No. 18-1587

In the Supreme Court of the United States

ATLANTIC COAST PIPELINE, LLC,

Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, *et al.*,

Respondents.

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 15 OTHER STATES IN SUPPORT OF PETITIONER

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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, 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 by numerous public and private entities through a system of negotiated "rights-of-way." *Id.* Nothing in the Trails Act, however, suggests that Congress intended to reach into the underlying ownership rights or management structure of the lands themselves.

The decision below does precisely that. The Fourth Circuit started with the Mineral Leasing Act, which was designed to *facilitate* crucial energy-infrastructure development by giving agencies with "jurisdiction" over federal lands authority to grant rights-of-way for pipeline construction. 30 U.S.C. § 185(a), (b)(3). It then zeroed in on a narrow exception—this power does not extend to "lands in the National Park System," *id.* § 185(b)(1)—to transform

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[1] Pursuant to Supreme Court Rule 37.2(a), *amici* have timely notified counsel of record of their intent to file an *amicus* brief in support of Petitioner.

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. The court reasoned that the Trail is "land[] in the National Park System" because NPS administers the *trail*, even though the U.S. Forest Service manages the *land* it crosses. But this novel approach is divorced from the Mineral Leasing Act's text and ignores the statutory context in which it operates—including Congress's emphatic statement that "[n]othing" in the 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).

Amici curiae—the States of West Virginia, Alabama, Alaska, Georgia, Idaho, 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 60,386,000 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* also care about holding federal agencies to their statutory duty to ensure proper review of proposed rights-of-way on federal lands *not* part of the National Park System, so that these lands will be maintained for our citizens consistent "with [their] purposes." 30 U.S.C. § 185(b)(1).

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. And the need for review is 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 an easement under the Mineral Leasing Act crossing the Appalachian Trail. In other words, absent review 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, Pet. App-73—may stop the entire enterprise, as well as others to come.

The *amici* States support granting the Petition for the following two reasons:

First, the decision below is wrong. It is irreconcilable with the text of the Mineral Leasing Act, the National Parks Service Organic Act ("Parks Service Act"), and the Trails Act. It also 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.

Second, the decision's consequences are dangerous and far-reaching. The decision cripples 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 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. The Court should weigh in now to ensure that billions of State dollars and hundreds of miles of energy infrastructure do not become mere sunk costs. Beyond the pipeline context, the Fourth Circuit's logic could also 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.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Is Wrong.

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 quality of the question presented: Where a park trail crosses a forest, does the land below remain part of the forest or transform 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, by contrast, misconstrues the statutory text and turns Congress's purposes in enacting the Mineral Leasing Act on their head. Certiorari review is needed to repudiate the overreaching decision below and restore stability to this critically important area of federal law.

A. The Decision Below Misreads The Mineral Leasing Act And Other Operative Statutes.

The Mineral Leasing Act provides that "appropriate agency head[s]" may grant "[r]ights-of-way through any Federal lands . . . for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom." 30 U.S.C. § 185(a). The only caveat potentially relevant here is if the land is "in the National Park System." *Id.* § 185(b)(1). When determining whether this exception applied, the court below purportedly focused on "the *land*, not the agency" in question. Pet. App-59. Yet the court did not account for the full breadth of statutes describing "the land"—which is located within the George Washington National Forest and "reserved, held, and administered as national *forest* lands." 16 U.S.C. § 521 (emphasis added). Instead, it elevated the land's surface *use* as a footpath, *id.* § 1244(a)(1), over statutes that expressly preserve the Forest Service's jurisdiction over the *lands* that path crosses, *e.g.*, *id.* § 1609(a).

This approach is wrong. Lands the Forest Service administers are part of the Forest System, not the Park System, even when another agency administers a trail on the forest floor. The Fourth Circuit's contrary holding falls apart when viewed against the Mineral Leasing Act, the Parks Service Act, and the Trails Act—which all confirm that administration of a national trail does not *sub silentio* confer authority over the hundreds of miles of land beneath.

Mineral Leasing Act. This Act's otherwise broad grant of authority to allow pipeline rights-of-way across federal lands does not extend to "lands in the National Park System." 30 U.S.C. § 185(b)(1). Emphasizing *land*, as opposed to mere features or uses of the land, like a trail, is deliberate. As discussed further in the Petition and below, this choice of language reflects Congress's desire to bar energy development in a limited category of protected areas—like the national parks—but not to create hundreds or thousands of miles long barriers blocking States from each other for purposes of energy transmission. See *infra* Part I.B.

Parks Service Act. The focus on land as a whole—and not its surface use—becomes more apparent in the Parks Service Act. The Mineral Leasing Act does not define "lands in the National Park System," but this statute does: The Park System includes "areas of land and water described in section 100501," 54 U.S.C. § 100102(2), or "any area of land and water administered by the [Interior] Secretary, acting through the Director [of NPS]," *id.* § 100501. The "area[s] of land and water" in the George Washington

National Forest are forest lands, *e.g.*, 16 U.S.C. §§ 521, 1609(a), administered by the Secretary of Agriculture, *id.* §§ 529, 551. NPS administers the Appalachian Trail as a feature in the forest, *cf. id.* § 1246(a)(1)(A), but it does not administer the "land and water" underneath. Indeed, the Parks Service Act is clear that a portion of geography is not necessarily land "in" the Park System even if it is considered a park "unit": Congress gave the Interior Secretary authority to "consolidate Federal land ownership within the *existing boundaries* of any system unit." 54 U.S.C. § 101102(a)(1) (emphasis added). This provision would be unnecessary if denoting an area a unit of the national park system automatically removed any other entity's jurisdiction over that land.

Trails Act. The Trails Act is Congress's clearest statement that administration of the Appalachian Trail (like other trails) does not confer jurisdiction over the land it crosses. The Trails Act "shall not 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 means that the entity that managed land before creation of a national trail manages the land afterward, as well. Similarly, the same section distinguishes between the "Secretary charged with the overall administration of a *trail*" and the agency responsible for "federally administered *lands*." *Id.* (emphases added). This distinction is no "marginal semantic divergence"; it is

a straightforward application of "the usual rule that when the legislature uses certain language in one part of the statute and different language in another," it intended "different meanings." *DePierre* v. *United States*, 564 U.S. 70, 83 (2011) (quotations omitted).

The land-trail distinction also makes sense because the Appalachian Trail was created as "a right-of-way," not a full land transfer. 16 U.S.C. § 1244(a)(1). It "include[s] lands" only "[w]here practicable," and subject to specified agreements. *Id.* The same is true of all national trails, which are developed as "rights-of-way" crossing over "Federal lands *under the jurisdiction of another Federal agency*"—or, for that matter, state, local, or private lands. *Id.* § 1246(a)(2) (emphasis added); see also National Trails System Act, Pub. L. No. 90-543 § 7, 82 Stat. 919, 922 (1968); 16 U.S.C. § 1241(a) (enacting 16 U.S.C. § 1246).

Congress's recognition that trails frequently cross lands other federal agencies manage is consistent with viewing a trail as a right-of-way: 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, not a transfer of ownership. And 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, because it would have already given the administering agency authority to use the 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).

The Fourth Circuit's mistaken view of what it means to "administer" a trail would also make meaningless the Trail Act's multiple provisions that require cooperating with States and other non-federal landowners. The Interior Secretary must, for example, "consult with the heads of all other affected State and Federal agencies" when making decisions affecting a trail. 16 U.S.C. § 1246(a)(1)(A). The Trails Act also recognizes the need to "cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas." *Id.* § 1246(h)(1). In these cases, the Secretary may enter into "cooperative agreements" with the States (as well as local and private landowners) for maintaining relevant portions of a trail. *Id.*

In short, the Fourth Circuit's myopic focus missed seeing the forest for the trail. Correcting to account for all relevant statutes makes clear that power to administer a national trail does not alter the legal status of the land it crosses.

B. The Decision Below Undermines The Mineral Leasing Act's Goal To Balance Conservation With Energy Development.

The statutory analysis discussed above 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 legislative history underscores the need for review. This statute weighs two interests: Encouraging ongoing development of our nation's energy resources, and protecting federal lands. The Fourth Circuit's interpretation supplants this balance with an inflexible, 1,000-mile barrier to energy development for States on both sides of the Appalachian Trail. This outcome is far afield of Congress's intended goal.

The 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 created a system for natural-resource extraction on federal lands that did not include 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.* Congress thus designed the statute to promote energy development across most federal lands. In the exempted federal lands—and only those lands—Congress determined that conservation goals outweighed the need for infrastructure development.

The Act was amended 53 years later in response to a narrow interpretation of its pipeline provision in *Wilderness Society* v. *Morton*, 479 F.2d 842 (D.C. Cir. 1973). 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, the decision stripped federal agencies of the ability to grant meaningful easements for pipeline construction on any federal land. See S. Rep. 93-207, at 11. Congress quickly amended the Act to authorize the right-of-way at issue in *Morton* and to correct this concern going forward. *Id.* at 11-12 ("S. 1081 . . . would resolve the major uncertainties which now exist and would vest . . . appropriate Federal agencies with the authority to grant rights-of-way for the purposes provided in the Act.").

Congress also took the opportunity to revisit the balance between pipeline construction and protection for federal lands. The 1973 amendment process was dynamic and reflected multiple compromises, but the end result 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 (1973) (statement of Senator Jackson upon introduction of S. 1081) (emphasis added). The Fourth Circuit's narrow read of the resulting text cannot be squared with Congress's goals, and would

replace one judicial interpretation unduly restricting infrastructure development with another.

Two features of the amendment process highlight that Congress did not intend to halt pipeline construction on national forest lands:

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 only the Secretary of the Interior 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 2 (Oct. 31, 1973). This important clarification indicates that Congress was concerned with making rights-of-way easier to obtain, not harder.

Second, the crux of the congressional debates was how many federal lands to exempt from the general policy favoring rights-of-way. The Senate bill proposed expanding the exemption from "national parks" to "lands in the National Park System," the "National Wildlife Refuge System," and the "National Wilderness Preservation System," among others. S. Rep. 93-207, at 29. The House's original language would have simply allowed larger rights-of-way for pipeline construction. H.R. 9130 § 1, as introduced by Rep. Melcher, 93rd Cong. (June 29, 1973). It would

not have expressly exempted *any* federal lands from this provision, even lands in the National Park System. See H. Rep. 93-414, at 9-10 (1973). This approach raised concerns in committee and during floor debates, however, leading to a proposed amendment adopting much of the Senate's language, while clarifying that exempting the National Park System and the other land categories would not override preexisting statutes that "specifically authorize [a] right-of-way or permit" in those areas. 119 Cong. Rec. 27,678 (Aug. 2, 1973) (amendment offered by Rep. Dingell).

This language, too, was controversial. Some members saw "no evidence the amendment [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 exempted areas, wherever the line fell between

exempted and non-exempted lands. *Id.* at 27,679 (statement of Rep. Meeds).

The conference report ultimately provided a workable compromise. Noting that it was "not completely clear" which specific lands were already covered by the Act, the conference 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 address 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 more importantly, the nation's "Scenic Trails"—which by that time included the Appalachian Trail, 16 U.S.C. § 1244(a)(1)—were specifically understood to be part of the new category of federal "reservations," rather than "lands in the

National Park system." 199 Cong. Rec. 36,611 (statement of Rep. Dingell). Congress ultimately adopted this compromise approach, and it remains in effect today.

The amendment process 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). The Fourth Circuit ignored the deliberate choices Congress made. Indeed, by blocking pipeline construction over a Scenic Trail that spans thousands of miles of national forest land—whether the construction is limited to 25 feet or not—it makes the problem that sparked the 1973 amendment process *worse* than before Congress took it up in the first place. The Court should grant review to correct these serious errors below.

II. Review Is Needed To Stem The Far-Reaching Consequences Of The Decision Below.

The Court should also intervene because the effects of the Fourth Circuit's decision are severe. The

court below did not conclude the Forest Service was the wrong agency to grant a right-of-way crossing the Appalachian Trail, but that under the Mineral Leasing Act *no* federal agency possesses that power. The court thus erected a roadblock to energy-infrastructure development at least 1,000 miles long. The disruption and potential ultimate defeat of the ACP that barrier creates has already hurt the energy markets and economies of many *amici* States. The decision also calls into question the status of other pipelines running under the Appalachian Trail, and will very likely chill development in and outside the Fourth Circuit as well—wherever the wide-ranging National Trail System intersects a proposed pipeline's path. Finally, 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.

A. Shuttering Construction On The Atlantic Coast Pipeline Harms States On Both Ends Of Its Route.

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 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 also estimated to produce a further $216 million in property tax revenues between 2018 and 2025.[5] Moreover, pipeline construction represents over 17,000 jobs in the affected States[6]—jobs that are critical for many of those States' citizens.[7]

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. Final EIS at 1-3. This gas would be able to

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

produce over 1.5 trillion British thermal-units of energy every day,[8] enough to satisfy over 90% of the demand for natural gas energy in the entire Commonwealth of Virginia.[9] And because the vast majority of this gas will be sold to utilities and used to produce electricity for commercial and residential consumers,[10] the pipeline represents a potential savings of $377 million in energy costs *every year*, see Final EIS at 4-508. For States facing steadily rising costs for residential electricity, a new supply of lower-cost and locally sourced energy cannot come soon enough. Residents of North Carolina and Virginia, for instance, have been historically underserved in this area, with residential natural gas prices currently 20%-50% higher than the national average.[11]

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[8] 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.

[9] 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.

[10] *Id.*

[11] 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.

B. The Decision Below Could Severely Constrain Energy Development Nationwide.

The consequences of the decision below expand far 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. The "sweeping" nature of the decision below warrants review. See *Youngdahl* v. *Rainfair, Inc.*, 355 U.S. 131, 137 (1957).

To start, 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.[12] And these federal lands are highly concentrated around state lines, which makes it extremely impractical to re-route around them: The Trail, for example, spans almost all of West Virginia's eastern border.[13] Geography thus

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[12] 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.

[13] See U.S. Nat'l Parks Srvc., *Appalachian Trail Map* (last accessed July 29, 2019), https://nps.maps.arcgis.com/apps/

makes the decision below an effective work-stoppage order for current and future pipelines in this entire region. After all, the decision is not about taking a hard look at the Forest Service's judgment that a right-of-way is not "inconsistent with the purposes" of the Appalachian Trail and forest lands. 30 U.S.C. § 185(b)(1). By deeming the Appalachian Trail "lands in the National Park System" when it crosses national forests, the court held that *no* federal agency may authorize a right-of-way under the Mineral Leasing Act, no matter how thorough its review.

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.[14] 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 is (improperly) defined to include all NPS-administered trails regardless of which federal agency manages the underlying land, it would include an overwhelming majority of NPS-

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webappviewer/index.html?id=6298c848ba2a490588b7f6d25453e4e0.

[14] 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.

administered trails: over 11,409 miles.[15] If *that* distance were a straight line—the miles the decision below transforms into an impassable barrier to energy development—it would easily stretch the entire length of the Western Hemisphere, from Anchorage, Alaska, to Rio Gallegos, Argentina.

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 that is so convoluted the agency has not fully measured it yet; the estimates above include less than two-thirds of the total National Trail System.[16] 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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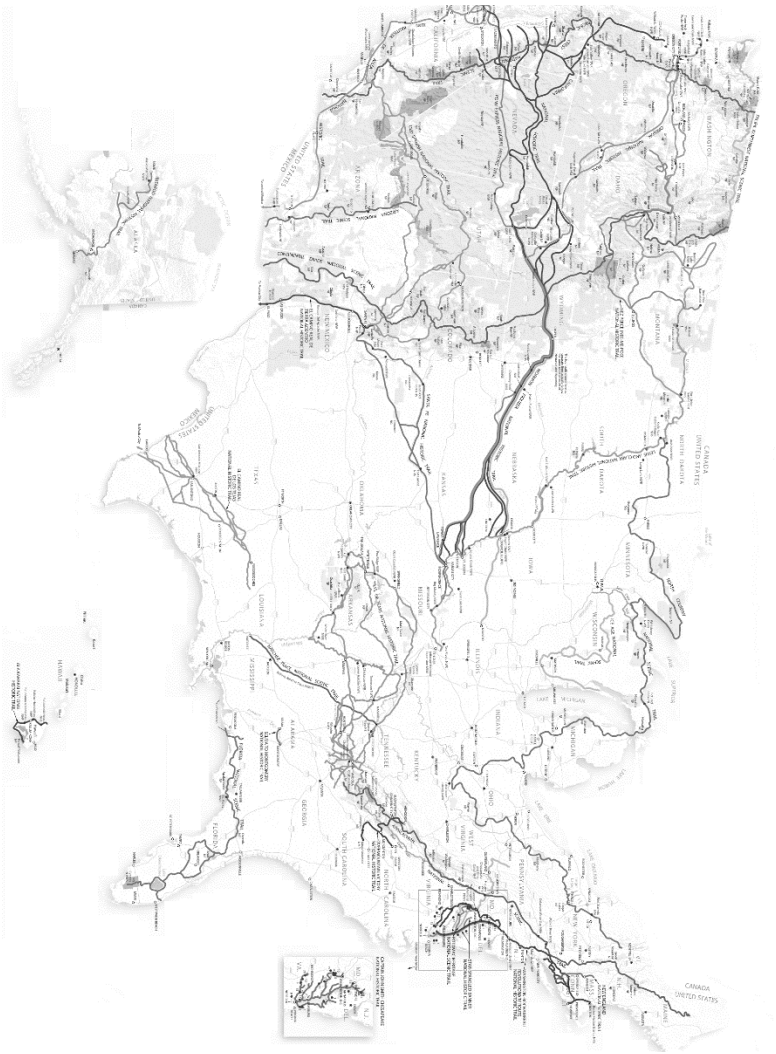
[15] *Id.*

[16] *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.

The Mineral Leasing Act should not be used to clog the arteries of the nation's power grid with over 11,000 miles of newly discovered barriers. Although courts outside the Fourth Circuit are not bound by the decision below, investors will likely think twice before undertaking years of groundwork, environmental studies, and other costly pre-construction measures that could be undone by a similar holding. This Court should intervene to avoid stalling much-needed infrastructure development nationwide.

C. The Decision Below Undermines Important Interests Beyond Pipeline Development.

Review is also warranted because the decision below will disrupt more than pipelines. The decision's "significant impact on the relationship between" States, landowners, and federal agencies warrants this Court's review. *Dep't of Interior* v. *Klamath Water Users Protective Ass'n*, 532 U.S. 1, 7 (2001).

First, the logic of the Fourth Circuit's decision would leave NPS 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. Linking a law's applicability to the agency that administers a trail, however, 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). Yet if 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"[17] that make up the nation's power grid. Yet left to stand, 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.[18]

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[17] 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.

[18] 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*

Second, the decision below could 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," Pet. App-60, but the court's reasoning requires exactly that when applied to Forest Service-administered trails. Just as (under the decision below), tying administration of a trail to management of the land it crosses creates a 1,000-mile sliver of Park Service land in the George Washington National Forest, 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, which the Forest Service administers. 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 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. The Fourth Circuit should have rejected 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.

Finally, the decision below raises serious questions about the sovereignty and ownership interests of States and other non-federal entities that own land the national trails cross, including their ability to issue rights-of-way for pipeline development on their own lands. 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 Trails Act and Mineral Leasing Act's prohibition on rights-of-way within Park System land could be controlling. The Court should not allow this result, nor the serious disruption to our nation's energy grid that challenges to the legality of existing rights-of-way could unleash.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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