



US Supreme Court Set to Interpret Natural Gas Act Section 7

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On June 29, 2026, the Supreme Court granted a petition for certiorari in *Leonard Hoffmann v. WBI Energy Transmission, Inc. (Hoffmann)*, which presents the question whether section 7 of the Natural Gas Act (NGA) requires pipeline companies using federal eminent domain authority to pay landowners' attorney's fees in states where landowners can recover those fees under state law. In the decision giving rise to the Supreme Court's review, the U.S. Court of Appeals for the Eighth Circuit held that a group of ranchers were not entitled to recover their \$383,300 in attorney's fees incurred while negotiating their compensation—creating a circuit split with four other courts of appeals. *Hoffmann* will be heard during the Court's October 2026 Term, and marks the second time in five years that the Court has agreed to interpret NGA section 7.

The Question Presented to the Court

All interstate natural gas pipelines must obtain a "certificate of public convenience" from the Federal Energy Regulatory Commission (FERC) under NGA section 7 before siting, constructing or operating interstate pipeline facilities. A federal right of eminent domain attaches to each NGA section 7 certificate, allowing the pipeline to take private land for their certificated purposes subject to the Takings Clause of the Fifth Amendment to the U.S. Constitution. Eminent domain proceedings are adjudicated either in state court or the federal district court in which the property at issue is located. While certain federal courts have interpreted "just compensation" as equating solely to market value, some states, including North Dakota, have laws that allow for the recovery of attorney's fees in condemnation actions. The question for

the Supreme Court is which rule should apply—the Fifth Amendment standard (which excludes attorney’s fees) or the state law standard (which may include attorney’s fees).

The petitioner landowners in *Hoffmann*, joined by 12 states as amici,¹ argued in their cert-stage filings that the NGA’s silence on “just compensation” constitutes a gap in the law that should be filled with state law rules. They relied on a 1979 Supreme Court decision, *United States v. Kimbell Foods, Inc.*, which held that when federal law does not supply a specific rule of decision, courts should adopt a uniform federal rule or borrow state law instead. The landowners also argue for a narrow reading of the NGA, positing that the NGA “does not delegate the power to take property.” Rather, it “authorizes the filing of a private condemnation lawsuit.” In their view, this distinction undercuts the Eighth Circuit’s conclusion that the NGA delegates a “categorical” power of federal eminent domain to a certificate holder.

In response, the respondent pipeline has argued that the Court’s more recent 2021 decision in *PennEast Pipeline Co., LLC v. New Jersey (PennEast)* governs. In that case, the Court held that an NGA certificate holder “step[s] into the federal government’s shoes” when exercising eminent domain authority. This position is supported by the United States as amicus curiae, which filed a brief at the Court’s invitation arguing there is no gap in the NGA that needs to be filled by state law.

3. *Hoffmann* in the Context of Other Supreme Court Cases

Hoffman will likely turn on how broadly the Court construes NGA section 7. *PennEast*, a recent decision interpreting FERC’s authorization of pipeline projects under NGA section 7, and *United States Forest Service v. Cowpasture River Preservation Ass’n (Cowpasture)*, a case that construed other federal statutes that applied to an interstate pipeline project, suggest the outcome may be a close call.

In *PennEast*, the Court considered whether a natural gas pipeline could condemn property located in New Jersey under NGA section 7 that was held by the state of New Jersey or in conservation easements by the New Jersey Conservation Foundation. New Jersey argued that the pipeline’s condemnation actions violated its Eleventh Amendment rights to not be sued by private companies in federal court. In a 5-4 decision, the Court rejected that position on grounds that New Jersey had consented to the federal government’s eminent domain power when it ratified the Constitution, and likewise consented to private parties’ exercise of that

same power when they stood in the shoes of the federal government, as pipelines do under the NGA.

One year earlier, in *Cowpasture*, the Court considered whether the U.S. Forest Service, a federal agency within the U.S. Department of Agriculture, could grant a right-of-way to an interstate pipeline through a portion of a National Forest containing a segment of the Appalachian Trail, which was managed by the National Park Service, a federal agency within the Department of the Interior. Because FERC has a practice of conditioning all NGA section 7 certificates on the receipt or waiver of federal authorizations required to construct the project, the pipeline could not proceed without the Forest Service right-of-way grant. In a 7-2 decision, the Court determined that the Forest Service was permitted to grant the right-of-way, distinguishing between the Park Service's surface right easement to manage the Appalachian Trail with the Forest Service's ownership of the land beneath it.

Although *Hoffman* presents questions that differ from *PennEast* and *Cowpasture*, each case considers the reach of federal law in clearing obstacles to interstate natural gas pipeline development. The landowners in *Hoffmann* are expected to attempt to distinguish *PennEast* and *Cowpasture* as the case proceeds.

4. Implications of *Hoffmann* for the Pipeline Industry

As indicated in the cert-stage briefing, the United States has asked the Court to side with the Eighth Circuit and read the federal authority within the NGA more broadly, while several conservative-leaning states argue against that outcome, in favor of state sovereignty and private property rights. The grant of certiorari comes at a time when the Court is issuing decisions that expand Executive Power. A practical concern for pipeline development is whether reversal of the Eighth Circuit's decision and the inclusion of attorney's fees will incentivize more litigious condemnation proceedings and slow down pipeline construction.

¹ The 12 states include North Dakota, Alabama, Arkansas, Florida, Idaho, Indiana, Louisiana, Nebraska, South Carolina, South Dakota, Tennessee and Texas.

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