No. _____

In The
Supreme Court of the United States

KAROLYN GIVENS, ET AL.,

Petitioners,

v.

MOUNTAIN VALLEY PIPELINE, LLC,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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July 3, 2019

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QUESTION PRESENTED

Through the Natural Gas Act ("NGA"), 15 U.S.C. §717 *et seq.*, Congress delegates the federal power of eminent domain to private pipeline companies to build interstate pipelines. Because the Act contains no quick-take provision, courts agree that the Act itself gives a pipeline company only the "straight" power of condemnation. This means the condemnor may take ownership and possession of the land after the trial on just compensation by paying the amount of the final judgment.

The Fourth Circuit and other courts of appeals nevertheless hold that district courts may issue preliminary injunctions granting immediate possession based on the prediction that the pipeline company will ultimately take the land under the NGA. In contrast, the Seventh Circuit holds that preliminary injunctions must be based on the parties' substantive rights at the time the injunction issues. And because neither state law nor federal statute gives a pipeline company any substantive right to pretrial possession, an injunction granting immediate possession exceeds federal judicial power.

The question presented is: whether district courts have power, before the trial on just compensation, to issue a preliminary injunction granting immediate possession of property to a pipeline company in a condemnation proceeding under the Natural Gas Act.

PARTIES TO THE PROCEEDINGS

The opinion below consolidated seven separate appeals, case numbers 18-1159, 18-1165, 18-1175, 18-1181, 18-1187, 18-1242, and 18-1300.

In case number 18-1159, none of the appellants join in this petition. The abbreviated caption was *Mountain Valley Pipeline, LLC* v. *6.56 Acres of Land, Owned by Sandra Townes Powell, Montgomery Cnty. Tax Map Parcel No. 015900 and being MVP Parcel No. VA-MO-3370; 1.81 Acres of Land, Owned by Robert M. Jones and Donna Thomas Jones, Montgomery Cnty. Tax Map Parcel No. 024588 and being MVP Parcel No. VA-MO-5511; 1.29 Acres of Land, Owned by Robert M. Jones and Donna Thomas Jones, Montgomery Cnty. Tax Map Parcel No. 024591 and being MVP Parcel No. VA-MO-5512; 0.52 Acres of Land, Owned by Emilie M. Owen and Richard Clark Owen, Franklin Cnty. Tax Map Parcel No. 0380002204B and being MVP Parcel No. VA-FR-4129 (AR FR-294)*.

In case number 18-1165, none of the appellants join in this petition. The abbreviated caption was *Mountain Valley Pipeline, LLC* v. *Teresa D. Erickson, POA for Gerald Wayne Corder (Parcel ID NO. 20-362-20. An Easement to construct, operate and maintain a 42-inch gas transmission line across properties in the counties of Braxton, Lewis, Harrison, Webster, and Wetzel, WV; Lorena B. Krafft, POA for Randall N. Corder (Parcel ID NO. 20-362-21. An Easement to construct, operate and maintain a 42-inch gas transmission line*

PARTIES TO THE PROCEEDINGS—Continued

across properties in the counties of Braxton, Lewis, Harrison, Webster, and Wetzel, WV.

In case number 18-1175, petitioner Karolyn Givens was an appellant; none of the other appellants join in this petition. The full caption was *Mountain Valley Pipeline, LLC* v. *0.335 Acres of Land, Owned by George Lee Jones, Giles Cnty. Tax Map Parcel No. 47-1-1 and being MVP Parcel No. VA-GI-200.044; 0.65 Acres of Land, Owned by Michael S. Hurt and Mary Frances K. Hurt, Franklin Cnty. Tax Map Parcel No. 0380002204A and being MVP Parcel No. VA-FR-4130 (AR FR-294); 1.52 Acres of Land, Owned by Vernon V. Beacham, Sr. and Vernon V. Beacham, II, Giles Cnty. Tax Map Parcel No. 44A-1-34 and being MVP Parcel No. VA-GI-051; 2.83 Acres of Land, Owned by Vernon V. Beacham, Sr. and Vernon V. Beacham, II, Giles Cnty. Tax Map Parcel No. 44A-1-33 and being MVP Parcel VA-GI-052; 4.88 Acres of Land, Owned by Clarence B. Givens and Karolyn W. Givens, Giles Cnty. Tax Map Parcel No. 47-9 and being MVP Parcel No. VA-GI-200.041; 2.01 Acres of Land, Owned by George Lee Jones, Giles Cnty. Tax Map Parcel No. 47-1-2 and being MVP Parcel No. VA-GI-200.045; 2.09 Acres of Land, Owned by Steven C. Hodges and Judy R. Hodges, Craig Cnty. Tax Map Parcel No. 120-A-10 and 120-A-10A and being MVP Parcel No. VA-CR-200.047; 0.66 Acres of Land, Owned by Gordon Wayne Jones and Donna W. Jones, Craig Cnty. Tax Map Parcel No. 120-A-13 and being MVP Parcel No. VA-CR-200.049; 0.71 Acres of Land, Owned by Roanoke*

PARTIES TO THE PROCEEDINGS—Continued

Valley 4-Wheelers Ass'n, Montgomery Cnty. Tax Map Parcel No. 031198 and being MVP Parcel No. VA-MO-4264 (AR-MN-276); 1.53 Acres of Land, Owned by Roanoke Valley 4-Wheelers Ass'n, Montgomery Cnty. Tax Map Parcel No. 016068 and being MVP Parcel No. VA-MO-4265 (AR MN-276); 1.53 Acres of Land, Owned by Stephen W. Bernard and Anne W. Bernard, Franklin Cnty. Tax Map Parcel No. 0370001901 and being MVP Parcel No. BVA-FR-13; 5.88 Acres of Land, Owned by Wendell Wray Flora and Mary McNeil Flora, Franklin Cnty. Tax Map Parcel No. 0380002000 and being MVP Parcel No. VA-FR-017.21; 3.70 Acres of Land, Owned by Michael S. Hurt and Mary Frances K. Hurt, Franklin Cnty. Tax Map Parcel No. 0380002204 and being MVP Parcel No. VA-FR-017.25; 1.97 Acres of Land, Owned by Keith M. Wilson and Mary K. Wilson, Franklin Cnty. Tax Map Parcel No. 0370009906 and being MVP Parcel No. VA-FR-017.44; 6.50 Acres of Land, More or Less, Owned by New River Conservancy, Inc., Located in Giles Cnty., Virginia being a portion of Giles Cnty. Tax Map Parcel No. 29-25B and being MVP Parcel No. VA-GI-035.

In case number 18-1181, none of the appellants join in this petition. The full caption was *Mountain Valley Pipeline, LLC* v. *0.01 Acres of Land, Owned by Benny L. Huffman, Giles Cnty. Tax Map Parcel No. 46-25 B and being MVP Parcel No. VA-GI-5779; 0.01 Acres of Land, Owned by Jeremy Joseph Rice and Michelle*

PARTIES TO THE PROCEEDINGS—Continued

Renee Rice, Roanoke Cnty. Tax Map Parcel No. 111.00-01-58.00-0000 and being MVP Parcel No. VA-RO-5627; 0.01 Acres of Land, Owned by Roy A. Stevens, Franklin Cnty. Tax Map Parcel No. 0440018800 and being MVP Parcel No. VA-FR-5496; 0.02 Acres of Land, Owned by Daniel G. Myers and Deborah L. Myers, Franklin Cnty. Tax Map Parcel No. 0440019801 and being MVP Parcel No. VA-FR-5502; 0.04 Acres of Land, Owned by Bruce M. Wood and Jennifer M. Wood, Franklin Cnty. Tax Map Parcel No. 0440200600 and being MVP Parcel No. VA-FR-5791; 2.75 Acres of Land, Owned by Helena Delaney Teekell, Trustee of the Helena Delaney Teekell Trust, Craig Cnty. Tax Map Parcel No. 120-A-12 and being MVP Parcel No. VA-CR-200.048; 2.81 Acres of Land, Owned by Robert W. Crawford or Patricia D. Crawford, Trustees Under the Crawford Living Trust, and Anita Neal Hughes, Craig Cnty. Tax Map Parcel No. 121-A-15 and being MVP Parcel No. VA-CR-200.053; 2.60 Acres of Land, Owned by Helena Delaney Teekell, Trustee of the Helena Delaney Teekell Trust, Craig Cnty. Tax Map Parcel No. 120-A-14A and being MVP Parcel No. VA-CR-5343; 0.15 Acres of Land, Owned by Donald W. Long and Evelyn W. Long, Montgomery Cnty. Tax Map Parcel No. 021560 and being MVP Parcel No. BVMO-25; 0.07 Acres of Land, Owned by George A. Craighead and Helen P. Craighead, Montgomery Cnty. Tax Map Parcel No. 016298 and being MVP Parcel No. VA-MO-011; 1.90 Acres of Land, Owned by Joseph Patrick Tomelty, Montgomery Cnty. Tax Map Parcel No. 013819 and being MVP Parcel No.

PARTIES TO THE PROCEEDINGS—Continued

VA-MO-060; 0.89 Acres of Land, Owned by Donald W. Long and Evelyn W. Long, Montgomery Cnty. Tax Map Parcel No. 021559 and being MVP Parcel No. VA-MO-062; 0.392 Acres of Land, Owned by Travis Scott Lancaster and Tracy Lynn Taylor, Montgomery Cnty. Tax Map Parcel No. 033280 and being MVP Parcel No. VA-MO-064 (AR-MN-271); 23.74 Acres of Land, Owned by Mark W. Cronk, Alison G. Cronk and the Nature Conservancy, Roanoke Cnty. Tax Map Parcel No. 093.00-01-44.00-0000 and being MVP Parcel No. VA-RO-038; 1.89 Acres of Land, Owned by Trustees of Evangel Foursquare Church, Roanoke Cnty. Tax Map Parcel No. 093.00-01-47.00-0000 and being MVP Parcel No. VA-RO-039; 5.38 Acres of Land, Owned by Lucy A. Price, Franklin Cnty. Tax Map Parcel No. 0240003400 and being MVP Parcel No. VA-FR-008; 3.11 Acres of Land, Owned by Russell E. Callaway and Heide K. Callaway, Franklin Cnty. Tax Map Parcel No. 0240005400 and being MVP Parcel No. VA-FR-015.02; 5.93 Acres of Land, Owned by Charles Frederick Flora and Stephanie M. Flora, Franklin Cnty. Tax Map Parcel No. 0380002002 and being MVP Parcel No. VA-FR-017.20; 0.07 Acres of Land, Owned by Dale E. Angle and Mary A. Angle, Trustees of the Dale E. and Mary A. Angle Joint Revocable Trust, Franklin Cnty. Tax Map Parcel No. 0440006400 and being MVP Parcel No. VA-FR-077.01; 214 Acres of Land Owned by Dale E. Angle and Mary A. Angle Joint Revocable Trust, Franklin Cnty. Tax Map Parcel No. 0440006501 and being MVP Parcel No. VA-FR-078; 11.86 Acres of Land, Owned by Donald B.

PARTIES TO THE PROCEEDINGS—Continued

Barnhart, Franklin Cnty. Tax Map Parcel No. 0440007300 and being MVP Parcel No. VA-FR-081; 10.21 Acres of Land, Owned by William David Board, James R. Board, Susan Board Myers, Nancy B. Flora, and Kenneth Craig Board, Franklin Cnty. Tax Map Parcel No. 0450006100 and being MVP Parcel No. VA-FR-128; 0.30 Acres of Land, Owned by Robert Alan Pegram, Franklin Cnty. Tax Map Parcel No. 0650401600 and being MVP Parcel No. VA-FR-155.01; 1.85 Acres of Land, Owned by Oyler Land & Leasing, LLC, Franklin Cnty. Tax Map Parcel No. 0240004000 and being MVP Parcel No. VA-FR-4126 (AR FR-291); 0.83 Acres of Land, Owned by Susan Board Myers, William David Board, Kenneth Craig Board, and Nancy Board Flora, a/k/a William D. Board, Franklin Cnty. Tax Map Parcel No. 0450012003 and being MVP Parcel No. VA-FR-4141 (AR FR-313); 0.56 Acres of Land, Owned by William D. Board, Franklin Cnty. Tax Map Parcel No. 0450012005 and being MVP Parcel No. VA-FR-4277 (AR FR-313); 0.97 Acres of Land, Owned by William David Board, Kenneth Craig Board, Susan B. Myers, Nancy B. Flora, and James R. Board, Franklin Cnty. Tax Map Parcel No. 0450012001 and being MVP Parcel No. VA-FR-4278 (AR FR-313); 0.12 Acres of Land, Owned by Angela L. McGhee and Fredrick C. McGhee, Franklin Cnty. Tax Map Parcel No. 0370009905 and being MVP Parcel No. VA-FR-5411; 0.07 Acres of Land, Owned by Russell W. Lawless, Franklin Cnty. Tax Map Parcel No. 0370009907 and being MVP Parcel No. VA-FR-5413; 0.04 Acres of Land, Owned by Ronald B.

PARTIES TO THE PROCEEDINGS—Continued

Edwards, Sr., Gloria Martin, Terrance Edwards, Linda White, Ruby Penn, Janis E. Waller, Crystal Diane Edwards, and Penny Edwards Blue, Franklin Cnty. Tax Map Parcel No. 0660009502 and being MVP Parcel No. VA-FR-5434; 0.44 Acres of Land, Owned by Shelby A. Law, Franklin Cnty. Tax Map Parcel No. 0440200400 and being MVP Parcel No. VA-FR-5492; 3.15 Acres of Land, Owned by Robert Wayne Morgan and Patricia Ann Morgan, Franklin Cnty. Tax Map Parcel No. 0440018700 and being MVP Parcel No. VA-FR-5493; 3.11 Acres of Land, Owned by James Glynwood Haynes, Jr., Franklin Cnty. Tax Map Parcel No. 0440020001 and being MVP Parcel No. VA-FR-5504; 0.95 Acres of Land, Owned by James Glynwood Haynes, Jr., Franklin Cnty. Tax Map Parcel No. 0440019500 and being MVP Parcel No. VA-FR-5505; 0.38 Acres of Land, Owned by James Glynwood Haynes, Jr., Franklin Cnty. Tax Map Parcel No. 0440019300 and being MVP Parcel No. VA-FR-5507.

In case number 18-1187, petitioners James and Kathy Chandler; Georgia L. Haverty; Doe Creek Farm, Inc.; Michael and Margaret Slayton as Trustees of the Margaret McGraw Slayton Trust; Dowdy Farm, LLC; Sizemore Incorporated of Virginia; and Eagle's Nest Ministries, Inc. were appellants; none of the other appellants join in this petition. The full caption was *Mountain Valley Pipeline, LLC* v. *0.09 Acres of Land, Owned by Gary Hollopter and Allison Hollopter, Giles Cnty. Tax Map Parcel No. 30-4B and being MVP Parcel*

PARTIES TO THE PROCEEDINGS—Continued

No. VA-GI-5310; 0.18 Acres of Land, Owned by Georgia Lou Haverty, Giles Cnty. Tax Map Parcel No. 30-4A and being MVP Parcel No. BVGI-10; 6.50 Acres of Land, Owned by Sizemore Incorporated of Virginia, f/k/a National Committee for the New River, Giles Cnty. Tax Map Parcel No. 29-25B and being MVP Parcel No. VA-GI-035; 1.23 Acres of Land, Owned by Eagle's Nest Ministries, Inc., Giles Cnty. Tax Map Parcel No. 29-25 and being MVP Parcel No. VA-GI-035.01; 10.67 Acres of Land, Owned by Doe Creek Farm, Inc., Giles Cnty. Tax Map Parcel No. 30-4 and being MVP Parcel No. VA-GI-049; 2.19 Acres of Land, Owned by Stephen D. Legge, David Legge, and Phyllis J. Legge, Giles Cnty. Tax Map Parcel No. 44-3-3A and being MVP Parcel No. VA-GI-057; 5.25 Acres of Land, Owned by Mary Virginia Reynolds, Samuel Hale Reynolds, and Mary Sutton Reynolds, Giles Cnty. Tax Map Parcel No. 46-1-3 and being MVP Parcel No. VA-GI-097.01; 8.60 Acres of Land, Owned by Dowdy Farm LLC, Giles Cnty. Tax Map Parcel No. 46-52 and being MVP Parcel No. VA-GI-4250; 0.22 Acres of Land, Owned by Dowdy Farm, LLC, Giles Cnty. Tax Map Parcel No. 46-52 A. and being MVP Parcel No. VA-GI-5790; 10.26 Acres of Land, Owned by Samuel Hale Reynolds and Mary Sutton Reynolds, Giles Cnty. Tax Map Parcel No. 46-1-2A and being MVP Parcel No. VA-GI-5922; 7.18 Acres of Land, Owned by Michael Edward Slayton, Trustee or Margaret McGraw Slayton, Trustee, Margaret McGraw Slayton Living Trust, Montgomery Cnty. Tax Map Parcel No. 024590 and being MVP Parcel No. VA-MO-3371;

PARTIES TO THE PROCEEDINGS—Continued

0.22 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-41.00-0000 and being MVP Parcel No. BVRO-12; 0.41 Acres of Land, Owned by James D. Scott and Karen B. Scott, Roanoke Cnty. Tax Map Parcel No. 093.00-01-34.01-0000 and being MVP Parcel No. VA-RO-030 (AR RO-281); 2.17 Acres of Land, Owned by James D. Scott and Karen B. Scott, Roanoke Cnty. Tax Map Parcel No. 093.00-01-33.00-0000 and being MVP Parcel No. VA-RO-042; 0.341 Acres of Land, Owned by James D. Scott and Karen B. Scott, Roanoke Cnty. Tax Map Parcel No. 093.00-01-33.01-0000 and being MVP Parcel No. VA-RO-043; 0.41 Acres of Land, Owned by Lenora W. Montuori, Roanoke Cnty. Tax Map Parcel No. 110.00-01-54.00-0000 and being MVP Parcel No. VA-RO-058; 4.31 Acres of Land, Owned by James T. Chandler and Kathy E. Chandler, Roanoke Cnty. Tax Map Parcel No. 111.00-01-62.01-0000 and being MVP Parcel No. VA-RO-060; 4.31 Acres of Land, Owned by James T. Chandler and Kathy E. Chandler, Roanoke Cnty. Tax Map Parcel No. 117.00-01-38.00-0000 and being MVP Parcel No. VA-RO-061; 1.91 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-43.02-0000 and being Parcel No. VA-RO-062; 0.91 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of

PARTIES TO THE PROCEEDINGS—Continued

the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-43.00-0000, being MVP Parcel No. VA-RO-063; 2.99 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-46.00-0000 and being MVP Parcel No. VA-RO-064; 0.20 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-43.01-0000 and being MVP Parcel No. VA-RO-065; 0.19 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-42.00-0000 and being MVP Parcel No. VA-RO-066; 2.43 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-45.00-0000 and being MVP Parcel No. VA-RO-067; 0.50 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-41.01-0000 and being MVP Parcel No. VA-RO-4124; 0.33 Acres of Land, Owned by Lenora W. Montuori and Lenora Montuori and Kristina Montuori Hillman, Trustees of the Antonio Montuori Family Trust, Roanoke Cnty. Tax Map Parcel No. 117.00-01-41.02-0000

PARTIES TO THE PROCEEDINGS—Continued

and being MVP Parcel No. VA-RO-4125; 8.21 Acres of Land, Owned by Occanneechi, Inc., Franklin Cnty. Tax Map Parcel No. 0250004100 and being MVP Parcel No. VA-FR-017.11; 21.98 Acres of Land, Owned by Occanneechi, Inc., Franklin Cnty. Tax Map Parcel No. 0380001501 and being MVP Parcel No. VA-FR-017.15; 8.67 Acres of Land, Owned by James D. Scott and Karen B. Scott, Roanoke Cnty. Tax Map Parcel No. 093.00-01-34.00-0000 and being MVP Parcel No. VA-RO-040.

In case number 18-1242, petitioners Bruce and Mary Beth Coffey were appellants; none of the other appellants join in this petition. The full caption was *Mountain Valley Pipeline, LLC* v. *0.09 Acres of Land, Owned by Larry Bernard Cunningham and Carolyn A. Cunningham, Roanoke Cnty. Tax Map Parcel No. 063.00-01-20.03-0000 and being MVP Parcel No. VA-RO-5781; 0.11 Acres of Land, Owned by June Smith, Ray Smith, Patricia S. Devecha, Stephen R. Smith, Barry Scott Smith, Douglas F. Smith, David L. Smith, Fred Apgar, Ruth Apgar Glock, Donald Apgar, Gregory M. A, a/k/a Raymond Foster Smith, a/k/a Fred I. Apgar, a/k/a Frederick Apgar, a/k/a Gregory M. Apgar, a/k/a Angela H. Apgar, Unknown Heirs and Assigns of the Following June Smith and Ray Smith, Roanoke Cnty. Tax Map Parcel No. 063.00-01-25.00-0000 and being MVP Parcel No. VA-RO-033; 0.14 Acres of Land, Owned by Unknown Heirs or Assigns of Anthony B. Novitzki and Joanne A. Lofaro, Franklin Cnty. Tax Map Parcel*

PARTIES TO THE PROCEEDINGS—Continued

No. 0440206600 and being MVP Parcel No. VA-FR-5500; 4.90 Acres of Land, Owned by Brenda Lynn Williams, Giles Cnty. Tax Map Parcel No. 46-15 and being MVP Parcel No. VA-GI-200.019; 0.19 Acres of Land, Owned by Cletus Woodrow Bohon and Beverly Ann Bohon, Montgomery Cnty. Tax Map Parcel No. 030271 and being MVP Parcel No. VA-MN-5233 (AR MN-278.01); 0.39 Acres of Land, Owned by James C. Law and Carolyn D. Law, Montgomery Cnty. Tax Map Parcel No. 032431 and being MVP Parcel No. VA-MN-5234 (AR MN-278.01); 2.08 Acres of Land, Owned by Donald D. Apgar and Mildred M. Apgar, Montgomery Cnty. Tax Map Parcel No. 000843 and being MVP Parcel No. VA-MO-012; 2.69 Acres of Land, Owned by Brian David Glock and Susan Elizabeth Glock Buch, Montgomery Cnty. Tax Map Parcel No. 000844 and being MVP Parcel No. VA-MO-013; 2.74 Acres of Land, Owned by Cletus Woodrow Bohon and Beverly Ann Bohon, Montgomery Cnty. Tax Map Parcel No. 017761 and being MVP Parcel No. VA-MO-022; 2.12 Acres of Land, Owned by James Cabel Law and Carolyn Diana Eanes Law, Montgomery Cnty. Tax Map Parcel No. 018808 and being MVP Parcel No. VA-MO-024; 4.67 Acres of Land, Owned by James Cabel Law and Carolyn Diana Eanes Law, Montgomery Cnty. Tax Map Parcel No. 011673 and being MVP Parcel No. VA-MO-025; 12.20 Acres of Land, Owned by June Smith, Ray Smith, Patricia S. Devecha, Stephen R. Smith, Barry Scott Smith, Douglas F. Smith, David L. Smith, Fred Apgar, Ruth Apgar Glock, Gregory M. Apgar, and Ang, a/k/a

PARTIES TO THE PROCEEDINGS—Continued

Raymond Foster Smith, a/k/a Fred I. Apgar, a/k/a Frederick I. Apgar, Unknown Heirs or Assigns of the Following June Smith, and Ray Smith, Montgomery Cnty. Tax Map Parcel No. 120001 and MVP Parcel No. VA-MO-084; 3.35 Acres of Land, Owned by Thomas W. Triplett and Bonnie B. Triplett, Montgomery Cnty. Tax Map Parcel No. 024589 and being MVP Parcel No. VA-MO-5514; 2.07 Acres of Land, Owned by Phyllis M. Hutton, Montgomery Cnty. Tax Map Parcel No. 009443 and being MVP Parcel No. VA-MO-5515; 3.01 Acres of Land, Owned by Phyllis M. Hutton, Montgomery Cnty. Tax Map Parcel No. 026945 and being MVP Parcel No. VA-MO-5516; 6.86 Acres of Land, Owned by Juliana Bernholz and Irina Bernholz Siegrist, Montgomery Cnty. Tax Map Parcel No. 015895 and being MVP Parcel No. VA-MO-5526; 0.38 Acres of Land, Owned by James C. Law and Carolyn D. Law, Montgomery Cnty. Tax Map Parcel No. 002833 and being MVP Parcel No. VA-MO-5626; 4.03 Acres of Land, Owned by Matthew D. Rollier and Deanna D. Robinson, Roanoke Cnty. Tax Map Parcel No. 102.00-01-12.00-0000 and being MVP Parcel No. BVRO-04; 0.47 Acres of Land, Owned by Bruce M. Coffey and Mary E. Coffey, Roanoke Cnty. Tax Map Parcel No. 102.00-01-13.00-0000 and being MVP Parcel No. BVRO-05; 13.47 Acres of Land, Owned by John Coles Terry, III, Roanoke Cnty. Tax Map Parcel No. 102.00-01-08.00-0000 and being MVP Parcel No. VA-045; 8.37 Acres of Land, Owned by Frank H. Terry, Jr., John Coles Terry, III, and Elizabeth Lee Terry, a/k/a Elizabeth Lee Reynolds, Roanoke Cnty. Tax Map Parcel

PARTIES TO THE PROCEEDINGS—Continued

No. 102.00-01-02.00-0000 and being MVP Parcel No. VA-RO-046; 1.40 Acres of Land, Owned by Mary Ellen Rives, Roanoke Cnty. Tax Map Parcel No. 103.00-02-43.00-0000 and being MVP Parcel No. VA-RO-051; 1.85 Acres of Land, Owned by Jacquline J. Lucki, Roanoke Cnty. Tax Map Parcel No. 102.00-01-14.00-0000 and being MVP Parcel No. VA-RO-052; 9.89 Acres of Land, Owned by Elizabeth Lee Terry, a/k/a Elizabeth Lee Reynolds, Roanoke Cnty. Tax Map Parcel No. 110.00-01-44.00-0000 and being MVP Parcel No. VA-RO-054; 4.72 Acres of Land, Owned by Fred W. Vest, Roanoke Cnty. Tax Map Parcel No. 110.00-01-56.00-0000 and being MVP Parcel No. VA-RO-056; 2.93 Acres of Land, Owned by Lois King Waldron and Lois Mabel Waldron Martin, Roanoke Cnty. Tax Map Parcel No. 110.00-01-50.00-0000 and being MVP Parcel No. VA-RO-057; 2.05 Acres of Land, Owned by Howard M. Thompson and Christine W. Thompson, Roanoke Cnty. Tax Map Parcel No. 118.00-01-09.00-0000 and being MVP Parcel No. VA-RO-068; 0.94 Acres of Land, Owned by Martin G. Morrison and Patricia A. Boyd, Roanoke Cnty. Tax Map Parcel No. 063.00-01-20.00-0000 and being MVP Parcel No. VA-RO-4115; 2.20 Acres of Land, Owned by Hilah Parks Terry, Frank H. Terry, Jr., Elizabeth Lee Terry, John Coles Terry III, Grace Minor Terry, Unknown Heirs or Assigns of Frank H. Terry, Sr., Roanoke Cnty. Tax Map Parcel No. 103.00-02-01.00-0000 and being MVP Parcel No. VA-RO-4118 (AR RO-283); 0.28 Acres of Land, Owned by Jacquline J. Lucki, Roanoke Cnty. Tax Map Parcel No. 102.00-01-13.01-0000 and being

PARTIES TO THE PROCEEDINGS—Continued

MVP Parcel No. VA-RO-50; 0.32 Acres of Land, Owned by Grace Minor Terry, Roanoke Cnty. Tax Map Parcel No. 102.00-01-01.02-0000 and being MVP Parcel No. VA-RO-5149 (AR RO-279.01); 0.34 Acres of Land, Owned by Robin B. Austin and Allen R. Austin, Roanoke Cnty. Tax Map Parcel No. 110.00-01-45.00-0000 and being MVP Parcel No. VA-RO-5222 (AR RO-285); 0.33 Acres of Land, Owned by Elizabeth Lee Terry, a/k/a Elizabeth Lee Reynolds, Roanoke Cnty. Tax Map Parcel No. 093.00-01-46.00-0000 and being MVP Parcel No. VA-RO-5228 (ATWS-1224); 0.31 Acres of Land, Owned by Rebecca Jane Dameron, Roanoke Cnty. Tax Map Parcel No. 111.00-01-61.00-0000 and being MVP Parcel No. VA-RO-5383; 0.15 Acres of Land, Owned by Frank W. Hale and Flossie I. Hale and Robert Matthew Hamm and Aimee Chase Hamm, Roanoke Cnty. Tax Map Parcel No. 110.00-01-56.01-0000 and being MVP Parcel No. VA-RO-5748; 0.26 Acres of Land, Owned by Larry Bernard Cunningham and Carolyn A. Cunningham, Roanoke Cnty. Tax Map Parcel No. 063.00-01-21.00-0000 and being MVP Parcel No. VA-RO-5785; 1.38 Acres of Land, Owned by Alvin E. Wray, Linda L. Wray, L. Benton Wray, Jr., and Diane S. Wray, Franklin Cnty. Tax Map Parcel No. 250002100 and being MVP Parcel No. VA-FR-017; 11.45 Acres of Land, Owned by L. Benton Wray, Jr., Diane S. Wray, Alvin E. Wray, and Linda L. Wray, Franklin Cnty. Tax Map Parcel No. 0250002200 and being MVP Parcel No. VA-FR-017.02; 2.74 Acres of Land, Owned by Mark A. Pettipiece and Teresa J. Pettipiece, Giles Cnty. Tax Map Parcel No.

PARTIES TO THE PROCEEDINGS—Continued

47-1-3 and being MVP Parcel No. VA-GI-200.046; 0.87 Acres of Land, Owned by Bobby I. Jones and Richard Wayne Jones Revocable Trust, Richard Wayne Jones, Trustee, Franklin Cnty. Tax Map Parcel No. 0430105200 and being MVP Parcel No. VA-FR-070.01; 1.60 Acres of Land, Owned by Sandra H. Lancaster, Franklin Cnty. Tax Map Parcel No. 0430105000 and being MVP Parcel No. VA-FR-073; 3.70 Acres of Land, Owned by David J. Werner, Betty B. Werner, Ian Elliott Reilly, and Carolyn Elizabeth Reilly, Franklin Cnty. Tax Map Parcel No. 0440004300 and being MVP Parcel No. VA-FR-076.01; 1.72 Acres of Land, Owned by Guy W. Buford and Margaret S. Buford, Franklin Cnty. Tax Map Parcel No. 0440004400 and being MVP Parcel No. VA-FR-077; 0.292 Acres of Land, Owned by Gail Dudley Smithers and Ginger K. Smithers, Franklin Cnty. Tax Map Parcel No. 0450008100 and being MVP Parcel No. VA-FR-113; 8.56 Acres of Land, Owned by Gail Dudley Smithers and Ginger K. Smithers, Franklin Cnty. Tax Map Parcel No. 0450000902 and being MVP Parcel No. VA-FR-114; 8.60 Acres of Land, Owned by Gail Dudley Smithers, Franklin Cnty. Tax Map Parcel No. 0450001600 and being MVP Parcel No. VA-FR-117; 3.92 Acres of Land, Owned by Gail Dudley Smithers and Ginger K. Smithers, Franklin Cnty. Tax Map Parcel No. 0450006800 and being MVP Parcel No. VA-FR-119; 0.32 Acres of Land, Owned by Gail Dudley Smithers, Franklin Cnty. Tax Map Parcel No. 0450001500 and being MVP Parcel No. VA-FR-5151 (ATWS-1266); 0.15 Acres of Land, Owned by Russell R. Barksdale, Jr.,

PARTIES TO THE PROCEEDINGS—Continued

Franklin Cnty. Tax Map Parcel No. 0370009904 and being MVP Parcel No. VA-FR-5415; 4.14 Acres of Land, Owned by Mark E. Daniel and Angela D. Daniel, Franklin Cnty. Tax Map Parcel No. 0440011600 and being MVP Parcel No. VA-FR-5476; 7.82 Acres of Land, Owned by Thomas O. White, Jr., Trustee of the Beverly A. McLaughlin Testamentary Trust, Pittsylvania Cnty. Tax Map Parcel No. 1489-86-7542 and being MVP Parcel No. VA-PI-029.05; 1.23 Acres of Land, Owned by James M. Grubbs, Evelena Grubbs Rouse, and Enzy Grubbs Anderson, Unknown Heirs or Assigns of James M. Grubb, a/k/a Evelyn Rouse, Pittsylvania Cnty. Tax Map Parcel Nos. 2436-05-4452 and 2436-05-2564 and being MVP Parcel No. VA-PI-104; 3.42 Acres of Land, Owned by Henry Cox and Janet DeGroff, Montgomery Cnty. Tax Map Parcel No. 032870 and being MVP Parcel No. VA-MO-5520; 3.74 Acres of Land, Owned by Jerome David Henry and Doris Marie Henry, Roanoke Cnty. Tax Map Parcel No. 110.00-01-46.00-0000 and being MVP Parcel No. VA-RO-055.

In case number 18-1300, petitioner Orus Berkley was an appellant; none of the other appellants join in this petition. The full caption was *Mountain Valley Pipeline, LLC* v. *Cheryl L. Boone, Parcel ID No. 7-7-27.2; Kerry N. Boone, Parcel ID No. 7-7-27.2; Orus Ashby Berkley, Parcel ID No. 7-15A-13, 7-15A-13.1; Tammy A. Capaldo, Parcel ID No. 7-15-125; Carla D. Fountain, Parcel ID No. 05-19-36, 05-19-24; Dennis F. Fountain, Parcel ID No. 05-19-36, 05-19-24; Robert M. Jarrell,*

PARTIES TO THE PROCEEDINGS—Continued

Parcel ID No. 7-11-15; David Allen Johnson, Parcel ID No. 05-19-9; Everett Johnson, Jr., Parcel ID No. 05-19-9; Wayne Johnson, Parcel ID No. 05-19-9; Maury Johnson, Parcel ID No. 05-19-9; Elisabeth Tobey, Parcel ID No. 11-84-10; Ronald Tobey, Parcel ID No. 11-84-10; Patricia J. Williams, Parcel ID No. 05-25-1.13.

CORPORATE DISCLOSURE STATEMENT

Petitioners Doe Creek Farm, Inc.; Dowdy Farm, LLC; Sizemore Incorporated of Virginia; and Eagle's Nest Ministries, Inc. are nongovernmental corporations within the meaning of Rule 29.6. None of these petitioners has any parent corporation, and no publicly held company owns 10% or more of any of their stock. The remaining petitioners are natural persons.

RELATED PROCEEDINGS

- *Givens, et al. v. Mountain Valley Pipeline, LLC*, No. 18A1211, Supreme Court of the United States. Application to extend time to file a writ of certiorari granted May 24, 2019.
- *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, et al.*, Nos. 18-1159, 18-1165, 18-1175, 18-1181, 18-1187, 18-1242, and 18-1300 (consolidated), United States Court of Appeals for the Fourth Circuit. Judgment entered February 5, 2019.
- *Mountain Valley Pipeline, LLC v. Easements, et al.*, No. 7:17-cv-00492, United States District Court for the Western District of Virginia. Memorandum opinion issued January 31, 2018.
- *Mountain Valley Pipeline, LLC v. Simmons, et al.*, No. 1:17-cv-211, United States District Court for the Northern District of West Virginia. Memorandum opinion issued February 2, 2018.
- *Mountain Valley Pipeline, LLC v. An Easement, et al.*, No. 2:17-cv-04214, United States District Court for the Southern District of West Virginia. Memorandum opinion issued February 21, 2018.

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PETITION FOR WRIT OF CERTIORARI

In the push for the United States to become a net exporter of energy, the demand for new gas pipelines has surged. Newly formed limited liability companies have rushed to the Federal Energy Regulatory Commission, asking for certificates to build interstate pipelines under the Natural Gas Act (NGA), 15 U.S.C. §717 *et seq*. The NGA gives pipeline companies with a FERC certificate the power to take land for their projects using the straight, ordinary power of condemnation.

But private pipeline companies are not content with the ordinary takings power: they do not want to wait until after the trial on compensation to take land for their pipelines. The companies want the land now.

FERC certificate in hand, the companies run to federal district court asking for a preliminary injunction giving them immediate access to begin bulldozing land and cutting down trees in the proposed right-of-way before securing the state and federal permits needed to lay their line. They make the request even though the NGA confers no right to early entry and even though there is no guarantee that the permits will ever be granted—or the pipeline ever built.

In this context, the courts of appeals disagree about how to analyze a pipeline company's request for preliminary injunction.

The Fourth Circuit and those following it have focused on the perceived inevitability that the pipeline will be built, believing that the pipeline company's

power to take land under the NGA renders the timing of possession (now versus after transfer of ownership) irrelevant.

By contrast, the Seventh Circuit recognizes it is beyond a court's power to grant an injunction based on substantive rights that a party is likely to receive in the future—here, those arising from ownership of the condemned property following payment of the final judgment. Instead, federal courts may only grant a preliminary injunction based on the substantive rights that the parties have at the time the injunction issues. And on that analysis, neither federal statute nor state law gives pipeline companies any substantive right to immediate possession; rather, landowners maintain their state-law property rights through the time of trial.

Misreading the Seventh Circuit's analysis, the Fourth Circuit's approach gets the law wrong, but this case is about much more than error correction. The court below affirmed the judicial creation of a new substantive right—and the abrogation of state-law property rights—through preliminary injunctions that disrupt rather than preserve the status quo through trial. As a result, landowners suffer harms they would not have incurred—and that likely are not compensable—in the ordinary condemnation process. The power grab endorsed below also arrogates power to the federal judiciary that rightly belongs to Congress and the States.

This petition offers a uniquely good vehicle to resolve the division of authority. The landowners preserved the issue, the split among the appellate courts is mature, and this is a live controversy on an issue sure to impact thousands more landowners across the country. Further, the pipeline company's failure to secure its required permits creates an opportunity, before the pipeline could become operational, for the Court to resolve whether the preliminary injunctions blessed by the Fourth Circuit are a proper exercise of federal judicial power.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 915 F.3d 197 and reproduced at App. 1-54. The memorandum opinions and orders granting injunctions by the Western District of Virginia in No. 7:17-cv-00492-EKD, the Northern District of West Virginia in No. 1:17-cv-00211-IMK, and the Southern District of West Virginia in No. 2:17-cv-04214 are unpublished and are reproduced at App. 55-125, 126-181, and 182-217, respectively.

JURISDICTION

The Fourth Circuit issued its opinion on February 5, 2019. App. 1-54. On May 24, 2019, the Chief Justice extended the time to file a petition for a writ of

certiorari to and including July 3, 2019. This Court has jurisdiction under 28 U.S.C. §1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The respondent claims authority to condemn the petitioners' properties pursuant to the Natural Gas Act, 15 U.S.C. §717f(h), which provides, in relevant part:

> When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, . . . it may acquire the same by the exercise of the right of eminent domain in the district court for the district in which such property may be located, or in the State courts.

The Fifth Amendment to the United States Constitution provides, in relevant part:

> No person shall . . . be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

A. Factual and Statutory Background

Fifteen years ago, Petitioner Karolyn Givens and her late husband, Clarence, bought a farm. C.A. App. 1224. The Givenses relied on their farm as a source of income as they approached retirement. C.A. App. 1225-1226. They raised cattle, grew corn and hay, leased a field to another farmer, and rented out a house on the property. *Ibid.*

Beginning in 2014, Respondent Mountain Valley Pipeline (MVP) began efforts to build a pipeline that would cut through Karolyn and Clarence's farm. C.A. App. 2751. MVP is a Delaware limited liability company formed in 2014. C.A. App. 2747-2748. A joint venture, MVP has one purpose: building and operating a 303-mile natural-gas pipeline from the Marcellus and Utica shale formations in northwestern West Virginia to southern Virginia. *Ibid.*

MVP's line is 42 inches in diameter, roughly the size of a large hula hoop. C.A. App. 2749. When complete, the line will have capacity to ship two billion cubic feet of natural gas per day, enough to power all of Delaware's natural-gas needs for more than two weeks. *Ibid.*

MVP's pipeline is part of a wave of new pipelines across the country. Over the past decade, advances in directional drilling and hydraulic fracturing, or fracking, have made large-scale recovery of oil and gas from

shale economical for the first time.[1] Industry pitched fossil-fuel exports as a win-win for both consumers and American influence abroad. Starting in 2013, the U.S. Department of Energy fast-tracked approvals for natural-gas exports and the infrastructure needed to support them, including liquefied-natural-gas (LNG) plants, LNG port terminals, and natural-gas pipelines.[2]

When the Givenses learned about MVP's pipeline and its potential impact on their farm, MVP was seeking regulatory approval from FERC.

FERC oversees interstate pipelines. Under the NGA, Congress charged FERC with the responsibility to determine whether a proposed pipeline "is or will be required by the present or future convenience and necessity." 15 U.S.C. §717f(e). The NGA empowers FERC to "attach to the issuance of the certificate . . . such reasonable terms and conditions as the public convenience and necessity may require." *Ibid.*

The NGA also gives FERC authority over the rates charged for interstate-pipeline services, requiring the rates to be "just and reasonable." 15 U.S.C. §717c(a). FERC has set rates that allow investors a 14 percent return on equity. C.A. App. 2779-2780. In the aftermath

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[1] Jack Perrin & Troy Cook, *Hydraulically fractured wells provide two-thirds of U.S. natural gas production*, U.S. Energy Information Administration (May 5, 2019), https://perma.cc/8LMG-RXMM.

[2] Jie Jenny Zou, *How Washington unleashed fossil-fuel exports and sold out on climate*, The Texas Tribune (Oct. 16, 2018), https://perma.cc/F8GF-YYSZ.

of the 2008 financial crisis, that high rate of return on pipeline projects has attracted billions of dollars of investment for new pipelines. See Zou, note 2, *supra*. The combination of technological advances, government support, and large amounts of funding has led to a dramatic increase in interstate pipelines over the last decade. *Ibid.*

As members of a nonprofit historical committee, Karolyn and Clarence Givens participated in the FERC process and expressed opposition to MVP's proposed pipeline. Like other petitioners who intervened in the process, the Givenses were concerned about the pipeline's impact on streams, trees, wells, and wildlife and about possible pipeline leaks, explosions, and other hazards.

Clarence passed away on August 23, 2017, leaving Karolyn living on a fixed income that depends on rents from the farm. C.A. App. 1224.

On October 13, 2017, less than two months later, FERC granted MVP a conditional certificate of public convenience and necessity lasting three years. C.A. App. 2747, 2854-2857. Despite expressing concern that the pipeline would cause erosion in mountainous areas and adversely impact streams, the FERC commissioners voted 2-1 to approve MVP's project. C.A. App. 2804, 2807, 2811, 2857, 2882-2886. The certificate's conditions—many dealing with environmental issues—require MVP to secure several federal and state permits before construction can begin. *E.g.*, C.A. App. 2781, 2794, 2870-2881.

B. Proceedings Below

Less than two weeks after receiving its conditional FERC certificate, MVP sued all of the landowners along the entire 303-mile route of the pipeline. C.A. App. 136, 2118.[3] Given the properties' locations, MVP filed lawsuits in three separate judicial districts. *Ibid.*

Most petitioners first learned they had been sued—and that MVP was seeking to seize part of their land immediately—when they discovered a thick packet with two filings duct-taped to their doors. MVP had simultaneously served the landowners with the original complaint and a consolidated motion for partial summary judgment (on its power to condemn land under the NGA) and for a preliminary injunction ordering immediate possession. C.A. App. 462, 1602, 2284.

The district courts held hearings to consider MVP's requests for summary judgment on its power to condemn and its injunction request for immediate possession. C.A. App. 928, 1631, 2397. With immediate possession, MVP would bulldoze large swaths of land along the pipeline's route before the lawsuits—or its permit applications—ran their course. MVP would cut down millions of trees, dig out hillsides, and destroy

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[3] MVP originally sued all West Virginia landowners in the U.S. District Court of the Southern District of West Virginia even though some of the subject properties are in the Northern District of West Virginia. MVP fixed the venue problem by bringing its third lawsuit in the proper court. See C.A. App. 1567.

other property in carving a 125-foot-wide clear-cut swath through previously pristine countryside.

The petitioners testified about the injuries they would suffer if the courts awarded MVP early possession. The landowners would have no opportunity to set up safeguards to mitigate environmental damage to their water and land. C.A. App. 1118, 1227. They also testified about losses they would suffer—and never recover—if MVP were granted possession now rather than at the end of trial. C.A. App. 1226-1228, 1288-1289, 1321-1324.

Karolyn Givens, for example, testified that MVP's early taking would prompt her residential tenant to move out and force Karolyn to move her cattle to fields rented from another farmer. C.A. App. 1226-1227. That lost income and her extra costs, both of which would likely not be recoverable in the condemnation proceeding, would impose a real hardship. For a widow on a fixed income, missing out on one or two years of rents means a great deal.

Complaints like Karolyn's were for naught. All three district courts recognized MVP's condemnation power and issued injunctions granting MVP immediate possession. App. 124, 180, 216-217. The courts pointed to the Fourth Circuit's decision in *East Tennessee Natural Gas Co.* v. *Sage*, 361 F.3d 808 (2004), as mandating that outcome. App. 96-97, 153-154, 173, 184, 199-200.

The petitioners appealed, arguing that the injunctions exceeded the district courts' equitable powers

and their authority under Federal Civil Procedure Rule 65, violated the Rules Enabling Act, 28 U.S.C. §2072, and offended constitutional separation of powers. The Fourth Circuit, upholding the injunctions, held that its previous decision in *Sage* was "on all fours." App. 35. The petitioners filed a timely motion for panel and en banc rehearing, which was denied without opinion. App. 218.

C. Early Possession and Suspended Permits

Back on the farm, MVP used its immediate possession to raze a path for its pipeline. Karolyn Givens walks along that path of destruction. She sees barren stretches of earth, car-sized boulders, newly exposed caves and sinkholes, mangled fences, and rust-colored stains of erosion running down her hillside.

Yet MVP's project has stalled. Decisions from the Fourth Circuit have vacated permits that were conditions of MVP's FERC certificate.[4] Thus, despite inflicting permanent damage to the petitioners' land, MVP cannot build its pipeline right now—and may never be able to.

[4] *Sierra Club* v. *U.S. Forest Serv.*, 897 F.3d 582 (4th Cir. 2018) (vacating decisions by the Forest Service and the Bureau of Land Management to grant MVP rights-of-way through national forests); *Sierra Club* v. *U.S. Army Corps of Eng'rs*, 909 F.3d 635 (4th Cir. 2018) (vacating MVP's Corps permit under the Clean Water Act).

REASONS FOR GRANTING THE PETITION

I. The Opinion Below Exceeds Important Limits on Federal Judicial Power.

In federal takings cases, Congress, state law, and the Constitution are the sole sources of the litigants' substantive rights. Congress defines the substantive power of the taker. State law defines the underlying property rights of the landowner. The Constitution requires that the taking be for public use and guarantees just compensation to the landowner. The federal judiciary applies these substantive rights in takings cases, but it has no power to create new rights or abridge old ones.

The decision of the court of appeals ignores those first principles and other limits on the federal courts' injunctive power. Conflicting with the Seventh Circuit's approach, the Fourth Circuit's decision allows district courts to award interstate pipeline companies immediate possession of property before the trial on just compensation—even though Congress has not given the companies that substantive power. Orders granting immediate possession thus enlarge the pipeline company's substantive rights and abridge those of the landowners, exceeding both equitable and statutory limits on federal judicial power. These preliminary injunctions also award interim relief (immediate possession) different from what the final judgment offers (an option to purchase at a set price) and change the status quo instead of preserving it.

A. Congress gives pipeline companies substantive power to take by the ordinary condemnation process, but no substantive right to immediate possession.

"Congress and Congress alone" holds the federal power of eminent domain. *First English Evangelical Lutheran Church of Glendale* v. *Los Angeles Cty.*, 482 U.S. 304, 321 (1987).

Congress chooses who may exercise that power. It routinely gives federal actors the power to take property.[5] Congress also occasionally delegates its takings power to private entities such as public utilities, railroad companies, and toll-road companies to build infrastructure projects.[6] Such delegation to a private entity is what happened here. Under the NGA, Congress delegates the takings power to private companies, like MVP, that have obtained a certificate of public convenience and necessity from FERC to build an interstate pipeline. 15 U.S.C. §717f(h).

Besides choosing who can use the takings power, Congress also has exclusive authority to decide how

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[5] See, *e.g.*, *Kohl* v. *United States*, 91 U.S. 367, 371 (1875) (allowing the federal government to take land for a customs house and post office); *United States* v. *Gettysburg Elec. R.R.*, 160 U.S. 668, 679 (1896) (recognizing the federal government's power to acquire land to preserve the Gettysburg Battlefield).

[6] See, *e.g.*, *Noble* v. *Oklahoma City*, 297 U.S. 481 (1936) (railroad); *Luxton* v. *N. River Bridge Co.*, 153 U.S. 525 (1895) (bridge); *Curtiss* v. *Georgetown & Alexandria Turnpike Co.*, 10 U.S. (6 Cranch) 233 (1810) (turnpike).

that power may be exercised. See *Secombe* v. *Milwaukee & St. P. R. Co.*, 90 U.S. 108, 118 (1874) ("[T]he mode of exercising the right of eminent domain . . . is within the discretion of the legislature."); *United States* v. *Parcel of Land*, 100 F. Supp. 498, 504 (D.D.C. 1951) ("While the power of eminent domain is an inherent right of sovereignty, it is not open to question that such power lies dormant until legislative action is had pointing out the occasions, modes, agencies and conditions for its exercise.").

Congress can authorize an "expeditious" procedure by statute, where the condemnor takes the property before trial and pays the court-determined price later. *Kirby Forest Indus., Inc.* v. *United States*, 467 U.S. 1, 3-5 (1984). But if Congress does not give a special right to early access, then the default rule applies. *Ibid.* The rule of "straight," ordinary condemnation is simple: pay the final judgment first and take the property afterward. *Ibid.*[7]

The substantive rights in an ordinary condemnation are straightforward. State law defines the landowners' preexisting property rights. *Armstrong* v. *United States*, 364 U.S. 40, 44 (1960); see also *Murr* v. *Wisconsin*, 137 S. Ct. 1933, 1950 (2017) (Roberts, C.J., dissenting) ("Our decisions have, time and again, declared that the Takings Clause protects private property rights as state law creates and defines them.").

[7] See also *Danforth* v. *United States*, 308 U.S. 271, 284 (1939) (holding the actual "taking" in straight condemnation—meaning transfer of title—"takes place upon the payment of the money award by the condemnor").

Those rights—such as rights to exclude others and peacefully enjoy property—remain intact until someone else's substantive rights supersede them.

Kirby Forest and other decisions of this Court peg when that tipping point occurs. After the taker sues the property owner and identifies the property interests to be taken, the parties proceed to trial on the issue of just compensation. *Kirby Forest*, 467 U.S. at 4. The final judgment then gives the taker a contingent property interest: "The practical effect of final judgment on the issue of just compensation is to give the [taker] an option to buy the property at the adjudicated price." *Ibid.*

Thus, it is payment of the final-judgment amount, rather than a statute, that gives the taker a substantive power to seize the property. *Kirby Forest*, 467 U.S. at 4; *Bauman* v. *Ross*, 167 U.S. 548, 598 (1897) (holding condemnors "are not entitled to possession of the land until the damages have been assessed" in straight condemnation, because the irrevocable act of taking "and the vesting of title in the [condemnor] are to be contemporaneous").

While the courts of appeals are split on whether the judiciary may award pretrial possession to pipeline companies for NGA takings (Part II), there is no dispute that these cases involve only the straight, ordinary takings power.

Applying straight-condemnation rules to these takings, the landowners maintain their state-law property rights to exclusive possession and use of their land

through the time of trial. In turn, the pipeline company obtains a substantive right to possession only after exercising its option to take the property rights by paying the final judgment's price for the pipeline easement.

B. The Fourth Circuit's approach exceeds the limits of equity and Rule 65 by creating new substantive rights for pipeline companies and abridging the existing rights of landowners.

The court of appeals, following *East Tennessee Natural Gas Co.* v. *Sage*, 361 F.3d 808 (4th Cir. 2004), pointed to the judiciary's inherent equitable power and Rule 65 as the sources of the district courts' authority to issue the injunctions here. App. 33-36. But both putative sources of power—inherent equitable power and Rule 65—have important limits. These injunctions violate those limits.

Whether in equity or under Rule 65, the basic rule is the same: courts cannot use injunctions to create new substantive rights or change existing ones. Because "equity follows the law," injunctions cannot impose a remedy that overshoots the movant's legal entitlements. *Douglas* v. *Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 619-620 (2012). Under "traditional principles of equity jurisdiction," an injunction must stay within—not exceed—the scope of the parties' underlying substantive rights. *Grupo Mexicano de Desarrolo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-319 (1999).

The same limits apply to Rule 65 injunctive power. The Rules Enabling Act mandates that the federal rules "shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. §2072(b). Any "application of a federal rule that effectively abridges, enlarges, or modifies a state-created right or remedy violates this command." *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 418 (2010) (Stevens, J., concurring).[8] Courts cannot use a preliminary injunction to add to—or to subtract from—the parties' underlying legal entitlements. *Ibid.*

Yet that is exactly what these injunctions do. They give the pipeline company a new right to possession "*right now*." *N. Border Pipeline Co.* v. *86.72 Acres of Land*, 144 F.3d 469, 471 (7th Cir. 1998). And they strip the landowners of their still-extant state-law property rights, including the "right to exclude others[,] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Dolan* v. *City of Tigard*, 512 U.S. 374, 393 (1994) (quoting *Kaiser Aetna* v. *United States*, 444 U.S. 164, 176 (1979)); see also *J.I. Case Co.* v. *United Va. Bank*, 349 S.E.2d 120, 124 (Va. 1986) (defining the right of possession as a

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[8] Because Justice Stevens "concurred in the judgment on the narrowest grounds," his opinion is controlling. *Marks* v. *United States*, 430 U.S. 188, 193 (1977). The majority of courts of appeals follow his *Shady Grove* concurrence. *Whitlock* v. *FSL Mgmt., LLC*, 843 F.3d 1084, 1091 n.2 (6th Cir. 2016); *James River Ins. Co.* v. *Rapid Funding, LLC*, 658 F.3d 1207, 1217 (10th Cir. 2011); *Godin* v. *Schenks*, 629 F.3d 79, 89-90 (1st Cir. 2010). But see *Abbas* v. *Foreign Policy Group, LLC*, 783 F.3d 1328, 1337 (D.C. Cir. 2015) (Kavanaugh, J.).

"substantive right[]" of Virginia landowners); *Don S. Co., Inc.* v. *Roach*, 285 S.E.2d 491, 495 (W. Va. 1981) (defining the landowner's "vital interest in the continued possession and enjoyment of his real property" as a "fundamental right[]").

The court of appeals never paused to analyze the parties' substantive rights, misled by the belief that these takings were inevitable and its erroneous conviction that the timing of possession did not matter. See App. 33-36; *Sage*, 361 F.3d at 829 ("This is simply a timing argument because productive capacity would still be disturbed, albeit at a later time.").

But of course timing matters. Substantive property rights are intrinsically tied to—and are defined by—the timing of possession. Basic property-law examples prove this. A person with a lease starting next February has no substantive right to possession today. A life estate is no longer a life estate if the life tenant is dispossessed while still breathing. Changing the timing of possession fundamentally changes the underlying substantive right.

The injunctions undermine other bedrock principles of equitable relief. The very "purpose of a preliminary injunction is merely to preserve the relative positions of the parties" pending trial. *Benisek* v. *Lamone*, 138 S. Ct. 1942, 1945 (2018). These injunctions do the opposite. Before the injunctions, the landowners could choose whom to let through their doors. After the injunctions, MVP does not need the landowners' consent to enter. Also, in granting immediate possession,

these orders gifted MVP a right greater than the purchase option it would have received at final judgment. That violates the rule that preliminary injunctions can issue only "to grant intermediate relief of the same character as that which may be granted finally." *De Beers Consol. Mines* v. *United States*, 325 U.S. 212, 220 (1945).

The limits on the judiciary's inherent equitable power and Rule 65 keep the judiciary in its proper lane, ensuring that federal courts apply the law, not create it. In granting these preliminary injunctions, several courts of appeals have strayed into the wrong lane. Review is necessary to reaffirm the principle that, subject to constitutional limits, Congress and state law may create and alter substantive rights, but the federal judiciary must not.

II. The Courts of Appeals Are Irreconcilably Split on Whether Courts May Grant Early Possession in NGA Takings Cases.

Courts of appeals are divided on whether district courts have authority to grant immediate possession in straight-condemnation proceedings under the NGA. Even though some courts deny its existence, that split is real and abiding. Such denials lead more courts down the wrong path, reinforcing the need for this Court's review.

The Seventh Circuit addressed the issue first. The court began by confirming that a "preliminary injunction may issue only when the moving party has a

substantive entitlement to the relief sought," but recognized that neither state law nor the NGA created any "entitlement to immediate possession of the land." *N. Border*, 144 F.3d at 471. To justify granting early possession, a pipeline company must "claim[] an ownership interest in the property that, if it existed at all, was fully vested even before the initiation of the lawsuit." *Id.* at 472.

Under the Seventh Circuit's approach, the condemnation process itself cannot be the source of an entitlement to early possession. See *N. Border*, 144 F.3d at 471-472. Without a "substantive entitlement to defendants' land right now, *rather than an entitlement that will arise at the conclusion of the normal eminent domain process*," the pipeline company "is not eligible for [injunctive] relief." *Id.* at 471 (emphasis added). Absent a "preexisting entitlement to the property" that predates the condemnation case, a district court has "no authority to enter a preliminary injunction awarding immediate possession." *Id.* at 471-472.

Six years later, the Fourth Circuit reached the opposite conclusion in *Sage*. Facing a situation where the pipeline was already in the ground, the court of appeals affirmed the lower court's immediate-possession injunction, holding that "once a district court determines that a gas company has the substantive right to condemn property under the NGA, the court may exercise equitable power to grant the remedy of immediate possession through the issuance of a preliminary injunction." 361 F.3d at 828. The court conceded that the NGA "contains no provision for quick-take or

immediate possession," but reasoned that after "the right to condemn is established by court order, it follows that the company will be entitled to possession when title is transferred at the end of the case." *Id.* at 822, 825. Thus, summary-judgment orders "determining that [the pipeline company] has established its right to exercise eminent domain . . . gave [it] an interest in the landowners' property that could be protected in equity." *Id.* at 823.

The approaches of the Seventh and Fourth Circuits cannot be reconciled. The Seventh Circuit holds that the substantive right to immediate possession must come from Congress or state law—and not merely from the ordinary eminent-domain power, which gives the taker an option to take land only at the end of the condemnation process. *N. Border*, 144 F.3d at 471-472; see also *Kirby Forest*, 467 U.S. at 3-4.

The power to take later is not the power to take "*right now*." *N. Border*, 144 F.3d at 471. In contrast, the Fourth Circuit says that judicial recognition of a pipeline company's right to take later somehow confers a power to take right now. *Sage*, 361 F.3d at 825.

Attempting to distinguish *Northern Border*, the Fourth Circuit concluded there was no split with the Seventh Circuit because the pipeline company in *Northern Border* made the mistake of "not obtain[ing] an order determining that it had the right to condemn before it sought a preliminary injunction." 361 F.3d at 827. But that distinction is illusory. Judicial recognition of a pipeline company's right to take—an "order

confirming the right to condemn"—is not the source of any substantive power. *Transwestern Pipeline Co.* v. *9.32 Acres*, 544 F. Supp. 2d 939, 945-947 (D. Ariz. 2008) (finding the Fourth Circuit's approach unpersuasive because "the district court's order did not give the gas company anything that it did not already have, namely the eminent domain authority granted under §717f(h) of the NGA").

The true source of a pipeline company's right to take is the NGA and the FERC certificate, and neither of them creates a right to take land before the trial on compensation. *Kirby Forest*, 467 U.S. at 3-4 (discussing straight-condemnation procedure); see also Part I.B, *supra*.

Understanding this, the Seventh Circuit insisted on a "preexisting entitlement to the property" created by "substantive federal or state law" other than the condemnation power to justify early possession. *N. Border*, 144 F.3d at 471-472. Only by deep-sixing that linchpin of the Seventh Circuit's analysis could the Fourth Circuit claim there was no conflict with *Northern Border*.

Buying the Fourth Circuit's no-split reasoning, the Third, Sixth, Eighth, Ninth, and Eleventh Circuits replicated and adopted *Sage*'s fundamental flaw.[9] The

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[9] *Transcontinental Gas Pipe Line Co.* v. *6.04 Acres*, 910 F.3d 1130, 1152 (11th Cir. 2018); *Transcontinental Gas Pipe Line Co.* v. *Permanent Easements*, 907 F.3d 725, 736-737 & n.70, 739 (3d Cir. 2018); *Nexus Gas Transmission, LLC* v. *City of Green*, 757 F. App'x 489, 491 n.2 (6th Cir. 2018); *Alliance Pipeline L.P.* v. *4.360*

decision below likewise confirms the Fourth Circuit's continued adherence to *Sage*. App. 35-36 (finding this case "on all fours with *Sage*," which "squarely forecloses the Landowners' argument that the district courts lacked the authority to grant immediate possession in an NGA condemnation").

The divergence between the Seventh and Fourth Circuit approaches "creates the kind of split of authority" the Court "typically think[s] [it] need[s] to resolve." *Mata* v. *Lynch*, 135 S. Ct. 2150, 2156 (2015). And the Fourth Circuit cannot "prevent[ ] that split from coming to light" simply by "recharacterizing" *Northern Border* and denying that any split exists. *Ibid.*

If anything, the Fourth Circuit's incorrect assertion that there is no split makes it even more important that the Court step in. Without intervention, some lower courts have recognized the split.[10] But most have uncritically accepted the Fourth Circuit's no-split analysis at face value, abridging the substantive rights of an ever-growing number of landowners. *E.g.*, *6.04*

Acres, 746 F.3d 362, 368 (8th Cir. 2014); *Transwestern Pipeline Co.* v. *17.19 Acres*, 550 F.3d 770, 776-777 (9th Cir. 2008).

[10] See, *e.g.*, *N. Nat. Gas Co.* v. *Approximately 9117.53 Acres*, No. 10-1232-MLB, 2012 WL 859728, at *7 (D. Kan. Mar. 13, 2012) (rejecting *Northern Border* and following "the reasoning of *Sage*"); *9.32 Acres*, 544 F. Supp. 2d at 945-947 (calling *Northern Border* and *Sage* "incompatible with one another" and the Fourth Circuit's attempt to distinguish *Northern Border* unpersuasive); *Nw. Pipeline Corp.* v. *The 20' x 1,430' Pipeline Right of Way Easement*, 197 F. Supp. 2d 1241, 1244-1245 (E.D. Wash. 2002) (finding *Northern Border* "difficult to harmonize" with the now-majority view).

Acres, 910 F.3d at 1152; *Permanent Easements*, 907 F.3d at 736-739; *17.19 Acres*, 550 F.3d at 776-777.

III. The Question Presented Is Exceptionally Important and Has Wide-Ranging Impact.

A. These injunctions misappropriate powers rightly belonging to Congress and the States.

1. The injunctions are a judicial infringement on Congress's power to prescribe the methods of condemnation.

Congress alone holds the keys to set the methods and modes of condemnation, including delegating the power to take now and pay later. See *Kirby Forest*, 467 U.S. at 3-5, 11-12, 13 n.20 (citing federal statutes and looking to congressional intent for eminent-domain procedure); *Secombe*, 90 U.S. at 118. Congress did not grant private pipeline companies the power to take early possession under the NGA or any other statute. The judiciary gave the pipeline company that extraordinary power anyway. See *17.19 Acres*, 550 F.3d at 774 (noting the "additional [quick-take] right conferred" by Congress is missing from §717f(h) of the NGA).

When, as here, a condemnation statute is silent on the issue of immediate possession, congressional silence means "no." See *United States* v. *Carmack*, 329 U.S. 230, 243 n.13 (1946) (contrasting the sovereign's broad eminent domain power with the limited grant of eminent domain power to public utilities and private

corporations, which does "not include sovereign powers greater than those expressed or necessarily implied"); *City of Cincinnati* v. *Vester*, 281 U.S. 439, 448 (1930) (holding takings-power delegations must be "strictly followed"); *W. Union Tel. Co.* v. *Pa. R. Co.*, 195 U.S. 540, 569 (1904) ("The exercise of eminent domain is against common right. It subverts the usual attributes of the ownership of property. It must, therefore, be given in express terms or by necessary implication."). The judiciary invades Congress's exclusive prerogative by allowing pipeline companies to take early possession where Congress has not delegated that power.

2. The orders also offend federalism, undermining the compromise Congress and the States struck under the Clean Water Act.

The Clean Water Act (CWA) recognizes and protects the States' "primary responsibilities and rights" in preserving water quality and preventing water pollution. 33 U.S.C. §1251(b). As part of this authority, a State has power to deny certifications under the Act if, in the State's judgment, a federally approved project causes too much harm. 33 U.S.C. §1341; see also *S.D. Warren Co.* v. *Maine Bd. of Envtl. Protection*, 547 U.S. 370, 386 (2006) ("State certifications under [CWA] §401 are essential in the scheme to preserve state authority to address the broad range of pollution.").

The district-court injunctions infringe on a State's ability to exercise its veto power—before potential

damage is done—on pipeline projects that impact water sources. With immediate possession, pipeline companies can inflict environmental harm before a State has the chance to say "no," undermining the authority that the CWA vests with the States.

B. Immediate possession harms landowners—often irreparably—in ways that straight condemnation does not.

The injunctions let MVP cut down trees and bulldoze land before anyone knows whether the pipeline will ever be built. The risk of needless destruction is not hypothetical. MVP has lost multiple required permits.[11] Without them, MVP cannot build its pipeline. C.A. App. 2816.

This situation is not unique. The Atlantic Coast Pipeline, following the Fourth Circuit's recent revocation of key permits, may be rerouted or canceled—even though the district court had already granted immediate access.[12] And the Holleran family lost their property and livelihood when a Pennsylvania district court

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[11] *U.S. Forest Serv.*, 897 F.3d 582; *U.S. Army Corps of Eng'rs*, 909 F.3d 635.

[12] *Cowpasture River Preservation Ass'n* v. *Forest Serv.*, 911 F.3d 150 (4th Cir. 2018) (invalidating Atlantic Coast Pipeline's Forest Service permit); *Sierra Club* v. *U.S. Dep't of Interior*, 899 F.3d 260 (4th Cir. 2018) (vacating Fish and Wildlife Service and National Park Service permits, which were subsequently reissued and suspended again); see also *e.g.*, *Atl. Coast Pipeline, LLC* v. *0.25 Acre*, No. 2:18-CV-3-BO, 2018 WL 1369933, at *5-6 (E.D.N.C. Mar. 16, 2018) (authorizing Atlantic Coast Pipeline to take immediate possession).

granted immediate access to another pipeline company, allowing it to cut down a 200-year-old grove of sugar maples the family used to make syrup. Even so, the pipeline company ultimately failed to obtain a required environmental permit and canceled the project, leaving heaps of rotting maple trees strewn across the family's land.[13]

Lost permits are not the only reason for canceling a pipeline project. Markets change. Gas prices drop. Funding may dry up.

If so, the landowners whose land has been forever marred face the likelihood of never being compensated. MVP—like most FERC pipeline companies—is a single-purpose LLC whose only real asset is the pipeline itself. If a pipeline project is canceled, the single-purpose owner will shutter operations and leave no money to compensate the landowners for the destruction caused by premature takings. That, of course, offends the Fifth Amendment's guarantee that the landowner be put to no risk of an uncompensated taking. See

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[13] *Constitution Pipeline Co.* v. *A Permanent Easement for 1.84 Acres*, No. 3:14-2458, 2015 WL 1220248, at *3-4 (M.D. Pa. Mar. 17, 2015) (granting immediate possession to the Hollerans' property); *Constitution Pipeline Co.* v. *N.Y. State Dep't of Envtl. Conservation*, 868 F.3d 87, 91, 100-103 (2d Cir. 2017) (upholding New York's denial of §401 of the Clean Water Act certification); Marie Cusick, *Conflicting Decisions on Pipelines Frustrate Industry, Landowners*, StateImpact Pennsylvania (Sept. 18, 2017), https://perma.cc/UVK4-6KEH (reporting how the pipeline developer's contractors "cut down a large swath of maple trees" but pipeline project's failure left the Hollerans "with heaps of rotting maple trees").

Cherokee Nation v. *S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890) (observing that the Fifth Amendment entitles a landowner to "reasonable, certain, and adequate provision for obtaining compensation before his occupancy is disturbed").

These orders also rob the landowners of income they would have otherwise received. Many of these properties are farms, ranches, and businesses that earn income. Their owners—some on fixed incomes—depend on that money to make ends meet. Early possession prematurely cuts off that income. Landowners cannot grow crops or graze cattle in the fields possessed by the pipeline company. They are forced to close businesses, temporarily or permanently, and miss out on rental income.

The point is that these orders cause such harms one to three years earlier than under the ordinary condemnation process. The petitioners lose years of income, income that they will never get back because lost income is generally not recoverable under federal condemnation law. See *United States* v. *Gen. Motors Corp.*, 323 U.S. 373, 379-380 (1945).

And there is more than money to consider. Speak with landowners affected by one of these orders, and they talk of losing years of walking through their forests, watching wildlife, caring for a dying relative, and enjoying peace and quiet. They also talk of losing the chance to prevent or reduce environmental damage to their springs, streams, and hillsides. Beyond the structural harm to constitutional separation of powers and

federalism (Part III.A), these premature takings impose devastating real-world consequences on real people.

IV. This Case Is an Ideal Vehicle for Resolving the Issue.

Cases involving grants of immediate possession typically pose a special problem for Supreme Court review. By the time such cases reach the appellate level, the pipeline is often already in the ground and operational. So is not difficult to understand why some appellate courts have affirmed district-court orders granting early entry: it seems a waste to order companies to remove their pipelines when there is still a possibility the companies will simply reinstall them following the trials on just compensation. *Sage* and its followers prove once again how bad facts make bad law.

This case is different. Given MVP's trouble keeping its permits (Part III.B), the pipeline is only partially laid. This ensures an opportunity for the Court to examine the preliminary-injunction orders before the line is operational.

The case also has the traditional traits of a good vehicle. First, the question of the district courts' authority to issue immediate-possession injunctions was properly preserved and squarely addressed below. App. 32-38 (opinion); App. 218 (denying order on rehearing). Second, the circuit split is mature, and further percolation of the issue is unlikely to heal the division. See Part II. Third, mootness and other issues

of justiciability will not render the case unsuitable for review. And even if the petitioners were given trials on compensation during the pendency of the Court's review, the "capable of repetition, yet evading review" exception to mootness would apply.[14]

The petition presents an ideal opportunity to address the increasingly common requests for federal courts to issue preliminary injunctions in ways that intrude into the domains of Congress and the States and alter the parties' underlying substantive rights.

[14] That exception applies where (1) "the challenged action is in its duration too short to be fully litigated prior to cessation or expiration" and (2) "there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Kingdomware Techs., Inc.* v. *United States*, 136 S. Ct. 1969, 1976 (2016). Because lines tend to be "collocated" in pipeline corridors, the petitioners will likely face more immediate-possession requests as new pipeline routes are announced, implicating the exception. See *Dunn* v. *Blumstein*, 405 U.S. 330, 333 n.2 (1972) ("Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is capable of repetition, yet evading review.").

CONCLUSION

For these reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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