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 FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether the Fifth Amendment, as opposed to state law, determines the measure of compensation due in a condemnation action brought by a private entity exercising the federal power of eminent domain under the Natural Gas Act, 15 U.S.C. 717f(h).

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INTEREST OF THE UNITED STATES

This case presents the question whether the Fifth Amendment or state law defines the measure of compensation owed by a private entity exercising the federal power of eminent domain pursuant to the Natural Gas Act (NGA or Act), 15 U.S.C. 717 *et seq.* The Federal Energy Regulatory Commission (FERC) is responsible for administering the NGA, and private condemnation suits further the purposes the Act is intended to serve. The United States therefore has a substantial interest in the resolution of the question presented here. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of the case.

INTRODUCTION

The NGA delegates to certain private entities the federal power of eminent domain to obtain rights-of-way necessary to construct and maintain interstate pipelines. 15 U.S.C. 717f(h). The Act does not specify the measure of compensation owed for such takings, and the question presented in this case is whether the Fifth Amendment or state law supplies the applicable compensation standard. The Eighth Circuit held that Congress's failure to specify a different measure of compensation means that "the default rule" of "'just compensation' under the Fifth Amendment" applies. Pet. App. 6a. The court determined in particular that, although attorney's fees incurred by the landowner in a condemnation suit are part of the compensation owed for a taking under North Dakota law, *id.* at 3a, such fees are not part of "just compensation" under the Fifth Amendment. *Id.* at 9a-10a; see *United States* v. *Bodcaw Co.*, 440 U.S. 202, 203 (1979) (per curiam).

The Eighth Circuit's decision was correct. The NGA's delegation of the federal eminent-domain power is "categorical." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 498 (2021). When the federal government exercises the federal eminent-domain power, it must pay a property owner "just compensation" under the Fifth Amendment, unless Congress affirmatively adopts state compensation rules or otherwise mandates greater compensation. The same default rule applies when, as here, Congress delegates the federal eminent-domain power to a private entity. Because Congress did not specify a measure of compensation in Section 717f(h), the Fifth Amendment default standard applies, and attorney's fees are not available.

Petitioners acknowledge (Br. 7, 20) that, when the federal government takes land in its own name, the Fifth Amendment standard applies unless Congress explicitly provides otherwise. Petitioners argue (Br. 12-

37), however, that when Congress delegates the federal eminent-domain power to a private party, state-law rules governing the measure of compensation should presumptively apply. That argument ignores the categorical nature of the NGA's delegation of federal condemnation authority. And petitioners offer no sound alternative reason why state-law measure-of-compensation rules should supersede the Fifth Amendment standard in a federal cause of action under the NGA.

Petitioners contend (*e.g.*, Br. 47) that incorporation of state law is appropriate here because the parties' dispute involves "rules about land valuation." But the decision whether to award attorney's fees has nothing to do with the value of the easements that respondent took. The decision instead concerns whether petitioners should receive *additional* compensation, over and above the value of the taken property. North Dakota is free to authorize such additional compensation when the *State* takes property, but the landowner in an NGA condemnation action is entitled only to Fifth Amendment "just compensation."

Petitioners alternatively argue (Br. 37-44) that the NGA's failure to specify an applicable measure of compensation left a "gap" for courts to fill through judicial lawmaking, and that state law should be incorporated to fill that gap under the framework of *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979). That is also wrong. Congress's failure to specify a measure of compensation did not leave a "gap" as to the standard of compensation that applies. And even if it did, uniform federal rules, rather than disparate and potentially obstructionist state laws, should fill that gap.

STATEMENT

1. In 1938, Congress enacted the Natural Gas Act to regulate "the transportation of natural gas in interstate commerce." 15 U.S.C. 717(b). The Act reflects Congress's determination that "[f]ederal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." 15 U.S.C. 717(a).

The Act vests FERC, formerly the Federal Power Commission, with primary authority to approve the construction and extension of interstate natural-gas pipelines. See 15 U.S.C. 717f. In order to build or extend an interstate pipeline, a private entity must first obtain from FERC a "certificate of public convenience and necessity" authorizing the project. 15 U.S.C. 717f(c). A company seeking such a certificate must submit to FERC an application that describes the proposed pipeline. 15 U.S.C. 717f(d). The company must make a "good faith effort to notify all affected landowners" whose property may be crossed by the proposed pipeline or used during construction. 18 C.F.R. 157.6(d). If FERC determines that the proposed interstate pipeline "is or will be required by the present or future public convenience and necessity," FERC issues a certificate authorizing its construction. 15 U.S.C. 717f(e).

"As originally enacted, the NGA did not identify a mechanism for certificate holders to secure property rights necessary to build pipelines." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 489 (2021); see S. Rep. No. 429, 80th Cong., 1st Sess. 1 (1947) (Senate Report). Pipeline companies relied instead on state-law mechanisms to acquire the needed land. Senate Report 1-2. Under that regime, States could (and did) withhold authority to take land for projects that they disfavored, such as those undertaken by out-of-state corporations. *Id.* at 2-3. "The result was that certificate holders often had only an illusory right to build." *PennEast*, 594 U.S. at 489.

In 1947, Congress addressed that impediment by amending the NGA to authorize private certificate holders to exercise the federal power of eminent domain. Act of July 25, 1947, ch. 333, 61 Stat. 459 (15 U.S.C. 717f(h)); see *PennEast*, 594 U.S. at 489. Specifically, Congress provided:

> When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas * * * , it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.

15 U.S.C. 717f(h).

The drafters of Section 717f(h) explained that they had modeled its language on "the wording of the eminent domain provision of the Federal Power Act [16 U.S.C. 791a *et seq.*]." Senate Report 1; see *id.* at 4. That provision authorizes private entities to condemn property necessary for the "construction, maintenance, or operation" of dams and other projects that support hydroelectric power. 16 U.S.C. 814. As in the Federal Power Act, Congress directed that the "practice and procedure" in any NGA condemnation action brought in federal district court "shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated." 15 U.S.C. 717f(h); see 16 U.S.C. 814.

2. Respondent transports and stores natural gas. Pet. App. 2a. In 1985, FERC issued respondent a certificate of public convenience and necessity, authorizing respondent to operate and maintain an interstate pipeline system previously owned by another company. *Williston Basin Interstate Pipeline Co. & Montana-Dakota Utils. Co.*, 30 F.E.R.C. ¶ 61,143, at 61,253 (1985). Respondent also inherited the other company's "blanket certificate," which is an authorization to conduct relatively minor pipeline projects pursuant to a streamlined regulatory approval process. *Ibid.*; *Montana Dakota Utils. Co.*, 21 F.E.R.C. ¶ 62,299, at 63,482 (1982); see 18 C.F.R. 157.201-157.218.

In November 2017, respondent requested authorization to construct approximately 12 miles of pipeline in McKenzie County, North Dakota, and to expand certain existing natural-gas facilities in the area. C.A. J.A. 9, 12. Pursuant to respondent's blanket certificate, FERC issued a notice of authorization for the project. See 82 Fed. Reg. 60,007 (Dec. 18, 2017).

To construct and maintain the new pipeline, respondent needed to secure several easements and rights-of-way in McKenzie County. See C.A. J.A. 45. Respondent purchased many of the necessary property interests from local landowners, but respondent could not reach an agreement with certain landowners, who are petitioners in this Court. *Ibid.* Respondent therefore sought to obtain the relevant easements and rights-of-way through eminent domain, pursuant to the NGA.

3. In April 2018, respondent filed a condemnation action in the United States District Court for the District of North Dakota. Compl. 1-7; see Pet. App. 28a.

The parties stipulated that respondent could immediately use and possess the relevant easements and rights-of-way, leaving only the amount of compensation to be determined. Pet. App. 29a. After three years of litigation on that issue, the parties reached a confidential settlement on the value of the taken property interests. *Id.* at 29a, 50a. But petitioners reserved the right to move for attorney's fees and expenses, and respondent reserved the right to contest that motion. *Id.* at 50a.

Consistent with the parties' stipulation, petitioners moved for an award of attorney's fees and expenses. Pet. App. 30a. Petitioners argued that state law should control in determining the compensation owed to them for the taking, and that "just compensation as measured in North Dakota" "includes" "reasonable fees and expenses." D. Ct. Doc. 127, at 10 (Oct. 4, 2021); see D. Ct. Doc. 119, at 1-14 (Aug. 12, 2021). Respondent opposed the motion. Respondent argued that "federal law defines just compensation in a federal condemnation" under the NGA, and that "attorney's fees and other litigation expenses are not included in just compensation under the Fifth Amendment" or otherwise authorized by federal statute. D. Ct. Doc. 120, at 13 (Sept. 2, 2021).

The district court granted petitioners' motion. Pet. App. 46a. The court observed that the NGA is "silent" as to the applicable law and measure of compensation in a condemnation action brought by a private party, and indeed that the Act does not expressly require "that just compensation be awarded." *Id.* at 32a. The court concluded that the Act's silence on that point left a gap to be filled through common lawmaking. *Id.* at 32a-33a. The court then applied the analytic framework of *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715

(1979), to determine whether to adopt state law or instead to fashion a uniform federal rule to fill that asserted gap. Pet. App. 33a-35a. Under that framework, the court chose to "adopt[ ] state substantive law as the federal standard of just compensation." *Id.* at 45a. The court of appeals concluded that under North Dakota law, attorney's fees and expenses are a component of just compensation. *Id.* at 45a-46a.

After further briefing on the appropriate fee award, the district court awarded petitioners $383,375.76 in attorney's fees and expenses. Pet. App. 23a.

4. The court of appeals vacated the fee award. Pet. App. 1a-10a. The court explained that a private entity exercising the federal power of eminent domain under the NGA "step[s] into the federal government's shoes" and "inherit[s] all its rights and obligations." *Id.* at 4a. When the federal government conducts a taking, the court observed, the Just Compensation Clause does not require it to pay attorney's fees. *Id.* at 6a (citing *United States* v. *Bodcaw Co.*, 440 U.S. 202, 203 (1979) (per curiam)). The court further explained that, although some federal statutes mandate compensation above the constitutional floor by requiring attorney's fees for certain federal takings, the NGA provision at issue here does not. *Id.* at 5a-6a.

The court of appeals rejected the district court's *Kimbell Foods*-based determination to adopt state law as the applicable rule of decision. Pet. App. 6a-9a. The court of appeals explained that, "when it comes to eminent domain, congressional silence leaves no 'gaps' to fill" with state law or federal common law on the measure of just compensation. *Id.* at 7a. Instead, "any gaps are filled by the Fifth Amendment itself." *Id.* at 8a. The court also viewed this Court's decision in *PennEast* as confirming that the NGA delegates to private entities "the *entire* federal eminent-domain power, not just some diluted form of it." *Ibid.* And it concluded that petitioners' policy arguments for applying state law in this context were better directed to Congress. *Id.* at 9a.

SUMMARY OF ARGUMENT

A. The Fifth Amendment defines the measure of compensation owed by a private pipeline company in a condemnation action under the NGA, 15 U.S.C. 717f(h).

1. When the United States exercises the federal power of eminent domain, it must pay landowners "just compensation" within the meaning of the Fifth Amendment, unless Congress expressly adopts a standard above that constitutional floor. One way that Congress can depart from the constitutional floor is by requiring the federal government to pay compensation according to the state-law standards that apply when state entities take land, which may be more generous than the compensation required by the Fifth Amendment. Such state compensation laws do not apply of their own force to the federal government. See *Kohl* v. *United States*, 91 U.S. 367, 374 (1876). So unless Congress expressly adopts such standards or otherwise requires some specific measure of compensation, the Fifth Amendment default applies.

2. The same principles apply when the federal government authorizes a private entity to exercise the federal eminent-domain power on its behalf. In that circumstance, the power being exercised is still that of the federal government, so state law does not apply unless Congress expressly so provides. Statutory silence means that the Fifth Amendment standard applies.

3. Section 717f(h) authorizes private entities to exercise the eminent-domain power but does not expressly adopt state law. 15 U.S.C. 717f(h). In that circumstance, the Fifth Amendment "just compensation" standard applies, just as it would if the statute authorized the government to condemn land in its own name. The NGA's delegation of the federal eminent-domain power is "categorical." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 498 (2021). And Congress gave no indication that it intended for a different measure-of-compensation rule to apply to federal delegees. On the contrary, adopting state compensation rules would be at odds with Congress's purpose in enacting Section 717f(h), which was to ensure that interstate pipeline construction was not subject to disparate and potentially obstructionist state-law eminent-domain regimes. See *id.* at 489.

B. Petitioners contend that state law, rather than the Fifth Amendment standard, should determine their compensation for respondent's taking of their land. They seek to recover attorney's fees from defending the condemnation action, even though attorney's fees are not part of "just compensation" under the Fifth Amendment, on the theory that such fees are part of the compensation required for condemnations under North Dakota law. Both of petitioners' theories in support of that argument lack merit.

1. Petitioners first contend (Br. 12-37) that Section 717f(h)'s silence as to condemnation is best read as an affirmative decision by Congress to adopt state law as the measure of compensation. But they concede (Br. 7, 20) that statutory silence would mean that the Fifth Amendment standard applies in a taking by the federal government in its own name, and they offer no sound

reason why a different rule should apply when the government categorically delegates its power. Petitioners also argue that issues of property valuation are typically the province of state law. But the compensation dispute in this case does not concern the value of petitioners' property; it concerns whether petitioners are entitled to litigation costs on top of that property value. Petitioners' remaining arguments about the implications of the statutory silence lack merit.

2. Petitioners alternatively argue that the NGA's failure to specify a measure of compensation leaves a gap to fill through judicial lawmaking. But in federal condemnation statutes, silence as to compensation leaves no gap to fill. Even if it did, federal law should fill that gap under a straightforward application of the factors this Court considered in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979).

ARGUMENT

A. The Fifth Amendment Defines The Measure of Compensation Owed By A Private Entity Exercising The Federal Eminent-Domain Power Under The NGA

The NGA authorizes private certificate holders to exercise the federal eminent-domain power on the government's behalf, but it does not specify any particular measure of compensation for their takings. See 15 U.S.C. 717f(h). Respondent argues that the Fifth Amendment standard of "just compensation" applies in this circumstance, while petitioners contend that certificate holders are subject to the state-law measure-of-compensation rules that apply in state condemnation actions. The court of appeals correctly held that the Fifth Amendment, not state law, defines the measure of compensation in a private taking under the NGA. See Pet. App. 6a. When the federal government takes property, the default Fifth Amendment standard applies unless Congress expressly provides otherwise. The same default rule applies when, as here, the government exercises its power through a private delegee.

1. When the federal government condemns property, the Fifth Amendment "just compensation" standard applies unless Congress expressly provides otherwise

When the federal government exercises the federal power of eminent domain, the Fifth Amendment requires it to pay "just compensation" to the property owner. U.S. Const. Amend. V. A significant body of case law clarifies the scope of "just compensation" under the Fifth Amendment. As a general matter, "just compensation normally is to be measured by 'the market value of the property at the time of the taking.'" *United States* v. *50 Acres of Land*, 469 U.S. 24, 29 (1984) (citation omitted); but cf. *Pung* v. *Isabella County*, 146 S. Ct. 1964, 1970-1971 (2026) (discussing exceptions). Other decisions elaborate on that standard and further define the contours of "just compensation." See *United States* v. *Reynolds*, 397 U.S. 14, 16-18 (1970) (discussing the "refinements developed over the years" to the "basic" fair-market-value standard).

Just compensation under the Fifth Amendment "is for the property, and not to the owner." *Monongahela Navigation Co.* v. *United States*, 148 U.S. 312, 326 (1893). Accordingly, "indirect costs to the property owner caused by the taking of his land," such as "'attorneys' fees and expenses,'" are "generally not part of the just compensation to which he is constitutionally entitled." *United States* v. *Bodcaw Co.*, 440 U.S. 202, 203 (1979) (per curiam) (quoting *Dohany* v. *Rogers*, 281 U.S. 362, 368 (1930)) (brackets omitted).

Congress is free to, and sometimes does, mandate relief exceeding that constitutional floor. For example, although attorney's fees are not part of "just compensation" under the Fifth Amendment, the Equal Access to Justice Act, Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, makes the federal government liable to pay such fees in certain condemnation actions that are not resolved "by settlement." 28 U.S.C. 2412(d)(1)(A) and (2)(H). And the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (42 U.S.C. 4601 *et seq.*), authorizes the payment of attorney's fees when the government abandons a condemnation proceeding or the final judgment is that the government "cannot acquire the real property by condemnation." 42 U.S.C. 4654(a)(1) and (2). Such compensation, however, "is a matter of legislative grace rather than constitutional command." *Bodcaw*, 440 U.S. at 204.

When a State or state entity exercises the power of eminent domain under state law, the State may authorize compensation more generous than the Fifth Amendment requires. For example, a State could direct that when a state entity takes a landowner's property by eminent domain, the landowner is entitled to receive significantly more than the property's fair market value. See Resp. Br. 28-29 (citing state laws). Or a State could require state entities to pay landowners the attorney's fees they have incurred in condemnation proceedings, even though such fees are not part of "just compensation" under the Fifth Amendment.[1]

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[1] States may not limit landowners to compensation *below* the Fifth Amendment "just compensation" standard, because the Just Compensation Clause applies to the States through the Fourteenth Amendment. See *Dolan* v. *City of Tigard*, 512 U.S. 374, 383 (1994).

Such state laws do not apply of their own force when the federal government exercises its power of eminent domain. The federal government's "power" of eminent domain "can neither be enlarged nor diminished by a State," "[n]or can any State prescribe the manner in which it must be exercised." *Kohl* v. *United States*, 91 U.S. 367, 374 (1876). The measure of compensation in a taking by the federal government is thus controlled by federal law. See *United States* v. *Miller*, 317 U.S. 369, 379-380 (1943); *United States* v. *93.970 Acres of Land*, 360 U.S. 328, 332-333 (1959).

Congress may choose, however, to adopt as the governing federal standard state-law measures of compensation that exceed the federal constitutional minimum. See Pet. App. 5a. For example, the General Bridge Act of 1946, ch. 753, 60 Stat. 847 (33 U.S.C. 525 *et seq.*), authorizes certain takings and requires compensation to be "ascertained and paid according to the laws of [the] State" where the condemnation occurs. 33 U.S.C. 532. Federal standards remain the default, however, unless Congress affirmatively "chooses to make state laws applicable." *93.970 Acres of Land*, 360 U.S. at 333. Thus, in *Miller*, the Court refused to apply California compensation rules in a federal taking where Congress had not affirmatively "adopted the local rule." 317 U.S. at 379. Although certain federal statutes at the time directed courts to follow state procedural rules, the Court explained that those laws "do not, and could not, affect questions of substantive right—such as the measure of compensation—grounded upon the Constitution of the United States." *Id.* at 380.

As *Miller* illustrates, courts will not presume that state compensation rules apply to a federal taking unless Congress says so expressly. See 317 U.S. at 379;

93.970 Acres of Land, 360 U.S. at 332-333. Thus, when a statute is silent as to the measure of compensation that the federal government owes for a particular taking, the Fifth Amendment standard applies.

2. *The same default rule applies when a private entity exercises the federal eminent-domain power*

The foregoing analysis does not change when Congress authorizes a private entity to exercise the federal power of eminent domain. "Since the founding, the United States has used its eminent domain authority to build a variety of infrastructure projects," both "on its own and through private delegates." *PennEast Pipeline Co.* v. *New Jersey*, 594 U.S. 482, 488 (2021); see *Luxton* v. *North River Bridge Co.*, 153 U.S. 525, 530 (1894) (explaining that Congress may "use its sovereign powers" of eminent domain "directly or through a corporation created for that object"). When a private entity condemns property pursuant to a federal delegation, the power it exercises belongs to the federal government—not to the delegee itself. Cf. *Boom Co.* v. *Patterson*, 98 U.S. 403, 406 (1879) (explaining that the eminent-domain power is an "attribute of sovereignty").

Because a private condemnor in a federal taking is exercising the "power of the Federal government," States may not directly regulate the use of that power. *Kohl*, 91 U.S. at 373; see p. 14, *supra*. Accordingly, regardless of whether the government takes land in its own name or through a delegee, questions concerning the proper measure of compensation are issues of federal law. See *ibid.*; *Miller*, 317 U.S. at 379; Pet. App. 6a. Under that framework, state measure-of-compensation rules apply only if Congress chooses to adopt them. See *93.970 Acres of Land*, 360 U.S. at 332-333. Otherwise, the Fifth Amendment default of "just compensation" applies. *Ibid.*

3. Congress did not adopt state compensation laws in the NGA, so the Fifth Amendment standard applies

a. Section 717f(h) authorizes certificate holders to "acquire" property "by the exercise of the right of eminent domain," but it does not mention compensation. 15 U.S.C. 717f(h). It was unnecessary for Congress to specify that compensation must be paid, because the Fifth Amendment requires payment of "just compensation" to a landowner whose property is taken. Cf. *Miller*, 317 U.S. at 380. Specific statutory language *would* have been necessary, however, to require payment of *more than* "just compensation" for a taking effected under a federal statute. The absence of such language here means that the Fifth Amendment provides the measure of compensation for a taking under the NGA. See Pet. App. 6a.

Section 717f(h)'s delegation of the federal eminent-domain power to a private entity does not change the measure-of-compensation analysis. By delegating the federal "right of eminent domain" without further qualification, Congress authorized certificate holders to step into the federal government's shoes. Pet. App. 6a (citation omitted). The NGA's silence therefore indicates that the Fifth Amendment's default measure of compensation applies, just as it would if the statute authorized a taking by the federal government. See p. 15, *supra*. "The rules of the road do not change, in other words, when the federal government hands the keys over to a private party." Pet. App. 8a; see *Sabal Trail Transmission, LLC* v. *3.921 Acres of Land*, 74 F.4th 1346, 1349 (11th Cir. 2023) (per curiam) (Grant, J., concurring); *Tennessee Gas Pipeline Co.* v. *Permanent Easement for 7.053 Acres*, 931 F.3d 237, 257-258 (3d Cir. 2019) (Chagares, J., dissenting).

This Court's decision in *PennEast* confirms how completely a certificate holder acting under Section 717f(h) stands in the federal government's shoes. There, the Court rejected New Jersey's state-sovereign-immunity defense to a certificate holder's condemnation of state-owned land, explaining that States had consented in the plan of the Convention to the exercise of the federal eminent-domain power "in its entirety." *PennEast*, 594 U.S. at 508. The Court held that because "the federal eminent domain power can be delegated," and Section 717f(h) "speaks with sufficient clarity to delegate th[at] power," States "have no immunity left to waive or abrogate when it comes to condemnation suits by the Federal Government and its delegatees." *Ibid.* The Court described the NGA's delegation to private certificate holders as "categorical." *Id.* at 498.

b. Other contextual features confirm that Congress did not intend for state measure-of-compensation rules to apply in takings under the NGA. Section 717f(h) provides that condemnation actions may be brought in federal or state court, and that if they are brought in federal court, state-law "practice and procedure" should apply where possible. 15 U.S.C. 717f(h). That language ensures that state *procedural* law will govern in NGA condemnation actions, regardless of the court in which suit is brought. But Congress did not include any similar directive that courts apply state *substantive* law in NGA condemnation proceedings. See *Miller*, 317 U.S. at 380 (identifying the "measure of compensation" in a federal condemnation suit as a "question[] of substantive right"). Congress's selective incorporation of state procedural law confirms the default assumption that substantive measure-of-compensation issues are governed by federal law.[2]

The General Bridge Act, which Congress enacted one year before it enacted Section 717f(h), reinforces that conclusion. See p. 14, *supra*. The General Bridge Act authorizes an "individual," a "firm or corporation," or a state entity to exercise the same eminent-domain powers "as are possessed by railroad corporations" or "bridge corporations" "in the State" of the taking. 33 U.S.C. 532. That law specifies *both* that "the proceedings [for eminent domain] shall be the same as" in the States, *and* that the substantive "just compensation therefor" shall "be ascertained and paid according to the laws of such State." *Ibid.* The contrast between the General Bridge Act's incorporation of state procedural *and* substantive rules, and the NGA's substantially contemporaneous incorporation of state procedural rules alone, further indicates that federal law governs the measure of compensation under the NGA.

The history and purpose of Section 717f(h) point in the same direction. Before Section 717f(h) was enacted, certificate holders could secure rights-of-way only by "rely[ing] on state eminent domain procedures," which "were frequently made unavailable to them." *PennEast*, 594 U.S. at 489. Some States, for example, had barred out-of-state gas companies from exercising the right of eminent domain. See Senate Report 2-3. Congress addressed that problem by amending the statute to "au-

[2] The NGA's "practice and procedure" language has now effectively been abrogated by Federal Rule of Civil Procedure 71.1, formerly Rule 71A, which establishes uniform rules for federal condemnation actions. See Fed. R. Civ. P. 71.1(a); cf. *93.970 Acres of Land*, 360 U.S. at 333 n.7.

thorize certificate holders to exercise the *federal* eminent domain power," thereby ensuring that their certificates "could be given effect." *PennEast*, 594 U.S. at 489-490. If state measure-of-compensation rules governed in those condemnation actions, however, States could impede interstate pipeline construction by requiring prohibitively high compensation. Given the problem that Section 717f(h) was enacted to address, it is implausible that Congress would have subjected certificate holders to disparate and potentially obstructionist state-law compensation regimes.

c. The court of appeals correctly applied those principles to the parties' dispute over attorney's fees here. The courts below determined—and this Court may assume for purposes of this case—that attorney's fees are part of the compensation owed in condemnation proceedings under North Dakota law. See Pet. App. 3a. Attorney's fees are not, however, "embraced within just compensation" under the Fifth Amendment. *Bodcaw*, 440 U.S. at 202 (citation omitted). The court of appeals rightly determined that in private condemnations under the NGA, "the default rule applies: 'just compensation' under the Fifth Amendment." Pet. App. 6a (citation omitted). The court thus correctly reversed petitioners' fee award. *Id.* at 9a.

B. Petitioners' Alternative Theories Lack Merit

Petitioners contend that state-law measures of compensation, rather than the Fifth Amendment "just compensation" standard, should govern in an eminent-domain proceeding under Section 717f(h). In support of that theory, petitioners offer two alternative arguments. Their lead argument (Br. 12-37) is that, as a matter of statutory interpretation, Section 717f(h)'s silence as to compensation is best read as an affirmative choice to adopt state compensation law. Alternatively, petitioners argue (Br. 37-44) that the statutory silence left a gap for courts to fill through judicial lawmaking, and that courts should select state law as the governing federal common-law rule. Both arguments fail.

1. Congress did not silently choose state law to govern the measure of compensation in federal condemnations under the NGA

Petitioners' frontline theory (Br. 12-37) is that Section 717f(h)'s silence as to compensation is best read as manifesting an affirmative congressional choice to require courts to apply state-law measure-of-compensation rules. That argument reflects an implausible understanding of Congress's failure to specify the governing measure of compensation.

a. Petitioners contend that Congress would have expected state law to govern the measure of compensation under Section 717f(h) because state law "*usually* controls questions" about the "'transfer of property.'" Pet. Br. 17 (quoting *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 155 (1944)) (brackets omitted). Section 717f(h), however, does not address the ordinary "transfer of property"; it authorizes an exercise of the federal eminent-domain power. See *PennEast*, 594 U.S. at 489-490. In that context, state law does not "usually control" questions of compensation. Contra Pet. Br. 17. On the contrary, "[i]n a federal condemnation proceeding what constitutes just compensation is a question of federal law." 4 Julius L. Sackman, *Nichols on Eminent Domain* § 12.01[4], at 12-33 (3d ed. 2026) (*Nichols*); see

Miller, 317 U.S. at 380-381. That is the relevant background principle against which Section 717f(h) should be interpreted.[3]

Petitioners also argue (Br. 17) that compensation disputes often involve subsidiary questions of "property valuation," which are traditionally the province of state law. See *id.* at 17-19. That argument does not help petitioners here, however, because the compensation dispute in this case does not concern the value of the easements that respondent took. To the contrary, the parties to this case settled their dispute about the value of the taken property interests before litigating the attorney's-fee issue. See Pet. App. 29a, 50a.

Petitioners characterize (Br. 47) the issue before this Court as "whether transaction costs in acquiring land are part of that land's fair price." But the value of a real-property interest does not rise or fall with the fees charged by the landowner's attorney. Instead, the dispute in this case concerns whether the compensation

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[3] To be sure, even in federal condemnations, state law plays a role in defining the meaning and scope of the "property" that is protected by the Fifth Amendment. See *United States ex rel. Tennessee Valley Auth.* v. *Powelson*, 319 U.S. 266, 279 (1943). That is because "property interests are not created by the Constitution," but rather "are defined by existing rules or understandings that stem from an independent source such as state law." *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1001 (1984) (brackets, citation, and ellipsis omitted). But "[u]nlike private property, whose source lies outside the Constitution, 'just compensation' is the federal constitutional remedy for interference with that property." Stewart E. Sterk, *The Role of State and Federal Law in Energy Condemnations*, 9 Brigham-Kanner Prop. Rts. J. 205, 218 (2020). State-law "supplements" to that standard therefore "have no federal constitutional significance." *Id.* at 219; see *Miller*, 317 U.S. at 381.

owed for a taking of property should include the landowner's litigation expenses *in addition to* the taken property's value. Cf. *Bodcaw*, 440 U.S. at 203 (describing attorney's fees incurred in condemnation actions as "indirect costs to the property owner caused by the taking of his land"). North Dakota is free to require that such expenses be awarded when property is taken *by the State*. But there is no sound basis for reading the NGA to incorporate state-law rules authorizing such awards.[4]

b. Petitioners rely substantially on Congress's decision in the NGA to delegate federal eminent-domain power to private pipelines. See Pet. Br. 15, 19-23. They concede that when the federal government takes property in its own name, the Fifth Amendment defines the measure of compensation absent "an explicit statutory command otherwise." *Id.* at 7. But they argue that when a private delegee exercises the same power, the opposite presumption applies, so that courts must apply state-law measure-of-compensation rules unless Congress explicitly adopts a different standard. *Id.* at 20.

Petitioners offer no sound reason why the NGA's delegation to a private entity justifies reversing the usual default rules. They contend that the Fifth Amendment standard should not be the default because

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[4] Even in cases that *do* involve valuation disputes, the States' relative experience in matters of land valuation does not justify the inference that Congress intended for state law to govern the compensation owed in a federal condemnation action under the NGA. Notwithstanding that state experience, courts are "not required" to follow state law when "determining value of property taken by the federal government by eminent domain." 4 *Nichols* § 12.01[7], at 12-42. State expertise likewise cannot justify requiring the application of state law to determine the value of property taken by federal delegees under the NGA.

landowners' right to compensation in a taking under Section 717f(h) does "not flow only from the Fifth Amendment." Pet. Br. 15. In their view, the obligation to pay compensation is inherent in the nature of the power to file a "straight" condemnation action, a proceeding "whose purpose is to adjudicate how much [landowners] must be paid for their land." *Id.* at 14-15; see *Kirby Forest Indus., Inc.* v. *United States*, 467 U.S. 1, 3-4 (1984) (describing "straight condemnation"). But even on petitioners' view, the source of the obligation to pay is federal law, not state law. See Pet. Br. 15 (arguing that the obligation to pay flows from what the federal "statute authorizes"). And the power exercised is still that of the federal government. State measure-of-compensation rules therefore do not apply of their own force, and there is no reason to suppose that Congress intended to incorporate such rules absent an express textual directive to that effect. See pp. 14-15, *supra*.

Petitioners next posit that the usual default rules should not apply to Section 717f(h) because "private delegations of eminent domain" are "disfavored" and should be read "narrowly." Pet. Br. 19; see *id.* at 19-23. This Court has recognized, however, that the NGA's delegation of eminent-domain power is "categorical." *PennEast*, 594 U.S. at 498. Petitioners downplay *PennEast*, arguing that the Court was describing as " 'categorical' " only "the delegation of the power *to sue*," not the power to sue under the same compensation standards that apply to the federal government. Pet. Br. 46. That is not what "categorical" means. In all events, the lines that petitioners draw make little sense. Petitioners do not explain why Congress would have simultaneously given certificate holders the federal government's significant power to sue the States, while withholding the federal government's ordinary protection from state-law rules mandating compensation above what the Fifth Amendment requires.

Petitioners assert (Br. 21) that even a categorical delegation does not confer "the full scope of the sovereign's powers and immunities." To be sure, the NGA's delegation to litigate eminent-domain suits does not entitle the pipelines to the federal government's "immun[ity] from state tax laws," *ibid.*, or otherwise to exercise the government's powers outside the specific context of the delegation. But within that context, Congress has delegated the federal government's power in its entirety. See Pet. App. 8a; *PennEast*, 594 U.S. at 498. For the same reason, petitioners do not benefit from their assertion that Section 717f(h) authorizes pipelines to file direct condemnation actions, but not to take land first and pay later in a so-called inverse condemnation action. See Pet. Br. 14. Even assuming that pipelines can bring only direct condemnation actions, Congress's categorical delegation means that they may do so on substantially the same terms as the federal government, including the standard of compensation owed. See p. 15, *supra*.

Petitioners also contend (Br. 26-29) that different interpretive presumptions should apply to private delegations of eminent-domain power because private entities lack the federal government's sovereign immunity. Petitioners' theory appears to be that, while the government enjoys sovereign immunity from state measure-of-compensation laws, those laws apply of their own force to private pipelines, so Congress must affirmatively specify when it wants to displace them. See *ibid.* But as explained above, a federal delegee pursuing a condemnation action under the NGA is still exercising the eminent-domain "power of the Federal government," so state law does not apply of its own force. *Kohl*, 91 U.S. at 373. And even leaving aside the eminent-domain context and the question of sovereign immunity, substantive "state law does not operate of its own force" in a case brought under a "federal cause of action." *Burks* v. *Lasker*, 441 U.S. 471, 476 (1979); see *DelCostello* v. *International Bhd. of Teamsters*, 462 U.S. 151, 159 n.13 (1983). Congress thus had no need to specify that state measure-of-compensation rules would not apply in a federal condemnation action under Section 717f(h)—even one brought by a private entity.

Petitioners ground their contrary argument in Justice Scalia's concurrence in the judgment in *Agency Holding Corp.* v. *Malley-Duff & Associates*, 483 U.S. 143 (1987). See Pet. Br. 26. There Justice Scalia opined that, absent express federal preemption, state statutes of limitations should apply of their own force in federal causes of action. *Agency Holding*, 483 U.S. at 157-164. Justice Scalia's opinion in *Agency Holding* does not help petitioners.

Justice Scalia's view appears to have been limited to state statutes of limitations; he did not suggest that other types of state laws should apply of their own force in adjudicating federal causes of action. And even in the statute-of-limitations context, Justice Scalia acknowledged that the Court had long ago abandoned his analytic approach. See *Agency Holding*, 483 U.S. at 164. Petitioners suggest (Br. 24-25) that Justice Scalia's theory at least prevailed when Congress enacted Section 717f(h) in 1947. That, too, is wrong; Justice Scalia cited a 1946 decision taking a different (and in his view incorrect) approach to the application of state statutes of limitations to suits asserting federal causes of action. See

Agency Holding, 483 U.S. at 164 (citing *Holmberg* v. *Armbrecht*, 327 U.S. 392, 395 (1946)).

c. Petitioners argue that Congress would have expected state measure-of-compensation rules to govern in Section 717f(h) condemnation suits, because Congress enacted that provision against the backdrop of judicial decisions applying state law in federal causes of action. But the decisions that petitioners invoke were all irrelevant or unreasoned, or were outdated by the time Section 717f(h) was enacted.

Several of the cited decisions did not involve the federal eminent-domain power at all. For example, petitioners identify (Br. 24) early decisions applying state statutes of limitations to federal causes of action. And even if those decisions were relevant here, this Court had abandoned that approach to state statutes of limitations by 1947. See p. 25, *supra*.

Petitioners also invoke (Br. 25) *Reconstruction Finance Corp.* v. *Beaver County*, 328 U.S. 204 (1946), which held that in a federal statute subjecting certain real property to state and local taxes, the term "real property" should take its content from state law. *Id.* at 209. *Reconstruction Finance* has no bearing on the proper construction of Section 717f(h). The decision did not involve eminent domain, and it did not purport to announce a general rule or presumption that state law should govern all issues relating to property. See p. 21 n.3, *supra* (discussing the role of state law in defining the meaning and scope of "property" in federal takings). Instead, the Court's reasoning was statute-specific: the Court found it sensible to draw on state-law understandings of "real property" in construing a law that authorized States to tax that property. See *Reconstruction Fin.*, 328 U.S. at 209-210.

Petitioners rely on some decisions that addressed eminent domain, but those decisions likewise do not support petitioners' inferences about the NGA. For example, petitioners rely (Br. 23-24) on this Court's decision in *Brown* v. *United States*, 263 U.S. 78 (1923), which encouraged courts adjudicating federal condemnation suits to "adopt the local rule" for compensation, "if it is a fair one" and "a provision making for just compensation." *Id.* at 87. But the *Brown* Court made clear that in condemnation suits the measure of compensation was a question of federal law, and it borrowed a state-law rule only "because recognition of state interests was not deemed inconsistent with federal policy." *Board of County Comm'rs* v. *United States*, 308 U.S. 343, 352 (1939). In any event, as petitioners recognize (Br. 24 n.2), the Court in *Miller* retreated from *Brown*'s preference for borrowing state compensation rules. Section 717f(h) was enacted only four years after *Miller* was decided, so *Miller* rather than *Brown* provides the relevant backdrop to the congressional action here.

Petitioners further contend (Br. 30) that, when Congress enacted Section 717f(h), the settled understanding in the courts of appeals was that state law "governed that very language" in the Federal Power Act's similarly worded eminent-domain provision, 16 U.S.C. 814. See Pet. Br. 30-31. To establish that Congress ratified a "'settled construction'" of the Federal Power Act when it passed Section 717f(h), petitioners must identify a "judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it." *Jama* v. *ICE*, 543 U.S. 335, 349 (2005). The authority that petitioners invoke falls far short of that high standard.

Petitioners point to only four decisions. Pet. Br. 30-31. Two "cited both federal and state cases," but neither specified which law governed the measure of compensation. *Id.* at 30. The other two are Eighth Circuit decisions that stated, without discussion or explanation, that Nebraska law controlled the measure of compensation. *Id.* at 30-31. It is unclear whether a party in any of those cases argued that federal law should govern, or whether application of federal law would have changed the outcomes. That handful of unreasoned decisions "is too flimsy to justify presuming" congressional ratification when every other interpretive clue is "to the contrary." *Jama*, 543 U.S. at 352.

d. Petitioners' arguments about the consequences of respondent's interpretation are similarly unpersuasive. Petitioners assert (Br. 31) that under respondent's theory, Section 717f(h) silently imposed "a massive wealth transfer from private landowners to private pipeline companies." But they have not identified any pre-1947 state regimes that both permitted interstate pipelines to condemn land and entitled landowners to "massive[ly]" greater compensation than the Fifth Amendment standard.

For similar reasons, petitioners are wrong to say that, under respondent's interpretation, landowners "woke up poorer the day after § 717f(h) passed." Pet. Br. 32. Before Congress enacted Section 717f(h), landowners were already subject to eminent-domain proceedings commenced by the federal government, with compensation measured under the Fifth Amendment standard. See, *e.g.*, Condemnation Act (Lands for Public Uses), ch. 728, 25 Stat. 357 (authorizing federal condemnation of land "for the erection of a public building or for other public uses"). Section 717f(h)'s enactment simply authorized private entities to condemn property for pipeline use under the same compensation standard. And Section 717f(h)'s core purpose was to overcome state-law obstacles to condemnation of necessary easements by authorizing pipelines to sue as the federal government's delegees. See *PennEast*, 594 U.S. at 489-490.

The consequences of accepting petitioners' interpretation would be far more disruptive. In addition to allowing States to erect barriers to pipeline construction, see pp. 18-19, *supra*, petitioners' theory would produce doctrinal inconsistencies. Most notably, petitioners' argument is inconsistent with this Court's repeated admonitions that under the "American Rule," federal courts may not award attorney's fees to a party in litigation without "express statutory authorization" to do so. *Lackey* v. *Stinnie*, 604 U.S. 192, 199 (2025) (citations omitted). Congress has authorized fee awards in condemnation proceedings involving delegees, but only in circumstances not present here. See 42 U.S.C. 4654(a).

Petitioners assert (Br. 47) that the American Rule is not implicated here because state courts that award attorney's fees in condemnation actions "are adopting rules about land valuation" rather "rules about litigation costs." But as explained above (at 21-22), the parties here do not dispute the value of the condemned easements; their disagreement concerns whether fees can be collected on top of that value. In all events, the whole point of requiring Congress to clearly authorize attorney's fees is to obviate the need for *courts* to "pick and choose" the statutory contexts in which fee-shifting is appropriate. *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 263 (1975). Petitioners ask the Court to do just that.

e. Post-enactment developments likewise do not support petitioners' interpretation. Contra Pet. Br. 33-37. Petitioners contend that "contemporaneous jurists understood" Section 717f(h) to silently adopt state-law compensation rules, because in the first 15 years after its enactment, a handful of state courts calculating the compensation owed in condemnations under that provision relied on state-law precedents. *Id.* at 34. But those post-enactment state-court decisions shed no light on the meaning of Section 717f(h), because as with the pre-enactment cases discussed above (at 28), it is unclear whether any party argued that federal law should apply.

Petitioners further argue (Br. 35-37) that Congress acquiesced in their interpretation when it enacted the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594. That statute amended and added to various energy laws, including the NGA and the Federal Power Act. One new provision authorized private entities to condemn land for interstate electricity transmission facilities, and it defined the compensation owed in those proceedings as fair market value (including severance damages). 16 U.S.C. 824p(f)(1). But Congress did not amend the Federal Power Act's existing eminent-domain provision for hydropower companies (on which Section 717f(h) is modeled), which the Fifth Circuit had construed as incorporating state measure-of-compensation rules. See *Georgia Power Co.* v. *Sanders*, 617 F.2d 1112, 1124 (1980) (en banc). Petitioners read those legislative choices as evidence that Congress approved of *Georgia Power*'s inference from statutory silence and "avoided that interpretation *when it wanted to*" by enacting an express compensation standard in Section 824p(f). Pet. Br. 36.

Congress's failure to correct *Georgia Power* does not indicate its agreement with that decision. Arguments about congressional inaction generally "deserve[] little weight in the interpretive process," because it is "'impossible to assert with any degree of assurance'" that inaction signals affirmative approval of a particular judicial interpretation. *Alexander* v. *Sandoval*, 532 U.S. 275, 292 (2001) (brackets and citations omitted); see *Johnson* v. *Transportation Agency*, 480 U.S. 616, 672 (1987) (Scalia, J., dissenting). Here, congressional inaction is particularly unrevealing because petitioners have not identified a broad pre-existing consensus of reasoned lower-court decisions. See pp. 28, 30, *supra*. Petitioners also draw the wrong inference from Congress's adoption of a fair-market-value standard in 16 U.S.C. 824p. To the extent that provision sheds any light on Congress's reaction to *Georgia Power*, it reflects Congress's specification of a compensation standard that would not allow courts to repeat the Fifth Circuit's error.

2. Congress did not leave a gap for courts to fill with state law as a matter of federal common lawmaking

In the alternative, petitioners argue (Br. 10, 37-39) that the NGA's failure to specify a measure of compensation leaves a "gap" to fill through judicial lawmaking, and that as a matter of federal common law, state compensation rules should be used to fill that gap. Both parts of that argument are wrong.

a. For the reasons explained above, the NGA's silence as to the measure of compensation in a private condemnation suit does not leave a statutory "gap" to fill with judge-made law. See pp. 16-19, *supra*. Instead, that silence indicates that the default Fifth Amendment standard applies. See *ibid.*; Pet. App. 7a. Treating Section 717f(h) as an invitation for judicial lawmaking would "improperly expand[ ] federal common law." *3.921 Acres of Land*, 74 F.4th at 1349 (Grant, J., concurring).

b. Even if the NGA is viewed as leaving a gap to be filled through judicial lawmaking, this Court should select federal rather than state law to fill that gap. Petitioners contend (Br. 37-44) that the factors this Court considered in *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715 (1979), favor the incorporation of state measure-of-compensation rules as the governing federal standard. On the contrary, each of the *Kimbell Foods* factors points to adopting a uniform federal rule—here, the Fifth Amendment standard that courts already apply when the federal government takes land.

First, the NGA's text and history evidence a felt "need for a nationally uniform body of law." *Kimbell Foods*, 440 U.S. at 728. Congress enacted the NGA to bring "'uniformity'" to "matters relating to wholesale sales and transportation of natural gas in interstate commerce." *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293, 305, 310 (1988) (citation omitted). Congress added Section 717f(h) specifically in response to the problems private pipeline companies had faced when they were subject to disparate state eminent-domain laws. See *PennEast*, 594 U.S. at 489-490; Senate Report 1-3. Adopting state measure-of-compensation rules would reintroduce the lack of uniformity that Congress sought to avoid. As discussed above (at 18-19), individual States could effectively deter the construction of interstate pipelines by requiring private pipeline companies to pay prohibitively high compensation.

Petitioners assert (Br. 49) that States would have no incentive to pass such extreme compensation laws because such laws would make States' "own infrastructure projects impossibly expensive." But a State could simply require different rates of compensation for favored and disfavored categories of infrastructure projects. Petitioners further assert (*ibid.*) that States have not passed such laws yet. But Congress delegated the federal eminent-domain power to ensure that pipeline certificate holders need not depend on States' voluntary forbearance. Incorporating state measure-of-compensation laws as the federal rules of decision would undermine that choice. Petitioners additionally contend (Br. 29) that even under their regime, federal courts could decline to apply "state-law rules that discriminate against federal projects or otherwise render them impossible." But state laws can frustrate a pipeline's construction without facially discriminating against federal projects or rendering them completely impossible. And the need for such a safety valve only underscores the problems with petitioners' proposal to adopt state-law rules.

Second, applying state law here "would frustrate" congressional objectives "[a]part from considerations of uniformity." *Kimbell Foods*, 440 U.S. at 728. The NGA reflects Congress's judgment that the interstate transportation of natural gas "is affected with a public interest." 15 U.S.C. 717(a). The Executive Branch has also emphasized the importance of interstate pipelines to the country's economic competitiveness and national security. See Exec. Order No. 14,154, *Unleashing American Energy*, 90 Fed. Reg. 8353, 8353-8354 (Jan. 29, 2025); Exec. Order No. 14,156, *Declaring a National Energy Emergency*, 90 Fed. Reg. 8433, 8433 (Jan. 29, 2025). A regime that permits individual States to impede pipeline construction jeopardizes those interests. And at a minimum, increases in the cost of pipeline construction are likely to be passed down to consumers.

Third, applying the Fifth Amendment compensation standard would not "disrupt commercial relationships predicated on state law." *Kimbell Foods*, 440 U.S. at 729. The Court in *Kimbell Foods* observed that in some cases, adopting a "readymade body of state law" may provide greater "stability" for business than fashioning a new and indeterminate federal regime. *Id.* at 739-740; see Note, *The Federal Common Law*, 82 Harv. L. Rev. 1512, 1519 (1969). But in this case, there is a "ready-made" *federal* option: the Fifth Amendment "just compensation" standard that applies by default to federal takings. See pp. 12-15, *supra*. Property owners can already expect that standard to apply if the federal government takes their land. So it would not disrupt commercial expectations to apply the same standard to a taking by a private pipeline under the NGA.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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