

**From:** Tammy Daly [mailto:tammyldaly@gmail.com]  
**Sent:** Saturday, December 23, 2017 11:21 AM  
**Subject:** Fwd: NEXUS CASE MOVES TO THE APPELLATE COURT

----- Forwarded message -----

From: **Paul Gierosky** <[plgierosky@gmail.com](mailto:plgierosky@gmail.com)>  
Date: Sat, Dec 23, 2017 at 7:59 AM  
Subject: NEXUS CASE MOVES TO THE APPELLATE COURT  
To: Paul Gierosky <[plgierosky@gmail.com](mailto:plgierosky@gmail.com)>

Friends

For those of you following the Nexus pipeline who have not heard, on Tuesday of this past week Judge John Adams of the U.S. District Court of the Northern District of Ohio dismissed a lawsuit brought by sixty-four property owners impacted by the Nexus pipeline. See the Judge's decision attached.

We filed our original Complaint in this case against the Federal Energy Regulatory Commission (FERC) and Nexus Gas Transmission LLC on May 12th fully three months before the FERC issued a Certificate for this project. It took Judge Adams over seven months to reach the conclusion that his Court did not have jurisdiction in the case.

Our Complaint alleges that the Nexus Project:

a) violates our substantive due process rights in that the Project a) strips us of our protected interests based upon the land use restrictions in effect where we live; b) places us in jeopardy of physical injury because the FERC process places no consideration of our safety concerns; and c) forces us to give up property rights to a foreign entity;

b) violates our procedural due process rights because the FERC process offers no meaningful opportunity to contest the taking of our property;

c) violates the Natural Gas Act (NGA) by allowing Nexus to obtain a Certificate and utilize eminent domain to acquire easements for an export pipeline; and alleges that the FERC

d) violated the National Environmental Policy Act (NEPA) when it issued the Final Environmental Impact Statement (FEIS) in part because key portions are unsupported by evidence, thus rendering it arbitrary and capricious.

These are serious issues that affect all Americans. They deserve to be heard.

In my personal opinion, Judge Adam's decision fails to address the difficult and challenging issues regarding protecting our Constitutional rights. The District Court, as described by the Court in its written opinion, had discretion to stay inappropriate agency action such as FERC's. Other than the use of

eminent domain by a private foreign corporation I can envision no worse situation for property owners than FERC delegating its safety responsibility to PHMSA in violation of DOT regulations and violations of NEPA. NEPA compels a hard look at safety considerations, local zoning and land use plans. This would include co-location with Rover, in the siting process, which was not done by FERC.

#### WHAT REMAINS TO BE DONE

The battle to protect our rights is not over. Thursday, the Coalition to Reroute Nexus (CoRN) filed a petition in the Sixth Circuit Court of Appeals asking for review by the Court of FERC's tolling order, which has stalled review of our petition for Rehearing. The case has been assigned number 17-4302. Yesterday, the City of Oberlin filed a similar request number 17-4308.

The good news is that in a separate case the Sixth Circuit has issued a stay halting construction along eight miles of the pipeline route within the City of Green. Despite this fact and that seven organizations have filed Requests for Rehearing with FERC, construction on the pipeline began in mid-October

#### RELATED CASE OVER EMINENT DOMAIN IN US DISTRICT COURT

Any of you familiar with children understand that most toddlers respect private property as private until they want it, at which point they feel justified in asserting their superior rights. Nexus has not behaved much differently. Shortly after FERC issued a Certificate, Nexus filed a Motion for Preliminary Injunction and Partial Summary Judgement to seize (use eminent domain) private property from owners who chose to defend their Constitutional rights in federal court. Judge Adams still has this and our Motion to Stay pending.

#### FINAL NOTE

Our Founding Fathers supported the importance of property rights. Madison stated, "Government is instituted to protect property of every sort; . . . [t]his being the end of government, that alone is a just government, which impartially secures to every man, whatever is his own."

Jefferson's agreed with Madison's view of property, writing that "a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings."

John Adams made the point most clearly stating, "The moment the idea is admitted into society, that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence." Adams further stated that "[p]roperty must be secured, or liberty cannot exist."

How far we have slid down the slippery slope. What can be done about it?

The Supreme Court in its decision in *Kelo v New London, CT* effectively handed the wild card to the government by making public use—or more accurately public purpose—mean whatever the legislature wants it to mean.

As I and others have contended for quite some time, if we want real change we need to appeal to Congress to put in place the necessary reforms. As we have experienced, that is no small task. In the mean time we are looking for a court that will stick-up for us.

Merry Christmas to all

*Paul L Gierosky*

mobile: [216-469-5206](tel:216-469-5206)

email: [plgierosky@gmail.com](mailto:plgierosky@gmail.com)