

Bond Case Briefs

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EMINENT DOMAIN - OHIO

Gordon Cox, et al., Plaintiffs v. State of Ohio, et al., Defendants

United States District Court, N.D. Ohio, Western Division - August 29, 2016 - Slip Copy - 2016 WL 4507779

In 2012, Ohio exempted specified pipeline companies from regulatory scrutiny by the Ohio Power Siting Board. As a result, a company like the defendant, Kinder Morgan Utopia LLC, that intends to build such a pipeline may select the pipeline's route and initiate eminent-domain proceedings to acquire the necessary easements and rights-of-way - all without oversight from any Ohio governmental or regulatory body.

Three property owners in Wood County, Ohio - received notices from Kinder Morgan that the company intends to acquire, whether by voluntary agreement or a state-court appropriation action, easements across their properties. The landowners, who have refused to grant the easements voluntarily, argue that the delegation of eminent-domain power to Kinder Morgan is an impermissible delegation of legislative authority and, as such, violates the Due Process Clause of the Fourteenth Amendment.

Landowners moved for a preliminary injunction.

The District Court denied the motion, finding that landowners were unlikely to prevail on the merits and had not established an irreparable injury.

"I conclude that plaintiffs are unlikely to prevail on their impermissible-delegation claim. This is because the courts of Ohio will undertake judicial review of Kinder Morgan's exercise of its eminent-domain powers. That means that the company cannot take property over an objection without obtaining judicial approval of the appropriation."

"Because Ohio law does not delegate that kind of "final" legislative power to Kinder Morgan, plaintiffs are unlikely to prevail on their nondelegation claim."