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## The Supreme Court Should End Pipeline Companies "Build First, Pay Later" Use Of Eminent Domain

By Andrew Wimer

"I'd gladly pay you Tuesday for a hamburger today." That's the catchphrase of Popeye the Sailor Man's buddy Wimpy, but it also seems to describe the deal many pipeline companies have been offering to property owners. All across the country, pipeline companies are using court orders to take land before—long before—they pay the owner a penny. But now, the Institute for Justice is asking the U.S. Supreme Court to end the free lunch and make companies follow the proper legal and constitutional process for taking land.

The pipeline business has boomed since new drilling processes opened previously inaccessible sources of natural gas. New pipelines are crisscrossing the country and many of these projects move from design to construction at a relatively swift pace for infrastructure projects. Landowners may be able to state objections to a pipeline's path, but they have little real power to influence whether the project ultimately ends up in their backyard.

Few Americans ever deal with their property being taken by eminent domain, but most probably imagine that they would be justly compensated if the government demanded their homes. But in recent years, pipeline companies have been getting court orders to take land immediately and figure out payment and compensation later—much later in some cases.

Gary and Michelle Erb purchased 72 acres near the Susquehanna River in scenic Lancaster County, Pennsylvania. It's prime land for Gary's hobby of deer hunting and Michelle envisioned building another house so that their adult sons could all live together on the homestead. That vision crumbled in 2015 when the Transcontinental Gas Pipe Line Company (Transco) announced that it would soon construct its Atlantic Sunrise pipeline running along the river from central Pennsylvania to a port in Maryland.

Transco, armed with approval from the Federal Energy Regulatory Commission, asked the Erbs for a six-acre easement 400

feet from their front door. The company offered what the Erbs considered to be a low price, which they declined.

This was a smart choice monetarily. Opening offers in eminent domain proceedings are typically lowballed. Negotiating or taking the case to court usually yields a much better selling price. A ProPublica analysis of eminent domain proceedings to build border wall in Texas demonstrated that opening offers were sometimes only 10% of the final selling price. The analysis also demonstrated that the people least likely to fight back were the elderly and the poor.

Rather than make a counteroffer, Transco sued the Erbs and several of their neighbors who had also tried to negotiate for more compensation. A federal court granted Transco's request for immediate possession of the land for the duration of the court challenge. And since the wheels of justice move slower than the treads of construction vehicles, the Erbs' case is still in court even though gas is flowing through the pipeline. Transco has yet to pay the family a single dime.

The Institute for Justice has long defended the rights of property owners in eminent domain proceedings, but not typically when land is being taken for infrastructure. But in this case and hundreds more documented by IJ, the process that pipeline companies are using is far from the one established in law. Congress granted pipeline companies the power to acquire land through eminent domain, but not the power to take first and pay later.

In March, IJ asked the U.S. Supreme Court to hear the Erbs' appeal. Lower courts have strayed from the strict application of the law and it will take a clear ruling from the justices to put them back on track. Otherwise, more and more property owners will find themselves facing the difficult choice of accepting a low offer for their land or waiting years to get just compensation.

The Erbs didn't just lose their land, they also lost their privacy as Transco employees frequently show up to inspect the pipeline without warning. Out of frustration and fear of living so close to a live pipeline, they are planning to sell their dream home and build on another part of their property further away. It will be difficult to sell, both emotionally and because the home has probably lost significant value. Gary and Michelle's fight couldn't keep the pipeline company from destroying their dreams, but hopefully it will end with an eminent domain process where property owners get fair compensation before the bulldozers rumble onto their land.