No. 23A35

In the Supreme Court of the United States

MOUNTAIN VALLEY PIPELINE, LLC,
Applicant,

v.

THE WILDERNESS SOCIETY, et al.,
Respondents.

MOUNTAIN VALLEY PIPELINE, LLC,
Applicant,

v.

APPALACHIAN VOICES, et al.,
Respondents.

On Emergency Application to Vacate the Stays of the U.S. Court of Appeals for the Fourth Circuit (Nos. 23-1592, 23-1594, & 23-1384)

BRIEF OF EQT CORPORATION, THE GAS AND OIL ASSOCIATION OF WV, INC., MARCELLUS SHALE COALITION, RANGE RESOURCES CORPORATION, AND PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF APPLICANT

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

July 19, 2023

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STATEMENT OF INTEREST[1]

EQT Corporation ("EQT Corp.") is the largest producer of natural gas in the United States. As a foundation shipper on the Mountain Valley Pipeline Project ("the Pipeline"), EQT Energy, LLC ("EQT") has subscribed to 1,165,000 dekatherms per day of firm transportation capacity on the Pipeline. The Pipeline is an important part of EQT's long-term goals regarding responsible energy development, and EQT is counting on that contracted capacity to meet the growing need for natural gas.

Gas and Oil Association of WV, Inc. ("GO-WV") is an association of oil and gas-related companies doing business in the State of West Virginia. GO-WV's members are engaged in the exploration, production, gathering, distribution, transportation, and sale of natural gas. Many of GO-WV's members utilize the facilities of Equitrans, L.P. ("Equitrans") to ship natural gas. Equitrans is located upstream of the Pipeline, and many of GO-WV's members have precedent agreements to become firm shippers or are potential shippers of natural gas on the Pipeline.

The Marcellus Shale Coalition ("MSC") represents natural gas producers, midstream and pipeline companies, and local supply-chain companies that promote the safe and responsible development of natural gas from the Marcellus and Utica geological formations located in the Commonwealth of Pennsylvania. Pennsylvania accounts for 20% of the nation's natural gas production, and interstate pipelines are essential for MSC members in order to get their gas to market. MSC members intend

[1] No part of this brief was authored by any party's counsel, and no person or entity other than *amici curiae* funded its preparation or submission.

to use the Pipeline to supply gas to underserved parts of the country. The U.S. Energy Information Administration estimates that over 100 trillion cubic feet of proven gas reserves exist in Pennsylvania. Stranding these valuable natural resources due to the lack of an interstate pipeline leading to important demand regions would be tremendously wasteful and detrimental to MSC members' operations.

Range Resources Corporation ("Range") is one of the largest producers of natural gas in the United States, with all its unconventional natural gas produced in Pennsylvania. Range has produced energy in Appalachia for more than twenty-five years, and it was the first exploration company to commercially drill in and develop the Marcellus Shale, which has become one of the most prolific natural gas reservoirs in the world. Pipeline infrastructure, including that to be offered by MVP, is critical to natural gas development in Appalachia, including to Range as a producer of natural gas, those involved in the natural gas industry, and consumers of natural gas who rely on this clean energy source for electric power generation and as a feedstock for products needed in everyday life.

Pennsylvania Independent Oil & Gas Association ("PIOGA") is an association of independent producers and other oil and gas-related companies doing business in the Commonwealth of Pennsylvania. PIOGA's members are engaged in the exploration, production, marketing, and sale of natural gas. Many of PIOGA's producer members utilize the facilities of Equitrans to ship natural gas. Equitrans is located upstream of the Pipeline, and PIOGA members are potential shippers on MVP.

Based on their extensive experience in the natural gas industry, *Amici* respectfully submit this brief to explain why the public interest overwhelming supports granting Applicant Mountain Valley Pipeline, LLC's ("MVP") Emergency Application to Vacate the Stays of Agency Authorizations Pending Adjudication of the Petitions for Review ("the Emergency Application"). Indeed, absent emergency relief from this Court, the public will be significantly and irreparably harmed. *Amici* therefore urge the Court to promptly grant the Emergency Application.

INTRODUCTION

In the Fiscal Responsibility Act of 2023, Congress "f[ound] and declare[d] that the timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest." Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, §324(b), 137 Stat. 10, 47-48 (2023) (the "Act"). Congress further found that the Pipeline will "serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions" while "increas[ing] the reliability of natural gas supplies and the availability of natural gas at reasonable prices"; will "allow natural gas producers to access additional markets for their product"; and will "reduce carbon emissions and facilitate the energy transition" away from less-efficient, more environmentally harmful energy sources. *Id.*

Despite these explicit Congressional findings—any one of which is sufficient to demonstrate that the public interest favors the Pipeline's immediate completion—the U.S. Court of Appeals for the Fourth Circuit has indefinitely stayed the federal authorizations that would allow MVP to finish the Pipeline's remaining few miles of construction, thus slamming the breaks on the entire project. The Fourth Circuit did

not explain how further delay of this important infrastructure project could serve the public interest. Indeed, the Fourth Circuit offered no explanation at all for its decision, much less its exercise of jurisdiction. Unless this Court promptly vacates the Fourth Circuit's stays, the Pipeline will not be completed this year, will not transport natural gas to end users and consumers, and will not provide fuel to heat American homes this winter—flatly contrary to Congress's determination that the "national interest" requires the Pipeline's "timely completion."

The Emergency Application correctly explains why the Fourth Circuit's stays run contrary to law, thwart the express will of Congress, risk irreparable injury to MVP (and others), do not provide any valid benefits to the Pipeline's opponents, and harm the public interest. Here, *Amici* submit this brief to further demonstrate why the public interest supports vacatur. As Congress recognized, the Pipeline will directly benefit the public, including enabling millions of U.S. consumers to access affordable and reliable energy, expanding access for natural gas producers, and reducing regional emissions versus the status quo. Even absent deference to Congress's judgement about where the public interest lies, vacatur would be warranted. As *Amici* can aver, the disruption to industry and the consequences for the public are palpable absent timely completion of this long-delayed project. Given that Congress, however, considered these precise issues and explicitly found that the public interest supports the Pipeline, the Fourth Circuit's decision is even more indefensible and vacatur is required.

BACKGROUND

For more than six years, MVP has endeavored to complete the Pipeline and connect natural gas supplies in the Appalachian Basin to broader regions of demonstrated demand. Doing so has required MVP to obtain regulatory approvals regarding essentially all aspects of the project, spend billions of dollars, invest countless hours, and defend the project against torrents of litigation. All this effort is worth it because the Pipeline is an essential piece of American infrastructure that will provide significant benefits to the public. In recognition of the project's importance, Congress expressly determined in the Fiscal Responsibility Act of 2023 that the national interest requires this essential project's timely completion. Unless promptly vacated by this Court, the Fourth Circuit's stays will harm the public interest—which requires that construction begin by no later than July 26, 2023—while disregarding Congress's findings about what the public interest requires.

A. Natural Gas Has Important Benefits

Natural gas is one of the most valuable natural resources in the United States. Not only does this form of energy provide heat for homes and cooking, hundreds of consumer products used every day,[2] and many industrial uses, but it is also a primary feedstock for power generation. In 2022, the United States used more than 32 trillion cubic feet of natural gas, which accounts for approximately one third of all energy use

[2] *See*, *e.g.*, *No Substitute for Products Made from Natural Gas & Oil: Saving Lives & Enhancing Safety During COVID*, PIOGA, at 2, https://pioga.org/publication_file/Just_The_Facts_Products_From_Gas_Oil.pdf, (listing items made from natural gas and oil found in every emergency room).

in the country. *See, e.g.*, *Natural Gas Explained: Use of Natural Gas*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php.

There are many reasons for the widespread and growing use of natural gas. One is availability. The United States is home to some of the largest natural gas reserves—primarily shale formations—on earth. Over 600 trillion cubic feet of natural gas can be economically recovered in the United States using just existing technology, and for decades that volume has increased annually as technology improves. *See, e.g.*, *Natural Gas Explained: How Much Natural Gas Is Left*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/how-much-gas-is-left.php. Much of that volume is found in the "Marcellus shale play in the Appalachian Basin, spanning Ohio, Pennsylvania, and West Virginia." *Natural Gas Explained: Where Our Natural Gas Comes From*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/where-our-natural-gas-comes-from.php. In fact, more than 100 trillion cubic feet of natural gas is available under existing economic and technological conditions in Pennsylvania alone, with another roughly 50 trillion cubic feet in West Virginia and 32 trillion cubic feet in Ohio. *See, e.g.*, *Natural Gas Explained: How Much Natural Gas Is Left*, *supra*. According to the U.S. Energy Information Administration, there are 710 drilled-but-not-completed wells ("DUCs") in the Appalachian Basin as of June 30, 2023. *Drilling Productivity Report, DUC Well by Region (Appalachian Basin)*, U.S. Energy Info. Admin., July 17,

2023, https://www.eia.gov/petroleum/drilling/#tabs-summary-3. Placing MVP in service could lead to completion of these wells, thereby increasing production.

Another reason for the substantial natural gas usage in the United States is its affordability—at least for those in geographic regions that can access it. Because natural gas is so abundant compared to other forms of energy, it can significantly decrease a user's costs. According to the federal government, for example, natural gas is nearly 3.5 times more affordable than electricity as a residential energy source. *See, e.g.*, *Representative Average Unit Costs of Energy*, U.S. Dep't of Energy, 87 Fed. Reg. 12681, 12682 (Mar. 7, 2022).

Especially compared to the types of fuel that once dominated the U.S. energy market and still power most of the rest of the world, natural gas is also good for the environment. "Burning natural gas for energy results in fewer emissions of nearly all types of air pollutants and carbon dioxide (CO_2) than burning coal or petroleum products to produce an equal amount of energy." *Natural Gas Explained: Natural Gas and the Environment*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php. Replacing coal with natural gas thus results in a roughly 60% reduction in CO_2 emissions. *See, e.g.*, *Environment Baseline, Volume 1: Greenhouse Gas Emissions from the U.S. Power Sector* at 18, U.S. Dep't of Energy (June 16, 2016). And on this front, natural gas from Appalachia is particularly beneficial: the region is the largest producer but has among the lowest methane-emission intensity of all major oil and natural gas basins in the country. *See Benchmarking Methane and Other GHG*

Emissions of Oil & Natural Gas Production in the United States, Clean Air Task Force, at 15, https://www.catf.us/resource/benchmarking-methane-emissions/, (June 1, 2021).

The United States' access to an abundant, affordable, low-emissions energy source has resulted in predictable environmental performance. From 2005 to 2019, the United States led the world in emissions reductions, decreasing its annual emissions by approximately 960 million metric tons per year, approximately 61% of which was attributable to natural gas replacing coal for power generation. *See Unleashing U.S. LNG*, EQT Corp., at 19, https://www.eqt.com/wp-content/uploads/2022/03/LNG_Final.pdf (citing *World Energy Outlook 2021*, Int'l Energy Agency, https://iea.blob.core.windows.net/assets/4ed140c1-c3f3-4fd9-acae-789a4e14a23c/WorldEnergyOutlook2021.pdf; *U.S. Energy-Related Carbon Dioxide Emissions, 2019*, U.S. Energy Info. Admin., https://www.eia.gov/environment/emissions/carbon/archive/2019/pdf/2019_co2analysis.pdf). To put this into context, the amount of emissions reduction from coal-to-gas switching in the United States alone was roughly the same as the total emissions reductions from the United Kingdom, Italy, Germany, and Japan combined, the next highest performing countries globally. *See id.*

B. Challenges To Greater Use Of Natural Gas

Expanding access to natural gas requires pipeline infrastructure. Because reserves are not uniformly distributed, and because natural gas is a gas, pipeline infrastructure is required to transport gas from producing regions to regions of consumption. As a result, prices for natural gas "vary greatly" depending on where

a user is located. *Natural Gas Explained: Natural Gas Prices*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/prices.php. In fact, two of the most significant pricing factors are "[d]istance from where natural gas is produced or stored" and "[a]vailability and capacity of transmission pipelines to move natural gas from producing areas, storage facilities, and trading hubs to distribution hubs." *Id.*

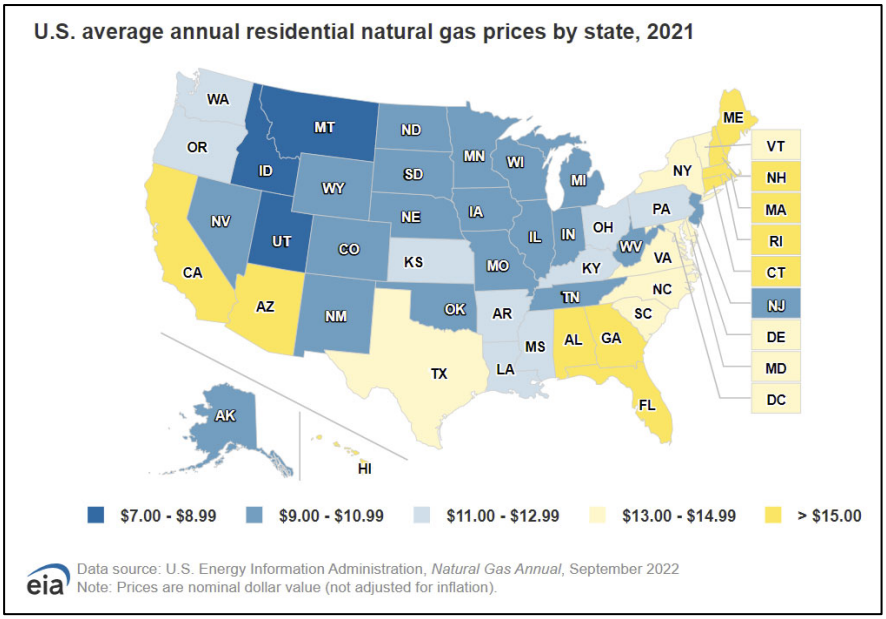
Pipelines allow natural gas to leave the Appalachian Basin, thus increasing the supply of this energy source in other regions and lowering prices. This concept—known as "takeaway capacity"—is critical. App'x 42. Without the ability to transport natural gas from where it is found to where it is needed, the value of this important natural resource for consumers and producers is considerably reduced.

Unfortunately, "[t]he Appalachian Basin has recently experienced periods in which natural gas production has surpassed local takeaway capacity." *Id.* Absent "significant Appalachian Basin takeaway capacity," natural gas producers and shippers are unable to efficiently respond to market demand and consumer needs. *Id.* This logistical reality explains why greater pipeline capacity "increase[s] service reliability and will ultimately reduce the excessive prices that end users often pay for natural gas." App'x 43; *see also, e.g.*, App'x 23, 49.

The criticality of pipeline infrastructure to expanded consumption of natural gas has not been lost on those that oppose the use of natural gas as an energy source. In the past decade, these groups have targeted natural gas pipeline infrastructure in litigation, in particular infrastructure emanating from the Marcellus Shale to service

demand regions in either the Northeast or Southeast. And they have been highly successful. The amount of interstate natural gas pipeline capacity additions has dropped from over 28 billion cubic feet per day in 2017 to under 1 billion cubic feet per day in 2022, the least capacity additions on record. *See, e.g.*, *The Least U.S. Interstate Natural Gas Pipeline Capacity On Record Was Added In 2022*, U.S. Energy Info. Admin. (Mar. 2, 2023), https://www.eia.gov/todayinenergy/detail.php?id=55699#. During this time, roughly 7 billion cubic feet per day of pipeline infrastructure intended to address unmet demand in Northeast and the Southeast United States has been canceled or put on hold as a result of excessive litigation delays and costs. *See* Feb. 16, 2022 EQT Corp. Ltr. to J. Granholm at 2, https://www.eqt.com/wp-content/uploads/2022/02/Letter-to-Secretary-Granholm-vF2-2.16.22-1.pdf (table of canceled or opposed pipelines and their volume capacities).

As a result of the success of these opposition groups in blocking this needed infrastructure, significant population centers—particularly in the Northeast, Mid-Atlantic, and Southeast—pay considerably more than other regions do:



Natural Gas Explained: Natural Gas Prices, *supra*. Even more concerning, these regions, in particular in the Northeast, have faced the uncertainty and significant risk associated with potential power reductions and blackouts. *See*, *e.g.*, *2021/2022 Winter Outlook*, ISO New England, at 2, https://www.iso-ne.com/static-assets/documents/2021/12/20211206_winteroutlook2122_pressconference.pdf ("three variables could put the region in a more precarious position than past winters and force the ISO take emergency actions, up to and including controlled power outages"); *2023/2024 Winter Outlook*, ISO New England, at 6, https://www.iso-ne.com/static-assets/documents/2023/05/npc-2023-05-04-coo-rpt-2023-24-winter-outlook-scenarios.pdf ("under [cold winter with several cold stretches] scenario, ISO expects that capacity deficiency actions under [Operating Procedure 4] may be necessary across a few days").

Perversely, while many of the opponents to natural gas pipeline infrastructure claim to be acting on behalf of the environment, the blocking of natural gas pipeline

infrastructure has resulted in increased emissions, with New Englanders burning fuel oil and the Southeast continuing to unnecessarily rely on coal-fired power generation. Because of the successful oppositions to natural gas infrastructure—the same type of infrastructure that facilitated the United States' world-leading emissions reduction since 2005—it is likely that the current administration will be the first to oversee increasing domestic emissions this century.

C. The MVP Project, Congress's Factual Findings, And The Urgent Need For Completion

As the Emergency Application documents, MVP has been working for more than six years to increase takeaway capacity from the Appalachian Basin. The Pipeline will expand the volume of gas that can move to other regions, thereby reducing prices and creating significant environmental benefits. As EQT explained to the Federal Energy Regulatory Commission, "spot prices in the Southeast region have consistently been almost 50% higher than those in Appalachia," and during winter, prices may be "nearly triple." Comments of EQT Energy, LLC in Support of Completion of the Mountain Valley Pipeline and the Requested Extension of Time (July 25, 2022), https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20220725-5139. It thus is "abundantly clear" that lack of takeaway capacity from the Appalachian Basin is "harming consumers' financial wherewithal" right now, and the Pipeline "will undeniably help to remedy the situation." *Id.*

The need for additional takeaway capacity, moreover, extends beyond national borders. As discussed above, increased domestic use of natural gas has dramatically reduced U.S. carbon emissions. The rest of the world, by contrast, remains largely

where the United States was decades ago: Global coal consumption is at all-time highs and accounts for roughly half of foreign carbon emissions. In 2021 alone, the increase in emissions from international coal had the environmental effect of offsetting roughly fifteen years of investment in solar and wind in the United States. *See Electric power sector CO2 emissions drop as generation mix shifts from coal to natural gas*, U.S. Energy Info. Admin., https://www.eia.gov/todayinenergy/detail.php?id=48296#:~:text=Of%20the%20819%20million%20metric,the%20increase%20in%20renewable%20generation (June 9, 2021) ("Of the 819 million metric ton decline in CO2 emissions from 2005 to 2019, approximately 248 million metric tons [or 0.28 gigatons] (30%) of that decline is attributable to the increase in renewable generation."); *Global Energy Review: CO2 Emissions in 2021*, Int'l Energy Agency, at 1, 4, https://iea.blob.core.windows.net/assets/c3086240-732b-4f6a-89d7-db01be018f5e/GlobalEnergyReviewCO2Emissionsin2021.pdf (noting that CO_2 emissions increased by over 2 gigatons in 2021 and that coal accounted for over 40% of the overall growth in CO_2 emissions that year, meaning coal was responsible for approximately 0.8 gigatons of increased CO_2 emissions worldwide).

To address the unchecked growth in international coal consumption and associated emissions, countries like the United States must provide access to alternatives. Two-thirds of the world's economically recoverable natural gas resources sit within the borders of just four countries—the United States, Russia, Iran, and Qatar—and supplanting coal with natural gas could cut emissions in half,

but only if supply can meet demand. Modern shipping technology allows tankers to transport liquified natural gas to non-producing countries. *See, e.g.*, *Natural Gas Explained: Liquefied Natural Gas*, U.S. Energy Info. Admin., https://www.eia.gov/energyexplained/natural-gas/liquefied-natural-gas.php. Yet without pipelines connecting natural gas reserves to export facilities, it is impossible to move natural gas across seas.

Time is also of the essence. Unless construction begins again by no later than July 26, 2023, "it is extremely unlikely that Mountain Valley will be able to complete construction before Spring 2024." App'x 58. This means that users of natural gas will not be able to access it in the amounts they need during the winter months, when energy is generally most necessary and expensive. *See, e.g.*, App'x 23. Furthermore, if the Pipeline is prevented from being completed prior to another winter, natural gas producers will be irreparably affected. For years, producers have waited, planned, and adjusted as construction of the project started and stopped in response to a deluge of legal challenges. Now, at last, the Pipeline is nearly complete, and both Congress and the Executive Branch have greenlit the last leg of its journey. Producers therefore are preparing to finally access this important piece of infrastructure. In fact, producers need "the Project be completed and placed into service as soon as possible," App'x 42-43, or else their ability to timely provide consumers with this necessary energy will be irreparably harmed. EQT, for example, requires the Pipeline's prompt completion so that it can "deliver the gas EQT has extracted to

market," "meet its customers' need for natural gas," and "satisfy its delivery obligations." App'x 43.

Recognizing these facts, Congress enacted legislation to prevent further delays of the Pipeline as part of the Fiscal Responsibility Act of 2023. Of particular significance, Congress "found" that the "national interest" requires "timely completion of construction and operation of the Mountain Valley Pipeline." Act, §324(b). Accounting for the nation's current state of pipeline infrastructure and the need for greater takeaway capacity from the Appalachian Basin, Congress also found that the Pipeline will "serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions" and will "increase the reliability of natural gas supplies and the availability of natural gas at reasonable prices." *Id.* Furthermore, observing the outsized importance of the energy sector to the nation's overall economic health and the cross-cutting value of job creation, Congress also found that prompt completion of the Pipeline will "allow natural gas producers to access additional markets for their product." *Id.* Finally, reflecting the considerable environmental benefits of natural gas over other forms of energy, Congress also found that the Pipeline will "reduce carbon emissions and facilitate the energy transition." *Id.* Congress made these findings with good reason: prompt completion of the Pipeline is essential if natural gas producers are to meet "customers' need for natural gas" by transporting this critical energy source to where it is needed. App'x 43.

Despite these considerable public benefits—and Congress's findings regarding them—the Fourth Circuit indefinitely stayed completion of the Pipeline during the

entire pendency of the petitions on review. *See* App'x 1-2, 3-4. The consequence of those stays (absent vacatur by the Court) is that the Pipeline will not be completed this year despite Congress's findings. Without this Court's intervention, the cascading effects of that delay will be substantial. Because it offered no analysis, the Fourth Circuit did not explain how that outcome purports to further the public interest. As set forth below, it cannot, and the stays should be immediately vacated.

ARGUMENT

Traditional stay factors govern whether to grant a stay pending judicial review. *See, e.g.*, *Nken v. Holder*, 556 U.S. 418, 426 (2009). This Court thus considers "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.*

For the many reasons set forth in the Emergency Application, the Fourth Circuit's indeterminate injunctions (denominated as "stays"), which serve to disrupt time-critical work on the Pipeline, should be vacated. The Fourth Circuit lacked jurisdiction to issue the "stays," and any constitutional objection is in the wrong forum and meritless in any event. Furthermore, MVP (and many others) will suffer irreparable injury, while the Pipeline's opponents have no lawful interests to offset that injury. As MVP explains, moreover, the public interest also firmly favors expeditious completion of this important project. Here, drawing on their deep experience with the production and distribution of natural gas, *Amici* write to further

explain the harms that delay will impose on the public and why the final stay factor—"where the public interest lies"—overwhelmingly requires immediate vacatur.

The Public Interest Overwhelming Supports Vacating The Stays.

By any measure, the public benefits from greater natural-gas pipeline capacity. Where available, natural gas is more affordable than coal-generated electricity and much better for the environment. It is also one of the nation's most abundant and significant natural resources—one that strengthens economic well-being, reduces dependence on foreign energy, and produces tens of thousands of jobs for hardworking Americans.

Any of these benefits—and certainly the combined force of all of them—confirm that prompt completion of the Pipeline is in the public interest. Importantly, however, the Court need not take *Amici*'s word for it: Congress itself has considered this very issue and definitively declared what policy will best serve the public interest. That is why Congress made the findings that it did; that is why Congress determined for itself the issues that Respondents seek to have the courts second-guess; and that is why Congress specifically identified the court that can exercise jurisdiction respecting challenges to the Pipeline—categorically excluding the Fourth Circuit from any involvement. Where, as here, Congress has determined what the "national interest" requires, Act, §324(b), foundational separation-of-powers principles demand that the judiciary respect Congress's judgment.

A. Congress's Judgment About What The Public Interest Requires Should Be The Beginning And End Of The Issue.

Under our system of government, it is "up to Congress" to determine what "the public interest" requires. *Ala. Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485, 2490 (2021) (per curiam). Where "an issue involves a host of considerations that must be weighed and appraised, it should be committed to those who write the laws rather than those who interpret them." *Ziglar v. Abbasi*, 582 U.S. 120, 135-36 (2017) (quotations omitted). This is because "the Legislature is in the better position" to decide what is in "the public interest." *Id.* at 136. Indeed, Congress has "exclusive" authority "not only to formulate legislative policies and mandate programs and projects, but also to establish their relative priority for the Nation." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978). Because determining "whether an injunction"—or, in this case, a stay—"should issue" requires a court to choose "between conflicting public interests," it follows that "[w]hen Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement." *Youngstown Sheet Tube Co. v. Sawyer*, 343 U.S. 579, 609-610 (1952) (Frankfurter, J, concurring).

In light of these bedrock principles, courts should defer to Congress's judgment about what the public interest requires. *See, e.g.*, *Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F.4th 38, 49 (1st Cir. 2021) ("Congress has effectively declared the public interest and weighed the equities…. Whether the statutory framework that requires this result should be changed is up to Congress, not the courts."); *Sierra Club v. Trump*, 929 F.3d 670, 707

(9th Cir. 2019) (where Congress has determined what the "public interest" requires, "[i]t is not for us to reach a different conclusion"); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016) (emphasizing what "Congress … declared to be the public interest"). So it is here.

The deference owed to Congress is even greater in this case, moreover, because the Executive Branch—across multiple administrations—has also concluded that the Pipeline should be completed. *See, e.g.,* Emergency App. at 4 (describing agency approvals MVP has obtained); *see also* Apr. 21, 2023 J. Granholm Ltr. to FERC, https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20230424-4000, (recognizing that "the Federal Energy Regulatory Commission…has completed its regulatory authorizations for the MVP project"). In assessing the public interest, an Article III court should not lose sight of what the other branches have determined. *Cf. Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24-26 (2008) (vacating injunction in light of "great deference" owed to a coordinate branch of government).

B. The Public Interest Overwhelming Supports The Pipeline's Prompt Completion.

For the reasons identified by Congress, the public interest overwhelming supports prompt completion of the Pipeline and calls out for this Court to promptly vacate the Fourth Circuit's stays. Finishing the Pipeline now, rather than delaying it to 2024 (or to some unknown date beyond), directly serves the public interest in numerous ways.

First, the public needs greater access to affordable, reliable energy now, and the Pipeline will provide exactly that. As Congress determined, the Pipeline will

"serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions" while "increas[ing] the reliability of natural gas supplies and the availability of natural gas at reasonable prices." Act, §324(b). As Secretary of Energy Granholm explained, "the MVP project will enhance the Nation's critical infrastructure for energy and national security." Granholm Ltr., *supra*, at 1. At present the Appalachian Basin does not have enough takeaway capacity, thus preventing natural gas that exceeds local needs from being transported to where it needs to go so it can be used to effectively and reliably provide affordable energy. *See, e.g.*, App'x 42 (explaining that "natural gas production has surpassed local takeaway capacity" and that producers need "significant Appalachian Basin takeaway capacity").

Second, the energy industry—and the innumerable people whose livelihoods depend on the energy industry—require access to additional demand regions. The Pipeline will provide that access. Completing the Pipeline now provides certainty and permits producers to plan both new drilling and the completion of existing wells accordingly; by contrast, allowing an indeterminate stay (from a court with zero authority to issue it in the first place) with no idea when the final few miles of needed pipeline will be completed puts producers, consumers, and everyone in between along the supply chain in an impossible position—with ramifications for global energy markets. As Congress found, the Pipeline will "allow natural gas producers to access additional markets for their product." Act, §324(b). By building additional pipeline

infrastructure, U.S. producers will be able to transport even more of this resource to regions where it is most valuable, benefitting everyone.

Third, greater access to clean energy is in the public interest, and the Pipeline will directly promote that access. Natural gas is cleaner energy than other hydrocarbons and is an essential tool in the effort to address carbon emissions. Where natural gas is not available, other fossil fuels (typically coal) fill the void. Natural gas, moreover, is an important complement to renewable energy sources because it is not dependent on the vagaries of wind patterns or cloud coverage. Indeed, "[n]atural gas—and the infrastructure, such as MVP, that supports its delivery and use—can play an important role as part of the clean energy transition." Granholm Ltr., *supra*, at 1. Congress therefore concluded that the Pipeline will "reduce carbon emissions and facilitate the energy transition." Act, §324(b). No court can gainsay Congress's determination, well supported by science, that the Pipeline will benefit the environment.

Finally, the Pipeline should be finished as soon as possible—and certainly before winter. Millions of Americans will benefit from the Pipeline, and MVP has worked for years to bring those benefits to them. Further delay will benefit no one. Yet unless the Court vacates the Fourth Circuit's stays by July 26, the Pipeline will not be finished until next year at the earliest. At the same time, further delay will significantly harm natural gas producers who need the Pipeline to be completed "as soon as possible" if they are to satisfy their "customers' need for natural gas" while meeting their "delivery obligations." App'x 42-43. An inability to do so will not only

literally leave consumers in the cold, but will also harm the goodwill of everyone upstream in the supply chain. Such delay will also damage the global competitiveness of the U.S. energy industry and undermine energy independence. Congress thus found that "the *timely* completion of construction and operation of the Mountain Valley Pipeline is required in the national interest." Act, §324(b) (emphasis added). That determination was correct, and was Congress's to make. In the wake of the Fourth Circuit's unexplained and unauthorized stays, only this Court can vindicate Congress's charge that further delay of this important project threatens the national interest. The Court should do so immediately so that consumers, producers, the environment, and everyone and everything in between can reap the benefits of the Pipeline that Congress ordained by law should be completed forthwith.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to grant the Emergency Application and vacate the Fourth Circuit's stays immediately and permit the final incremental steps of this vital project finally to be completed.

Respectfully submitted,

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