

BEFORE THE
COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEE ON CIVIL RIGHTS AND CIVIL LIBERTIES
UNITED STATES HOUSE OF REPRESENTATIVES

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*Hearing on “Pipelines Over People (Part II): Midship Pipeline’s
Disregard for Landowners in Its Pathway”*

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Thank you, Chairman Raskin, Ranking Member Sessions, and members of the subcommittee. My name is Sam Gedge, and I am an attorney with the Institute for Justice. We’re a public-interest law firm that litigates to protect property rights nationwide. And one of our areas of focus is eminent-domain abuse.

Unlike my co-panelists, I’m not going to speak to the Midship project specifically. Rather, I’d like to focus on a couple of examples of the broader systemic imbalance between pipeline companies that exercise eminent domain and the private landowners who have the misfortune of finding themselves in the way.

1. First, at a structural level, condemnations by pipeline companies often are far more disruptive and far harsher than condemnations executed by the federal government itself. That’s because, unlike the federal government, pipeline companies often take first and pay later.

In this way, pipeline condemnations differ fundamentally from almost every other exercise of eminent domain under federal law. Ordinarily, when the federal government itself exercises eminent domain—by, say, taking land to build a military base—private landowners almost always get compensated before the government moves in on their land.

In what are called “straight condemnations,” for example, the government doesn’t get the land until after the courts have determined the

value of the property and the government has paid that value to the owner.

Likewise when it comes to what's called "quick take"—which is a speedier form of condemnation. There, the federal government can access private land immediately. But it also must pay the owner immediately. Up front, it must pay out a fair estimate of the value it will be taking.

In short, whenever the *federal government* condemns property, Congress has gone to great lengths to ensure that payment predates possession—in other words, to ensure that property owners are compensated before the government enters on their land. That's only fair.

But things are entirely different when it comes to pipeline companies. Routinely, these companies file condemnation actions under the Natural Gas Act and secure what they call preliminary injunctions against property owners. Those injunctions give the companies immediate access to the land they want. Yet critically, the injunctions impose on the companies no immediate obligation to pay the landowners. It's "take now, pay later," and "later" can be months or even years away.

This state of affairs is profoundly unjust, and, candidly, it's a consequence of the federal courts' simply misconstruing the Natural Gas Act. Having a pipeline company tear up your land imposes serious and immediate burdens. People find themselves with construction equipment scattered on their land; with debris strewn about; with wildlife killed and left to rot (which was the experience of one of my firm's clients in Pennsylvania); and, of course, with the loss of the sense of security that comes from being on your own property and knowing that no one can take it from you. The least pipeline companies can be expected to do is compensate people *before* disrupting their lives in this way. Across the country, however, pipeline companies accelerate the parts of eminent domain they like—the taking parts—while slow-walking the paying part. And without congressional intervention, the federal courts have made clear that they will let these land-grabs persist.

2. Not only do pipeline companies take first and pay later, but they also may take land for pipelines that don't even get built. In your run-

of-the-mill taking, the government gets all the approvals it needs before it takes your land for its project. But here, too, things are different when it comes to pipelines. Because of the way pipeline permitting works, FERC tells the company: “you have permission to build this pipeline conditional on getting the necessary permits from those other agencies over there.” On the strength of that conditional certificate, the company instantly gets the power of eminent domain.

What that means is companies can intrude on your land, forcibly take easements, and tear up your property, even though there’s no guarantee that their pipeline will ever be built. One of the highest-profile recent examples of this, of course, is from Virginia and surrounding states, where the Atlantic Coast Pipeline spent years forcibly taking easements on people’s land—almost up until the moment the entire pipeline project was cancelled.

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These are just two examples of what I think is a broader phenomenon: pipeline companies’ exploiting FERC and the Natural Gas Act to disadvantage private property owners. Across the board, the process lets private companies exercise a formidable sovereign power—the power to intrude on our land—and to do so in ways that systematically disadvantage the people they’re targeting.

This is a national problem. It can affect any district. Certainly we’re aware of similar issues in Texas, of particular concern to Ranking Member Sessions. At the best of times, eminent domain is disruptive, is harsh, and often falls hardest on people who lack political clout. And where, as here, you have unaccountable, private actors exercising this power, all the risks of harshness and waste and injustice are magnified. Because this eminent-domain power is a product of Congress—through the Natural Gas Act—we think the scope of that power and the abuses of that power are strong candidates for congressional attention.