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SUPREME COURT

Conservative powerhouse takes on pipeline land feuds

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Pennsylvania landowners are pushing the Supreme Court to review Transcontinental Gas Pipe Line Co. LLC's use of eminent domain. Mark Fischer/Flickr

Can a pipeline developer use private property without first paying landowners?

That's the question a group of Pennsylvania landowners backed by a powerful right-leaning group posed this week to the Supreme Court.

Their challenge, one of several recent pipeline-related matters submitted to the nation's highest court, stems from Transcontinental Gas Pipe Line Co. LLC's use of eminent domain to build the Atlantic Sunrise natural gas project.

"The Natural Gas Act delegates to certain private companies the ordinary eminent domain power: that is, the power to bring a condemnation lawsuit and then buy land at an adjudicated price after final judgment," attorneys for the landowners wrote in a [petition](#) filed Wednesday.

"The Act does not delegate the separate power to take immediate possession of land."

In a [video](#) accompanying the Institute for Justice's announcement of the Supreme Court appeal, property owners Gary and Michelle Erb said work on Atlantic Sunrise has destroyed their enjoyment of their 72-acre homestead.

"As a result of the pipeline coming through our property, we lost our privacy," Gary Erb said in his interview. "We lost our love for our land, and more importantly, we don't want to live 400 feet from something that could incinerate us within two to three seconds."

IJ is among the first conservative groups to get involved in the growing legal tension between pipelines and property rights. The libertarian-leaning Niskanen Center has also taken up the cause, and many others are watching the issue closely ([Energywire](#), Sept. 13, 2017).

IJ is renowned for its involvement in high-profile property rights cases, including the Supreme Court's landmark *Kelo v. City of New London*. The institute lost the case in 2005 when the Supreme Court endorsed broad protection of the use of eminent domain to take property for economic development. Conservatives have been working to overturn or narrow that precedent ever since.

The new case joins a recent wave of pipeline-related challenges before the Supreme Court ([Energywire](#), Jan. 16).

The justices, who only accept about 1 percent of cases, have already rejected two pipeline petitions this year.

One of the cases the court tossed, *Orus Ashby Berkley v. Federal Energy Regulatory Commission*, raised questions about the federal government's exercise of eminent domain power for pipelines, which landowners argued do not serve the "public interest," as required under the Fifth Amendment of the Constitution.

This week's case, *Lynda Like v. Transcontinental*, focuses on the second element of the takings clause: the payment of "just compensation."

"The U.S. Supreme Court has repeatedly called for judicial engagement when courts are scrutinizing the use of eminent domain by private entities, like Transco," IJ President and general counsel Scott Bullock said in a statement. "But instead, the opposite is happening in the lower courts; they are not reining in the abusive actions of these pipeline companies."

"In fact, the courts are letting these companies get away with whatever the companies say is necessary to get their project completed," he continued. "That is the opposite of what judges are supposed to do."

The Atlantic Sunrise project, an expansion of the existing Transcontinental system, is designed to add nearly 200 miles of pipeline and other upgrades through Pennsylvania, in addition to other upgrades in Maryland, Virginia, North Carolina and South Carolina.

Reporter Ellen M. Gilmer contributed.

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