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CSG Joins U.S. Supreme Court Amicus Brief on Natural Gas Act

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

In a U.S. Supreme Court [amicus brief](#) filed in [PennEast Pipeline Co. v. New Jersey](#), the State and Local Legal Center (SLLC) argues that the Natural Gas Act doesn't allow private parties to condemn state land. CSG, along with other national associations, joined the brief.

The Natural Gas Act (NGA) authorizes private gas companies like PennEast to obtain necessary rights of way through eminent domain to build pipelines. PennEast asked a federal district court to condemn 42 properties which belong to New Jersey to build a pipeline.

Before the Third Circuit, New Jersey argued that Eleventh Amendment sovereign immunity prevents a private company from haling it into court. The Eleventh Amendment prohibits states from being sued in federal court unless they have consented to suit. An exemption applies to the federal government. According to New Jersey, "the federal government cannot delegate its exemption from state sovereign immunity to private parties like PennEast."

The Third Circuit stated that it "doubt[ed]" the federal government could delegate its exemption. But it held that even if doing so was possible, Congress failed in the NGA because it didn't use "unmistakably clear" language to abrogate state sovereign immunity. The Third Circuit noted "the NGA does not even mention the



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Eleventh Amendment or state sovereign immunity. Nor does it reference ‘delegating’ the federal government’s ability to sue the States.”

The SLLC [amicus brief](#) urges the Court to reject PennEast’s argument that “*silence* as to State lands in the NGA constitutes a satisfactorily clear statement that Congress intended to allow private parties to step into the shoes of the federal sovereign and exercise eminent domain authority—free from political accountability—over State lands.” The brief points out that states, working closely with local governments, manage their natural resources through extensive statutory and regulatory schemes. “The Constitution establishes a careful balance between Federal and State authority, preserving the integrity, dignity, and residual sovereignty of the States. Allowing private parties to invoke the Federal government’s authority to condemn State lands would dramatically alter the Federal-State balance.”

Jennifer Selendy, Erica Iverson, Vivek Tata, and Adam Hersh of Selendy & Gay wrote the SLLC [amicus brief](#) which the following organizations joined: The Council of State Governments, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, and International Municipal Lawyers Association.

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