No. 18-1584 & 18-1587

In the Supreme Court of the United States

U.S. FOREST SERVICE, *et al.*,
Petitioners,
v.
COWPASTURE RIVER PRESERVATION ASSOCIATION, *et al.*,
Respondents.

ATLANTIC COAST PIPELINE, LLC,
Petitioner,
v.
COWPASTURE RIVER PRESERVATION ASSOCIATION, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 17 OTHER STATES IN SUPPORT OF PETITIONERS

PATRICK MORRISEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

LINDSAY S. SEE
Solicitor General
Counsel of Record

THOMAS T. LAMPMAN
Assistant Solicitor General

Counsel for Amicus Curiae *State of West Virginia*
[additional counsel listed at end]

QUESTION PRESENTED

Whether the Mineral Leasing Act and National Trails System Act give the U.S. Forest Service authority to grant rights-of-way through national forest lands traversed by the Appalachian National Scenic Trail.

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INTERESTS OF *AMICI CURIAE*[1] AND SUMMARY OF ARGUMENT

Through the National Trails System Act, Congress crafted a "national system of recreational and scenic trails" crossing over some of the most beautiful and historic lands in our country—federal, state, and private. National Trails System Act, Pub. L. No. 90-543, § 2(a), 82 Stat. 919, 919 (1968) ("Trails Act"). The first of these trails, the Appalachian National Scenic Trail ("Appalachian Trail" or the "Trail"), is administered by the Secretary of the Interior through the National Park Service ("NPS"), in concert with other federal agencies. *Id.* at § 5(a)(1), (3), 82 Stat. 920. The Trail crosses lands owned and administered by numerous public and private entities through a system of negotiated "rights-of-way." *Id.* Nothing in the Trails Act alters the underlying ownership rights or management structure of the lands themselves.

The decision below, however, does precisely that. The Fourth Circuit reasoned that because NPS administers the Trail, any land crossed by the Trail is "land[] in the National Park System," even though the U.S. Forest Service has statutory authority to administer the land the Trail crosses. This novel approach is divorced from the text of the Trails Act and the Mineral Leasing Act alike, and ignores Congress's emphatic statement that "[n]othing" in the

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity other than amici contributed monetarily to its preparation or submission.

Trails Act "shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System." 16 U.S.C. § 1246(a)(1)(A). This analysis also turns the Mineral Leasing Act—which was designed to *facilitate* crucial energy-infrastructure development—on its head. In short, the court below took a narrow exception for "lands in the National Park System" and used it to transform the roughly 1,000 miles of federal land along the Appalachian Trail (if not the entire Trail) into a near-impenetrable barrier to energy development.

Amici curiae—the States of West Virginia, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, and Wyoming—have strong interests in preserving the Mineral Leasing Act's balance between robust energy development and responsible management of public lands.

States are invested on both sides of this scale. Many States' economies depend on exporting oil and natural gas reserves to surrounding States, and the country's overall economy is built on the bedrock of a resilient and well-supplied national electrical grid. *Amici* also have strong interests in protecting the National Park System, and respect Congress's decision to bar pipeline development in the nation's parks. Indeed, *amici* States are proud of the roughly 60,506,000 acres of Park System lands in their borders, such as the area surrounding West Virginia's

New River Gorge National River near the proposed Atlantic Coast Pipeline ("ACP") route.

Amici thus have deep concerns with the decision below, which destroyed the balance Congress baked into the Mineral Leasing Act and cut off thousands of miles of federal land from development. These concerns are especially pressing because the decision does not simply question the Forest Service's judgment or ask for a redo: It makes it impossible for any federal agency to grant any easement crossing the Appalachian Trail. In other words, without reversal one 1/10 mile crossing on a 600-mile pipeline route—a route that crosses 21 miles of national forests where rights-of-way indisputably *can* be granted—may stop the entire enterprise, as well as others to come.

The *amici* States support reversal for the following three reasons:

First, the decision below is irreconcilable with the text of the Mineral Leasing Act, the Park Service General Authorities Act, and the Trails Act. These Acts draw precise and meaningful distinctions between the administration of a national trail and the administration of land crossed by a national trail—distinctions the decision below would obliterate.

Second, the decision undermines the Mineral Leasing Act's purposes, particularly the balance between energy development and conservation that Congress struck anew during the Act's amendment process. These consequences of the Fourth Circuit's contrary interpretation could cripple the growth of new infrastructure for transporting energy from

resource-rich States on one side of the Appalachian Trail to energy-importing States on the other. Fear that the lower court's approach may expand beyond the Fourth Circuit—wherever else a pipeline crosses the 11,000 miles of NPS-administered trails on federal land—also threatens a chilling effect on investment and disruption to the national power grid. It beggars belief to think that an act passed to revitalize a struggling energy sector would be interpreted instead to reduce hundreds of miles of energy infrastructure to mere sunk costs.

Third, beyond the pipeline context, the Fourth Circuit's logic could undermine other rights-of-way regimes, unsettle protections for national parks traversed by trails different agencies administer, and inject uncertainty into the property rights of the many state, local, and private entities that grant the rights-of-way our national *trails* need to exist.

ARGUMENT

Literally and figuratively, this case sits at the intersection of the National Trails and National Forest Systems. The full complement of statutes at play reveals a simple answer to the almost riddle-like question presented: Where a park trail crosses a forest, does the land below remain part of the forest, or is it transformed into a park? Taken together, the statutes' most natural readings confirm that Forest Service lands remain forests—even when crossed by a trail another agency administers. The decision below misconstrues the statutory text and turns Congress's purposes in enacting the Mineral Leasing Act on their

head. Under this view a statute that was enacted to combat an energy crisis would instead erect over 11,000 miles of barriers to new and existing energy infrastructure. The Court should set the record straight.

I. The Decision Below Misreads The Applicable Statutes.

The decision below turns on three statutes. First, under the Mineral Leasing Act, federal agencies may grant rights-of-way over land they administer to oil and gas pipelines. 30 U.S.C. § 185(a)-(b). This Act excludes, among other narrow categories, "land in the Park System." *Id.* Second, pursuant to the Park Service General Authorities Act, "land in the Park System" refers to any land that is "administered by" NPS. 54 U.S.C. § 100501. And third, NPS manages a network of national trails under the Trails Act that cross land administered by *other* federal agencies.

Read together, these statutes show that "trail administration" and "land administration" are distinct. Land the Forest Service administers does not morph into "land in the Park System" wherever crossed by a trail that NPS administers. This case is thus resolved by the Mineral Leasing Act's general authority to grant pipeline easements over forest lands, not by the Act's exemption for the separate category of national park system lands.

A. Authority To Issue Mineral Leasing Act Permits Flows From Administrative Authority Over Underlying Lands, Not Land-Use Easements.

As amended in 1973, the Mineral Leasing Act provides a streamlined system of authorizing right-of-way permits over federal land. Prior to amendment, multiple statutes provided overlapping (and sometimes conflicting) sources of authority for various agencies. Both the Secretary of Agriculture and the Secretary of the Interior, for example, were authorized to grant rights-of-way through national forests, and each permitting process was subject to separate restrictions. S. Rep. 93-207, at 16-17. As there was minimal coordination between the two Secretaries, and because the Secretary of Interior's authority was severely limited by a court ruling, the Secretary of Agriculture issued an estimated 700 right-of-way permits that rested on dubious legal footing. *Id.* It was also "not completely clear" which federal lands were amenable to pipeline rights-of-way in the first place. H.R. Rep. 93-617, at 21.

The amended Mineral Leasing Act resolved both of these concerns. First, it clarified that where one agency has jurisdiction over "the surface of all Federal lands involved in a proposed right of way," that agency is "authorized" to grant right-of-way permits. Pub. L. No. 93-153, § 101, 87 Stat. 576, 577 (1973) (enacting 30 U.S.C. § 185(c)). In cases where the lands are "administered by . . . two or more agencies," the Secretary of the Interior may issue the permits. *Id.* Second, the amendments provided that pipeline

rights-of-way could be granted over "all lands owned by the United States except lands in the National Park System[,] . . . held in trust for an Indian or Indian tribe[,] . . . [or] on the Outer Continental Shelf." *Id.* at 576-77 (enacting 30 U.S.C. § 185(a)-(b)).

The Mineral Leasing Act thus starts from the premise that rights-of-way are allowed on federal land unless the specific area falls within the list of exempted lands. Answering that question turns on which agency is responsible for administering the land: Shortly before amending the Mineral Leasing Act, Congress consolidated classification of the "National Parks System" based on land-administration jurisdiction. *See* National Park Service General Authorities Act, Pub. L. No. 91-383, § 2(b), 84 Stat. 825, 826 (1970) (enacting 16 U.S.C. § 1c) (recodified at 54 U.S.C. § 100501). Under this framework, "any area of land and water" that is "administered by the Secretary of the Interior through the National Park Service" is included in the "national park system." *Id.* This designation consolidated several preexisting categories of federal lands—"national parks, monuments, recreation areas, historic monuments, [and] parkways," *id.*—that had been understood to fall squarely within the National Park Service's jurisdiction. *See*, *e.g.*, 16 U.S.C. § 460a-2 (designating that certain "lands and easements . . . conveyed to the United States" along a defined route "shall be known as the Blue Ridge Parkway and shall be administered and maintained by the Secretary of the Interior through the National Park Service").

National forest lands, by contrast, were not traditionally understood to fall within the National Park Service's purview. Indeed, it is undisputed that, as a general matter, administration of the George Washington National Forest is squarely within the Forest Service's jurisdiction. 16 U.S.C. § 521, 1609(a). The question thus becomes whether power of another agency to manage the Appalachian Trail divests the Forest Service of its preexisting authority to administer the land along, under, and around that trail. The nature of trails generally and the Trails Act specifically disavow any such implicit authority transfer.

First, trails are composed of "rights-of-way" over land held by any number of parties, not full ownership rights or authority to manage land for other purposes. The Appalachian Trail illustrates the rule, as it was one of two "initial" trails created when the National Trails System Act was enacted. See National Trails System Act, Pub. L. No. 90-543, § 5(a), 82 Stat. 919, 920 (1968). At the outset, the Appalachian Trail was defined in terms of "the right-of-way for such trail." *Id.* at § 5(a)(1) (enacting 16 U.S.C. § 1244(a)(1)). Similarly, the process for establishing other trails requires "the appropriate Secretary [to] select the rights-of-way for national scenic and national historic trails." 16 U.S.C. § 1246(a)(2).

This repeated word choice shows a separation between trails and the land they cross. When the Trails Act was enacted, as today, a "right-of-way" was understood to be a "servitude" upon "the estate *of another*." Black's Law Dictionary 1489 (4th ed. 1968)

(emphasis added). Indeed, the right-of-way the ACP seeks is an interest in the use of federal land, similar to a trail easement. Just as a pipeline operator does not inherit responsibility for federal land beyond the terms of an easement, a federal agency managing a trail that crosses other federal lands does not assume management authority beyond the trail's easement, either.

Second, the Trails Act proceeds from this general, property-law-based understanding. Unlike a national monument or parkway, a national trail is not created by transferring ownership or oversight of land. Instead, Congress creates a trail by proposing—in general terms—a route for it to pass over. 16 U.S.C. § 1246(a). Congress then designates either the Secretary of the Interior or the Secretary of Agriculture to "administer" the trail, which in turn involves convening an "advisory council" to begin assembling the trail's components. *Id.* § 1246(d). This process involves the active participation of both *trail* and *land* administrators: A trail administrator selecting the rights-of-way for a new trail must consult with "the head of each Federal department or independent agency *administering lands through which the trail route passes*." *Id.* § 1244(d)(1) (emphasis added). Moreover, "[t]he location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary." *Id.* § 1246(a)(2).

The Trails Act's textual distinction between administration of a trail and "administering lands

through which the trail route passes" reinforces that Congress did not mean to wrest land administration jurisdiction from one agency as soon as its land is crossed by a trail another agency manages. Indeed, this statutory distinction is no "marginal semantic divergence," but follows "the usual rule that 'when the legislature uses certain language in one part of the statute and different language in another,'" courts will presume the legislature intended "different meanings." *DePierre* v. *United States*, 564 U.S. 70, 83 (2011) (citations omitted).

This textual distinction (as well as the statute's recognition that trails frequently cross lands other federal agencies manage) is also consistent with viewing a trail as a right-of-way. After all, if administrating a trail were tantamount to authority over the entire tract of land, Congress's direction to obtain rights-of-way would be redundant—it would have already given the agency administering a trail authority to use the underlying land as it deems fit. "Absent clear evidence that Congress intended [such] surplusage," the Court rejects interpretations that render part of a statute "meaningless." *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.*, 138 S. Ct. 617, 632 (2018).

Critically, the Trails Act also goes so far as to provide that although "Federally administered lands" *can* be "components of the National Trails System," *the Act itself* does not "transfer among Federal Agencies any management responsibilities" that are "established under any other law." 16 U.S.C. § 1246(a)(1)(A). In contrast to this "automatic transfer" theory, the Trails Act spells out a single

mechanism for agencies to exchange trail-administration responsibilities: "The Secretary charged with the overall administration of any trail . . . may transfer management of any specified trail segment." *Id.* § 1246(a)(1)(B). Nothing in the statute indicates that this provision allows the reverse—transferring responsibilities for the land itself (as opposed to the trail segment) to the trail administrator. And even if such a reverse transfer were possible as a general matter, nothing of the sort is purported to have taken place here.

In short, authorization to issue Mineral Leasing Act permits follows land administration jurisdiction, not administration of trails secured by rights-of-way easements. The land in this case is part of a national forest under the Secretary of Agriculture's management. Neither the Trails Act nor NPS's organic statute alters that framework. Under the Mineral Leasing Act, power to grant a permit for the requested pipeline right-of-way thus begins and ends in the forest.

B. The Circuit Court's Application Of The Mineral Leasing Act Is Incorrect Because It Conflates "Trail Administration" With "Land Administration."

In applying the foregoing provisions, the Fourth Circuit purportedly focused its Mineral Leasing Act analysis on "the *land*, not the agency" in question. *Cowpasture River Preservation Ass'n* v. *U.S. Forest Service*, 911 F.3d 150, 180 (4th Cir. 2018). But in doing so, the court doubly missed the mark.

First, the court ignored the fact that the availability of permits under the Mineral Leasing Act turns on which agency is authorized to administer the land. If the Park Service, then the land would be "land in the park system" and outside the scope of right-of-way permitting authority. But because the Trails Act does not divest the Secretary of Agriculture of this authority, the Mineral Leasing Act's exception does not apply and the Secretary is authorized to issue rights-of-way.

Second, insofar as the court weighed the relative responsibilities of agencies, its analysis focused on which agency administers the Appalachian Trail overall, rather than which agency administers the specific land in question. This shortcut ignores the Trails Act's painstaking distinction between "trail administration" and "land administration," simplifying the inquiry but ultimately producing incorrect results.

Indeed, the court below wrongly overlooked Congress's distinction between land administration and trail administration by leaning too heavily on the Park Service's internal designation of the Appalachian Trail as a "unit of the Park System." *Cowpasture*, 911 F.3d at 180; see also Resp. Br. Opp. Cert. at 27-28 (arguing that the Appalachian Trail's status as a system unit ends the inquiry into the underlying land's status). True, it is often the case under the Park Service General Authorities Act that the Park Service "administer[s] both lands and waters within all system units in the country." *Sturgeon* v. *Frost*, 139 S. Ct. 1066, 1076 (2019) (citing 54 U.S.C.

§§ 100751, 100501, 100102). But this general pronouncement does not displace the Trails Act's specific caveat: In the context of national trails, Congress refused to alter preexisting "management responsibilities" for federal lands "established under any other law." 16 U.S.C. § 1246(a)(1)(A); see also *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 n.7 (1976) ("It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute." (citation omitted)).

Further, this Court recognized last Term that Congress distinguishes between the boundaries of land NPS administers and the boundaries of park system units. In *Sturgeon*, the Court considered the Alaska National Interest Lands Conservation Act, which exempts from Park Service administration all private land, all State land, and some federal land within Alaskan system units. 139 S. Ct. at 1077. In other words, Congress provided in that statute that the boundaries of a Park System unit do not automatically confer administrative authority over all land within that unit. In the Trails Act, Congress did the same thing.

The lower court's summary conclusion—that designation of the Appalachian Trail as a "unit of the National Park System" makes the underlying lands *ipso facto* "National Park System land," *Cowpasture*, 911 F.3d at 181—missed seeing the forest for the trail. Congress distinguished between administration of the system of rights-of-ways that make up a national trail

and administration of the land beneath. The Mineral Leasing Act's exemption for "lands in the Park System" accordingly does not apply to the federal forest lands on which the Appalachian Trail runs.

II. The Decision Below Conflicts With The Mineral Leasing Act's Purposes.

The jurisdiction-centric text of the Mineral Leasing Act confirms the profound error in the decision below—particularly because a statute's "plain language . . . is controlling unless a different legislative intent is apparent from the purpose and history of the Act." *Jefferson Cty. Pharm. Ass'n, Inc.* v. *Abbott Labs.*, 460 U.S. 150, 157 (1983). And far from suggesting a different result, the Mineral Leasing Act's history underscores its plain language. In seeking to safeguard the nation's Trail System, the Fourth Circuit's analysis ultimately proceeds down a route the statute's drafters never contemplated, and arrives at the very place that amendments to the Act were designed to avoid: nationwide barriers to natural resource development.

A. Amendments To The Mineral Leasing Act Confirm Congress's Goal To Facilitate Crucial Pipeline Development On Federal Lands.

The Mineral Leasing Act was amended in 1973 with the specific aim of expanding national energy development. The amendment process was dynamic and reflected multiple compromises, but the motivating purpose was "a *broad*[] *approach*" to "rights-of-way for oil and gas pipelines, waterlines, electrical transmission lines, communication

facilities, roads, and other necessary public transportation facilities across public and Federal lands." 119 Cong. Rec. 6131 (Mar. 1, 1973) (statement of Senator Jackson upon introduction of S. 1081) (emphasis added). The history is also devoid of any suggestion that the amendments created new limits on the Trails System. The Fourth Circuit's read of the resulting text cannot be squared with Congress's goals, and indeed, would replace one judicial interpretation unduly restricting infrastructure development with another.

1. The statutory provisions at the center of this case were passed as part of a concerted push to expand pipeline infrastructure in the United States. The original Mineral Leasing Act was enacted in 1920, nearly five decades before the National Trails System's creation. Pub. L. No. 66-146, 41 Stat. 437 (1920) (enacting 30 U.S.C. § 185). As originally crafted, the Act set up a system for natural-resource extraction on federal lands, with exclusions for several categories of federal lands, including "national parks." *Id.* § 1, 41 Stat. 437-38. The Act did, however, authorize pipeline construction across "public lands," including "the ground occupied by [] said pipe line and twenty-five feet on each side." *Id.* § 28, 41 Stat. 449. And it expressly included "forest lands" when describing the "public lands" available for pipeline construction. *Id.*

The current language of 30 U.S.C. § 185(b) dates 53 years later, and was enacted in response to a narrow interpretation of the Act's pipeline provision in *Wilderness Society* v. *Morton*, 479 F.2d 842 (D.C.

Cir. 1973). In that case, the D.C. Circuit held that the 25-foot limit applied not only to easements for completed pipelines, but to the rights-of-way necessary for construction as well. *Id.* at 876-78. Yet because construction requires a wingspan greater than 25 feet, that reasoning stripped federal agencies of authority to grant meaningful easements for pipeline construction on any federal land. See S. Rep. 93-207, at 11; *Rights of Way Across Federal Lands: Hearings on S. 1040, S. 1041, S. 1056, and S. 1081 Before the S. Comm. on Interior and Insular Affairs*, 93rd Cong. 128 (1973) (Statement of Interior Secretary John Whitaker) (describing the *Morton* decision as effectively preventing modern pipeline construction on federal lands, and potentially imperiling power line development as well).

The *Morton* decision came when the United States was in the throes of an energy crisis, spurred in part by nationwide gasoline shortages. Congress's response to the D.C. Circuit's interpretation of the Mineral Leasing Act was thus informed by the growing demands for energy throughout the national economy. The hearings, for example, underscored the importance of both capitalizing on Alaskan oil deposits and on the need for comprehensive right-of-way reform generally. 119 Cong. Rec. 22,613 (June 30, 1973). Rising energy prices caused by oil shortages were also linked to the ongoing economic depression, and security implications from deepening reliance on foreign oil reserves were flagged as additional reasons to ensure that the nation's own

bounty of natural resources could be brought to bear. *Id.* at 22,814.

It was against this backdrop that Congress acted quickly to authorize the specific pipeline right-of-way at issue in *Morton*—and to prevent similar roadblocks from rising in the future. S. Rep. 93-207, at 11-12.

2. The resulting 1973 amendments reflect a congressional compromise between development of our nation's energy resources and protecting federal lands. The Fourth Circuit's interpretation, however, upends this balance and replaces it with an inflexible, 1,000-mile barrier to energy development for States on both sides of the Appalachian Trail. Two features of the amendment process confirm that Congress did not intend such a result.

First, the provision giving any agency with jurisdiction over federal lands authority to grant pipeline rights-of-ways, 30 U.S.C. § 185(a), (b)(3), dates to this amendment. Before *Morton* over 700 pipelines had been built on rights-of-way granted by the Forest Service, whereas the Mineral Leasing Act expressly vested the Secretary of the Interior alone with this power. S. Rep. 93-207, at 16. The Senate's bill expanded this authority to include any "agency head" with jurisdiction over the land in question. *Id.* at 30-31. The House in turn agreed with this approach, allowing any "appropriate agency head" to grant rights-of-way over federal land. H.R. Rep. 93-617, at 1. This important clarification indicates that Congress was concerned with making rights-of-way easier to obtain, not harder

Second, there was debate in both chambers over whether to exempt Park System lands from the Mineral Leasing Act. The exemption was included in the Senate bill as introduced, but not in the House bill reported out of committee. 119 Cong. Rec. 6,131-32 (Mar. 1, 1973); H.R. Rep. 93-414, at 1-2. The Senate heard testimony from Dr. Barbara Moulton that if the statute provided an exemption for Park System lands, then the Blue Ridge Parkway would render it impossible to connect Virginia to West Virginia or Maryland through any utility right-of-way unless Congress passed special authorizations every time access was needed. *Rights of Way Across Federal Lands* at 433 (Statement of Dr. Barbara Moulton). The committee's report noted this concern, and separately indicated that such authorizations had been granted for rights-of-way across the Blue Ridge Parkway, the C&O Canal, and the Natchez Trace Parkway. S. Rep. 93-207, at 29. Yet although the Appalachian Trail had been in existence for years by this point, and indeed ran parallel to the Blue Ridge Parkway, neither the committee nor Dr. Moulton noted it as a similar example of "park system" barriers.

Conversely, omission of a park system exemption from the House bill raised concerns that the bill was not protective enough. Some members saw "no evidence the [exemption] [wa]s necessary," because in their view "the lands that are [subject to the Mineral Leasing Act]"—"public lands, including forest lands," Pub. L. No. 66-146, § 28, 41 Stat. 449—already excluded national parks. 119 Cong. Rec. 27,679

(statement of Rep. Melcher). Others believed the amendment was vital to avoid "sanctif[ying] raids on the public domain" by "authoriz[ing] a pipeline, camp ground, [or] tank storage facility" in "Yosemite, Yellowstone, [or] any national park." *Id.* at 27,678-79 (statements of Reps. Dingell and Seiberling). Some of the members who agreed the existing statute already barred rights-of-way in national parks viewed the proposal as broadening the exemption. *Id.* (statement of Rep. Bingham). And still others were opposed to what they saw as "an absolute prohibition" on pipelines in any defined areas, wherever the line fell between exempted and non-exempted lands. *Id.* at 27,679 (statement of Rep. Meeds).

The conference committee ultimately provided a workable compromise. Noting that it was "not completely clear" which lands were already covered by the Act, the committee adopted the Senate's approach of exempting specific categories of land from the definition of "federal lands." H.R. Rep. 93-617, at 21 (Oct. 31, 1973). It did not, however, exempt as many categories as the Senate bill: It eliminated the exemptions for lands in the National Wildlife Refuge System and National Wilderness Preservation System, *id.*, thus addressing members' concerns about restricting pipeline development too far. And to resolve the opposite concern about altering the character of federal lands, the compromise language made clear that rights-of-way across federal reserved lands are not automatic, but may be granted only where not "inconsistent with the purposes of the reservation." *Id.* at 21-22; see also *id.* at 2.

This renewed focus on the purposes for which different federal lands are reserved is important. The amendment's reminder that rights-of-way must be consistent with those purposes satisfied House members who championed additional protections for federal lands. See 119 Cong. Rec. 36,611 (statement of Rep. Dingell). And the nation's "Scenic Trails"—which by that time included the Appalachian Trail, 16 U.S.C. § 1244(a)(1)—were understood to be separate from the statute's "lands in the National Park system" category. 119 Cong. Rec. 36,611 (statement of Rep. Dingell).

Congress ultimately adopted this compromise approach, and it remains in effect today. The amendment's language and the process that produced it highlights Congress's twin goals of protecting federal lands and facilitating energy development. For purposes of the Mineral Leasing Act, Congress gave ironclad protection to "lands in the National Park System" on the one hand, but declined to wall off other federal lands on the other. For those other lands—even the "Scenic Trails"—Congress generally allowed pipelines and development of energy resources unless a right-of-way would be in tension with a specific land's purposes. "Courts . . . must respect and give effect to" legislative compromises like these "between groups with marked but divergent interests." *Ragsdale* v. *Wolverine World Wide, Inc.*, 535 U.S. 81, 93-94 (2002). Attention to the deliberate choices Congress made counsels strongly for reversal.

B. The Fourth Circuit's Interpretation Inhibits Pipeline Development Against Congress's Intent And At The Expense Of The States And National Economy.

The decision below is particularly concerning because the court did not merely deem the Forest Service the wrong agency to grant a right-of-way crossing the Appalachian Trail. Instead, under its reasoning the Mineral Leasing Act gives *no* federal agency that power. *Cowpasture*, 911 F.3d at 181. The Fourth Circuit thus erected a roadblock to energy-infrastructure development at least 1,000 miles long. The practical consequences of this decision give life to Congress's concerns in 1920 and 1973 about undue restrictions on needed energy development. *First*, the decision's interpretation of the Mineral Leasing Act has hurt the energy markets and economies of States that would be served by the ACP. *Second*, it would similarly harm other States if the lower court's reading holds sway nationwide—up and down the Appalachian Trail and wherever else the wide-ranging National Trail System intersects with a proposed pipeline's path. *Third*, the decision below threatens rights-of-way for telecommunications transmissions and other forms of electricity, creates new challenges and inefficiencies for managing federal lands, and fosters uncertainty over the status of the many state, local, and private lands that the Appalachian Trail—and others—traverse.

1. As a major construction project and long-term vehicle for the sale of natural gas, the ACP offers

important financial benefits to the States along its route. The Federal Energy Regulatory Commission ("FERC") projected significant gains during the pipeline's construction for "employment, local goods and service providers, and state governments in the form of sales tax revenues."[2] During six years of construction, for example, FERC estimated that the pipeline would generate over $2.7 billion in economic activity.[3] Had the project continued without interruption, construction was also projected to yield $25 million in income and corporate tax revenue through 2019.[4] Operation of the pipeline and an associated "Supply Header" project was separately estimated to produce $216 million in property tax revenues between 2018 and 2025.[5] And pipeline construction represents over 17,000 jobs in the affected States[6]—jobs that are important anywhere, but especially needed in this region.[7]

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[2] U.S. Fed. Energy Reg. Comm'n, *Atlantic Coast Pipeline and Supply Header Project: Final Environmental Impact Statement* (vol. I) 4-507 (July 2017) ("Final EIS"), *available at* https://www.ferc.gov/industries/gas/enviro/eis/2017/07-21-17-FEIS/volume-I.pdf.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 4-509.

[6] *Id.* at 4-507.

[7] See U.S. Bureau of Labor Statistics, *Local Area Unemployment Statistics* (July 19, 2019), *available at* https://www.bls.gov/web/laus/laumstrk.htm (showing that West Virginia, North

The pipeline also promises significant benefits to consumers. When finished, it will be capable of shipping 1.5 billion cubic feet of natural gas per day to customers in North Carolina, Virginia, and West Virginia.[8] This gas would be able to produce over 1.5 trillion British thermal-units of energy every day,[9] enough to satisfy over 90% of the demand for natural gas energy in the entire Commonwealth of Virginia.[10] And because the vast majority of this gas will be sold to utilities and used to produce electricity for commercial and residential consumers,[11] the pipeline represents a potential savings of $377 million in energy costs *every year*.[12] For States facing steadily rising costs for residential electricity, a new supply of lower-cost and locally sourced energy cannot come soon enough. Indeed, Residents of North Carolina and Virginia have been historically underserved in

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Carolina, and Pennsylvania have higher unemployment rates than most other States; West Virginia's is 6th highest).

[8] Final EIS at 1-3.

[9] On average, each cubic foot of natural gas produces 1,037 British thermal units of heat energy when burned. U.S. Energy Information Admin., *Heat Content of Natural Gas Consumed* (June 28, 2019), *available at* https://www.eia.gov/dnav/ng/ng_cons_heat_a_EPG0_VGTH_btucf_a.htm.

[10] In 2017, Virginia consumed over 596 trillion British thermal units of energy from natural gas. U.S. Energy Information Admin., *Virginia: State Profile and Energy Estimates, Consumption by Source* (Aug. 18, 2018), *available at* https://www.eia.gov/state/?sid=VA#tabs-1.

[11] *Id.*

[12] Final EIS at 4-508.

this area, with residential natural gas prices currently 20%-50% higher than the national average.[13]

2. The consequences of the decision below also expand beyond threatening the ACP itself. Left standing, it will almost certainly block similar proposals across the region, and the specter of other courts following the Fourth Circuit's lead could chill energy-infrastructure investment more broadly. It is no surprise that other pipelines serving the region are facing similar roadblocks. The in-process Mountain Valley Pipeline, for instance, also crosses the Appalachian Trail on Forest Service land, see 81 Fed. Reg. 71,041, 71,042 (Oct. 14, 2016), leaving its status uncertain after the decision below.

There is every reason to think future development will be stymied too. The Appalachian Trail stretches from Maine to Georgia, and over 1,000 miles—almost half its length—cross federal lands.[14] Further, these federal lands are highly concentrated around state lines, which makes it extremely impractical to re-route around them. The Trail spans almost all of West Virginia's eastern border, for example.[15] Geography

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[13] U.S. Energy Information Admin., *Natural Gas Prices: Residential Price* (June 28, 2019), *available at* https://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_m.htm.

[14] See Nat'l Parks Conservation Ass'n, *Appalachian National Scenic Trail: A Special Report* 1, *available at* https://www.nps.gov/appa/learn/management/upload/AT-report-web.pdf.

[15] See U.S. Nat'l Parks Srvc., *Appalachian Trail Map* (last accessed Dec. 9, 2019), https://nps.maps.arcgis.com/apps/

thus makes the decision below an effective work-stoppage order for current and future development in this entire region. After all, the decision below is not about taking a hard look at the Forest Service's judgment whether a right-of-way is "[]consistent with the purposes" of the Appalachian Trail and forest lands. 30 U.S.C. § 185(b)(1). Deeming all federal land crossed by the Appalachian Trail to be "lands in the National Park System" means that *no* federal agency may authorize a right-of-way over such land under the Mineral Leasing Act, no matter how thorough its review. *Cowpasture*, 911 F.3d at 181.

Nor is the damage limited to the Fourth Circuit. Properly interpreted, the Mineral Leasing Act's category of "lands in the National Park System," 30 U.S.C. § 185(b)(1), encompasses a national trail only where it crosses *NPS*-administered land. See *supra* Part I. Current estimates from NPS indicate this category includes over 1,300 miles of trails.[16] Laid end-to-end, such a barrier would reach from Houston, Texas, to Harrisburg, Pennsylvania—a significant distance showing that the exemption has teeth. If, however, that category were re-defined to include all NPS-administered trails regardless of which federal agency manages the underlying land, it would include

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webappviewer/index.html?id=6298c848ba2a490588b7f6d25453e4e0.

[16] U.S. Dep't of Interior, Nat'l Parks Service, *Reference Manual 45: National Trails System* 200-01 (Jan. 2019) ("*Reference Manual 45*"), *available at* https://www.nps.gov/subjects/nationaltrailssystem/upload/Reference-Manual-45-National-Trails-System-Final-Draft-2019.pdf.

an overwhelming majority of NPS-administered trails: over 11,409 miles.[17] If *that* distance were a straight line, it would easily stretch the entire length of the Western Hemisphere—Anchorage, Alaska, to Rio Gallegos, Argentina. Those are the miles the decision below transforms into an impassable barrier to energy development

Of course, national trails do not run as the crow flies, which means the damage from the Fourth Circuit's interpretation would not be limited to one coast or region. NPS administers trails over a winding network of paths so convoluted the agency has not fully measured it yet; the estimates above include less than two-thirds of the total National Trail System.[18] What is plain, however, is that national trails crisscross the entire country. The California Historic Trail, for instance, bisects Nevada at two points and reaches up the west coast of Oregon, and it runs almost entirely on federal land. Similarly, the Old Spanish Historic National Trail cuts a wide arc across all of Utah, and again lies almost wholly on federal land. Both trails are administered by NPS. *Reference Manual 45*, at 200-01.

The map below illustrates the potential reach of the Fourth Circuit's decision. At least 23 of the 30 national trails depicted are administered by NPS, see *Reference Manual 45*, at 200-01, and the shaded areas show how extensively trails cross federal lands:

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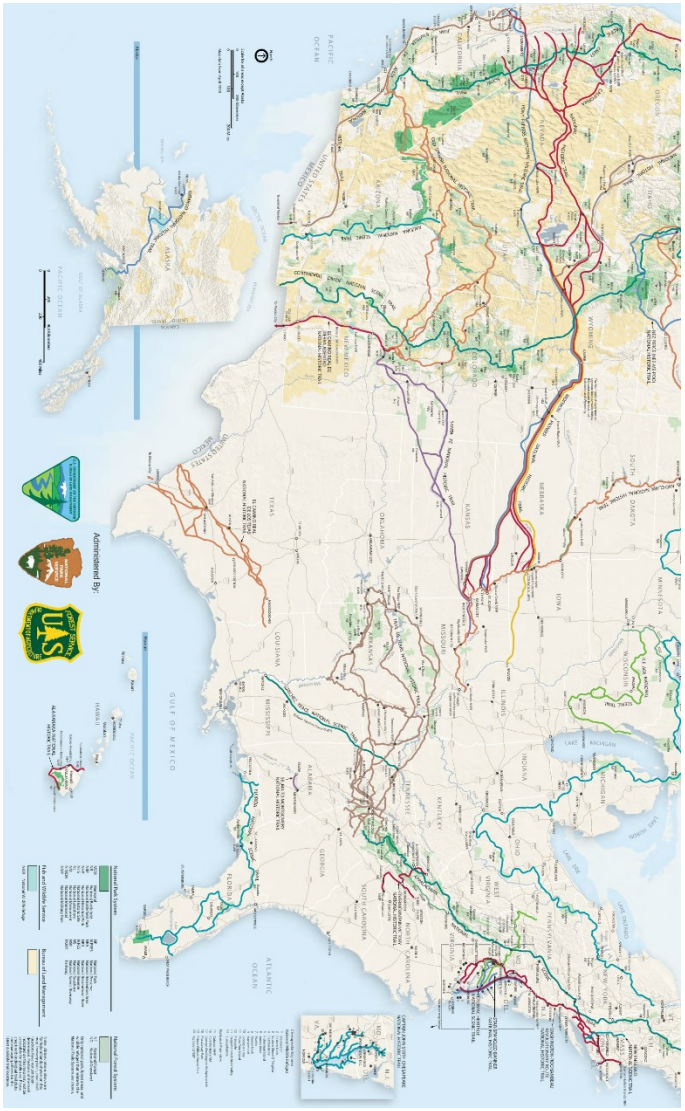
[17] *Id.*

[18] *Id.*



U.S. Nat'l Park Service, *National Trails System 50th Anniversary Map* (2018), *available at* https://www.nps.gov/subjects/nationaltrailssystem/upload/National-Trails-50th-Map-02-09-18.pdf.

Given this sprawling nature of the National Trails System, it is unsurprising that pipelines often run under national trails—including trails administered by NPS. See Pet. Br. Opp. Cert. at 14-15 (noting that 55 other pipelines cross the Appalachian Trail alone). Indeed, as the federal government owns approximately 28% of all land in the United States,[19] overlap between these systems is all but unavoidable. The Greenbrier Pipeline presents a similar example: It was approved to cross the Appalachian Trail within Jefferson National Forest based on the correct view that NPS had only a "scenic easement" for the Trail, and did *not* have jurisdiction over the land beneath. See U.S. Fed. Energy Reg. Comm'n, Greenbrier Pipeline Company, LLC, Docket No. CP02-396-000, *Final Environmental Impact Statement* vol. II, pt. 2 of 3, at Z-5 ("The proposed pipeline crosses the [Appalachian Trail] at pipeline milepost (MP) 8.85 within the Jefferson National Forrest [sic] (JNF).").[20]

Moreover, the problem is worsened by the fact that the statutory prohibition extends to *all* "pipeline purposes," not just actual points of intersection. 30

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[19] CONGRESSIONAL RESEARCH SERVICE, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1 (Mar. 3, 2017), *available at* https://fas.org/sgp/crs/misc/R42346.pdf.

[20] Although FERC approved construction of the Greenbrier Pipeline, subsequent economic developments led the sponsors to abandon the project. See U.S. Fed. Energy Reg. Comm'n, Greenbrier Pipeline Company, LLC, Docket No. CP02-396-000, *Order Vacating Certificate Authorization for Greenbrier Pipeline Company*, LLC, 2, *available at* https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13492659.

U.S.C. § 185(a). This means that even if a pipeline were rerouted around a trail, the Forest Service likely could not grant a limited easement for construction purposes, either. See *Morton*, 479 F.2d at 855 (applying the Mineral Leasing Act's restrictions on rights-of-way "for pipeline purposes" to rights-of-way that "allow room for construction" of pipelines). Allowing pipeline workers to use Forest Service access roads crossed by NPS-administered trails, for example, could become just as dicey a legal proposition as an easement to lay the pipeline beneath the trail itself. Because the Mineral Leasing Act was amended to remove judicially created barriers to energy infrastructure development, it should not be redefined a half century later to create countless new barriers like these.

3. Finally, left standing the decision below will disrupt more than pipelines, disturbing previously settled relationships between federal agencies, the States, and other landowners across the nation's trails system.

One important consequence of the Fourth Circuit's decision is that NPS could become responsible for crucial infrastructure functions that it lacks statutory authority to fulfill. The decision below made a categorical distinction between trails that are "subject to laws applicable to the National Forest System" and those—like the Appalachian Trail—that are administered by NPS. Pet. App-61. Yet linking a law's applicability to the agency that administers a trail has consequences beyond the Mineral Leasing Act. For example, the Secretary of Agriculture—and

not NPS—may grant rights-of-way over "lands within the National Forest System" for "transmission[] and distribution of electric energy," and "transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication." 43 U.S.C. § 1761(a)(4), (5). If, however, land ceases to be part of the National Forest System when crossed by the Appalachian Trail for purposes of the Mineral Leasing Act, the same is likely true under 43 U.S.C. § 1761 as well.

The Fourth Circuit's "lands as trails" approach could thus disable *any* federal agency from being able to authorize power lines and telecommunications infrastructure across the Appalachian Trail, as well as other trails that cross forest land. It is highly unlikely Congress intended to create a National Trail System-sized obstacle course for the "nearly 160,000 miles of high-voltage power lines, and millions of low-voltage power lines"[21] that make up the nation's power grid. The logic of the decision below could call into question the legality of—by a conservative estimate, looking at high-voltage lines only in just 39 States—over *101 existing intersections*, as well as every intersection that will be needed in the future.[22]

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[21] U.S. Energy Information Admin., *U.S. Electric System Is Made Up Of Interconnections And Balancing Authorities* (July 20, 2016), *available at* https://www.eia.gov/todayinenergy/detail.php?id=27152.

[22] U.S. Dep't Energy, Env. Sci. Div., *Electricity Transmission, Pipelines, and National Trails: An Analysis Of Current And Potential Intersections On Federal Lands In The Eastern United*

The decision below could also undermine protections for Park System lands that are traversed by national trails NPS does *not* administer. The Fourth Circuit thought it would "def[y] logic" to "give the Forest Service more authority than NPS on National Park System Land," *Cowpasture*, 911 F.3d at 180, but the court's reasoning requires exactly that when applied to Forest Service-administered trails. Just as tying administration of a trail to management of the land it crosses creates a 1,000-mile sliver of Park Service land in national forests, the opposite could occur for trails the *Forest Service* administers when they cross *national parks*.

Take for instance the Continental Divide National Trail running through Yosemite National Park. The Forest Service administers this trail, not NPS. 16 U.S.C. § 1244(a)(5). To say that laws applicable to the Forest Service control the land beneath this trail could effectively limit NPS's authority over miles of land in Yosemite that is indisputably part of the National Park System. At a minimum, this approach would introduce jurisdictional questions and new inefficiencies as competing agencies manage the same lands. This Court should reject an interpretation that would "lead to absurd results . . . or would thwart the obvious purpose of the statute." *In re Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978) (alteration in original; quotations omitted).

States, Alaska, And Hawaii 40 (2016), *available at* https://publications.anl.gov/anlpubs/2016/11/131478.pdf.

III. Reversal Is Necessary To Protect The Rights Of States And Private Property Owners.

The Fourth Circuit's analysis also raises serious questions about the sovereignty and ownership interests of States and other non-federal entities that own lands crossed by the national trails.

The ability to issue rights-of-way for pipeline development on their own lands is an important aspect of land ownership and management. The Mineral Leasing Act speaks only to "lands owned by the federal government," 30 U.S.C. § 185(b)(1), but the decision below may sweep broader: It purports to subordinate "other affected *State* and Federal agencies [that] *manage* trail components under their jurisdiction" to NPS's jurisdiction. Pet. App. 60 (first emphasis added; quotation omitted). After all, if authority to administer a trail is truly enough to transfer the underlying land into the Park System, then the decision could be read to apply not just to forest lands, but to the more than 8,200 miles of national trails that fall on state land as well. *Reference Manual 45*, at 200-01. It goes without saying that neither the Trails Act nor the Parks Service Act contains the "clear statement" that would have been necessary for Congress to "radically readjust[] the balance of state and national authority" in this way—especially without any notice, negotiation, or compensation. *Bond* v. *United States*, 572 U.S. 844, 858 (2014) (quoting *BFP* v. *Resolution Trust Corporation*, 511 U.S. 531, 544 (1994)).

Likewise, the decision below could call into question the over 50 rights-of-way that already exist

across segments of the Appalachian Trail. The court concluded that the Mineral Leasing Act does not allow pipeline easements over the Trail in the national forests because the Trail is "land[] in the National Park System." 30 U.S.C. § 185(b)(1). There is no limiting principle in the decision to keep the same result from applying where the underlying land owner is not the Forest System, but a State, a local entity, or a private landowner. In any of these scenarios, the Mineral Leasing Act's prohibition on rights-of-way within Park System land could be controlling. The Court should not allow that result, nor the serious disruption to our nation's energy grid that challenges to the legality of existing rights-of-way could unleash.

CONCLUSION

For the foregoing reasons, the Court should reverse.

Respectfully submitted.

PATRICK MORRISEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
lindsay.s.see@wvago.gov
(304) 558-2021

LINDSAY S. SEE
Solicitor General
Counsel of Record

THOMAS T. LAMPMAN
Assistant Solicitor General

Counsel for Amicus Curiae *State of West Virginia*
(Additional counsel listed on the following page)

December 9, 2019

STEVE MARSHALL
Attorney General
State of Alabama

KEVIN G. CLARKSON
Attorney General
State of Alaska

LESLIE RUTLEDGE
Attorney General
State of Arkansas

CHRISTOPHER M. CARR
Attorney General
State of Georgia

LAWRENCE G. WASDEN
Attorney General
State of Idaho

CURTIS T. HILL, JR.
Attorney General
State of Indiana

DEREK SCHMIDT
Attorney General
State of Kansas

JEFF MARTIN LANDRY
Attorney General
State of Louisiana

TIM FOX
Attorney General
State of Montana

DOUG PETERSON
Attorney General
State of Nebraska

WAYNE STENEHJEM
Attorney General
State of North Dakota

DAVE YOST
Attorney General
State of Ohio

MIKE HUNTER
Attorney General
State of Oklahoma

JASON R. RAVNSBORG
Attorney General
State of South Dakota

KEN PAXTON
Attorney General
State of Texas

SEAN REYES
Attorney General
State of Utah

BRIDGET HILL
Attorney General
State of Wyoming