

Construing Congressional Silence: With The Natural Gas Act's Not Addressing Compensation in Pipeline Condemnations, Can Courts Use State Law to Award Attorney Fees?

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by Steven A. Weiler

On November 9, 2026, the Supreme Court will hear oral arguments in Leonard W. Hoffmann v. WBI Energy Transmission, Inc. to determine: "In private condemnations under the Natural Gas Act, should just compensation be determined by reference to state law?" North Dakota ranchers litigated the price of a natural gas pipeline easement during three years of condemnation proceedings, settled on the easement price, and were awarded attorney fees based on state law, but the fees were denied by Eighth Circuit, which held that because the Natural Gas Act ("NGA") provision authorizing pipelines to use of eminent domain does not address compensation, the Fifth Amendment standard must necessarily apply, that is, "just compensation" for property, but not attorney fees.¹ Four other circuits disagree. The Court will resolve the circuit split, likely making some pipeline condemnations less expensive and quicker or, alternatively, more expensive and take longer. Whatever the result, Congressional action could follow.

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Background

Section 7(c) of the NGA requires the Federal Energy Regulatory Commission ("FERC") to issue a certificate of public convenience and necessity, before new interstate natural gas pipeline facilities can be constructed and operated.² Significantly, only a private party – not the federal government, not a state, nor a municipality – can obtain certificate authorization.³ The NGA did not initially address property acquisition, leaving certificate holders to rely on state condemnation law to secure necessary property rights to develop their projects, rendering some with "only an illusory right to build."⁴ Congress resolved that by enacting NGA Section 7(h), which vests certificate holders with the ability to exercise eminent domain in a federal or state court where the property is located.⁵ Yet Section 7(h) does not address compensation: it does not indicate whether attorney fees can be recovered; "it does not even expressly require that just compensation be provided."⁶ Litigation over the meaning of the Congressional compensation silence ensued.

After Years of Litigation, Parties Agreed on Easement Price, but Not Attorney Fees

In February 2018, WBI Energy Transmission, Inc. (“WBI”) received certificate authorization to construct and operate approximately 12 miles of 24-inch diameter pipeline through ranch land in western North Dakota, in the heart of the oil and gas producing Bakken formation of the Williston Basin.⁷ WBI and the ranchers could not agree on an easement price: the ranchers had recently negotiated easement prices with oil pipelines (which do not have eminent domain rights and must pay “market” prices to obtain easements) and sought a similar deal,⁸ but WBI was unwilling, instead offering only what it paid for a parallel natural gas line easement years earlier.⁹ So WBI filed in federal district court a complaint to take by eminent domain a permanent easement and temporary rights-of-way to construct the pipeline. Shortly thereafter, with the agreement of the ranchers, the court ordered that WBI could have immediate use and possession of the easements necessary for construction, leaving for trial the amount of compensation.¹⁰

The Fifth Amendment guarantees that private property shall not be taken for public use without just compensation.¹¹ WBI and the ranchers disagreed on what constitutes “just compensation.” WBI maintained that compensation should be determined solely by the “before and after rule” – *i.e.*, the difference between the market value of the land free of the easement and the market value burdened with the easement.¹² The ranchers argued that other factors should also be considered, such as market rate paid by oil pipelines for easements on the properties.¹³ WBI filed a motion in limine to exclude evidence and testimony of such payment information, which the trial judge denied,¹⁴ leading to a confidential settlement on the value of the easement, with the ranchers’ reserving their right to seek attorney fees and expenses and WBI’s reserving its right to contest.

After three years of litigation, the ranchers sought to recover \$383,375.76 – that is, \$332,274.96 in legal fees and \$50,650.86 in costs and expenses.¹⁵ WBI claimed that the amount was unreasonable and should be limited to \$220,625.52.¹⁶ The trial court, recognizing that the NGA was silent on compensation issues, relied on *United States v. Kimbell Foods, Inc.*¹⁷ to analyze whether to “fill in the gap” with North Dakota condemnation law and ultimately concluded it could award attorney fees and costs.¹⁸ WBI appealed.

Four Circuits Rely on *Kimbell Foods* and State Law to Award Attorney Fees

Courts have recognized the difference between condemnations by the federal government and a private party: “the sovereign need only pay for what it actually takes rather than for all that the owner has lost.”¹⁹ “[W]here the federal government is the condemnor there exists a significant concern about the spending of federal dollars, one that does not exist when a private entity is the condemnor . . . pursuing the condemnation ‘for purposes of profit.’”²⁰ As such, four circuit courts have applied federal common law to allow recovery of attorney fees and costs in condemnations under the NGA.²¹ “In crafting such federal common law, courts need not inevitably . . . resort to

federal rules,”²² but rather, after weighing various considerations set forth in the Supreme Court’s 1979 opinion in *Kimbell Foods*, can apply state law.²³ In particular, the four circuits answered “no” to each of the following three questions posed in *Kimbell Foods*: “(1) whether the federal program, by its very nature, required uniformity; (2) whether application of state law would frustrate specific objectives of the federal program; and (3) whether application of uniform federal law would disrupt existing commercial relationships predicated on state law.”²⁴ The Eighth Circuit took a different tack.

Eighth Circuit Reversed and Barred Attorney Fees, Breaking with Sister Circuits

The Eighth Circuit framed the issue this way: “Under North Dakota law, as the district court points out, attorney fees are available in condemnation proceedings. WBI’s view is that federal law applies because it was exercising the eminent-domain power of the United States, which would owe no attorney fees if it did the condemning.”²⁵ The court then held:

“Just compensation” under the Fifth Amendment has a well-established legal meaning that usually equates to “market value,” the “full monetary equivalent of the property taken.” * * * But the focus is always on the value of the property itself, not what the owner spends trying to keep it. * * * Under the Fifth Amendment, property owners cannot recover for “indirect costs” like attorney fees and expenses.

Only a statute can require more. * * * [T]he Natural Gas Act says nothing about the measure of compensation due to a property owner. It does not even use the words “just compensation,” let alone say that attorney fees are available or that an agency or state law can provide them. Without such an exercise of “legislative grace,” the default rules applies: “just compensation” under the Fifth Amendment.²⁶

The Eighth Circuit recognized “that different concerns are at stake when the United States is exercising its own power under the Fifth Amendment.... But these are policy arguments better addressed to Congress.”²⁷

Petition For Writ of Certiorari Granted to Resolve Circuit Split

The ranchers filed with the Supreme Court a petition for a writ of certiorari to resolve the split between the Eighth Circuit and four other circuits.²⁸ WBI initially opposed the petition,²⁹ but relented after the Solicitor General urged the court to grant petition and uphold the Eighth Circuit opinion.³⁰ The attorneys general of ten states³¹ and a national network of eminent domain and property lawyers filed *amici curiae* (friends of the court) briefs in support of the ranchers’ petition.³² Shortly after WBI and ranchers filed supplemental briefs,³³ the Supreme Court granted the petition for certiorari on June 26, 2026.³⁴

Ranchers Focused on Statutory Interpretation, Six *Amici* on

Economic Fairness

Rather than rely primarily on *Kimbell Foods*, the ranchers' merits brief used statutory interpretation to argue that private condemnation lawsuits under the NGA should use state law compensation rules.³⁵ They contend that, in contrast to various ways that the federal government can take land,³⁶ NGA Section 7(h) grants a limited "delegation of power to take property *through a condemnation lawsuit* – to file what is sometimes called "a straight condemnation,"³⁷ where authorization to take property is not sought, but instead for the court to adjudicate the value of the property: "If the condemnor wants to buy the property at the court's price, it tenders payment; if not, it can abandon the condemnation."³⁸ Thus, the ranchers submit that their rights to compensation under the NGA flow not from the Fifth Amendment, but rather from the NGA's authorizing "the filing of a lawsuit whose purpose is to adjudicate how much they must be paid for their land."³⁹ If the condemnor were the federal government, compensation would not be greater than the Fifth Amendment minimum, absent statutory authorization;⁴⁰ but that does not require the same to result in a private condemnation.

The ranchers suggest that several additional reasons support using state law to resolve property compensation issues. *First*, given that real property law "lies at the core of traditional state authority",⁴¹ compensation should consider "North Dakota's rule that property owners cannot be made to bear the cost of their condemnation...."⁴² *Second*, based on the "Court's longstanding practice of borrowing state substantive law," the issue is not whether NGA Section 7(h) incorporates state land valuation rules, but "whether the statute preempts them."⁴³ *Third*, unless an easement's value is above a statutory minimum,⁴⁴ the condemnor can only file in state court: "If Congress expected those state courts to look to a source of law other than the one they would ordinarily look to in a property case, one could expect it to have left some hint to that effect in the text. But there isn't one."⁴⁵ *Fourth*, awarding attorney fees under state law is consistent with the purpose of NGA Section 7(h):

Respondent suggests that Congress, out of a desire to fix a problem in Missouri (where interstate natural-gas companies lacked an eminent-domain cause of action), also decided to take some money away from farmers and ranchers in places like Iowa (where the companies already had a cause of action). Surely not.⁴⁶

Six groups filed *amicus* briefs supporting the ranchers.⁴⁷ Among them, Florida property owners, who were involved in a different condemnation proceeding,⁴⁸ contend that (1) compensation rules for federal government acting in its own name should not apply to private, for-profit companies acting under a limited delegation of eminent domain,⁴⁹ and (2) "property owners who are without economic wherewithal proceed in an unrepresented fashion and are typically forced to accept a compromise close to the amount of the private licensee company's low offers because they are not otherwise with the means to prepare their own valuation estimates and defend their respective constitutional entitlement to compensation."⁵⁰ This was reinforced by a group of property lawyers:

In 2016, under the auspices of the Natural Gas Act (“NGA”), the Sabal Trail natural gas pipeline project in Florida took land from Ryan B. Thomas and offered him \$6,800 in exchange. A Florida jury later determined that the measure of compensation for Sabal Trail’s taking was \$463,439. Sabal Trail had thus initially offered Mr. Thomas 1.4% of his land’s value. Between the initial offer and the jury’s determination of compensation lay months of litigation work by Mr. Thomas and his attorney.⁵¹

The property lawyers also argued that affirming the Eighth Circuit’s decision would strip property owners of state law protections in 21 states.⁵²

WBI Argued NGA Silence on Attorney Fees Intentional, Supported by Three *Amici*

WBI’s merits brief contends that condemnation by a private party is nothing new and does not require a different set of rules from the Federal government’s condemning land: “For as long as the eminent domain power has been exercised by the United States, it has also been delegated to private parties.”⁵³ These private delegates “knitted together the expanding nation by building railroads, bridges, roads, and telegraph and telephone lines”⁵⁴ and, absent a Congressional directive, paid the fair market value of the property taken, as required by the Fifth Amendment.⁵⁵

WBI points to a 1943 case, *United States ex rel. Tennessee Valley Auth. v. Powelson*,⁵⁶ which summarized then existing law: “[i]n the absence of a statutory mandate, the sovereign must pay only for what it takes, not for the opportunities which the owner may lose”.⁵⁷ Indeed, Congress knew how to depart from the Fifth Amendment’s fair-market-value measure of condemnation compensation: “One year before enacting Section 717f(h), in the General Bridge Act of 1946, Congress authorized private parties to condemn land for bridges and expressly required that compensation ‘be ascertained and paid according to the laws of [the] State’ where the property sits.”⁵⁸ Additionally, WBI argues that the ranchers essentially urge the court to adopt a patchwork of individual state compensation laws, which would undermine what Congress did in enacting NGA Section 7(h) --“eliminate state-by-state variation in NGA condemnations so that certificate-holders could efficiently construct interstate pipelines.”⁵⁹

Three *amicus* briefs were filed in support of WBI, including one from the Attorney General, who reiterated: “Just compensation under the Fifth Amendment ‘is for the property, and not the owner. Accordingly, ‘indirect costs to the property owner caused by the taking of his land,’ such as ‘attorneys fees’ are ‘generally not part of the just compensation to which his is constitutionally entitled.’”⁶⁰ Another *amicus* brief filed by trade associations claimed that interstate natural gas pipelines are responsible stewards of eminent domain, exercising it only as a last resort, as evinced by a survey indicating that, over a recent nine-year period FERC-certificated pipeline projects more than ten miles in length (25,268 tracts) resulted in only 10% of the tracts requiring condemnation and less than one percent (1%) required litigation.⁶¹ Finally, the US Chamber of Commerce emphasized the importance of natural gas to businesses,⁶² and urged the Court not to create obstacles that would “chill investment in essential infrastructure....”⁶³

Crystal Ball

Judicial Tension between “Strict Construction” and Support for Property Rights?

Hoffmann could set up a clash between a favored method of the Supreme Court for resolving conflicts and a centuries’ long commitment to protecting a fundamental right. Questions during oral arguments could foreshadow which way the Court will lean.

On one hand, the Court could rely on NGA Section 7(h)’s “‘plain meaning’ derived from an ordinary understanding of the words and structure of the statutory text.”⁶⁴ Consider the Supreme Court’s rationale in *Dobbs v. Jackson Women’s Health Organization*,⁶⁵ which overruled the landmark *Roe v. Wade*.⁶⁶ “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provisions including . . . the Due Process Clause of the Fourteenth Amendment.”⁶⁷ This type of “strict construction”⁶⁸ aligns most closely with WBI’s argument that Section 7(h) does not specifically provide for attorney fees, and the silence was intentional, given that Congress expressly permitted recovery of attorney fees in eminent domain actions under the General Bridge Act of 1946, the year before enactment of NGA Section 7(h).⁶⁹

On the other hand, the ranchers’ arguments resonate with a long line of cases protecting property rights. More than 130 years ago, the Court in *Monongahela Nav. Co. v. U.S.*⁷⁰ explained that in condemnation cases the courts should adhere to “the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right. . . .”⁷¹ Half a century ago, the Supreme Court, in *Lynch v. Household Fin. Corp.*,⁷² emphasized: “Property does not have rights. People have rights.”⁷³ Three years ago, all nine justices, in *Tyler v. Hennepin County, Minnesota*,⁷⁴ ruled for a property owner, holding that a local government cannot keep the surplus profit after selling a seized home for unpaid taxes.⁷⁵ The policies in these (and other cases cited by the ranchers) would appear to support landowners’ recovering the costs incurred to defend their property in condemnation proceedings. Whether a strict construction of NGA Section 7(h) permits those policies to be realized in *Hoffmann* remains to be seen.

Implications and Possible Congressional Action

The amount of compensation offered by pipelines and the length of condemnation proceedings may change, depending on how the Supreme Court rules. If the Court upholds the Eighth Circuit opinion – and concludes that attorney fees and costs cannot be recovered – a landowner may be presented with an unsavory decision: accept the pipeline’s offer or, alternatively, refuse the offer, go to court, and watch legal fees erode any compensation ultimately received. Worse yet, with litigation unlikely, pipelines may submit “low ball” offers, believing that the landowner will not likely want to risk costly litigation. Conversely, if the Supreme Court reverses the Eighth Circuit and holds that attorney fees and costs can be recovered, the number of condemnation cases could increase, as landowners’ eyeing large payouts reject pipeline offers and take their

chances in court. This in turn could increase pipeline costs (that are passed on to ratepayers). In short, depending on the Supreme Court rules, pipeline condemnations could become less expensive and quicker or, alternatively, more expensive and take longer.

No matter how the Supreme Court rules, Congressional action could (and arguably should) follow. If the Eighth Circuit opinion is affirmed, Congress may be pressured to protect landowner property rights by amending NGA Section 7(h) to provide for the recovery of attorney and fees and costs. Under similar circumstances in 1954, Congress responded to an unpopular Supreme Court opinion on federal regulatory jurisdiction by amending the NGA.⁷⁶ But even if the Eighth Circuit opinion is reversed, the result would be a geographical crazy quilt of federal common law stitched together from applicable state condemnation statutes, tying recovery of attorney fees in NGA condemnations to the state law in which the property is located, possibly leading to disparate cost recovery by landowners for the same pipeline project, prompting calls for a clear, uniform rule.

¹ Click on the hyperlink in the body to access all motions and briefs submitted in the Supreme Court proceeding.

² NGA § 7(c), 15 U.S.C. § 717(c)(1)(A) (“No natural-gas company ... shall ... undertake construction of extension of facilities ... unless there is in force with respect to such natural gas-company a certificate of public convenience and necessity....”).

³ *Id.* § 2, 15 U.S.C. § 717a (“‘Natural-gas company’ means a person engaged in the transportation of natural gas in interstate commerce....; ‘Person’ includes an individual or a corporation.”).

⁴ *PennEast Pipeline Co. v. New Jersey*, 594 U.S. 482, 489 (2021).

⁵ NGA § 7(h), 15 U.S.C. § 717f(h), Pub. Law No. 80-245, 61 Stat. 459 (1947). Section 7(h), in pertinent part, provides:

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, and the necessary land or other property . . . , 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.

Id.

⁶ *Tennessee Gas Pipeline Company, LLC v. Permanent Easement for 7.053 Acres*, 931 F.3d 237, 243 (3d Cir. 2019).

⁷ Under FERC’s regulations, once issued a “blanket certificate,” an interstate natural gas pipeline may file a “prior notice” for certificate authorization to construct and operate

facilities of limited cost, which, if not protested within 60 days after publication in the *Federal Register*, is authorized by operation of law. 18 C.F.R. § 157.205. On November 30, 2017, WBI filed a prior notice request to construct and operate certain facilities in McKenzie County, North Dakota; because no protests were filed, certificate authorization for the pipeline project was granted by operation of law. WBI estimated the project cost to be \$27.2 million (WBI's Prior Notice Request, Docket No. CP18-21-000 (Nov. 30, 2017) at 8), including \$1,115,153 in pipeline right-of-way costs. WBI's Supplemental Prior Notice Filing, Docket No. CP18-21-000, Exhibit K (Dec. 7, 2017) (Estimated Cost of Facilities).

⁸ “Leonard Hoffman was offered roughly half the market rate for gas pipeline access across his pastureland...” Chris Bennett, “Lowballed by Eminent Domain, ND Farmers Appeal Landmark Case to Supreme Court,” AG Web (Sept. 16, 2025) <https://www.agweb.com/news/business/farmland/lowballed-eminant-domain-nd-farmers-appeal-landmark-case-supreme-court>.

⁹ The pipeline at issue would run parallel to an existing pipeline on the ranchers' land, which WBI uses to transport gas from the Wild Basin and Garden Creek processing plants to an interconnection with the pipeline system of Northern Border Pipeline Company. Brief of Respondent, *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159 (filed Sept. 14, 2026) (“Respondent's Brief”) at 7; *id.* (“Despite having earlier reached voluntary agreements for WBI's immediately parallel pipeline at substantially lower rates, petitioners rejected WBI's compensation offers.”) (citation omitted).

¹⁰ *WBI Energy Transmission Inc. v. Easement and Right-of-Way Across, 189.9 rods, more or less*, Case No. 1:18-cv-078, slip op. (D.N.D. May 7, 2018) (order adopting stipulation).

¹¹ U.S. Const. amend. V (takings clause).

¹² See *United States v. 1129.75 Acres of Land*, 473 F.2d 996, 998 (8th Cir. 1973) (“When land is taken by eminent domain, and the title acquired is not a fee, but merely an easement, the proper measure of damages is the difference between the market value of the land free of the easement and the market value burdened with the easement.”).

¹³ *WBI Energy Transmission, Inc., v. Easement and Rights-of-Way Across 189.9 rods, more less*, Case No. 1:18-cv-078, slip op. at 3 (D. ND, April 1, 2021) (Order Denying Plaintiff's Motion in Limine to Exclude Evidence of Other Transactions).

¹⁴ *Id.* at 17 (“In this case, it may be appropriate for the fact finder to consider comparable pipeline easement transactions, particularly based on the unique nature of pipeline development in the Bakken oil field development occurring in McKenzie County, North Dakota.”).

¹⁵ The legal fees were “based upon a total of 1,295.4 hours, billed at hourly rates ranging from \$115 to \$350.” *WBI Energy Transmission, Inc. v. Easement and Right-of-Way Across 189.9 rods, more or less* . . . , 2024 WL 1477719 (D. ND March 5, 2024). “The

expenses include payments for court fees, travel expenses, legal research, and expert witness fees.” *Id.*

¹⁶ Each party and various *amici curiae* have expended considerable time and money to resolve the slightly more than \$150,000 difference between the attorney fees and costs actually incurred ranchers and what WBI considered reasonable, underscoring that from the start this appeal has been about whether attorney fees *should* be awarded, not whether the ranchers’ attorney fees were reasonable.

¹⁷ 440 U.S. 715 (1979).

¹⁸ *WBI Energy Transmission, Inc.*, 2024 WL 1477719.

¹⁹ *Tennessee Gas Pipeline*, 931 F.3d at 244 (citations omitted); *cf. Georgia Power*, 617 F.2d at 1118 (“Thus by definition a licensed project does not implicate the interests of the United States to the degree that is thought desirable that the project be undertaken by the United States itself.”).

²⁰ *Tennessee Gas Pipeline*, 931 F. 3d at 249 (citation omitted).

²¹ *See Tennessee Gas Pipeline Company, LLC v. Permanent Easement for 7,053 Acres*, 931 F.3d 237, 245 (3d Cir. 2019). The court explained:

“Federal common law refers to the development of legally binding federal rules articulated by a federal court which cannot be easily found on the face of a constitutional or statutory provision.” The need for common lawmaking “stems from the inability of legislators to anticipate every possible contingency and the impracticality of judges['] returning all unanswered questions to the legislature.”

Id. (citations omitted). The Third Circuit explained that “when Congress has not spoken in an area comprising issues substantially related to an established program of government operation, ... the Supreme Court has direct[ed] federal courts to fill the interstices of federal legislation according to their own standards.” *Id.* (internal quotations and citations omitted).

²² *Id.* (citation omitted).

²³ *Id.* The Supreme Court in *Kimbell Foods* was tasked with either crafting a uniform, national rule or, alternatively, utilizing state law, to determine whether contractual liens under federal loan programs take precedence over private liens. After establishing and applying a three-part test, the Court ultimately decided that nondiscriminatory state laws should be utilized. 440 U.S. at 740. The 3rd Circuit in *Tennessee Gas Pipeline* ruled that *Kimbell Foods* “and its progeny reflect a presumption in favor of state law, one not rebutted here.” 931 F.3d at 255.

²⁴ The 5th Circuit applied *Kimbell Foods* first in a condemnation involving the Federal Power Act (*Georgia Power Co. v. 138.30 Acres of Land*, 617 F.2d 1112 (5th Cir. 1980))

and later in an NGA condemnation. *Mississippi River Transmission Corp. v. Goerge S. Tabor*, 757 F.2d 662 (5th Cir. 1985). The 6th Circuit (*Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement*, 962 F. 2d 1192 (6th Cir. 1992), 3rd Circuit (*Tennessee Gas Pipeline Co.*, 931 F. 3d at 245-46), and 11th Circuit also followed suit. *Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy County*, 59 F.4th 1158 (11th Cir. 2023).

The geographic footprint of each of these four circuits include significant oil and gas formations and, therefore, associated pipeline transportation systems: Third Circuit (Marcellus Formation), Fifth Circuit (Eagle Ford, Haynesville, and Permian Formations), Sixth (Devonian, Marcellus, and Utica Formations), and Eleventh Circuit (transmission from Marcellus and Utica Formations). These formations account for approximately 75% of the natural gas produced in the U.S. Ryan Bellafontaine, “Mapped: Where is U.S. Natural Gas Produced?” (Aug. 17, 2026) (Sources: EIA 2026) <https://www.visualcapitalist.com/sp/sc02-mapped-where-is-u-s-natural-gas-produced/>.

²⁵ *WBI Energy Transmission, Inc. v. 189.9 Rods, More or Less*, 1332 F.4th 1058, 1060 (8th Cir. 2025).

²⁶ *Id.* at 1060-61.

²⁷ *Id.* at 1062.

²⁸ *Leonard W. Hoffmann v. WBI Energy Transmission, Inc.*, petition for cert. filed, No. 25-159 (U.S. Aug. 7, 2025) at 8-11. The petition was a long shot. Each year, the Court reportedly receives more than 7,000 petitions for a writ of certiorari, but only hears oral argument for 100 or less. Nora Collins, “The serious decline in petitions before the Supreme Court,” SCOTUS Blog (May 11, 2026) <https://www.scotusblog.com/2026/05/the-serious-decline-in-petitions-before-the-supreme-court/>.

²⁹ WBI argued that “this case is a poor vehicle for review of the question presented” because North Dakota does not require, but merely allows the award of attorney fees (Brief in Opposition of WBI Energy Transmission, Inc. No. 25-159 (Oct. 2025) at 2) and urged the Court to wait and see if other courts agree with the 8th Circuit. *Id.*

³⁰ Brief for the United States as *Amici Curiae*, No. 25-159 (May 22. 2026) at 2.

³¹ The ten states on brief included North Dakota, Alabama, Arkansas, Florida, Idaho, Indiana, Louisiana, Nebraska, South Carolina, South Dakota, Tennessee, and Texas. Brief of North Dakota, as *Amici Curiae* in Support of Petitioners, No. 25-159 (Sept. 8, 2025) at 4 (“just compensation” should be determined under state law because, among other things, the NGA “was not intended to displace traditional state authority for assessing real property value.”).

³² Owners’ Counsel of America as *Amici Curiae* in Support of Petitioners, No. 25-159 (Sept. 10, 2025) at 8 (presenting a survey showing that property owners in nearly half the

states “would be stripped of their guaranteed rights if the Eighth Circuit’s choice-of-law analysis were adopted nationwide.”).

³³ Respondent’s Supplemental Brief, No. 25-159 (June 8, 2026) at 1 (agreeing that cert should be granted, but “reserv[ing] the right to argue on remand, should it become relevant, that North Dakota law does not in fact include attorneys’ fees in the state’s measure of just compensation.”); Petitioners’ Supplemental Brief, No. 25-159 (June 5, 2026) at 2 (contrary to the Attorney General’s argument, requiring condemnors to pay for attorney fees would not incentivize landowners to draw out disputes to increase a potential fee award, any more than the *status quo* encourages condemnors to make unreasonable compensation offers).

³⁴ <https://www.supremecourt.gov/qp/25-00159qp.pdf>; Sup. Ct. R. 16. (if a petition for certiorari is granted, “[t]he case then will be scheduled for briefing and oral argument.”).

³⁵ The ranchers’ merits brief argues that the *Kimbell Foods* analysis leads to the same result as the statutory interpretation analysis. Brief of Petitioner, *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159 (filed August 13, 2026) (“Petitioners’ Brief”) at 37-42.

³⁶ *Id.* at 13-14 (unlike private parties, the federal government can take property by (1) seizing private property directly, leaving the owners to sue for compensation or (2) invoking the Declaration of Taking Act, where a condemnor takes immediate title to property, leaving compensation litigation for another day).

³⁷ *Id.* at 14, citing *Kirby Forest Indus., Inc. v. U.S.*, 467 U.S. 1, 3 (1984).

³⁸ Petitioners’ Brief at 14.

³⁹ *Id.* at 15.

⁴⁰ Petitioners’ Brief at 15-16, citing *Library of Congress v. Shaw*, 478 U.S. 310, 317 & n.5 (1986).

⁴¹ Petitioner’s Brief at 17, quoting *Sackett v. EPA*, 598 U.S. 651, 679 (2023).

⁴² Petitioners’ Brief at 18; see also *id.* at 24 (arguing that, for nearly two centuries, Congress has known that the Supreme Court routinely interpreted federal claims by applying substantive state law), citing *McCluny v. Silliman*, 3 Pet. 270, 276, 278 (1830 (applying state limitations period to plaintiff’s rights under federal law)).

⁴³ Petitioners’ Brief at 26; see *Agency Holding Corp. V. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 158 (1987) (Scalia concurring). Thus, for example, “congressional silence on the [statute of] limitations issue is ordinarily insufficient to pre-empt state statutes....” *Agency Holding Corp.*, 483 U.S. at 162.

⁴⁴ See NGA § 7(h), 15 U.S.C. § 717f(h) (“the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be

condemned exceeds \$3,000.”).

⁴⁵ Petitioners’ Brief at 29.

⁴⁶ *Id.* at 32.

⁴⁷ Six *amicus* briefs supporting the ranchers were filed on August 13, 2026 in *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159: Brief of Florida Property Owners Ryan Thomas, Lee Thomas Trust, and Sunderman Groves, Inc. (“Florida Property Owners Brief”); Brief of Gary R. Erb and Lynda Like (“Pennsylvania Property Owners’ Brief”); Brief of Owners Counsel of America (“Owners Counsel Brief”); Brief of Landowner Groups, (“Landowner Groups’ Brief”); Brief of Pacific Legal Foundation (“PLF Brief”); Brief of National Association of Realtors, American Farm Bureau Federation, and Realtors Land Institute (“Realtors Brief”).

⁴⁸ The Florida property owners report that ten years ago Sabal Trail Transmission, LLC (“Sabal Trail”) filed 263 condemnation cases in federal courts for a 247-mile corridor to construct a 36-inch pipeline to transport 1 Bcf/day. Florida Property Owners Brief at 13-14. In August 2026, the Florida property owners received notice that Sabal Trail is evaluating expansion pipeline project running near or along the current route for 482 miles, (*id.* at 14) increasing the stakes at issue in *Hoffmann*.

⁴⁹ *Id.* at 8-9 (“Federal actors are ultimately accountable to federal officials, sworn to uphold the Constitution, charged with promoting the public good, and held accountable by the voters on Election Day. * * * And, in direct federal condemnations, the federal government retains a continued ownership interest in the property taken”); see Pennsylvania Property Owners’ Brief” at 2 (while NGA § 7(h) delegates the power to condemn, “it does not transfer every rule or governmental protection that accompanies condemnation by the United States.”); *id.* at 7, citing *U.S. v. Carmack*, 329 U.S. 230, 243, n.13 (1946) (distinguishing federal officers acting for the sovereign from private entities authorized to condemn “on behalf of themselves”, whose grants “are, in their very natural grants and of limited powers” that “do not include sovereign powers greater than those expressed or necessarily implied.”).

⁵⁰ Florida Property Owners’ Brief at 4; *id.* at 5 (for private licensee companies exercising eminent domain rights under the NGA, “the Fifth Amendment’s measure of compensation should serve as a floor and not a ceiling” -- to do otherwise, “state created rights to attorneys’ fees will be stricken in six of the seven states of the Eighth Circuit, and will be at serious risk in at least 15 other states if the Eighth Circuit’s new-fashioned split widens.”).

⁵¹ Owners Counsel Brief at 2 (internal citations omitted). “In the Sabal Trail pipeline litigation, condemnors spent a combined \$8.3 million on appraisal work alone across the project.” *Id.* at 6 (citation omitted); see also Landowner Groups’ Brief at 5 (“The Eighth Circuit’s decision threatens to alter that bargaining framework well before any condemnation proceedings begin. If a company exercising eminent domain ... may disregard state compensation protections and pay only the federal constitutional

minimum, its fallback position becomes less costly, changing the baseline against which voluntary easement negotiations occur.”).

⁵² Owners Counsel Brief at 10-17 (list of 21 state statutes providing condemnation protection); see PLF Brief at 4 (distinguishing cases relied on by the 8th Circuit); see also Realtors Brief at 5 (cautioning that the 8th Circuit’s reasoning could incentivize “advocates for more public control of private interests....”) (citation omitted).

⁵³ Respondent’s Brief” at 2, *quoting PennEast*, 594 U.S. at 495; see Respondent’s Brief at 2, *quoting Luxton v. North River Bridge Co.*, 153 U.S. 525, 530 (1894) (Congress “may at its discretion, use its sovereign powers, directly or through a corporation * * * for the accommodation of interstate commerce.”).

⁵⁴ Respondent’s Brief at 4.

⁵⁵ *Id.* at 2, *United States v. Miller*, 317 U.S. 369, 374 (1943) (“[T]he courts early adopted, and have retained the concept of fair market value” as the appropriate compensation); *United States v. New River Collieries Co.*, 262 U.S. 341 344 (1923) (“More would be unjust to the United States, and less would deny the owner what he is entitled to.”).

⁵⁶ *United States ex rel. Tennessee Valley Auth. v. Powelson*, 391 U.S. 266 (1943).

⁵⁷ 319 U.S. at 281-82.

⁵⁸ Respondent’s Brief at 2, *quoting* 33 U.S.C. § 532.

⁵⁹ Respondent’s Brief at 28 (citation omitted).

⁶⁰ Brief for the United States, *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159 (filed Sept. 21, 2026) at 12 (citations omitted). The Attorney General also noted that the Supreme Court had recently ruled that eminent domain power delegated to a certificate holder is “categorical,” that is, absolute and unconditional. *Id.* at 10, *citing PennEast Pipeline Co.*, 594 U.S. at 498.

⁶¹ Brief of the Interstate Natural Gas Association of America and American Petroleum Institute, *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159 (filed Sept. 21, 2026) at 11. “INGAA” is the natural gas pipeline trade association, while “API” represents all aspects of the oil and gas industry. *Id.* at 1.

⁶² Brief of the Chamber of Commerce of the US, *Leonard W. Hoffman v. WBI Energy Transmission, Inc.*, No. 25-159 (filed Sept. 21, 2026) at 4-6.

⁶³ *Id.* at 9.

⁶⁴ Bradley C. Karkkainen, “*Plain Meaning*”: Justice Scalia’s Jurisprudence of Strict Statutory Construction,” 17 Harv. J.L. & Pub. Pol’y 401 (1994).

⁶⁵ 597 U.S. 215 (2022).

⁶⁶ 410 U.S. 113 (1973).

⁶⁷ *Id.* at 231.

⁶⁸ See *id.* at n.9 (strict construction “refers to a construction that narrows the scope of coverage or application of a statute....”).

⁶⁹ See *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“We presume that ‘Congress intends to make major policy decisions itself, ...’” (citation omitted)). In applying the “major question doctrine,” the Court explained: “The question there [*American Elec. Power. Co. v. Connecticut*, 564 U.S. 131 (2011)] however, was whether Congress wanted district court judges to decide, under unwritten federal nuisance law, ‘whether and how to regulate carbon dioxide emissions from powerplants. We answered no....’” 597 U.S. at 731. Another reason supports the efficacy of WBI’s argument: the Roberts Court has been labeled “business friendly,” with business winning on average 71% of the cases before the Supreme Court from 2010-20. Lee Epstein and Mitu Gulati, “A Century of Business in the Supreme Court, 1920-2020,” 107 Minn. L. Rev. 49, 59 & n.36-37 (2022).

⁷⁰ 148 U.S. 312 (1893).

⁷¹ *Id.* at 325. The Court concluded that if the government condemns a series of locks and dams built by a company to make a river navigable, whose passage is compensated with tolls, it must compensate a company not just for the value of the tangible property, but also for the franchise to take tolls. *Id.* at 344-45.

⁷² 405 U.S. 538 (1972).

⁷³ *Id.* at 552. After lower courts allowed a credit union to seize a woman’s savings account (without notice) for failure to repay a loan, the Court remanded and explained: “*The right to enjoy property without unlawful deprivation*, no less than the right to speak or the right to travel, is in truth a ‘*personal*’ right” *Id.* (emphasis added).

⁷⁴ 598 U.S. 631 (2023) (J. Gorsuch and J. Jackson concurring).

⁷⁵ After Hennepin County sold her condominium \$40,000 to satisfy a \$15,000 tax bill and kept the surplus, a 94-year-old woman filed claims (under the takings clause of the Fifth Amendment and Excessive Fines Clause of the 8th Amendment) against the county, which the trial court dismissed for failure to state a claim, and the 8th Circuit affirmed. 598 U.S. at 635-36. In a companion case, *Sackett v. EPA*, 598 U.S. 651 (2023), landowners wanting to build a house used sand and gravel to fill in a lot next to a ditch, but the Environmental Protection Agency (“EPA”) considered their land protected wetlands under the Clean Water Act, told the landowners that they could not build, directed them to remove the sand and gravel or face \$40,000/day fines. *Id.* at 662. The Supreme Court reversed the underlying opinion siding with the EPA and limited the

scope of the “waters of the United States,” allowing the landowners to build their house.
Id. at 684.

⁷⁶ NGA § 1(c), P.L. 83-323, 68 Stat. 36 (1954) (exempting from federal regulation natural gas companies operating entirely within a single state, effectively overturning *FPC v. East Ohio Gas Co.*, 338 U.S. 464 (1950) that had ruled an otherwise local, in-state gas company was subject to federal regulation because it crossed state lines to receive gas).