

Supreme Court Holds That Private Parties Can Sue States To Seize State Property Along Federally Approved Pipeline Routes

Client Alert | June 29, 2021

Decided June 29, 2021

***PennEast Pipeline Co. v. New Jersey*, No. 19-1039**

Today, the Supreme Court held in a 5-4 decision that the Natural Gas Act authorizes a private party who has obtained federal government approval to exercise eminent domain power along a federally approved pipeline route to sue a State to condemn state land.

Background:

The Natural Gas Act, 15 U.S.C. § 717 et seq., delegates the federal government's power to take property by eminent domain to private parties that have been issued a certificate of public convenience and necessity by the Federal Energy Regulatory Commission (FERC). PennEast Pipeline obtained a certificate from FERC to build an interstate natural gas pipeline and sued New Jersey under the Natural Gas Act to condemn properties that the State owned or had an easement over along the pipeline route. New Jersey sought to dismiss the condemnation suits for lack of jurisdiction, citing the State's sovereign immunity under the Eleventh Amendment and PennEast's failure to satisfy the jurisdictional requirements of the Natural Gas Act. The district court ruled in favor of PennEast. The Third Circuit reversed, holding that the Natural Gas Act does not clearly delegate to private parties the federal government's exemption from a State's sovereign immunity.

Issue:

Does the Natural Gas Act authorize private parties to exercise the federal government's eminent domain power to condemn state land in which a State claims an interest?

Court's Holding:

Yes. The Natural Gas Act delegates to private parties the federal government's power to take property by eminent domain, and States do not have sovereign immunity from the exercise of that power.

"Since the founding, the Federal Government has exercised its eminent domain authority through both its own officers and private delegates. And it has used that power to take property interests held by both individuals and the States. Section 717f(h) is an unexceptional instance of this established practice."

Chief Justice Roberts, writing for the Court

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What It Means:

- The Supreme Court's decision prevents States from having a de facto veto over interstate pipelines found to be in the public interest and authorized by the Federal Energy Regulatory Commission. The Court explained that States consented to the exercise of federal eminent domain power in the plan of the Constitutional Convention and consequently "have no immunity left to waive or abrogate when it comes to condemnation suits by the Federal Government and its delegates."
- The Court explained that Congress added the eminent domain authority to "remedy" a "defect" in the Natural Gas Act that left pipeline certificate holders with "only an illusory right to build" pipelines authorized by the federal government.
- In dissent, Justice Barrett—joined by Justices Thomas, Kagan, and Gorsuch—emphasized that "States did not surrender their sovereign immunity to suits authorized pursuant to Congress' power to regulate interstate commerce" and "no historical evidence" supports a different result for private condemnation suits against States.
- Justice Gorsuch, joined by Justice Thomas, wrote a separate dissenting opinion to clarify that a State's structural immunity, waivable by consent, is distinct from its Eleventh Amendment immunity.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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