No. 25-159

In the Supreme Court of the United States

LEONARD W. HOFFMANN, ET AL., PETITIONERS,

v.

WBI ENERGY TRANSMISSION, INC.

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

BRIEF OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA AND THE AMERICAN PETROLEUM INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s)**

Administrative Materials: **Page(s)**

Other Authorities:

Other Authorities—Continued: **Page(s)**

INTEREST OF *AMICI CURIAE*[1]

The Interstate Natural Gas Association of America ("INGAA") is a national trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in North America. INGAA represents the majority of interstate natural gas companies in the United States, which are regulated by the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act ("NGA"), 15 U.S.C. § 717 *et seq*. INGAA's members transport much of the nation's natural gas through a network of approximately 200,000 miles of pipelines. They have a substantial interest in pipeline development, continued investment in energy infrastructure, and predictable, consistent, rational, and fair law and policy affecting natural gas transportation and storage.

The American Petroleum Institute ("API"), a national trade association, represents all aspects of America's oil and natural gas industry, which supports nearly 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API's approximately 600 members produce, process, and distribute the majority of the nation's energy. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental

[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

safety, efficiency and sustainability. See https://www.api.org/.

Amici have an interest in this case because applying federal law to measure just compensation when a natural gas company exercises the federal power of eminent domain under the Natural Gas Act will ensure uniformity, consistency, and fairness for pipeline companies and landowners alike. FERC-regulated pipeline projects are part of a broader network of interstate infrastructure that, by its nature, frequently crosses state lines. Moreover, *amici* have unique, real-world insight into the interstate pipeline industry's use of the eminent domain power granted under the NGA and the practical consequences of applying state law to determine just compensation.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The federal eminent domain power is integral to the NGA's nationwide statutory framework. Prior to Congress amending the NGA to delegate that power to pipeline companies with certificated projects, interstate pipelines were hindered by a patchwork of state laws related to eminent domain. In many instances, companies could not build the infrastructure that FERC had determined was necessary to the public interest, where state law failed to provide the necessary authorizations or was overtly hostile to interstate natural gas pipelines. Congress resolved this issue in 1947 by enacting NGA section 7(h), which confers "the right of eminent domain" on holders of a FERC certificate. 15 U.S.C. § 717f(h). In the decades that followed, the NGA's federal eminent domain power became (and remains today) a vital tool for ensuring that

pipeline companies can build, operate, and maintain infrastructure that is necessary to serve the public interest and help meet the Nation's energy needs.

2. Despite the practical and legal importance of the federal eminent domain power, INGAA members have made a collective commitment to using this tool only as a last resort. See INGAA, *Commitments to Landowners* (Feb. 2019), https://perma.cc/2KFK-KUD6. Pipeline companies understand the responsibility that comes with the delegation of that authority. A recent survey of INGAA members reveals that over a nine-year span, pipeline companies initiated NGA condemnation proceedings for only 10% of tracts affected by certificated projects of ten miles or more and litigated cases to the point of judicial valuation less than 1% of the time. See Comments of the Interstate Natural Gas Association of America, FERC Docket No. PL 18-1-000, PL21-3-000 at 72 (Apr. 25, 2022) (Accession No. 20220425-5448) ("INGAA Comments").[2] There are good reasons for that approach. Pipeline companies are highly motivated to reach voluntary agreements with landowners, to avoid the expense and delays associated with lengthy condemnation proceedings and to foster a positive working relationship with landowners with whom they will interact for many years while the pipeline is in service. And price is not the only term on which pipelines seek to reach agreement with landowners. Pipeline companies work diligently to accommodate nonmonetary concerns where feasible, such as adjusting rights-of-way

[2] Available by searching via accession number in FERC's eLibrary, https://elibrary.ferc.gov/eLibrary/search.

to avoid areas of particular importance on a tract, or crafting construction schedules to avoid interfering with agricultural seasons and other surface uses.

Although pipeline companies avoid condemnation where possible, that does not mean that the federal eminent domain authority is unimportant. Quite the contrary. Condemnation actions may be the only viable path to develop a project—not only where parties are unable to agree on price or other terms, but also where no single tract owner has the clear right to negotiate with a developer. Parties may resort to court action to resolve probate or estate issues, to quiet title, to resolve disagreements among joint landowners, or to address situations where landowners cannot be located. And because the NGA does not provide a separate statutory right of access to property to conduct surveys, in some jurisdictions pipeline companies may seek preliminary relief through a condemnation action to undertake environmental and cultural surveys, to gather information that is necessary to identify an appropriate route and to apply for required authorizations.

Landowners do not lack bargaining power in these situations. Landowners and their counsel understand that pipeline projects are time sensitive, as projects are designed and built to meet customer demand. Landowners further understand that such projects, like all linear infrastructure, depend on securing easements for the entire project right-of-way. Such knowledge encourages "holdouts," who delay providing access to a property or resist coming to a valuation agreement to drive up the price, hoping that a pipeline will capitulate to avoid the delay and uncertainty of litigation. Nor is it accurate to say that pipeline companies have an incentive to low-ball property owners in negotiations; such tactics discourage agreements, delay permitting, and hamper project development, contrary to the developers' interests. In practice, natural gas pipeline companies routinely pay more than the assessed market value of a particular easement if it means avoiding litigation, given the practical value to pipelines of reaching early and voluntary agreements with landowners.

3. Allowing state law to define just compensation in actions exercising the NGA's federal eminent domain authority will create a patchwork of varying and inconsistent legal standards and practical results. Misaligned incentives will make pipeline development more burdensome and expensive. Increased costs will ultimately harm the hundreds of millions of Americans who depend on natural gas for heating, cooking, cooling, and electric power generation.

To begin, applying the settled federal law definition of just compensation is most consistent with the statutory text, history, and this Court's precedent. See Resp't Br. 13-33; U.S. Cert. Br. 8-15. Such a rule will also provide a single, uniform, and determinate standard. A federal-law standard avoids the unfair situation of neighboring landowners along a single pipeline, who happen to be separated by a state border, receiving disparate compensation for similar easements. A state-by-state approach will also be more burdensome for pipeline companies whose projects are, by nature, part of a broader interstate system. A uniform federal standard is easier to administer, builds on a well-settled and well-understood body of stable federal law, and ensures predictable administration of compensation awards under the Fifth Amendment.

A state-law measure of just compensation, by contrast, would make eminent domain cases more uncertain, protracted, and expensive. As reflected in the *amicus* briefs filed in this Court supporting Petitioner, many states have a highly sophisticated landowner bar. Counsel are adept at leveraging state law regimes that allow for the recovery of attorneys' fees and other litigation expenses, such as appraisal fees. In the experience of *amici* and their members, attorneys proactively target pipeline projects and aggressively solicit landowner clients along the proposed right-of-way as soon as a potential project is made public.

Although the dispute in this case involves attorneys' fees, a holding from this Court that state law governs just compensation under the NGA's federal eminent domain authority would implicate a wide range of other issues, many of which are unsettled. Adopting Petitioners' view of the law would declare an open-season for landowners to raise and litigate various issues under state law. These include the measure of pre-judgment interest, the availability of "stigma" damages and other theories of compensation that differ from the fair-market-value standard under federal law, and the standard for determining a parcel's "highest and best use"—to name just a few examples. Those points would need to be litigated and resolved on a state-by-state basis across dozens or hundreds of cases, nationwide, every year. This proliferation of unsettled issues will inevitably protract condemnation proceedings and decrease the likelihood of voluntary agreement or settlement.

A regime that allows landowners to shift their litigation costs to the pipeline will inevitably result in opportunistic behavior and misaligned incentives. A party who knows that win or lose, an adversary will cover their litigation costs lacks an incentive to make reasonable cost-benefit judgments about the value of continuing to litigate—tending to protract proceedings and increase unproductive costs. In addition, natural gas companies have encountered appraisers who provide extremely low-cost initial appraisals that dramatically *overstate* property value, creating unrealistic expectations in the property owner. When litigation inevitably ensues, appraisers may elevate the price and scope of their services once it becomes apparent that the fees are likely to be shifted to the pipeline company in litigation. Those litigation costs are created whether or not the landowner ultimately benefits from forcing a case into litigation. Petitioner's rule not only departs from statutory text, history, and precedent, but will lead to these and other misaligned incentives and inefficiencies, driving up the ultimate cost of projects needed to serve the public interest.

ARGUMENT

I. The Eminent Domain Power Is an Essential Part of the NGA's Statutory Framework.

Without the federal eminent domain power, FERC determinations that a particular interstate natural gas pipeline is required by the public convenience and necessity could be rendered a dead letter, with pipelines unable to proceed in many jurisdictions. As the NGA's history reveals and this Court has explained, prior to conferral of the federal eminent domain power on certificate holders, FERC-approved pipeline infrastructure projects were hindered or altogether thwarted in the many states that did not provide state-law eminent domain power for federally approved pipelines. See *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 489 (2021) (citing S. Rep. No. 429, 80th Cong., 1st Sess. 2-3 (1947)).

The legal and practical problems of a patchwork state-law approach to eminent domain were pronounced. Some states overtly discriminated against interstate projects (and project developers) by denying foreign corporations the right to bring condemnation actions. Other states refused to allow the use of eminent domain unless the operation of the pipeline in question would benefit that state's residents—a parochial requirement that was a poor fit for projects designed to move natural gas for long distances, across multiple state lines. *PennEast*, 594 U.S. at 489. This patchwork of state laws frustrated the federal scheme and resulted in an inability to meet natural gas demand. See S. Rep. No. 429, 80th Cong., 1st Sess. 2-3; *Amendments to the Natural Gas Act: Hearings on H.R. 2185, H.R. 2235, H.R. 2292, H.R. 2569, and H.R. 2956 Before the H. Comm. on Interstate and Foreign Commerce*, 80th Cong., 1st Sess. 543-545, 556-558 (1947); Alexandra B. Klass & Danielle Meinhardt, *Transporting Oil and Gas: U.S. Infrastructure Challenges*, 100 IOWA L. REV. 947, 996-998 (2015). In short, the absence of federal eminent domain authority under the NGA often rendered the "right to build" "illusory." *PennEast*, 594 U.S. at 489.

Ultimately, "Congress acted to remedy this defect" and "amended the NGA to authorize certificate holders to exercise the federal eminent domain power." *PennEast*, 594 U.S. at 489 (emphasis omitted). In so doing, Congress provided "a mechanism for certificate holders to secure property rights necessary to build pipelines" to "ensure[] that certificates of public convenience and necessity could be given effect." *Id.* at 489-490; accord *PennEast Pipeline Co.*, 164 FERC ¶ 61,098, P 29 (2018) (determination by FERC that "[t]he power of eminent domain conferred by NGA section 7(h) is a necessary part of the statutory scheme to regulate the transportation and sale of natural gas in interstate commerce"). As this Court has explained, "the federal eminent domain power" delegated via the NGA "is complete in itself," whether "condemnation suits [are brought] by the Federal Government [or] its delegatees." *PennEast*, 594 U.S. at 508 (internal quotation marks and citation omitted).

Today, the Nation's demand for natural gas is at an all-time high.[3] The federal eminent domain power remains a vital part of the NGA's statutory framework, and the effective and efficient resolution of condemnation cases is a necessary prerequisite for constructing and operating the infrastructure that is needed to serve the public interest.

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[3] U.S. Energy Info. Admin., *U.S. Natural Gas Consumption Set a Monthly and Yearly Record in 2025* (Mar. 18, 2026), https://perma.cc/BG34-GGGL.

II. Interstate Natural Gas Pipeline Companies Are Responsible Stewards of the Federal Eminent Domain Power and Exercise It Only as a Last Resort.

1. Natural gas companies recognize the considerable responsibility that comes with Congress's delegation of federal eminent domain authority in the NGA. As a group, they have committed to exercising it "only * * * as a means of last resort," and they "begin every easement negotiation with the expectation that a mutual agreement can be reached and eminent domain rights will not need to be exercised." INGAA, *Commitments to Landowners* (Feb. 2019), https://perma.cc/2KFK-KUD6.

This commitment is borne out by history and practice. Easements for interstate natural gas pipelines are primarily obtained through voluntary agreements with landowners, without resort to litigation—and this is true even for large "greenfield" projects that may require acquiring many hundreds or even thousands of easements across a lengthy new pipeline route. See, *e.g.*, *Nexus Gas Transmission, LLC* v. *City of Green*, 757 Fed. Appx. 489, 491 (6th Cir. 2018) (noting that pipeline company had "negotiated voluntary easements on 97% of the 2,070 tracts of land that lay in the path of the pipeline"); *USG Pipeline Co.* v. *1.74 Acres*, 1 F. Supp. 2d 816, 824 (E.D. Tenn. 1998) (noting that pipeline company "desired to acquire easements from landowners by negotiations and settlement rather than eminent domain whenever possible").

In 2021, INGAA conducted a survey of its members regarding their use of eminent domain. The survey involved 123 pipeline projects of over ten miles in length that were certificated by FERC and placed into service within a nine-year period (September 2011 through September 2020). These projects required easements across 25,268 tracts of land. The survey found that condemnation proceedings were initiated for approximately 10% of the tracts, and *less than 1%* required litigation through the point of full judicial valuation. See INGAA Comments at 72. Over 71% of the time, INGAA members were able to execute agreements with landowners for an easement prior to sending a final offer letter. *Ibid.* That trend remains true today. Most of the time, natural gas companies are able to come to an agreement with landowners regarding a needed easement well in advance of the initiation of condemnation proceedings.

2. Natural gas companies have strong incentives to develop and maintain positive working relationships with affected landowners. Years ago, INGAA adopted, and its members continue to abide by, "Commitments to Landowners" to guide interactions with landowners and set a framework for positive, mutually respectful relationships. See INGAA, *Commitments to Landowners*, *supra.* These commitments require negotiating in good faith with the goal of reaching a mutually agreeable easement. *Ibid.*

Pipeline companies believe that coming to a mutually acceptable agreement with a landowner is a better, faster outcome than resorting to litigation. Most often, the property interest needed to build a pipeline is an underground easement allowing installation and long-term or indefinite presence of a pipeline, which means that the pipeline company's interest in the land continues alongside the landowner's fee without appreciable conflict. Because natural gas pipelines have lifespans of many decades, during which the asset requires periodic inspection and maintenance, pipeline companies know up front that they will need to engage productively with the landowner going forward. It is in the company's best interest to come to an amicable result and foster a constructive and respectful working relationship.

FERC policies for reviewing and approving pipeline projects encourage negotiation with landowners. A proposed project's need for significant condemnation can weigh in FERC's balancing of the public interest, in deciding whether to approve a pipeline company's application for proposed new pipeline facilities. See *Certification of New Interstate Nat. Gas Pipeline Facilities*, 88 FERC ¶ 61,227, pp. 61,749-61,750 (1999). Accordingly, pipeline companies are incentivized to reach agreements with landowners along the right-of-way even prior to certification (i.e., prior to the point at which the pipeline would have eminent domain authority, see 15 U.S.C. § 717f(h)) to increase their chances of project approval.

Only once FERC approves a project does the pipeline company obtain legal authority to initiate condemnation proceedings. See 15 U.S.C. § 717f(h). Critically, even at that stage, the company remains highly motivated to reach agreement with landowners to avoid the cost and delay of protracted litigation. Because companies may need to purchase long-lead-time items (*e.g.*, steel, pipeline, equipment) before all necessary permits are obtained, postponing construction for easement litigation increases the carrying cost of those resources. Pipeline projects face strict deadlines to meet time-sensitive customer needs and contractual commitments, and FERC regularly imposes deadlines for completing construction as a condition of approving new projects. As FERC has explained, "condemning private property generally is not in the pipeline's best interest. The condemnation process can be a prolonged and expensive process that could delay construction of the pipeline and add significant costs to the project." *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197, P 70 (2018) (footnote omitted); see also *Mountain Valley Pipeline, LLC* v. *6.56 Acres of Land*, 915 F.3d 197, 211 (4th Cir. 2019) (noting that eminent domain process "could take more than three years to complete – bringing it outside FERC's in-service deadline [for the certificated pipeline]").

For example, the Sabal Trail project, discussed by some of Petitioners' *amici*, was built and entered service in 2017. But the last condemnation actions in Florida (where, under currently applicable precedent, landowners are entitled to recover attorneys' fees in addition to compensation for the easement) were only finally resolved about a decade later, in 2026. See, *e.g.*, *Sabal Trail Transmission, LLC* v. *+/- 1.401 Acres of Land*, No. 16-cv-278, 2026 WL 964386, at *1 (M.D. Fla. Mar. 27, 2026). Strikingly, the vast majority of that decade-long litigation time involved disputes over the landowner's attempt to recover attorneys' fees, not time spent litigating valuation of the easement itself.

Although condemnation cases can be vigorously litigated, it is important to put the impacts on landowners into context. The easements obtained are typically for a fully underground pipeline, accompanied by temporary surface use for installation and maintenance. A pipeline is installed several feet or more below ground, the trench is backfilled, and the surface is restored as close as feasible to preconstruction conditions. Certain limitations on surface uses may exist for safety and operational reasons. But the practical reality is that many landowners and third parties will not even be aware of the presence of an interstate gas pipeline after it has been installed and the surface remediated, apart from periodic stakes marking the presence of an underground pipeline. Moreover, empirical studies show that, on average, the presence of an underground interstate natural gas pipeline does not negatively affect property values. See INGAA Foundation, Inc., Report No. 2016.01, *Pipeline Impact to Property Value and Property Insurability* (2016), https://perma.cc/RJQ5-TTXH (concluding, based on quantitative analysis of data from a diverse range of properties nationwide, that the presence of an underground, FERC-regulated natural gas pipeline does not affect the value of a home or its insurability).

3. Petitioners and their *amici* imply that condemnation actions are disproportionately filed against small parcel individual landowners, who must then face large corporations in court. See, *e.g.*, Florida Property Owners Amicus Br. 3-4. But this narrative is incomplete at best. Condemnation actions can involve a range of landowners, including property held by large corporations or even states. Nor is the use of eminent domain power limited to disagreements regarding the value of a property interest. Litigation

may be necessary for numerous reasons, such as to quiet title of a tract; to resolve probate or estate issues; where there is a lack of unanimity among joint owners; or where landowners cannot be located or fail to respond. See INGAA Comments at 72.

Moreover, in the context of large infrastructure projects like pipelines, it is not accurate to suggest that landowners lack bargaining power. Contra Owners' Counsel Amicus Br. 5-6. To the contrary, the "holdout problem" is well-known in economic literature.[4] An interstate pipeline project—which can require the up-front investment of tens or hundreds of millions of dollars before a shovel hits the ground—cannot be built and enter service (and earn revenue) until each and every easement is obtained along the right-of-way. Accordingly, landowners and their counsel have an incentive to resist settlement and delay pipeline access to the property, hoping that the cost to the pipeline—and thus the pipeline's settlement window—will escalate as the project moves through the development process. See Richard A. Posner, *Economic Analysis of Law* § 3.7 (6th ed. 2003) (noting that once pipeline development begins, the cost of rerouting becomes very high, tempting landowners in the pipeline path to hold out "for a very high price").

Landowners and their counsel are also keenly aware that pipeline projects are time-sensitive. Such projects are authorized only after a demonstrated

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[4] See, *e.g.*, Thomas J. Miceli & C.F. Sirmans, *The Holdout Problem, Urban Sprawl, and Eminent Domain*, 16 J. OF HOUS. ECON. 309 (2007).

showing of need for gas transportation capacity. In many cases, local utilities have signed long-term contracts that require the pipeline to be operational by a certain date to serve end-use customers. Additionally, FERC certificates authorizing the pipeline project routinely include a deadline by which construction must be completed, as a condition of the underlying authorization. See 18 C.F.R. § 157.20(b).

Landowners and their counsel understand that delaying the pipeline's physical access to property—even for preliminary steps such as the environmental or cultural surveys necessary to *apply* for certain permits—or delaying agreement to an easement can delay the project as a whole, with disproportionate cost imposed on the project developer. See, *e.g.*, *E. Tenn. Nat. Gas Co.* v. *Sage*, 361 F.3d 808, 829 (4th Cir. 2004) (noting that "any single parcel has the potential of holding up the entire project" (citation omitted)); *Guardian Pipeline, L.L.C.* v. *950.80 Acres of Land*, 210 F. Supp. 2d 976, 978-979 (N.D. Ill. 2002) (noting that "any delays or an inability to sequence construction will occasion great additional expense to [the pipeline]"); *Fla. Se. Connection, LLC* v. *0.821 Acres of Land, More or Less*, 223 F. Supp. 3d 1227, 1231 (M.D. Fla. 2016) ("A delay in obtaining access to the [e]asements would delay the entire [p]roject and cause [the pipeline company] to significantly risk failing to meet its * * * in-service deadline.").

With delay as the "coin of the realm" by those opposed to new infrastructure, *Appalachian Voices* v. *FERC*, 139 F.4th 903, 917 (D.C. Cir. 2025) (Henderson, J., concurring), landowners can obstruct the overall project or even force its cancellation by dragging the pipeline into litigation.[5] This reality gives landowners significant leverage. See, *e.g.*, LandQuire, *Pipeline Easements—Read, Negotiate, and Get Value Despite Everything* (Jan. 20, 2026), https://perma.cc/L86E-DZA3 (website offering advisory services, arguing that landowners with property subject to eminent domain for a pipeline should "use time to your advantage," noting that pipeline "operators overwhelmingly prefer to negotiate voluntary agreements. Why? Expropriation proceedings drag on for 18-36 months. They cost $50,000 to $200,000 in legal fees. They also generate negative publicity. Your bargaining power is real * * * .").

4. In the experience of *amici*'s members and their counsel, pipeline companies do not have an incentive to provide landowners with inadequate initial offers. In practice, it is better, cheaper, and more certain for the pipeline to reach voluntary agreement with landowners than to spend years litigating. Thus, pipeline companies have an incentive to offer landowners attractive values during negotiations (with agreed-upon amounts often far exceeding appraised figures), in hopes of reaching a consensual agreement. See Gilad Edelman, *Pipeline Companies Paying More to Cross Private Land*, Tex. Trib. (June 18, 2014), https://perma.cc/H4HY-6A8B (observing trend of "landowners increasingly aware of the potential for high payouts" when pipeline eminent domain cases are litigated under state law, "leading to a cycle of escalating costs," and quoting landowner counsel that

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[5] See, *e.g.*, Domina Law Grp., *Nebraska Landowner Litigation Prompts Biden Administration to End Keystone XL Pipeline* (Jan. 19, 2021), https://bit.ly/4cPKBhb.

out-of-court "negotiations * * * are tracking very close to those amounts [recovered at trial]"); cf. National Ass'n of Realtors Amicus Br. 19 (alleging lowball offers). For example, *USG Pipeline Co.* described one pipeline's "efforts in reaching a starting point for offers." A pipeline employee testified that "they initially * * * obtained easements from six landowners at $1,500 an acre. Subsequently, they negotiated a higher amount with a landowner, $2,300–$2,400 per acre, and went back to the first six landowners and paid them at that same rate." 1 F. Supp. 2d at 822. In other words, even after securing a mutually agreeable initial rate, the pipeline company unilaterally raised the rate for several landowners to match the higher rate that another landowner later received.

5. Although pipeline companies seek to avoid condemnation, in some instances that step is unavoidable. For instance, in many jurisdictions, pipeline companies must invoke the federal eminent domain power and seek preliminary judicial relief to obtain even initial physical access to property for conducting surveys. The NGA does not contain a separate statutory provision giving a developer access to property along the right-of-way to perform environmental, historic, and other surveys. This preliminary access is necessary to gather the kind of site-specific information that allows a project developer to reduce impacts to protected resources, and is also typically needed even to *apply* for required permits and other authorizations.

Survey access to landowner properties is critically important early in the process to help project developers identify potentially sensitive areas to mitigate or avoid. Developers will work to identify property features that may have particular importance or value to a landowner, such as a grazing area, wetland, or road, that can be accommodated in the project development process. Particularly in early-stage development, obtaining property access allows pipelines to work with landowners to accommodate those interests, such as by shifting the proposed pipeline right-of-way where feasible. See, *e.g.*, Initial Comments of Enbridge Gas Pipelines, FERC Docket No. PL 18-1-000 at 64-65 (May 26, 2021) (Accession No. 20210526-5225) (large interstate gas pipeline developer noting that it "has routinely employed re-routes to avoid the use of eminent domain [and] address landowner concerns"); *Midwestern Gas Transmission Co.*, 116 FERC ¶ 61,182, P 48 (2006) (FERC order noting that "[pipeline company] has an incentive to negotiate easements agreements to avoid condemnation litigation, and * * * such agreements are flexible enough to shift the route alignment slightly to accommodate individual landowner needs on their property usually without further Commission approval").

Contrary to the suggestion by petitioners and their *amici*, when pipelines obtain preliminary access via an eminent domain proceeding, that access is often conditioned on the pipeline first paying *multiples* of the appraised value into the court's registry in cash or a bond. In many instances, the landowner can withdraw those funds during the pendency of case. See, *e.g.*, *Mountain Valley Pipeline*, 915 F.3d at 209 ("To ensure that the landowners would be compensated fully, the district courts required [the pipeline company] to post deposits, which the landowners could draw upon while the proceedings continued."); contra Owners' Counsel Amicus Br. 5 (suggesting owners do not have access to funds until the case is over or the pipeline is already built).

III. Applying State Law to Measure Just Compensation in Federal Eminent Domain Actions Would Increase the Length and Cost of Condemnation Cases and Create Misaligned Incentives.

This Court should hold that federal law defines just compensation in federal eminent domain actions under the NGA. As Respondent and the United States persuasively show, such a result is most consistent with statutory text, history and precedent. Resp't Br. 13-33; U.S. Cert. Br. 10-18. A contrary ruling would increase the length, complexity, and cost of eminent domain actions by imposing a patchwork of varying and inconsistent state laws on compensation. Landowners in some states are entitled to recover attorneys' fees and other litigation costs from the pipeline, although such amounts are not recoverable under federal law. See *United States* v. *Bodcaw Co.*, 440 U.S. 202, 203 (1979) (per curiam). States also have varying approaches to other issues that bear on the measure of just compensation: how the parcel subject to the taking is defined, whether a landowner can claim consequential, indirect, or other damages beyond fair market value of the property taken, and what the rate of prejudgment interest would be, to name just a few. Such a regime would also create practical difficulties, misaligned incentives, and increase the overall cost of condemnation cases, to the ultimate detriment of American energy consumers.

1. Applying state law to govern the measure of just compensation would create an inefficient and potentially inconsistent patchwork of approaches governing the exercise of what should be a unified federal eminent domain power. That patchwork will not only increase the time and cost of acquiring easements to build projects required to serve the public interest, but will also undercut the interest of uniformity and fairness in treatment of landowners. FERC-jurisdictional pipelines are, by definition, part of a larger interstate network that crisscrosses state lines. Under petitioners' approach, however, adjacent landowners affected by the same pipeline but who are separated only by a state line may receive dramatically different compensation for similar easements. For example, Florida law assures a property owner "full compensation," Fla. Const. art. X, § 6, defined in that state to include attorneys' fees. See *Joseph B. Doerr Tr.* v. *Cent. Fla. Expressway Auth.*, 177 So. 3d 1209, 1215 (Fla. 2015) ("full compensation under the Florida Constitution includes the right to a reasonable attorney's fee for the property owner"); Fla. Stat. § 73.092. Conversely, a neighbor across the border in Georgia is entitled to "just and adequate compensation," Ga. Const. art. I, § 3, ¶ I, which under state law generally does not include attorney's fees. See *DeKalb Cnty.* v. *Trs., Decatur Lodge No. 1602, B.P.O. Elks*, 251 S.E.2d 243, 244 (Ga. 1978); see also Ga. Code § 22-1-12 (providing for attorney's fees in eminent domain proceedings only when it is adjudged that the condemnor cannot acquire the property by condemnation or the condemnor abandons the proceeding).

Moreover, an approach under which a pipeline company needs to conform its eminent domain proceedings and cost awards to different state laws across a single project imposes additional burdens and costs for developing needed infrastructure. Pipelines will bear the additional cost of tailoring different strategies for acquiring easements on a jurisdiction-by-jurisdiction basis, both during initial negotiations (which occur in the shadow of governing law), and via litigation where necessary in some cases. By contrast, a uniform federal approach to defining just compensation would offer efficiencies from the uniform application of the predictable, well-settled principles under the Fifth Amendment that govern when the United States is the condemnor.

2. Holding that state law governs the measure of just compensation in NGA condemnation actions would implicate a wide range of unsettled issues, all of which would need to be litigated and resolved on a state-by-state basis across dozens or hundreds of cases nationwide every year. Such a framework would dramatically increase the complexity, length, and expense of condemnation actions. Greater uncertainty in the background rules of compensation would, in turn, make voluntary agreements and settlements less likely, as landowners leverage uncertainty to demand higher payouts, or choose to roll the dice with litigation.

Petitioners and their *amici* "lean in" to this concern, emphasizing the number and diversity of state-law approaches to measuring just compensation. See, *e.g.*, Landowner Groups Amicus Br. 15-16; Owners Council Amicus 17-18. But this diversity is a bug, not a positive feature, of their case. A state-law just compensation regime would create additional uncertainty and vastly expand the number of issues that would need to be litigated and resolved on a case-by-case basis.

States may provide entitlement not only to attorneys' fees but also other costs of litigation, such as expert appraisal fees. In some jurisdictions, landowners have aggressively litigated for so-called "severance" or "stigma" damages under state law—where landowners seek not only the fair-market value of the easement taken as the Fifth Amendment provides, see *Almota Farmers Elevator & Warehouse Co.* v. *United States*, 409 U.S. 470, 474 (1973), but also damages allegedly associated with prospective diminution in the use or value of the property, harm to a business operating from that property, or even harms to a non-existent business that an owner one day hopes to develop. See Florida Property Owners Amicus Br. 14-15. Simply enumerating these theories of compensation underscores the ways in which adopting Petitioners' proposed rule would increase the number and complexity of questions for litigation in condemnation cases.

Another common issue in pipeline eminent domain cases is how to define the "highest and best" use of a property, and in turn how to delineate the boundaries of the parcel "subject to" the taking. For instance, if a pipeline takes an underground easement crossing one corner of an agricultural field, but that field is adjacent to a separate parcel containing a farmhouse, is the parcel "subject" to the taking defined as just the agricultural field, or the field together with the residential parcel? Landowners and the pipeline may have sharply differing views about what is (or could be) the "highest and best" use of property with and without a pipeline. See *Atl. Coast Pipeline, LLC* v. *0.07 Acre, More or Less*, 396 F. Supp. 3d 628, 647 (W.D. Va. 2019) ("In condemnation, the larger parcel is 'the tract or tracts of land which are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use.'" (citation omitted)). In practice, how the parcel subject to the taking is defined can significantly change the amount of compensation; if a landowner proves a 5% diminution in value due to taking of an easement, the amount of compensation will scale with the size of the defined "parcel."

Unsurprisingly, states differ significantly in how to undertake this inquiry, whereas federal law provides a single uniform approach. Adopting Petitioners' position would present the added burdens and complexity associated with a patchwork of state laws. Moreover, it bears emphasis that federal law does not always advantage the pipeline over the property owner, in terms of calculating the value of an easement. Compare *United States* v. *8.929 Acres of Land*, 36 F.4th 240, 260 (4th Cir. 2022) (providing that, under federal law, separate tracts can be considered as a single parcel for eminent domain purposes if there is a "possibility" of the tracts being put to a unitary use in "the reasonably near future" such that it is "reasonably sufficient to affect market value" (citation omitted)), with *Commonwealth Transp. Comm'r* v. *Glass*, 613 S.E.2d 411, 417 (Va. 2005) (Virginia law, requiring "actual, permanent and present joint use of all the parcels as of the date of take" to find unity of lands for purposes of defining the parcel subject to the taking). Thus, although Petitioners here argue vigorously for state law to apply, in the experience of natural gas companies, landowners not infrequently have argued for a *federal-law* standard on larger-parcel and other issues, where it provided the possibility of a higher compensation award.

Other legal issues abound, all of which would be litigated on a state-by-state basis, across dozens or hundreds of eminent domain cases every year, inevitably generating inconsistent results if Petitioners prevail in this Court. The proliferation of issues to be litigated creates uncertainty and discourages prompt, efficient, and voluntary settlement. By contrast, fidelity to statutory text, history, and precedent, and holding that federal law governs just compensation in federal eminent domain actions, would promote clarity, increase efficiency, and avoid unnecessarily protracted litigation.

3. Applying state law to measure "just compensation" in NGA cases will also lead to misaligned incentives, causing practical difficulties and increasing costs. As the amicus briefs in this case illustrate, numerous jurisdictions entitle landowners to recover attorneys' fees and other litigation expenses from the condemning authority. That rule can create incentives for landowners and their counsel to engage in unproductive litigation without regard to whether those efforts ultimately benefit landowners.

Many jurisdictions have an extremely sophisticated and experienced landowner bar, whose members aggressively solicit clients as soon as a proposed project is announced. Lawyers gather landowner information from public records as soon as a potential project is known, and bombard property owners with solicitations for representation. See Prop. Rights & Pipeline Ctr., *Get a Lawyer*, https://perma.cc/4656-N5GF (last visited Sept. 16, 2026) (landowner nonprofit warning of "eminent domain lawyers flocking like seagulls to get groups of landowners to sign with them" and noting that, based on landowner experience, "many eminent domain lawyers were simply in it to 'negotiate,' and get their share of the pie"). Some landowner attorneys specifically target pipeline projects. See, *e.g.*, Sever Walker Padgett, *Southeast Supply Enhancement*, https://perma.cc/4B6U-BW3V (last visited Sept. 16, 2026) (landowner attorney with pages dedicated to targeting specific interstate pipeline projects); Domina Law Grp., *TransCanada Keystone XL Pipeline*, https://bit.ly/3VfgjOI (last visited Sept. 16, 2026) (touting termination of Keystone XL Pipeline project in part due to landowner litigation).

While *amici* are not privy to the precise fee arrangements between landowner attorneys and their clients, a system in which landowners do not cover *any* of the costs of their lawyers creates incentives for unproductive litigation. Where—win or lose—a landowner knows that their adversary will cover their litigation costs, that landowner lacks incentive to make informed cost-benefit judgments about the value of continued litigation. The inevitable result is to protract proceedings, increasing the total cost and burden of acquiring pipeline easements, even where doing so does not ultimately benefit landowners. For instance, in jurisdictions where state law allows appraisal costs to be shifted to the pipeline company in litigation, an appraiser may offer a low-cost initial appraisal that reflects a highly inflated property value. An unrealistically high initial appraisal can make the landowner less likely to settle, and the case more likely to proceed to litigation. But when the case proceeds to litigation, appraiser fees and costs (*e.g.*, reports, testimony) tend to skyrocket, without pushback from a landowner who expects to shift those costs to the pipeline in connection with any ultimate award. That is true whether or not the landowner actually recovers anything close to the initial appraisal.

Other misaligned incentives exist as well. For example, in the experience of *amici* members and their counsel, landowners often care significantly about practical issues *other than* the bottom-line dollar value paid for the easement. Landowners might place a significant practical value on adjusting a pipeline route to avoid certain sensitive areas or surface features to protect existing uses, or on scheduling construction to avoid interfering with planting or harvesting seasons. Natural gas companies and their counsel work diligently to accommodate landowners on such issues. See, *e.g.*, Initial Comments of Enbridge Gas Pipelines, FERC Docket No. PL 18-1-000 at 64-65 (May 26, 2021) (Accession No. 20210526-5225) (large pipeline developer noting that it "has routinely employed re-routes to avoid the use of eminent domain [and] address landowner concerns").

However, in the experience of many natural gas companies, once a landowner is represented by counsel, such discussions are sometimes pretermitted in favor of an exclusive focus on the bottom-line dollar value of the easement. That pivot may reflect the reality that landowner counsel's compensation is typically fixed as a percentage of dollars recovered, not based on securing nonmonetary accommodations. Given that the pipeline cannot communicate directly with landowners once they are represented by counsel, discussions about nonmonetary accommodations often stop entirely—to the apparent detriment of landowners.

Applying federal law would replace this patchwork of approaches with the stable, well-understood principles that govern just compensation under the Fifth Amendment. See *Almota Farmers*, 409 U.S. at 474 (property owner entitled "to the fair market value of his property at the time of the taking"); *Bodcaw*, 440 U.S. at 203 (just compensation does not extend to "indirect costs to the property owner caused by the taking of his land"). Adopting a clear, determinate federal-law standard would facilitate parties reaching agreement without the need for litigation, and would reduce and streamline case trajectories for those matters where litigation is unavoidable. In short, applying federal law would improve the overall efficiency of federal eminent domain proceedings under the NGA, and help avoid unproductive litigation and opportunistic behavior that can follow from misaligned incentives—all to the benefit of the hundreds of millions of Americans who depend on the Natural Gas Act to foster "the orderly development of plentiful supplies of * * * natural gas at reasonable prices." *NAACP* v. *Fed. Power Comm'n*, 425 U.S. 662, 669-670 (1976).

CONCLUSION

The judgment of the United States Court of Appeals for the Eighth Circuit should be affirmed.

Respectfully submitted.

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