



Environment, Land Use & Natural Resources ADVISORY ■

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Supreme Court Decision in *PennEast Pipeline Co. v. New Jersey* Is Major Win for Pipelines

By [Clay Massey](#) and [Leland Frost](#)

On June 29, 2021, the U.S. Supreme Court held in a 5–4 [opinion](#) written by Chief Justice Roberts that a private company holding a certificate of public convenience and necessity under Section 717f(e) of the Natural Gas Act (NGA) is authorized to condemn state-owned property. The Court reversed the decision of the Third Circuit that New Jersey had sovereign immunity from PennEast’s lawsuit to condemn the state’s land.

The case resolves an important question for the construction of interstate natural gas transmission pipelines: whether a private company can take, through delegated federal eminent domain power, land owned by a state to build a pipeline. PennEast argued that its Section 717f(e) certificate conferred it the delegated federal authority to sue New Jersey for the condemnation of the state’s land to build its pipeline. New Jersey opposed the pipeline on the ground that it was immune from eminent domain lawsuits under the Eleventh Amendment.

In reversing the Third Circuit, the Supreme Court explained that the states consented to the federal eminent domain power when entering the federal system and thereby waived their sovereign immunity to suits exercising that federal power. The Court further explained that the states’ consent to the federal eminent domain power included condemnation proceedings brought by private delegates of that power under a congressional act. The Court also rejected New Jersey’s argument that the NGA’s text was required to more clearly abrogate states’ sovereign immunity in order for states to be subject to NGA condemnation actions. The Court explained that the legislative clarity requirement had no application because the states had already waived their immunity to the federal eminent domain power.

This is a significant decision that confirms the supremacy of the federal government’s eminent domain power. It also eliminates an important roadblock that pipeline opponents have raised to the development of critical energy infrastructure in the United States.

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