

# **Bond Case Briefs**

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## **EMINENT DOMAIN - TEXAS**

### **Boerschig v. Trans-Pecos Pipeline, L.L.C.**

**United States Court of Appeals, Fifth Circuit - October 3, 2017 - F.3d - 2017 WL 4367151**

Property owner brought action alleging that pipeline company's condemnation of permanent right-of-way and easement for natural gas pipeline across his property violated due process.

The United States District Court denied owner's motion for preliminary injunction, and owner appealed. Company moved to dismiss.

The Court of Appeals held that:

- Owner's appeal was not moot;
- Younger abstention was not warranted; and
- Owner failed to establish likelihood of success on merits of his claim.

Property owner's appeal of district court order denying his request to enjoin gas pipeline company's condemnation proceeding against it was not rendered moot by company's completion of pipeline across owner's property during appeal's pendency, where company did not begin construction of pipeline on owner's property until district court denied owner's request, and Court of Appeals could order that company return property to its precondemnation state.

Pipeline company's condemnation of permanent right-of-way and easement for natural gas pipeline across property was not civil proceeding uniquely in furtherance of state courts' ability to perform their judicial functions, and thus *Younger* abstention was not warranted in property owner's federal court action alleging that state's condemnation procedures violated due process.

Property owner failed to establish likelihood of success on merits of his claim that Texas's condemnation scheme for public utilities violated due process, and thus was not entitled to preliminarily enjoin ongoing state condemnation process. Texas eminent domain laws were longstanding and had withstood previous legal challenges, precedent blocked owner's argument that he had right to predeprivation hearing, Texas scheme allowing gas pipelines to condemn property did not appear to violate private nondelegation doctrine, and utility's assessment of whether public necessity standard had been satisfied was subject to judicial review.