable to compensation generally, it is that rule that must govern here.

federal rule of decision." *Kimbell Foods*, 440 U.S. at 727-728.

Because "[t]he cases in which federal courts may engage in common lawmaking are few and far between" (*Rodriguez* v. *Federal Deposit Ins. Corp.*, 589 U.S. 132, 133 (2020)), resort to *Kimbell Foods*—which explicitly directs courts to construe legislation as "a matter of judicial policy" rather than via statutory interpretation (*Kimbell Foods*, 440 U.S. at 728)—should be highly disfavored. Instead, the statute itself must be the "courts' primary guide" to the "balance" "Congress has struck." *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 624-626 (1978). Crucially, "the authority to construe a statute is fundamentally different from the authority to fashion a new rule or to provide a new remedy which Congress has decided not to adopt." *Northwest Airlines, Inc.* v. *Transport Workers Union of Am.*, 451 U.S. 77, 97 (1981). When Congress "has enacted a comprehensive legislative scheme," and chose to omit a remedy from that scheme, courts presume that omission was "deliberate[]." *Ibid.* The judiciary "may not * * * fashion new remedies that might upset carefully considered legislative programs." *Ibid.*[15]

Congress's decision to omit a remedy does not grant courts license to graft that remedy onto a statute anyway under the auspices of federal common law. Any role for judicial lawmaking is confined to the

[15] Notably, the appellate decisions that agree with petitioners do not arrive at the result via statutory interpretation, but instead employ *Kimbell Foods*' framework to "fill the void" allegedly left by Congress "through common lawmaking." *Tennessee Gas Pipeline Co.*, 931 F.3d at 246.

rare instances in which "the Court is compelled to consider federal questions which cannot be answered from federal statutes alone." *City of Milwaukee* v. *Illinois & Michigan*, 451 U.S. 304, 314 (1981). But here, because the statutory text, context, and history resolve this question, there is no role for *Kimbell Foods* lawmaking.

B. Even if applicable, *Kimbell Foods* does not yield state law.

First, the NGA cannot operate effectively without a uniform federal rule governing just compensation. *Kimbell Foods*, 440 U.S. at 728. A panoply of different state takings laws was precisely what Congress enacted Section 717f(h) to combat. See *supra,* at 5-6. As petitioners and their *amici* admit—indeed, celebrate—individual States have a wide variety of individual compensation regimes. See *supra,* at 28-29. Imposing fifty different state-law compensation regimes, and enabling States to obstruct disfavored projects through onerous compensation rules, would allow States to again render the NGA's power of eminent domain "illusory." *PennEast*, 594 U.S. at 489.

Indeed, Congress delegated a categorical eminent domain authority to natural gas companies because it recognized that a federal rule was necessary to protect the "free flow of commerce among the States." S. Rep. No. 80-429, at 3. Congress *considered* allowing state law to govern NGA proceedings. *Ibid.* But Congress ultimately chose to impose a federal rule because a state-law patchwork would "defeat[] the very objectives of the Natural Gas Act." *Ibid.* Tellingly, even Section 717f(h)'s opponents understood it to "confer upon natural-gas companies the right of eminent domain exercisable throughout the United States irrespective of the provisions of State laws." *Amendments to the Natural Gas Act: Hearings on S. 734 & S. 1028*, 80th Cong. 102 (1947) (memorandum of Associated Railroads of N.J. in opposition to S. 1028).

Second, and for much the same reasons, grafting a state-law measure of compensation onto NGA condemnations would frustrate Congress's intent. *Kimbell Foods*, 440 U.S. at 728. It would be anomalous to conclude that, after replacing the patchwork of state condemnation powers with a uniform federal authority, Congress silently subjected it to a patchwork of state compensation laws. See *supra*, at 28-29.

Petitioners argue (at 41) that Section 717f(h) must incorporate substantive state compensation law because to hold otherwise would "burden * * * private landowners" and "enrich other private parties." To the contrary, Congress enacted the NGA to protect the natural gas-consuming public's interest in "plentiful supplies of * * * natural gas at reasonable prices" (*NAACP*, 425 U.S. at 670) and it passed Section 717f(h) to ensure that projects benefitting "thousands of the people of the United States" cannot be "readily and flippantly thwarted at the caprice of a recalcitrant or selfish private concern" (*Amendments to the Natural Gas Act: Hearings on S. 734 & S. 1028*, 80th Cong. 12 (1947) (statement of Sen. Moore)). Because it is the natural gas-consuming public that pays for the costs to acquire easements (see *supra*, at 31-32), Section 717f(h) ensures that state-specific compensation rules do not obstruct the construction of pipelines "to the detriment of the general public." *Ibid.* Allowing States to selectively enrich certain landowning residents at the expense of the Nation's natural gas ratepayers frustrates, rather than advances, Congress's objectives.

Third, a uniform federal standard will not disrupt commercial relationships. *Kimbell Foods*, 440 U.S. at 728-729. Petitioners do not dispute that the federal government could condemn the same easement at issue here for the same federal purposes. And if it did so, petitioners acknowledge (at 7) that the federal standard would govern compensation. Because landowners across the United States are already subject to condemnation by the federal government, applying that same body of federal law when the same federal power is exercised by a delegatee does not introduce any new uncertainty. If anything, it *reduces* uncertainty by imposing a uniform rule.

Petitioners argue (at 42) that "[p]roperty owners rely on state law to define their property rights." But defining the right is different from deciding what the ratepaying public must pay for it. See *supra*, at 31-32. And this prong is largely concerned with situations in which private parties "have entered legal relationships" expecting to "be governed by state-law standards." *Kamen* v. *Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98 (1991). Condemnations are the opposite—there is no pre-existing relationship.

* * *

In sum, the text, structure, history, and purpose of Section 717f(h) all point in the same direction: Congress did not silently incorporate fifty potentially divergent state compensation standards in an enactment that was intended to remove—not enshrine—state-law impediments to eminent domain for pipeline projects.

CONCLUSION

The Court should affirm.

Respectfully submitted.

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