

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEW JERSEY**

### **In re PennEast Pipeline Company, LLC**

**United States Court of Appeals, Third Circuit - September 10, 2019 - F.3d - 2019 WL 4265190**

Pipeline company filed actions under Natural Gas Act (NGA) to condemn properties owned by state for construction of interstate gas pipeline.

The United States District Court denied state's motion to dismiss and granted company's orders of condemnation and preliminary injunctive relief for immediate access to the properties. State appealed.

The Court of Appeals held that:

- NGA was not valid abrogation of state's Eleventh Amendment immunity, and
- NGA did not constitute delegation to private parties of federal government's exemption from Eleventh Amendment immunity.

Congress enacted Natural Gas Act (NGA) pursuant to Commerce Clause, and thus NGA's delegation of authorization for private companies to acquire necessary rights-of-way for their pipelines by exercise of right of eminent domain was not valid congressional abrogation of state's Eleventh Amendment immunity.

Natural Gas Act (NGA) provision authorizing private companies to acquire necessary rights-of-way for their pipelines by exercise of right of eminent domain did not express unmistakable intent to abrogate state sovereign immunity, and thus did not constitute delegation to private parties of federal government's exemption from Eleventh Amendment immunity, even though NGA did not differentiate between privately held and state-owned property; NGA did not mention Eleventh Amendment or state sovereign immunity, or reference "delegating" federal government's ability to sue states.