No. 25-159

In the

Supreme Court of the United States

LEONARD W. HOFFMANN, ET AL.,

Petitioners,

v.

WBI ENERGY TRANSMISSION, INC.,

Respondent.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE**

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community, including cases that involve development of critically needed infrastructure. *See, e.g.*, *PennEast Pipeline Co., v. New Jersey*, 594 U.S. 482 (2021).

The Chamber has a significant interest in the question presented here. The Chamber's members include not only pipeline constructors and operators directly affected by the ruling below, but also the multitude of businesses in every industry relying on interstate natural-gas pipelines to keep their lights on and shops and factories running. These members have a strong interest in ensuring that the eminent-domain process established under the Natural Gas Act (NGA) is uniform, clear, and administrable nationwide, preventing a patchwork of state regimes burdening the efficient development of national energy solutions.

* No party's counsel authored any part of this brief. No person or entity, other than *amicus curiae*, its members, and its counsel, made any contribution towards the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below should be affirmed. The Eighth Circuit correctly interpreted the Natural Gas Act based on its text, structure, and context, as ably explained by Respondent and the United States. The Chamber of Commerce writes separately to underscore the importance of uniform rules for energy infrastructure to American businesses.

Our Nation needs a robust infrastructure for natural gas. Natural gas is a building block of American commercial and industrial activity. It powers our manufacturing facilities, heats our office buildings, and fuels our agricultural operations. Over 300,000 miles of pipelines service enterprises in every corner of the country. This vast network did not materialize by accident; it is the product of sustained investment, enabled by a federal regulatory framework that Congress carefully designed to ensure that infrastructure can be developed orderly and efficiently on a national scale.

The rules governing the exercise of eminent domain under the NGA—including the measure of just compensation—directly affect the feasibility and cost of pipeline projects, and thus the ability of American businesses to access the energy resources they require. Uncertainty or hostility in compensation rules can deter investment, delay critical projects, and harm businesses and consumers.

In the NGA, Congress delegated the federal eminent domain power to private parties acting in the federal government's stead. When a pipeline company exercises that delegated authority, it stands in the shoes of the federal government itself, wielding federal power to acquire property for a federally permitted project serving the national interest. Federal law thus decides the complete measure of just compensation, as the Eighth Circuit correctly recognized. Because the NGA does not define the measure of just compensation, the default federal rule applies: the Fifth Amendment requires that the property owner receive fair market value for the property as compensation for the taking.

The inquiry should end there. Several courts of appeals have read the NGA not to import the federal rule, but to give courts the option to choose between federal or state law. The district court took that approach, and petitioners and their amici retreat to it as a last resort. They rely on *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979), which sets forth a framework for deciding whether federal common law should craft a single federal rule or import state law. But federal law as a whole leaves no gap on compensation that can be filled by judicial policymaking.

Moreover, even if such a gap existed, it must be filled with one uniform federal rule, not fifty separate state rules. The NGA establishes a comprehensive federal scheme, to serve federal interests, overseen by a federal agency. That scheme requires a uniform federal rule on just compensation, just as it imposes uniform rules on other aspects of the pipeline process. Importing state law to determine just compensation would undermine the Act's objectives. Interstate pipelines, given their complexity, need predictable and efficient rules. Having fifty different state compensation regimes would make expensive projects even more costly. And it would provide an opportunity for hostile States to craft compensation rules in a way that could effectively nullify the federal eminent domain power. Finally, a uniform federal rule would not disrupt any commercial expectations. Interstate pipelines are national projects, not local ones, and parties to such proceedings would reasonably expect federal law to govern—including on the measure of compensation due.

Our Nation needs an ample and increasing supply of natural gas. We cannot afford legal uncertainty that chills investment in essential infrastructure or that subjects interstate pipelines to a patchwork of inconsistent state-law rules. Making clear that federal law determines just compensation under the Natural Gas Act will help provide the certainty that American businesses require to continue investing in the energy infrastructure on which our economy depends.

ARGUMENT

I. U.S. businesses need durable and affordable access to natural gas, and interstate pipelines make that possible.

Natural gas fuels American enterprise, keeping lights on and factories running. This is possible only with robust and reliable pipeline infrastructure.

Natural gas is a leading commercial fuel source. Nearly 6 million businesses rely on natural gas. Adam Kay, *America's Industrial Edge Is Fueled by Natural Gas*, Am. Gas Ass'n (Feb. 14, 2026), https://perma.cc/C9NA-XY9T; Am. Gas Ass'n, *Natural*

Gas Fuels Businesses, https://perma.cc/23JT-J4M4 (last visited Sept. 15, 2026). And industrial demand is increasing; it is up more than 30% over the last two decades. S&P Global Energy, *Price & Economic Impacts of an Accelerating Export Industry* 5 (July 16, 2026), https://perma.cc/ZC9E-UWUW. For most businesses that rely on natural gas for their operations, natural gas is their primary fuel source; for others, it is a critical substitute.

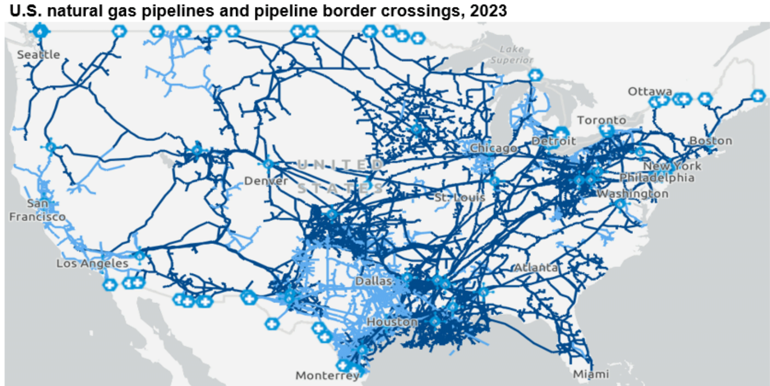
Demand for natural gas runs the gamut of the country's industries. Natural gas is critical to our nation's manufacturing facilities, accounting for 40% of all fuel consumed by plants and factories. U.S. Energy Info. Admin., *Use of Energy Explained: Energy Use in Industry* (Jan. 15, 2025), https://perma.cc/4VPR-33BP. It fuels our agricultural operations. Am. Gas Ass'n, *Advancing America's Agriculture: The Value of Natural Gas to U.S. Agriculture and Agrochemicals* 3, 9 (Mar. 2023), https://perma.cc/4TPP-6CK9. Natural gas is a key ingredient in fertilizer. *Id.* It also powers farm equipment, and provides energy to dry and process foods, safely store them, and then transport them to grocery stores and dinner tables. *Id.* at 3.

And the list continues. Natural gas heats most of our office buildings, schools, and stores. U.S. Energy Info. Admin., *Heating U.S. Commercial Buildings Is Most Energy Intensive in Cold Climates* (Sept. 6, 2023), https://perma.cc/V8PT-Q54G. It serves as a feedstock for numerous chemicals and plastics. U.S. Energy Info. Admin., *Energy Products Are Key Inputs to Global Chemicals Industry* (June 21, 2019), https://perma.cc/GH38-L4KL; Am. Geosciences Inst., *Non-Fuel Products of Oil*

& Gas (June 1, 2018), https://perma.cc/CA5N-J3EC. It helps hospitals sterilize equipment. Am. Gas Ass'n, *Natural Gas Reliability as a Public Health Essential* (Apr. 6, 2026), https://perma.cc/X6BB-UQKM. It powers the appliances at 80% of restaurants. Adam Kay, *Fueling Prosperity: How Small Businesses Rely on Natural Gas*, Am. Gas Ass'n (May 14, 2025), https://perma.cc/7B4T-A6A2. It's used by buses, trucks, and boats as an alternative fuel. U.S. Energy Info. Admin., *Use of Energy Explained: Energy Use for Transportation*, https://perma.cc/G87E-4Y2K (last visited Sept. 15, 2026). And data centers rely on it to meet a quarter of their energy needs. Int'l Energy Agency, *Energy Supply for AI*, https://perma.cc/K7T5-U65R (last visited Sept. 15, 2026).

These operations all depend on interstate pipelines to transport natural gas. Over 300,000 miles of pipelines crisscross the nation, servicing operations from Maine to Wyoming. *Price & Economic Impacts*, *supra*, at 11.

U.S. natural gas pipelines and pipeline border crossings, 2023



eia Source: U.S. Energy Information Administration, U.S. Energy Atlas, January 29, 2024
Note: Light-blue lines are intrastate pipelines, dark-blue lines are interstate pipelines, and + are border crossings.

U.S. Energy Info. Admin., *Natural Gas Explained: Natural Gas Pipelines* (Mar. 19, 2024), https://perma.cc/

7TYA-R5PX. Many large operations—like factories and industrial facilities—connect directly to pipelines. U.S. Energy Info. Admin., *Pipeline Companies Deliver Most of the U.S. Electric Power Sector's Natural Gas* (Feb. 26, 2025), https://perma.cc/E6DF-2GL8. But most businesses access natural gas indirectly, through local distribution networks. *Id.*

Because of this robust national pipeline system, the domestic natural-gas market has remained "resilient to external shocks," allowing businesses to weather global wars and national disasters. *Price & Economic Impacts*, *supra*, at 23; Am. Gas Ass'n, *Natural Gas Pipeline Systems: Delivering Resiliency* 1 (Oct. 10, 2014), https://perma.cc/Z5QD-VBYJ. The infrastructure has also kept energy prices competitive. Am. Gas Ass'n, *The Unspoken Story: America's Natural Gas Value Chain Is Keeping the Affordability Crisis from Getting Worse* (May 12, 2026), https://perma.cc/YLP7-VZQH. The United States enjoys some of the lowest industrial natural-gas prices in the world—with a benchmark price of $3.53 per MMBtu in 2025, and an even lower $3.43 in 2026, as compared to the United Kingdom's average $19 per MMBtu and France's $28. U.S. Energy Info. Admin., *Short-Term Energy Outlook* 2 (Sept. 2026), https://perma.cc/F4DR-A7SW; *Price & Economic Impacts*, *supra*, at 13. Lower overhead means that businesses can keep prices down for consumers and focus their funds on expanding and innovating. It also reduces barriers to entry for small businesses. And it helps American companies better compete in global markets. *The Unspoken Story*, *supra*.

This robust infrastructure is no accident, but the result of the focused efforts of industry and policymakers. Developers, with the support of their commercial customers, have invested over $280 billion in pipeline infrastructure over the past fifteen years. *Price & Economic Impacts*, *supra*, at 11; *see* Interstate Nat'l Gas Ass'n of Am., *North America Midstream Infrastructure through 2035* 9 (June 18, 2018), https://perma.cc/EA4T-VBEB. And policymakers have consistently pushed to streamline and expedite the permitting and construction process. *See* Paul W. Parfomak, Cong. Rsch. Serv., R45239, *Interstate Natural Gas Pipeline Siting: FERC Policy and Issues for Congress*, 13, 17-22 (2022); *see, e.g.*, FERC, *FERC Unleashes Natural Gas Permit Reforms, Accelerating Infrastructure Upgrades for Affordable, Reliable Energy Nationwide* (May 21, 2026), https://perma.cc/7G6A-GT54.

Nevertheless, new infrastructure must continue to be built to meet growing demand and replace aging systems. *Interstate Natural Gas Pipeline Siting, supra,* at 3; *see, e.g.*, Chris Newman, *PHMSA Targets Aging Natural Gas Pipelines with $98M in Modernization Grants*, Nat'l Gas Intel. (Apr. 6, 2026), https://perma.cc/T8GA-SYNZ. Significant bottlenecks persist. *Price & Economic Impacts*, *supra*, at 11, 25. And pipeline development remains "challenging," "particularly across state borders." *Price & Economic Impacts*, *supra,* at 18.

It is critical for the continuing efforts to expand and improve our pipeline infrastructure to succeed. The natural gas industry is a driving force of employment and economic growth. Over 150 pipeline companies operate in the United States. *Price & Economic Impacts*, *supra*, at 11. Over the next 15 years, the domestic natural-gas industry is projected to generate nearly $3 trillion in revenue for U.S. businesses and contribute $1.4 trillion to gross domestic product. *Id.* at 20. This growth will support 550,000 jobs, yielding $630 billion in labor income. *Id.* Liquefied natural gas (LNG) is set to become the country's second largest net export; in 2025, it produced over $44 billion in export revenue. *Id.* at 2, 6, 17. Today, the U.S. is the world's leading supplier of LNG, and will soon account for one-third of the global supply. *Id.* at 15. And at home, natural gas is essential to every corner of American business. With stable energy supplies, businesses can plan, invest, and grow with confidence. Interstate pipeline projects help provide that stability, ensuring that natural gas remains available to more businesses at affordable prices.

II. The Natural Gas Act should not be interpreted to create obstacles to the development of interstate pipelines.

Petitioners' position would create additional obstacles to realizing the benefits of natural gas. Subjecting interstate pipelines to a patchwork of inconsistent state-law rules would chill investment in essential infrastructure, impairing the ability of American businesses to access this important resource.

The NGA does not define the standard for just compensation, so the default federal rule applies. Brief for Respondent 12-22; *see, e.g.*, *United States ex rel. Tenn. Valley Auth. v. Powelson*, 319 U.S. 266, 281-82 (1943); *United States v. Miller*, 317 U.S. 369, 376 (1943). Under the Act, pipeline developers exercise the federal eminent domain power, stepping into the federal government's shoes. 15 U.S.C. § 717f(h). The federal government, when it exercises its eminent domain power, is bound by the federal rule for just compensation: the property owner is entitled to "market value," or "the full monetary equivalent of the property taken," but "cannot recover for indirect costs like attorney fees and expenses." *WBI Energy Transmission, Inc. v. 189.9 rods, more or less, located in Township 149 North*, 132 F.4th 1058, 1060-61 (8th Cir. 2025) (citations omitted). It follows that when a private party exercises that "categorical" power, *PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 498 (2021), the developer is bound by the same default federal standard, *WBI Energy*, 132 F.4th at 1061. The Eighth Circuit thus adopted the correct reading of the Act, for all the reasons explained by Respondent and the United States. Resp. Br. 12-43; Brief for the United States as Amicus Curiae Supporting Respondent at the Certiorari Stage 8-18.

Petitioners and their amici urge this Court to reach a different conclusion based on a different test. The district court read the NGA not to import the "default" federal rule, *WBI Energy*, 132 F.4th at 1061, but as an opportunity to exercise judicial discretion and decide between crafting a single uniform federal rule for interstate pipelines and borrowing the laws of each state through which the pipeline passes. Other courts of appeals have likewise read the Act to contain a "gap" on this issue that could be filled with either state or federal law. *See Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 59 F.4th 1158, 1172 (11th Cir. 2023); *Tenn. Gas Pipeline Co., v. Permanent Easement for 7.053 Acres*, 931 F.3d

237, 245 (3d Cir. 2019); *Columbia Gas Transmission Corp. v. Exclusive Nat. Gas Storage Easement*, 962 F.2d 1192, 1198 (6th Cir. 1992).

Congress left "no gaps to fill" here, as the Eighth Circuit explained. *WBI Energy*, 132 F.4th at 1062. "[N]othing in the Natural Gas Act tells [pipeline developers] what they must pay when taking property." *Id.* But "any gaps are filled by the Fifth Amendment itself, including the obligation to pay just compensation." *Id.* (citations omitted). It is thus not up to federal courts to engage in "interstitial lawmaking" by "build[ing] out compensation standards." *Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake Cnty., Fla.*, 74 F.4th 1346, 1350 (11th Cir. 2023) (Grant, J., concurring). "[F]ederal law already provide[s] a standard." *Id.* at 1349.

Even if the NGA could be read as giving courts an option on the measure of compensation, the only logical choice is a uniform federal rule, not disparate state laws. Petitioners and lower courts rely on the framework this Court set out in *United States v. Kimbell Foods, Inc.*, 440 U.S. 715 (1979). Under *Kimbell Foods*, in the rare situation when a federal statute contains a genuine gap—something that cannot be resolved by proper interpretation of the statute—courts, as a matter of federal common law and "judicial policy," can choose to either "fashion a nationwide federal rule," or "to adopt state law." *Id.* at 728. The test balances three considerations: First, does the statute administer a federal program that "by [its] nature [is] and must be uniform in character throughout the Nation"? *Id.* (citations omitted). Second, would state law "frustrate specific objectives of the federal" statute? *Id.* Third, would a consistent federal rule "disrupt commercial relationships predicated on state law"? *Id.*

The district court below, joining several courts of appeals, deemed these considerations to favor importing state compensation laws into the NGA. Those decisions are mistaken. The NGA establishes a comprehensive federal scheme for building and running interstate pipelines, including obtaining rights-of-way through eminent domain. The standard for compensation based on those takings should be the same throughout the nation. Permitting state law to define just compensation instead would subject interstate pipelines to a patchwork of fifty different regimes. That is precisely the kind of disuniformity and uncertainty that Congress sought to eliminate when it enacted the Act. And because interstate pipelines are federally permitted and exercise the federal eminent domain power, property owners reasonably expect just compensation to be set based on federal law, not state law. Resp. Br. 45-49.

A. Interstate pipelines need a nationally uniform rule.

"[F]ederal programs that by their nature are and must be uniform in character throughout the Nation necessitate formulation of controlling federal rules." *Kimbell Foods*, 440 U.S. at 728 (citations omitted). The NGA establishes such a program for interstate natural-gas pipelines.

1. The "federal interests" here "are identifiable and strong." *Nat'l R.R. Passenger Corp. v. Two Parcels of Land One 1691 Sq. Foot More or Less Parcel of Land In the Town of New London*, 822 F.2d 1261, 1267 (2d Cir. 1987); *see Kimbell Foods*, 440 U.S. at 730. For over a century, natural gas has played an "essential role" in our country, serving as a primary power source. Paul W. Parfomak, et al., Cong. Rsch. Serv., R48967, *The Natural Gas Act: Background, Key Provisions, and Policy Issues* 1 (2026). Its distribution and sale is thus "affected with a public interest." 15 U.S.C. § 717(a). To that end, the NGA is intended "to encourage the orderly development of plentiful supplies of ... natural gas at reasonable prices." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669-70 (1976).

"Federal regulation" of interstate transport "is necessary" to promote these interests. 15 U.S.C. § 717(a). Interstate pipelines are inherently national projects. Production facilities are often thousands of miles from the communities they serve. Unlike other forms of fuel, which can be transported by truck, boat, or rail, "natural gas is transported to markets almost exclusively by pipelines." Alexandra B. Klass & Danielle Meinhardt, *Transporting Oil and Gas: U.S. Infrastructure Challenges*, 100 Iowa L. Rev. 947, 950 (2015). These underground pipelines generally need to cross numerous States to reach their destination.

States along the route might object to serving as a thoroughfare, based on their own energy policies or because their own citizens will not directly benefit.

Absent federal intervention, those States could put up "roadblocks" that singlehandedly cut off access for another State, or even an entire region. Klass & Meinhardt, *supra*, at 951; *see id.* at 993. To avoid this, the Natural Gas Act brought interstate pipeline development "under national control," *Illinois Nat. Gas Co. v. Central Illinois Pub. Serv. Co.*, 314 U.S. 498, 506 (1942), ensuring that the United States retains "overarching influence" so that necessary infrastructure is made available across the entire country, Cong. Rsch. Serv., *The Natural Gas Act: Background, Key Provisions, and Policy Issues*, *supra*, at 6.

The district court and some courts of appeals reasoned that the federal interests here are reduced, or even non-existent, because the pipeline "involves two private parties, not the United States government." *WBI Energy Transmission, Inc. v. Easement and Right-of-Way Across*, No. 1:18-cv-078, 2022 WL 22649232, at *6 (D. N. D. Nov. 1, 2022). But the federal interests in national pipeline infrastructure are no less salient because the private parties are the ones building the pipelines. *PennEast*, 594 U.S. at 495-97. The projects are closely overseen by a federal agency and allowed to proceed only if they are found to be in the public interest. *Certification of New Interstate Natural Gas Pipeline Facilities: Statement of Policy*, 88 FERC ¶ 61,227, at 22-29 (Sept. 15, 1999) ("*Statement of Policy*"); *see Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1307-09 (D.C. Cir. 2015). When a developer exercises the federal eminent domain power conferred by the NGA, it stands in the shoes of the federal government itself. *PennEast*, 594 U.S. at 495-97. Nothing about that delegation diminishes the federal character of that power—much less the federal interests it serves. *Id.*; *cf. Tenn. Gas Pipeline Co.*, 931 F.3d at 248, 251; *Georgia Power Co. v. Sanders*, 617 F.2d 1112, 1118 (5th Cir. 1980).

2. The Natural Gas Act sets out a comprehensive scheme to promote these federal interests. That scheme "evidences a distinct need for nationwide legal standards," including on just compensation. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 98 (1991).

The Act implements "a nationwide federal program." *Columbia Gas*, 962 F.2d at 1196. Interstate pipelines are overseen by a single federal agency—originally the Federal Power Commission, now the Federal Energy Regulatory Commission—which "exercises virtually exclusive control … and approval of interstate natural gas pipelines." Klass & Meinhardt, *supra*, at 950; *see Interstate Natural Gas Pipeline Siting*, *supra*, at 4-8 (detailing this federal process). Interstate pipelines may be constructed or extended only upon a finding of "public convenience and necessity." 15 U.S.C. § 717f(c). This standard, among other things, requires considering the interests of "[l]andowners whose land would be condemned for the new pipeline right-of-way, under eminent domain rights conveyed by the" federal approval. *Statement of Policy, supra*, at 24. The developer must prove that the benefits from the pipeline are "proportional to the … proposed exercise of eminent domain procedures." *Id.* at 27. For this and other considerations, the same federal standard applies uniformly to all interstate pipelines. *Id.* at 22-29.

Federal oversight applies throughout the lifecycle of an interstate pipeline. Once approved, the pipeline must be built according to the "terms and conditions" in the federal order, "including the authorized pipeline route and any construction or environmental mitigation measures required." *Interstate Natural Gas Pipeline Siting*, *supra*, at 7-8. And once the pipeline is up and running, the price to transport gas is set through federal ratemaking under a uniform federal standard. 15 U.S.C. § 717c. This "program is general and standardized," and "the terms are explicitly dictated by federal law." *United States v. Yazell*, 382 U.S. 341, 354 (1966); *cf. Kimbell Foods*, 440 U.S. at 730-32 (federal program had "expressly incorporate[d] state law," both procedural and "substantive," and relied on "local lending offices and employees … familiar with the law of their respective localities").

This uniformity extends to takings under the Act. Rather than having to rely on 50 disparate state powers, pipeline companies may acquire rights-of-way by exercising the federal eminent domain power—a feature Congress added to the federal statutory program after States tried to impair pipeline development. 15 U.S.C. § 717f(h). The power to condemn property and the obligation to pay for that property go hand in hand; "the one is so inseparably connected with the other that they may be said to exist, not as separate and distinct principles, but as parts of one and the same." *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 324-25 (1893) (citations omitted). If federal law governs the authority to take, federal law equally governs what must be paid for that taking. *See*

West Virginia v. United States, 479 U.S. 305, 308-09 (1987) (applying uniform federal rule to determine liability for prejudgment interest on federal contract).

This is not a situation where state laws "furnish convenient solutions," *Kimbell Foods*, 440 U.S. at 729 (citations omitted), for peripheral, procedural, or "supplemental" matters, *The Federal Common Law*, 82 Harv. L. Rev. 1512, 1525-26 (1969). This Court has imported state law to decide threshold procedural requirements for corporate derivative suits, like requiring that shareholders make a demand upon the board, *Kamen*, 500 U.S. at 97-109, and granting independent directors the right to terminate the suit, *Burks v. Lasker*, 441 U.S. 471, 477-86 (1979). State law has also been imported to determine capacity to contract with the federal government, *Yazell*, 382 U.S. at 357-58, and priority of commercial liens between private and government lenders, *Kimbell Foods*, 440 U.S. at 729-39. In each of these matters, state law was incorporated to answer only ancillary questions inherently of a state-law character. Here, by contrast, the measure of just compensation cannot be separated from the exercise of the *federal* eminent domain power. *Cf.* Pet. Br. 39-40; *compare also* 15 U.S.C. § 717f(h) (providing that federal condemnation *procedures* should "conform as nearly as may be" with the relevant state practice).

3. Interstate natural-gas pipelines are a matter of national concern requiring uniform national standards. Indeed, the standard for just compensation is already "well-established" in federal law. *WBI Energy*, 132 F.4th

at 1060. It "equates to market value" of the property taken, excluding "indirect costs like attorney fees and expenses." *Id.* at 1060-61. This rule is both fair and administrable. It provides the property owner with "a full and perfect equivalent for the property taken," *Monongahela Nav. Co.*, 148 U.S. at 326, while recognizing that "[t]he injury done" by a taking is the loss of the property itself, not "all the costs" a property owner "incurs as a result of a condemnation action." *United States v. Bodcaw Co.*, 440 U.S. 202, 204 (1979). The first *Kimbell Foods* factor strongly supports applying that existing federal rule.

B. Permitting state law to fill the gap would frustrate the objectives of the Natural Gas Act.

It would "frustrate specific objectives" of the NGA to import state law to override the default federal rule. *Kimbell Foods*, 440 U.S. at 728. Requiring courts and developers to apply disparate state compensation rules, rather than a single federal standard, would lead to added costs and administrative waste. More concerningly, it would give States an avenue to seek to limit or prevent pipeline development.

1. State laws vary widely on what counts as just compensation. Some States mirror the default federal standard and require only fair market value for the property itself—although they may differ on the method for calculating that value. *See, e.g.*, *Correia v. New Bedford Redevelopment Auth.*, 375 Mass. 360, 361 (1978) (detailing accepted methods); Wyo. Stat. § 1-26-704(a)(iii) (same). Other States might add a multiplier; Michigan, for instance, demands "125% of [the] property's fair market value" for primary residences. Mich. Const. Art.

X. § 2. Others conduct a more holistic inquiry to determine compensation. For example, Pennsylvania balances "the original cost of construction," "the gross annual revenue of the property," "the probable earning capacity of the property," "[t]he reproduction cost of the property," and any "other elements of value." 55 Pa. Cons. Stat. § 557.1.

Beyond the value of the taken property itself, States might permit recovery for "consequential damages." *Tenn. Gas Pipeline Co.*, 931 F.3d at 244 (Pennsylvania); *see also Lebov, LLC v. New York*, 185 A.D.3d 911, 912 (N.Y. App. Div. 2020). This can include lost profits, Va. Code Ann. § 25-1-230.1(C), or the costs of any adjustments or alterations required to the remaining property, *Tenn. Gas Pipeline Co.*, 931 F.3d at 244 (Pennsylvania); *see also* Cal. Civ. Proc. § 1263.410(a); Fla. Stat. § 73.071(3)(b). Other States provide for "all reasonable costs and expenses," Nev. Const. Art. 1 § 22, like "appraisal … and engineering fees," *Tenn. Gas Pipeline Co.*, 931 F.3d at 245 (Pennsylvania); *accord* Minn. Stat. § 117.031; Ga. Code § 22-1-12. And some allow for attorneys' fees. Ariz. Rev. Stat. § 12-1135(b); Colo. Rev. Stat. § 38-1-122; Minn. Stat. § 117.031; Tex. Prop. Code § 21.019(b)-(c); *see also* Resp. Br. 28-29.

2. Imposing these disparate state compensation rules on interstate pipeline projects would increase the cost and burdens of interstate development, and may halt some projects altogether.

Pipeline projects are already complex and expensive undertakings. The developer must assess multiple "possible routes," considering which communities need service, the volume the pipeline must carry, and which population centers and existing infrastructure must be avoided. Dep't of Transp., *Phases of Pipeline Construction: An Overview* (Apr. 18, 2022), https://perma.cc/K6R8-BY9H. It then has to "engineer the actual system designs" and "construct the pipelines." *Id.* But in order to do that, the developer must "acquire the right-of-way ... to build, operate and maintain the pipelines" through "purchase, license, or easement agreement." *Id.*

This right-of-way process can be particularly onerous. Developers must engage in individual negotiations with each landowner along the route. If the parties cannot reach agreement, the developer must initiate separate court proceedings for each tract. *E. Tenn. Nat. Gas Co. v. Sage*, 361 F.3d 808, 828 (4th Cir. 2004). For one 94-mile pipeline, this process required "separate hearings on compensation" for 85 tracts of land. *Id.* Pipelines generate no revenue until the entire line is completed and delivery can begin. So they need enormous up-front capital investment; currently scheduled projects are expected to require nearly $40 billion over the next 15 years. *Price & Economic Impacts*, *supra*, at 19.

By including sums (such as attorneys' fees) in "just compensation" that go beyond the amount available under federal law, state law can contribute to the sticker price of a parcel of land, often significantly. *See, e.g.*, *Tenn. Gas Pipeline Co.*, 931 F.3d at 242 (awarding almost $1 million in consequential damages to a single landowner); *Sabal Trail*, 59 F.4th at 1162 (awarding over $765,000 in attorneys' fees and costs to two landowners); *see also* Resp. Br. 30. For the single parcel involved in this case, attorneys' fees and costs amounted to $380,000.

WBI Energy Transmission, Inc. v. Easement & Right-of-Way Across, No. 1:18-cv-078, 2024 WL 1477719, at *3 (D.N.D. Mar. 5, 2024). These added expenses not only would create disparities among similarly situated parties affected by the same pipeline project in different states, but could encumber a project so much that it becomes infeasible.

Navigating disparate state regimes also imposes significant administrative burdens on a project. A developer has to "enmesh itself in the" compensation regimes of each State through which the pipeline passes, an "unenviable position" for a federal project operating across multiple jurisdictions. *Nat'l R.R. Passenger Corp.*, 822 F.2d at 1267. These variations can result in "uncertainties and delays," *id.* at 1266-67, compounding already formidable development challenges.

The courts of appeals that go the other way have discounted these concerns on the ground that private entities expend private money, rather than "federal dollars," in paying just compensation. *Tenn. Gas Pipeline Co.*, 931 F.3d at 249. But like the federal government, a private party exercising delegated federal eminent domain power "has a strong interest in reducing the costs of its own exercises of eminent domain." *Id.* More importantly, so does the public: Costs of pipeline development are reflected in the rates paid by consumers. Keeping development expenditures down thus translates to lower natural gas prices for customers.

3. In addition to these direct and inevitable costs, imposing a state-law regime for just compensation introduces the opportunity for mischief that the NGA was designed to avoid. If States define the compensation due for condemnations under the NGA, state law could define "just compensation" in terms so expansive or "hostile" as to effectively deprive a pipeline operator of its ability to exercise the federal eminent domain power. *Georgia Power Co.*, 617 F.2d at 1120; *see Tenn. Gas Pipeline Co.*, 931 F.3d at 253 (recognizing that "a state could theoretically have a compensation law so far out of step with federal law as to create a significant conflict").

History demonstrates that States have been willing to erect barriers to interstate pipeline development when given the opportunity. Before Congress amended the NGA to delegate the federal eminent domain power, States frequently imposed restrictions—denying eminent domain authority to out-of-state corporations, or requiring that pipelines directly benefit in-state residents. *PennEast Pipeline Co.*, 594 U.S. at 489. These restrictions meant that companies "often had only an illusory right to build." *Id.*; *see* S. Rep. No. 429, 80th Cong., 1st Sess. 2, at 1-2 (1947).

For instance, after World War II, one company converted emergency crude-oil pipelines, no longer needed after the war, into natural gas lines. Klass & Meinhardt, *supra*, at 996. But to make the pipeline operational, the company needed to expand it into Pennsylvania. *Id.* "State governments, the coal industry, and railroad interests blocked [those] efforts." *Id.* at 997. That winter saw "[n]atural gas shortages," *id.*, much to the "discomfort and peril" of consumers, *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. 183 (1947) (statement of John Siggins, Jr., Chairman, Pa. Pub. Utility Comm'n). And "nearly 50,000 workers" were "laid off from jobs" that depended on natural gas. Klass & Meinhardt, *supra*, at 997. "Congress acted to remedy this defect" by granting pipeline companies "the *federal* eminent domain power," ensuring that operators would not be left to the mercy of competing and potentially unfriendly state regimes. *PennEast*, 594 U.S. at 489.

The same threat of "States impeding interstate pipeline development" applies to the measure of compensation. *PennEast*, 594 U.S. at 498. Consider a hypothetical State that, to disincentivize natural-gas development, decides to allow property owners to recover enhanced damages in natural-gas pipeline takings. *Cf.* Ind. Code § 14-39-1-9 (imposing special compensation requirements for takings by CO_2 pipelines); Wis. Stat. § 32.09(6r)(a) (same for taking for any "fuel pipeline"); *see also* Resp. Br. 30. A natural-gas pipeline needs an easement on a farm. The fair market value for an easement is $10,000, and the pipeline is financed accordingly.

But under the hypothetical compensation scheme, the property owner recovers far more in an award from a local (and sympathetic) finder of fact: for lost profits from reduced crop yields on adjacent property, for the diminished resale value of the property and neighboring lots, and even for the purported stigma of having a pipeline nearby. The owner also gets to recover expert and attorneys' fees, and so has little incentive to limit costs. All in, an easement that would cost $10,000 under federal law now costs $400,000 under state law. Now multiply that across the 40-plus easements that the pipeline has to acquire in a State. The pipeline's nominal authority to exercise federal eminent domain would become "illusory." *Id.* at 489. And "[a]n eminent domain power that is incapable of being exercised amounts to no eminent domain power at all." *Id.* at 504.

The consequences of such obstruction extend far beyond individual pipeline projects. When infrastructure development is impeded, "[f]ewer projects make it to the finish line"—or even "the starting line." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 184 (2025). "Those that survive often end up costing much more than is anticipated or necessary." *Id.* "And that in turn means fewer and more expensive" pipelines to meet national energy needs, and "fewer jobs, as new projects become difficult to finance and build in a timely fashion." *Id.* These harms—reduced energy reliability, higher prices, and diminished economic growth—are then borne by American businesses and consumers.

C. Commercial parties would reasonably expect that federal, not state law, determines just compensation in this context.

Finally, fashioning a uniform federal rule would not "disrupt commercial relationships predicated on state law." *Kimbell Foods*, 440 U.S. at 729. Interstate pipelines are national projects, not local ones. The parties to condemnation proceedings under the Natural Gas Act would reasonably expect federal law to govern—including on the measure of compensation due.

No doubt, state law defines the contours of property rights. Brief of Petitioners 42; *see also Tenn. Gas Pipeline Co.*, 931 F.3d at 251. But the question here is how to determine just compensation for the taking of such rights by federal eminent domain under a federal statute, the NGA. That is a quintessentially federal question. Under the NGA, property is being taken pursuant to "a private delegation of the *federal* eminent domain power," not the exercise of any "*state* government[]'s ... *state* eminent domain power." *Sabal Trail*, 74 F.4th at 1349 (Grant, J., concurring). Property owners thus would not "have their expectations thwarted" by the application of federal law to determine just compensation. *Kimbell Foods*, 440 U.S. at 739.

To the contrary, property owners would reasonably expect that federal law would determine the measure of compensation. The property is being taken for an interstate project authorized by a federal agency under federal law, typically in a proceeding in federal court. The "parties that conduct business in this industry are already on notice of the potential application of federal law." *Tenn. Gas Pipeline Co.*, 931 F.3d at 254; *cf. Kimbell Foods*, 440 U.S. at 739-40 & n.42. After all, "[t]he federal eminent domain power ... can neither be enlarged nor diminished by a State," "[n]or can any State prescribe the manner in which it must be exercised." *PennEast*, 594 U.S. at 494-95 (quoting *Kohl v. United States*, 91 U.S. 367, 374 (1876)); *see West Virginia*, 479 U.S. at 309.

The federal rule is well-settled and fair to both condemnors and property owners. Applying it here would not disrupt settled expectations; it would confirm them.

CONCLUSION

For the foregoing reasons, the Court should affirm the Eighth Circuit's judgment.

Respectfully submitted,

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