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

Introduction: Today, the Supreme Court held in a 5-4 decision that the Natural Gas Act delegates the federal eminent domain power to private parties, removing a barrier for the \$1 billion PennEast gas pipeline project and reversing a Third Circuit ruling that project developers could not seize New Jersey-owned land.

Background: In January 2018, PennEast obtained under the Natural Gas Act (NGA) a certificate of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) to construct a 116-mile pipeline from northeast Pennsylvania to western New Jersey. To facilitate pipeline projects, the NGA delegates federal eminent domain power to private parties that have been issued certificates of public convenience and necessity by FERC.

Shortly after receiving the certificate, PennEast instituted condemnation proceedings in federal district court against the properties in which New Jersey held interests. New Jersey moved to dismiss PennEast's complaints on sovereign immunity grounds. The District Court denied the motion and granted PennEast's requests for a condemnation order and preliminary injunctive relief. The Third Circuit vacated the District Court's order insofar as it awarded PennEast relief with respect to New Jersey's property interests. The Third Circuit concluded that because the NGA did not clearly delegate the federal government's ability to sue nonconsenting States, PennEast was not authorized to condemn New Jersey's property.

Issue: (1) Whether the Natural Gas Act delegates to FERC certificate holders the authority to exercise the federal government's eminent domain power to condemn land in which a State claims an interest; and (2) whether the court of appeals properly exercised jurisdiction over the case.

Court's Holding: In an opinion authored by Chief Justice Roberts, and joined by Justices Breyer, Alito, Sotomayor, and Kavanaugh, the Court concluded that a certificate of public convenience and necessity issued by FERC pursuant to the NGA authorizes a private company to condemn all necessary rights-of-way, whether owned by private parties or states.

The Court began by addressing the jurisdictional issue, finding that the Third Circuit properly exercised jurisdiction because New Jersey was defending against the condemnation proceeding rather than challenging the FERC certificate, which must be done in the D.C. Circuit.

Turning to New Jersey's sovereign immunity defense, the majority found that the NGA's delegation of the federal eminent domain authority is categorical: By its terms, the NGA delegates to certificate holders the power to condemn any necessary rights-of-way, including land in which a state holds an interest. In response to the argument that the NGA cannot authorize condemnation actions because Congress may not use its Article I powers to abrogate state sovereign immunity, the Court concluded that States implicitly consented to private condemnation suits when they ratified the Constitution.

Justice Barrett filed a dissenting opinion, in which Justices Thomas, Kagan, and Gorsuch joined, rejecting the majority's argument that New Jersey did not have sovereign immunity to assert against federal eminent domain.

Justice Gorsuch also filed a dissenting opinion, in which Justice Thomas joined, noting that even if the States consented, the Eleventh Amendment nonetheless divests federal courts of subject matter jurisdiction over a suit filed against a State by a diverse plaintiff.

Read the opinion [here](#).