

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 *AMICUS CURIAE*
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA
IN SUPPORT OF
EMERGENCY APPLICATION TO VACATE THE STAYS OF AGENCY
AUTHORIZATIONS ISSUED BY FOURTH CIRCUIT**

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INTEREST OF *AMICUS CURIAE*¹

The Laborers' International Union of North America ("LIUNA") is a union of primarily construction workers, founded in 1903 by a group of hod carriers and related construction tradesmen who came together to secure better livelihoods for themselves and their families. Today, LIUNA represents roughly 550,000 members throughout the United States and Canada across multiple industries in both the public and private sectors, from construction to energy to manufacturing.

LIUNA has a particular interest in this proceeding based on its representation of hundreds of employees who have been working on the Mountain Valley Pipeline ("the Pipeline"), a 303-mile natural gas pipeline that will deliver gas to existing pipelines and other customers along the Pipeline's route in the New England, Mid-Atlantic, and Southeast regions. Although this Pipeline has been subject to six years of litigation, in May 2023 Congress adopted and the President signed Section 324 of the Fiscal Responsibility Act of 2023, specifically approving all prior authorizations for the Pipeline and directing the Secretary of the Army to immediately issue all permits necessary to complete the Pipeline's construction. Soon thereafter, laborers and other construction workers and equipment were deployed to the field to do the work needed to complete the Pipeline by the end of this year. That work was brought to a sudden and unexpected halt, however, by the stay orders that are the subject of this Application. These stay orders are adversely affecting hundreds of laborers working on the Pipeline, in direct contradiction to the clear direction of Congress and the President in Section 324.

Individual laborers represented by LIUNA perform work on the Pipeline pursuant to a

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than *amicus curiae* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

collective bargaining agreement providing for wages that allow union workers to have a high standard of living, health benefits for themselves and their families, and pension contributions for all hours worked. Employers also make hourly contributions to training funds jointly run by LIUNA and signatory contractors, which ensure that experienced workers are trained on the skills necessary to build the safest pipelines and allow new workers to enter the trade and develop these skills. In return, LIUNA and the workers it represents ensure that the U.S. pipeline infrastructure is built and maintained according to the most up-to-date, safe, and efficient standards, at a significant benefit to the public at large.

SUMMARY OF ARGUMENT

The application to vacate the unexplained stays issued by the Fourth Circuit should be granted. The plain terms of Section 324 of the Fiscal Responsibility Act of 2023 divest the Fourth Circuit of jurisdiction in this case, and, in any event, the statute’s substantive provisions ratify and approve the administrative actions that Petitioners’ lawsuits have challenged.

Failure to promptly vacate the stays – which again have halted construction on the Pipeline notwithstanding Congress’ explicit finding that “timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest” – would have immediate detrimental effects. This is true both for the energy markets in the regions to which the Pipeline would deliver natural gas, as well as for the union-represented laborers who have been hired to finish construction of the Pipeline. Every opportunity for construction work that is delayed or denied is devastating because construction workers rely on a steady supply of projects to provide complete incomes and retirement savings for themselves and their families over the course of their careers. The Pipeline here is no exception, particularly given that laborers already had been deployed to complete the project when the Fourth Circuit stepped in and issued its *ultra vires* stay orders.

ARGUMENT

Mountain Valley Pipeline, LLC (MVP) seeks to vacate several extraordinary stay orders issued on July 10 and 11, 2023 by the United States Court of Appeals for the Fourth Circuit, which together are now blocking completion of the Pipeline. MVP also seeks a mandamus order (or a summary ruling on certiorari) holding that the Fourth Circuit lacked jurisdiction to issue the challenged orders. When issuing each of these stay orders, the Court of Appeals, without a word of explanation or analysis, defied the clear commands of the Legislative and Executive Branches that are contained in Section 324 of the Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 324, 137 Stat. 10, 47-48 (2023) (“Section 324”). Section 324 makes clear that (i) all federal-law agency authorizations necessary for completion of the Pipeline are lawful notwithstanding any other provision of law; (ii) no court has jurisdiction to adjudicate challenges to the lawfulness of those authorizations, again notwithstanding any other provision of law; and (iii) the United States Court of Appeals for the District of Columbia Circuit has exclusive original jurisdiction to adjudicate all claims challenging the constitutionality of Section 324 or alleging that challenged agency actions are not within the scope of authorizations covered by Section 324.

The Pipeline is a 303-mile natural gas pipeline that will deliver gas to existing pipelines and other customers along the Pipeline’s route in the Northeast, Mid-Atlantic, and Southeast regions. The Pipeline has been embroiled in litigation over the past six years. Various groups, including the petitioners at whose behest the Fourth Circuit issued the stays challenged in the instant Application, have filed dozens of lawsuits in the Fourth Circuit and elsewhere, challenging virtually every federal authorization issued for the project, all with the aim of delaying or interrupting completion of the Pipeline. Those suits have presented arguments under a range of laws, from the Administrative Procedure Act and the National Environmental Policy Act to various substantive statutes, as well as agency rules, regulations, and guidance. The same three-judge panel of the

Fourth Circuit has on several occasions enjoined construction of various aspects of the Pipeline, almost always without providing any reasoning whatsoever, and recently without even bothering to receive briefs in opposition to the stay request from MVP or the Federal Government.

Despite the years of delay occasioned by this litigation, the Pipeline is almost finished, with the construction remaining focused on a 3.5-mile stretch of the Pipeline that would traverse the federally-owned Jefferson National Forest, as well as completion of stream crossings outside the Forest and final restoration of the construction environment.

In recent months, MVP received the necessary authorizations from the United States Forest Service (Forest Service) and the Bureau of Land Management (BLM) authorizing construction in the Jefferson National Forest, as well as a Biological Opinion and Incidental Take Statement from the U.S. Fish and Wildlife Service concluding that the construction and operation of the Pipeline would not jeopardize any species of wildlife federally listed for protection under the Endangered Species Act. And on June 28, 2023, the Federal Energy Regulatory Commission (FERC) authorized MVP to resume construction generally. In response, MVP promptly deployed laborers and other workers and equipment to the field to do the work needed to complete the Pipeline by the end of this year. That work, however, was brought to a sudden and unjustified halt by the stay orders that are being challenged in this Application. As it had repeatedly done before, the Fourth Circuit issued orders blocking construction, at least until it adjudicated petitions for review of the orders issued by the Forest Service and BLM authorizing construction in the Jefferson National Forest and the Biological Opinion and Incidental Take Statement issued by the Fish and Wildlife Service.

I. SECTION 324

Unlike previous rulings and stays issued by the Court of Appeals, the Fourth Circuit's most recent stay orders are directly contrary to a statute that was adopted by Congress and signed by the

President, as part of the debt-ceiling legislation known as the Fiscal Responsibility Act of 2023. In particular, Section 324 of this legislation specifically finds that the “[e]xpeditied completion of the Mountain Valley Pipeline . . . is in the national interest.” Congress not only expressly “ratifie[d] and approve[d]” all federal authorizations for the Pipeline, including the specific agency actions that the Fourth Circuit stayed in the orders at issue here, but Congress also directed all agencies to “continue to maintain” the required permits, and to issue, within 21 days, any remaining federal authorization needed to complete the Pipeline. And Congress expressly stated that its commands were binding “[n]otwithstanding any other provision of law.” Section 324 also expressly stripped all courts – including the Fourth Circuit – of “jurisdiction to review any action” by a federal agency granting an authorization necessary “for the construction and initial operation at full capacity of the Mountain Valley Pipeline,” a category that unambiguously includes the actions that are the subject of this proceeding. And finally, Section 324 directed that the U.S. Court of Appeals for the D.C. Circuit, and only the D.C. Circuit, would have exclusive original jurisdiction to adjudicate all claims challenging the constitutionality of Section 324 or alleging that challenged agency actions are not within the scope of authorizations covered by Section 324.

The plain and unambiguous terms of Section 324 establish the clear commands of both the Legislative Branch acting with bipartisan majorities in both Houses of Congress and the Executive Branch acting through the President of the United States. Section 324 is controlling in the instant Emergency Application to Vacate the Stays, and therefore deserves to be reviewed in its entirety:

SEC. 324. EXPEDITING COMPLETION OF THE MOUNTAIN VALLEY PIPELINE.

(a) Definition of Mountain Valley Pipeline.--In this section, the term “Mountain Valley Pipeline” means the Mountain Valley Pipeline project, as generally described and approved in Federal Energy Regulatory Commission Docket Nos. CP16-10, CP19-477, and CP21-57.

(b) Congressional Findings and Declaration.--The Congress hereby finds and declares that the timely completion of construction and

operation of the Mountain Valley Pipeline is required in the national interest. The Mountain Valley Pipeline will serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions, will increase 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.

(c) Approval and Ratification and Maintenance of Existing Authorizations.

-- Notwithstanding any other provision of law--

(1) Congress hereby ratifies and approves all authorizations, permits, verifications, extensions, biological opinions, incidental take statements, and any other approvals or orders issued pursuant to Federal law necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline; and

(2) Congress hereby directs the Secretary of the Army, the Federal Energy Regulatory Commission, the Secretary of Agriculture, and the Secretary of the Interior, and other agencies as applicable, as the case may be, to continue to maintain such authorizations, permits, verifications, extensions, biological opinions, incidental take statements, and any other approvals or orders issued pursuant to Federal law necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline.

(d) Expedited Approval.--Notwithstanding any other provision of law, not later than 21 days after the date of enactment of this Act and for the purpose of facilitating the completion of the Mountain Valley Pipeline, the Secretary of the Army shall issue all permits or verifications necessary--

(1) to complete the construction of the Mountain Valley Pipeline across the waters of the United States; and

(2) to allow for the operation and maintenance of the Mountain Valley Pipeline.

(e) Judicial Review.--

(1) Notwithstanding any other provision of law, no court shall have jurisdiction to review any action taken by the Secretary of the Army, the Federal Energy Regulatory Commission, the Secretary of Agriculture, the Secretary of the Interior, or a State administrative agency acting pursuant to Federal law that grants an authorization, permit, verification, biological opinion, incidental take statement, or any other approval necessary for the construction and initial operation at full capacity of the Mountain Valley Pipeline, including the issuance of any authorization, permit, extension, verification,

biological opinion, incidental take statement, or other approval described in subsection (c) or (d) of this section for the Mountain Valley Pipeline, whether issued prior to, on, or subsequent to the date of enactment of this section, and including any lawsuit pending in a court as of the date of enactment of this section.

(2) The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any claim alleging the invalidity of this section or that an action is beyond the scope of authority conferred by this section.

(f) Effect.--This section supersedes any other provision of law (including any other section of this Act or other statute, any regulation, any judicial decision, or any agency guidance) that is inconsistent with the issuance of any authorization, permit, verification, biological opinion, incidental take statement, or other approval for the Mountain Valley Pipeline.

Acting within the clear boundaries of their legislative and executive powers, Congress and the President have concluded that completion of the Pipeline will increase the reliability of natural gas supplies and the availability of natural gas at reasonable prices; allow natural gas producers to access additional markets for their product; and reduce carbon emissions and facilitate the nation's ongoing energy transition. And, of most importance to the current proceeding, Congress and the President acted to amend existing law and to approve all existing authorizations previously issued by administrative agencies, to remove the jurisdiction of the federal courts to review those authorizations, and to allow only the Court of Appeals for the D.C. Circuit to hear constitutional challenges to Section 324 and to hear claims that any action is beyond the scope of Section 324. Congress and the President could not have been clearer in setting forth their instructions on these subjects.

LIUNA will not repeat the arguments made by MVP in its brief supporting the Application to vacate all stays issued by the Court of Appeals in the pending cases. Suffice it to say that Section 324(e) clearly divests the Fourth Circuit of subject matter jurisdiction to issue the disputed

stays, and the substantive terms of Section 324 that ratify and approve all administrative actions authorizing final construction and operation of the Pipeline clearly demonstrate that any court challenges to those actions are moot.

Nor is there any reason to believe that Congress and the President acted in an unconstitutional manner when they enacted Section 324. Congress has plenary authority to ratify agency authorizations and to define the jurisdiction of the lower federal courts, and pursuant to that authority, Congress indisputably may ratify the numerous agency approvals for the Pipeline and eliminate the Fourth Circuit's jurisdiction to review the administrative authorizations at issue in these proceedings. The decision by Congress and the President to grant the D.C. Circuit exclusive jurisdiction over any constitutional challenges to Section 324 warrants full implementation. Also unavailing is any suggestion that Congress and the President acted unconstitutionally when they changed the law to ensure that the Pipeline is timely constructed and placed into operation. Congress and the President clearly may enact laws or change laws to "apply retroactively to pending lawsuits, even when it effectively ensures that one side wins." *Patchak v. Zinke*, 583 U.S. ___, 138 S. Ct. 897, 905-07 (2018) (plurality opinion); *id.* at 911-12 (Breyer, J., concurring).

The Court of Appeals thus had no authority to issue the stay orders that MVP seeks to vacate in this application. Section 324(e) unambiguously removes jurisdiction from all courts, including the Fourth Circuit, to determine whether administrative actions taken by the Forest Service, BLM, or the Fish and Wildlife Service are lawful. Section 324(e) also provides that only the D.C. Circuit shall have jurisdiction to adjudicate claims that Section 324 is unconstitutional or that a challenged authorization is "beyond the scope of authority conferred by" Section 324. Thus, the Fourth Circuit had no jurisdiction to issue any order staying implementation of agency approvals for the Pipeline, and it could not, in any event, have determined that petitioners were likely to succeed in their challenges to agency authorizations for the Pipeline in light of Section

324 (which is a necessary predicate for its stay orders pending appeal).

II. FAILURE TO VACATE THE STAYS WOULD HAVE IMMEDIATE DETRIMENTAL EFFECTS

Pipelines support a vital industry for workers and provide associated socio-economic benefits in affected communities. LIUNA represents many of the union workers who would construct the Pipeline and reap significant economic and career benefits from doing so, including wages, benefits, and skills training. These workers are greatly affected by delay or cancellation of this Pipeline project. Local communities would also be harmed in many ways, including by loss of local spending, tax revenue, business development, and savings on energy costs that reliable pipeline construction and operation provide.

The jobs at stake are the exact type of jobs – blue collar jobs for skilled workers that provide good wages, health coverage, retirement security, and funding for training of current workers and new entrants to the industry – that are so badly needed in today’s economy.

Although pipeline construction jobs are often described as “temporary,” the temporary nature of construction jobs is exactly what makes them so important. Every opportunity for construction work that is delayed or denied is devastating because construction workers rely on a steady supply of projects to provide complete incomes and retirement savings for themselves and their families over the course of their careers. Thus, pipeline workers in particular rely on efficient and predictable permitting and other authorization of projects.

The MVP Pipeline is itself an example of this disruption and how it affects workers’ lives. After obtaining all applicable authorizations in May and June 2023, MVP began construction. When decisions of the Fourth Circuit placed stays (pending appeal) on agency action, construction was halted, leaving hundreds of workers, who had anticipated long-term employment on the Pipeline, jobless and largely forced to go on out-of-work lists and wait to be dispatched to another

job.

The stay orders below, issued as they were within weeks of enactment of a statute (Section 324) that approved and ratified all prior authorizations for the Pipeline and directed the Secretary of the Army to promptly issue all permits necessary to complete the Pipeline's construction, further exacerbates the situation. When a pipeline worker is unemployed, he or she loses not only significant income but also pension contributions and eligibility for individual and family health benefits, which are typically keyed to a required number of hours worked. Workers may try to get jobs outside of pipeline work, but these jobs – especially if they are not covered by a collective bargaining agreement – often do not compare in terms of wages and benefits to the skilled pipeline construction jobs for which these workers have trained. Thus, to the extent an unemployed pipeline worker is able to find a replacement job, that job may well command inferior wages and benefits.

All of this is not to say that pipelines should be approved without any scrutiny or even with less scrutiny than the law currently requires. Rather, it is to say that the effects of unnecessary obstruction and inefficiency in obtaining government authorizations compromise an entire industry, including the many thousands of skilled careers that the pipeline industry supports. These effects are real and tangible for the American workforce and worthy of consideration in deciding whether to vacate the Fourth Circuit's unsupported and unexplained stay orders.

The stay orders sought to be vacated also imperil socio-economic benefits for local communities. Construction and operation of the Pipeline would promote economic benefits in the communities through which it runs. Part of this economic activity and tax revenue would come from the workers on the pipeline, who would spend their earnings largely locally, including on lodging and all the necessities of everyday life. Perhaps of even more importance, the Pipeline would bring with it new natural gas infrastructure. This infrastructure would be used primarily to

supply natural gas and electricity for industrial, commercial, and residential purposes, translating to millions of dollars in net annual savings to natural gas and electricity consumers in all three regions targeted by the Pipeline.

Given all of these economic benefits of pipelines and the jobs and opportunities they create both directly and indirectly, it is not surprising that federal policy aims to provide accessible and reliable authorization procedures, and that Section 324 was enacted to effectuate that policy with respect to the Pipeline at issue here. The Fourth Circuit’s stay orders are directly contrary to this clear and unambiguous intent of Section 324.

CONCLUSION

For the foregoing reasons, LIUNA respectfully urges the Court to grant the pending Application and to vacate the stay orders issued by the Court of Appeals, thereby allowing the Mountain Valley Pipeline to be constructed and operated as promptly as envisioned by Congress and the President.

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Respectfully submitted,

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