Nos. 18-1584, 18-1587

In The
Supreme Court of the United States

UNITED STATES FOREST SERVICE, et al.,
Petitioners,
v.
COWPASTURE RIVER PRESERVATION ASS'N, et al.,
Respondents.

ATLANTIC COAST PIPELINE, LLC,
Petitioner,
v.
COWPASTURE RIVER PRESERVATION ASS'N, et al.,
Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF *AMICI CURIAE* AMERICAN FOREST RESOURCE COUNCIL, FEDERAL FOREST RESOURCE COALITION, INTERMOUNTAIN FORESTRY ASSOCIATION, MONTANA WOOD PRODUCTS ASSOCIATION, MISSOURI FOREST PRODUCTS ASSOCIATION, AMERICAN WALNUT MANUFACTURERS ASSOCIATION, ASSOCIATED CALIFORNIA LOGGERS, ASSOCIATED LOGGING CONTRACTORS-IDAHO, ASSOCIATED OREGON LOGGERS, MONTANA LOGGING ASSOCIATION, WASHINGTON CONTRACT LOGGERS ASSOCIATION, GREAT LAKES TIMBER PROFESSIONALS ASSOCIATION, AND DOUGLAS TIMBER OPERATORS SUPPORTING PETITIONERS

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QUESTION PRESENTED

The Mineral Leasing Act of 1920, 30 U.S.C. § 185(b)(1), permits Federal agencies to grant rights-of-way for energy pipelines, with limited exceptions including "lands within the National Park System." Does the designation of a trail to be administered by the National Park Service strip the Forest Service of its authority to issue a right-of-way through the underlying National Forest?

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are associations that represent forest products businesses that depend on healthy federal forests for their livelihoods.

The American Forest Resource Council (AFRC) is a regional trade association whose purpose is to advocate for sustained-yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. AFRC promotes active management to attain productive public forests, protect the value and integrity of adjoining private forests, and assure community stability. It works to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout California, Idaho, Montana, Oregon, and Washington. These businesses provide tens of thousands of family-wage jobs in rural communities.

The Federal Forest Resource Coalition, Intermountain Foresty Association, Douglas Timber Operators, Missouri Forest Products Association, American Walnut

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amici curiae*'s intention to file this brief, and all parties have consented in writing to the filing. *See* Sup. Ct. R. 37.2(b). No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. *See* Sup. Ct. R. 37.6.

Manufacturers Association, and Montana Wood Products Association are voluntary non-profit trade associations who work to promote long-term management of National Forests, provide opportunities for open discussion and appropriate interchange of information concerning all facets of the forest products industry, and accumulate and disseminate information regarding the forest products industry in order to foster the best interests of the industry and public. *Amici* include the majority of purchasers of commercial timber from Federally-owned forests throughout the country.

Associated California Loggers, Associated Logging Contractors-Idaho, Associated Oregon Loggers, Washington Contract Loggers Association, Great Lakes Timber Professionals Association, and Montana Logging Association work to provide a strong, cohesive voice before agencies, legislatures, the public, and the courts on behalf of their members who are engaged in the business of harvesting and transporting timber from forest to mill. They also work to enhance safety and professional standards for their members by offering educational and technical assistance programs.

Many of *amici*'s members work in or adjacent to Federal forestlands, and the management of these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. With much of the National Forest landscape in poor health, active management is badly needed throughout the country to reduce the risk of catastrophic wildfire as well as insect and disease outbreaks. *Amici* have a strong interest in maintaining

the ability of the Forest Service to conduct active management without judicial imposition of undue constraints.

SUMMARY OF ARGUMENT

The Fourth Circuit vacated the Forest Service's grant of a special use permit enabling a pipeline to cross under the Appalachian Trail. The court of appeals held that the administration of the trail by the National Park Service operated as a transfer of jurisdiction. It found the portion of the George Washington National Forest hosting the trail to be converted to "lands in the National Park System" where the Mineral Leasing Act (MLA) does not permit rights-of-way for pipeline projects. Pet. App. 55a, 57a; 30 U.S.C. § 185(b)(1). This was despite the admonition in the National Trails System Act that "[n]othing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law. . . ." 16 U.S.C. § 1246(a)(1)(A).

The Fourth Circuit's reasoning fundamentally misapprehended the task before it. Federal lands are replete with overlapping jurisdictions, agencies, and statutory mandates, an artifact of the role these lands played in building the Nation. Public land laws must be construed with an eye to this context, paying special attention to the varied types of agency power and

authority. The Fourth Circuit elided all of these concerns, facilely equating the Appalachian Trail, a “unit” of the National Trails System, with “lands” within the National Park System.

The effect of the ruling below is not limited to this pipeline, or any pipeline, or this trail. It threatens to impede the ability of land-management agencies to issue rights-of-way for other purposes. These include roads to access forest management project areas throughout the 193-million-acre National Forest System. At a time where forest health is in a state of emergency, and the need for active management is broadly recognized to reduce risk of severe fire, the decision below could have grave consequences. It should not stand.

For these reasons *amici* respectfully request that the Court grant the petitions for *certiorari* submitted by the Government and by Atlantic Coast Pipeline, LLC.

ARGUMENT

I. THE FOURTH CIRCUIT FUNDAMENTALLY MISUNDERSTOOD HOW TO INTERPRET THE LAWS GOVERNING PUBLIC LANDS.

The National Park Service “primarily” administers the Appalachian Trail, “in consultation” with the Forest Service. *See* 16 U.S.C. § 1244(a)(1). The court below found that the trail is therefore a “unit” of the National Park System. Pet. App. 57a. This led the court to

conclude that the trail's footprint constitutes "lands within the National Park System" wherein pipeline rights-of-way are prohibited. *Id.* (citing 30 U.S.C. §§ 185(a), 185(b)(1)). This holding failed to apply the careful process of statutory construction that is necessary when considering the complex framework of public land laws, and failed to appreciate the many different types of authority or jurisdiction that a single acre may bear. *Certiorari* is warranted to ensure that Congressional direction on the public domain is given the appropriate primacy, a primacy supporting our Federal system.

A. The Distinct History of Public Land Law Means Statutory Interpretation Must Be Undertaken With Special Care.

The Federal Government is by far the largest landowner in the United States, owning "about 650 million acres, or about 28% of all land in the country." G.C. Coggins et al., *Fed. Pub. Land & Res. Law* 1 (5th ed. 2002). This includes, for example, about half the national softwood timber inventory. *Id.* at 12. Federal lands were first acquired after the Revolution, at Congress's suggestion that the States cede their western land claims "for the common benefit of the union." 1 St. G. Tucker, *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia*, App. 283-86 (1803; 1969 reprint). The ultimate purpose of the first western cession was to retire the debt incurred to finance the Revolution.

Lessee of Pollard v. Hagan, 44 U.S. (3 How.) 212, 224 (1845).

Federal ownership of public lands was one of the distinctions between the Articles of Confederation and the Federalism of the Constitution. P.W. Gates, *History of Public Land Law Development* 3 (1968). Indeed, the controversy over western land ownership was a primary reason the Articles of Confederation were not ratified until 1781. U.S.C.A. Articles of Confederation Historical Notes (West) (stating Maryland "instructed her delegates . . . not to agree to the confederation until matters respecting the western lands should be settled on principles of equity and sound policy. . . .").

To that end, the new Constitution vested extremely broad power in the Legislative Branch to administer the public territory. The Property Clause provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." U.S. Const. Art. IV, § 3, cl. 2.

The Court has repeatedly declared Congress's Property Clause power to be "without limitation." *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976); *United States v. Gratiot*, 39 U.S. (14 Pet.) 526, 537 (1840). Therefore, "neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power." *United States v. City and County of San Francisco*, 310 U.S. 16, 29-30 (1940). The expansive interpretation of the

Clause gains strength from historical sources of support. *See*, *e.g.*, 3 J. Story, *Commentaries on the Constitution* § 1322 (1833) ("The power of congress over the public territory is clearly exclusive and universal; and their legislation is subject to no control; but is absolute, and unlimited.").

Not only did the new Federal lands strengthen the new country, but the nationalization of them could tamp down factional battles. Madison thus found the Property Clause to establish "a power of very great importance. . . ." which "was probably rendered absolutely necessary by jealousies and questions concerning the Western territory sufficiently known to the public." The Federalist No. 43 (Earle ed. (1937) at 281-82). Among these jealousies, ultimately rejected by the Convention, were Gouverneur Morris's efforts to constrain formation of states from the territory in the West, fearful that westerners would not be "equally enlightened, to share in the administration of our common interests." Gates, *supra*, at 74 (quoting M. Farrand, 1 *The Records of the Federal Convention* 583 (1911)).

As the Nation raced west, additional Federal lands were acquired and many were sold, granted, or otherwise used to encourage settlement. Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and to the Congress* x, 1-7, 19 (1970). Many of the new states were seeded with land grants to be held in trust for the benefit of public education, leading among other things to today's "land-grant" universities. *See*, *e.g.*, Omnibus Enabling Act of 1889, 15th Cong., 1st Sess., ch. 180, 25 Stat. 676, §§ 10, 14 (granting lands upon admission to Washington,

Montana, and the Dakotas); Gates, *supra*, at 804-05. By such "solemn agreement[s]," the Federal Government "agreed to cede some of its land to the State in exchange for a commitment by the State to use the revenues derived from the land to educate the citizenry." *Andrus v. Utah*, 446 U.S. 500, 507 (1980).

Today, the Federal Government owns over forty percent of eight states, and more than half of Alaska, Idaho, Nevada, Utah, and Oregon. Coggins et al. at 10. But no state east of the Mississippi has more than fifteen percent Federal ownership. *Id.* Total Federal land across the states of the Fourth Circuit, for example, is 7.2 percent. *Id.* Federal public lands have always been and still are a decidedly Western issue.

Unsurprisingly, the development of the law of public lands has been neither uniform nor smooth. Congress recognized "the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other. . . ." Former 43 U.S.C. § 1392 (1970). The layers of public land law have been characterized as a "briar patch" containing "a diverse assortment of old and new laws that have created a conflicting maze of legal mandates, property rights, and environmental requirements." R. Keiter & M. McKinney, *Public Land and Resources Law in the American West: Time for Another Comprehensive Review?*, 49 Envtl. L. 1, 30 (2019).

Public land statutes operate in at least three dimensions; they can be area-specific, agency-specific, or function-specific. As to the former, Congress has reserved areas of the public domain for particular

purposes. These include wilderness areas set aside for public use and enjoyment, 16 U.S.C. § 1131, or for Naval petroleum reserves, 10 U.S.C. § 8721. They also include areas reserved for sustained-yield timber production, 43 U.S.C. § 2601, within a "self-sustaining timber reservoir for the future." *Headwaters, Inc. v. Bureau of Land Mgmt., Medford Dist.*, 914 F.2d 1174, 1184 (9th Cir. 1990).

Activities of the National Park Service are guided by its Organic Act, 54 U.S.C. §§ 100101-104909. The Forest Service works within three framework statutes: its Organic Act of 1897, 16 U.S.C. § 475 *et seq*., the Multiple-Use Sustained-Yield Act of 1960, 16 U.S.C. §§ 528-531, and the National Forest Management Act of 1976, 16 U.S.C. § 1601 *et seq.* Historically, the Forest Service Organic Act also delegated to the President the authority to designate forest reserves, now incorporated into the National Forest System. Former 16 U.S.C. § 471 (1964); *see* 16 U.S.C. § 1609(a); *Herrera v. Wyoming*, 587 U.S. ___, 139 S. Ct. 1686, 1691-93, 1702 (2019) (recounting creation of the Bighorn National Forest). Both the National Trails System Act and Mineral Leasing Act are function-based statutes which overlie the public lands. And of course, there are laws of more general applicability such as the National Environmental Policy Act, 42 U.S.C. § 4332, and Administrative Procedure Act, 5 U.S.C. § 500 *et seq*.

Traditional rules of statutory construction, particularly when attempting to make sense of an interlocking and multifaceted statutory structure, can quickly lead a court astray, and did so here. The general rule

that courts should strive to reconcile potentially conflicting statutes is of "special significance" in the public land context. *Wilderness Soc'y v. Morton*, 479 F.2d 842, 881 (D.C. Cir. 1973). *Wilderness Society* held the MLA's 25-foot restriction on special use permit width for pipeline construction activities did not also constrain issuance of right-of-way for pipeline pumping stations. *Id.* at 876 (vacating permit for construction of Trans-Alaska Pipeline due to non-compliance with construction width limitation). The court remarked that "[w]hile the question of a pumping station right-of-way may appear similar to that of construction [permits], close examination reveals the similarity to be merely superficial." *Id.*

The thicket of public land laws is "hardly a model of neat organization and uniform planning." *Id.* This lack of organization also means that a court will find " 'the presumption of consistent usage readily yields to context,' and a statutory term may mean different things in different places[,]" particularly when a statute "is far from a *chef d'oeuvre* of legislative draftsmanship." *King v. Burwell*, 576 U.S. ___, 135 S. Ct. 2480, 2493 n.3 (2015) (quoting *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 134 S. Ct. 2427, 2441-42 (2014)). Moreover, statutory structure is just as significant as the words used. *King*, 135 S. Ct. at 2492. "Statutes must 'be read as a whole.' " *United States v. Atl. Research Corp.*, 551 U.S. 128, 135 (2007) (quoting *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991)).

B. The Fourth Circuit Inappropriately Interpreted the Statutes at Issue.

The Court of Appeals flouted all the above principles, imposing its own superficial understanding upon a multifaceted statutory scheme. It started with the MLA's preclusion of pipeline rights-of-way on "lands in the National Park System." 30 U.S.C. § 185(b)(1). Relying on comments the Park Service submitted in the administrative record, the court found that the Appalachian Trail "is a unit of the National Park System." Pet. App. 57a. The court then inferred, without explaining, that a "unit" of the Park System necessarily contains "lands in the National Park System." *Id.* The inference was unwarranted. The Appalachian Trail is part of the National *Trails* System. 16 U.S.C. § 1242. In deliberations on the National Parks and Recreation Act of 1978, the last major legislation in this arena, accordingly, Congress referred to the separate "National Park and National Trail *Systems*," plural. H.R. Rep. No. 95-1165, 95th Cong., 2d Sess., at 58 (May 15, 1978) (emphasis added).

Despite the Park Service's shorthand description, moreover, the Trail is not in fact a "unit" of the Park System as that term is defined by statute. Park System units, as defined by the Organic Act, "include any area of land and water administered by the Secretary, acting through the Director, for park, monument, historic, parkway, recreational, or other purposes." 54 U.S.C. § 100501; *see* 54 U.S.C. § 100102(6). It does not explicitly include trails, which are part of their own system. *See* USFS Pet. 21 ("the Trail itself is a footpath on the surface of the land it crosses"). The court erred by

assuming that informal reference to the Trail as part of the Park System had legal significance.

The Fourth Circuit made other unwarranted inferences. Assuming the trail is a unit of the Park System, and noting that the Trails Act indicates the Appalachian Trail "shall be administered primarily as a footpath by the Secretary of the Interior," 16 U.S.C. § 1244(a)(1), the court concluded the Trail is "land" administered by the Park Service. There is superficial equivalence between managing land and "administering a trail" over land, but not legal equivalence. Such is the nature of the thicket. Consistency in usage must yield, and the applicability of the MLA exception must be given an appropriately narrow reading. *Cf. No Oilport! v. Carter*, 520 F. Supp. 334, 360 (W.D. Wash. 1981) (construing the same sentence of 30 U.S.C. § 185(b)(1), referring to "lands held in trust for an Indian or an Indian tribe," to be limited to lands held in fee).

The Court of Appeals failed to recognize the separate structure of the Trails Act, which is on equal footing with the Park Service Organic Act. Instead, it subsumed the Trails Act into the Organic Act. This violated the Trails Act's instruction that "[n]othing contained in this chapter 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). Thus, the Forest Service retains its authorities both under the MLA and its own foundational statutes.

The Fourth Circuit's opinion in effect renders not only the Trails System but much of the Trails Act superfluous. It failed to give effect to the section of the Trails Act which clarifies that trail administration is not a transfer of general authority or jurisdiction, 16 U.S.C. § 1246(a)(1)(A); the detailed procedure for transfer of such authority, 16 U.S.C. § 1246(a)(1)(B); the proviso that designated uses shall not supersede any other authorized uses, 16 U.S.C. § 1246(j); the Forest's Service's explicit role in administering the Appalachian Trail, 16 U.S.C. § 1244(a)(1); and the retention by the Park Service and Forest Service of all other authorities for the purposes of trail administration, 16 U.S.C. § 1246(i). The Court of Appeals violated a "cardinal principle of statutory construction," that "to save and not to destroy." *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (quoting *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937)). It is a court's duty "to give effect, if possible, to every clause and word of a statute." *Menasche*, 348 U.S. at 538-39 (quoting *Inhabs. of Montclair Twp. v. Ramsdell*, 107 U.S. (17 Otto) 147, 152 (1883)). The Court of Appeals didn't do so.

The treatment of section 1246(a)(1) of the Trails Act stands out. Subsection (a)(1)(A)'s limitation on transfer of underlying management authority is rendered superfluous, and its limitation to subsection (a)(1)(B), is written out of the statute. This Court rejected a similar statutory reading in *Bennett v. Spear*, holding that the Government's reading of section 10(g)(1)(A) of the Endangered Species Act, 16 U.S.C. § 1540(g)(1)(A), was "simply incompatible with the

existence of another section" of the same Act. The Court found the related "provision would be superfluous—and, worse still, its careful limitation to § 1533 would be nullified—" under that reading, and so rejected it. *Bennett v. Spear*, 520 U.S. 154, 173 (1997). The decision below is similarly egregious, as it fails to take account of the statutory scheme, misreads the language of the statute, and nullifies a particular section and the careful limitations therein.

The Court of Appeals' remaining errors flow from its fundamental mistake. It rejected the Government's interpretation of the MLA because to do so "would give the Forest Service more authority than NPS on National Park System land." Pet. App. 57a. This is backwards. The Fourth Circuit's interpretation unduly restricts the Forest Service's own power and duty to manage Forest Service land, giving more power to the Park Service.

The court also found the Forest Service did not contain an "appropriate agency" head within the meaning of MLA section 185(a), defined as "the head of *any* Federal department or independent Federal office or agency . . . which has jurisdiction over Federal lands." 30 U.S.C. § 185(b)(3) (emphasis added). The court reasoned that the Forest Service was merely "managing" land underlying the Trail, and lacked "administration" responsibilities over the Trail. Pet. App. 58a. Again, this inverts the proper structure. The Forest Service manages and has jurisdiction over the land overlaid by the Trail, which is not taken away by the Trails Act.

Because the Trails Act does not purport to transfer land from the Forest Service to the Park Service, the Court of Appeals wrongly found that the Forest Service lost its general authority under the MLA to issue a right-of-way. The decision reflects a profound misunderstanding of how land management agencies are designed to work, of the structure of public land laws, and of the role of public lands in our Federal system. *Certiorari* is accordingly appropriate.

2. THE DECISION BELOW THREATENS WORK TO ADDRESS THE NATIONAL FOREST HEALTH CRISIS.

Petitioners describe significant adverse consequences from the decision below along the Eastern Seaboard, particularly to the development of energy infrastructure. USFS Pet. 26-27; Atlantic Pet. 31-34. They also point out the barriers the decision could impose on land management in the East.

Should the decision stand, moreover, and other courts follow the Fourth Circuit's misadventure, the consequences on forest health, rural economies, and public safety could be severe. The National Forests are in a state of crisis. As the Chief of the Forest Service remarked, "The challenges to forest health . . . are as great as any the Forest Service has faced in our 113-year history." Remarks of Interim Chief Vicki Christiansen, U.S. Forest Service, "Envisioning Healthy Forests for Families and Communities," Mar. 26, 2018. These challenges include "growing severity and duration of wildfires and fire seasons" and a total of 80 million

acres at risk and in need of active management. *Id*. Due to these growing threats, Congress has enacted several statutory provisions since 2014 to permit the Forest Service to expedite forest treatments. 16 U.S.C. §§ 6591a-6591e. Congress recognized that the current system has not been keeping up with the pace and scale of the forest health crisis. *Ctr. for Biological Diversity v. Ilano*, ___ F.3d ___, No. 17-16760, 2019 WL 2571434, at *4 (9th Cir. June 24, 2019).

Successive Governors of California have declared emergencies relating to forest mortality and wildfire risk. Gov. E.G. Brown, Jr., Procl. of a State of Emergency, Oct. 30, 2015; Exec. Order B-52-18 (directing agencies to "double the statewide rate of forest treatments"); Gov. G. Newsom, Procl. of a State of Emergency, Mar. 22, 2019. Similarly, the President has directed Federal agencies to use their authorities to increase active management. President Donald J. Trump, Exec. Order No. 13855, *Promoting Active Management of America's Forests, Rangelands, and Other Federal Lands To Improve Conditions and Reduce Wildfire Risk*, issued Dec. 21, 2018, 84 Fed. Reg. 45 (Jan. 7, 2019). "Active management of vegetation is needed to treat . . . dangerous conditions on Federal lands. . . ." *Id.*

The Forest Service has ample authority to issue rights-of-way for road access and to conduct forest management across the National Forest System. The National Forest Roads and Trails Act authorizes "permanent or temporary easements for . . . road rights-of-way . . . over national forest lands and other lands administered by the Forest Service." 16 U.S.C. § 533. Further, the Secretary of Agriculture is "authorized to

provide for the acquisition, construction, and maintenance of forest development roads within and near the national forests and other lands administered by the Forest Service in locations and according to specifications which will permit maximum economy in harvesting timber." 16 U.S.C. § 535. The Forest Service may conduct land management activities, including those that produce commercial timber, consistent with its governing land use plans. 16 U.S.C. §§ 1604(i), 1611. By contrast, if National Forest land were considered part of the Park System, these management authorities are not available. The Park Service does not have a mandate for multiple use but for resource preservation. 54 U.S.C. §§ 100101(a), 100701, 100706. Accordingly, the provisions of the Park Service Act regarding roads and rights-of-way are narrow, 54 U.S.C. §§ 100511, 100902(a)(3), and timber management is severely restricted. 54 U.S.C. § 100753. The Park Service Act's authorities must be narrowly construed "and shall not be exercised in derogation of the values and purposes for which the System units have been established. . . ." 54 U.S.C. § 100101(b).

The decision below also could raise questions about thousands of existing and potential future rights-of-way, easements, and share-cost agreements across federal and non-federal lands on these now-numerous federal designated trails. Most of those thousands of existing and future agreements are subject to periodic amendment, renewal, maintenance, or establishment to serve necessary public and private sector infrastructure and management actions. The disruptive consequences of the decision start with a pipeline but do not end there. USFS Pet. 28-30; Atlantic Pet. 34-35.

There are 30 National Scenic or Historic Trails designated by the Trails Act. 16 U.S.C. § 1244(a). An additional 24 trail routes are identified for study. 16 U.S.C. § 1244(c). Of the 30 currently-designated trails, 24 are primarily administered by the Secretary of the Interior through the Park Service. 16 U.S.C. §§ 1244(a)(1),(3),(4),(6)-(12),(15)-(26), (28)-(29).

While not all the trails administered through the Secretary of the Interior pass through National Forest System lands, most do. Fifteen of these trails stretch almost 38,000 miles across 32 states, and affect 60 different National Forests, Grasslands, Scenic Areas, and Management Units. Maps provided by the Park Service show where trails cross National Forest System Lands. National Park Service, National Historic Trails & Routes, https://imgis.nps.gov/html/?viewer=nht (last visited June 7, 2019).

For example, the North County National Scenic Trail crosses eight different states, and 872 of its 4,600 miles are within National Forest System units, from Vermont's Green Mountain National Forest to the Sheyenne National Grassland in North Dakota. Similarly, the Lewis and Clark National Historic Trail crosses 13 National Forest System Units in its journey from Ohio's Wayne National Forest to the Columbia River Gorge National Scenic Area in Oregon and Washington. Transferring these trails to the Park Service would create massive lines of disruption across the publicly-owned landscape.

On the other side of the coin, multiple national trails administered by the Forest Service pass through

units of the National Park System. For example, the Continental Divide Trail passes through several iconic National Parks including Yellowstone. Does the administration of this trail by the Secretary of Agriculture, 16 U.S.C. § 1244(a)(5), convert Yellowstone into National Forest land subject to the MLA? Respondents presumably would argue it does not, but the Fourth Circuit's logic leads inexorably to that result.

The Fourth Circuit's decision threatens significant disruption to Federal land management and therefore a great disservice to the public interest. Avoiding these consequences merits a grant of *certiorari*.

CONCLUSION

For the reasons above, *amici* respectfully request that the Court grant the petitions for *certiorari*.

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Respectfully submitted,

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