

IN THE
Supreme Court of the United States

UNITED STATES FOREST SERVICE,
ET AL., PETITIONERS,

v.

COWPASTURE RIVER PRESERVATION ASS'N,
ET AL.

ATLANTIC COAST PIPELINE, LLC, PETITIONER,

v.

COWPASTURE RIVER PRESERVATION ASS'N,
ET AL.

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

**BRIEF FOR CITIZENS EQUAL RIGHTS
FOUNDATION AS AMICUS CURIAE
SUPPORTING RESPONDENTS**

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INTEREST OF THE *AMICUS CURIAE*

The Citizen Equal Rights Foundation (“CERF”) was established by the Citizens Equal Rights Alliance (“CERA”). Both CERA and CERF are South Dakota non-profit corporations. CERA has both Indian and non-Indian members in 34 states. CERF was established to protect and support the constitutional rights of all people, to provide education and training concerning constitutional rights, and to participate in legal actions that adversely impact constitutional rights of CERA members. CERF is primarily writing this *amicus curiae* brief to explain why federalism as engineered in the structure of the Constitution was fundamentally broken after the Civil War when the United States was allowed to retain permanent federal lands subject to federal territorial war powers. CERF was very disturbed by this Court’s majority opinion last term in *Herrera v. State of Wyoming*, 139 S. Ct 1686 (2019). CERF decided it was necessary to step back from Indian law and explain in a federal lands case why subverting state general jurisdiction to special national interests is destroying federalism and individual liberty. This Court seems to have forgotten why the Framers fought the Revolutionary War. Allowing the President and Congress the same permanent territorial war powers as were exercised by King George III and Parliament against the colonists in the huge areas of retained federal lands across this nation is creating the exact same result against

individual rights.¹ Amicus submits this *amicus curiae* brief in this case because it demonstrates in the conflicting laws over a right of way to cross the Appalachian trail that this Court has impliedly allowed the creation of general federal jurisdiction over land.

SUMMARY OF THE ARGUMENT

Petitioners Atlantic Coast Pipeline and the Forest Service are trying to convince this Court that Congress intended the Mineral Leasing Act, 30 U.S.C. 181 et seq., to allow the Forest Service to grant a right of way to build a natural gas pipeline under the Appalachian trail that Congress has placed under the management of the National Park Service. Amicus is writing to explain that this right of way dispute exists because the DOJ always asserts federal territorial war powers instead of simply admitting that there are federal, state and individual interests in the protection and management of the Appalachian trail that could be cooperatively addressed if the land status was agreed to be governed by the Enclave Clause. Constantly

¹ Pursuant to Rule 37.6 of the Court, no counsel for a party has authored this brief, in whole or in part. No person or entity, other than *amicus curiae*, CERF, its members or its parent CERA's members, or its counsel have made any monetary contribution to the preparation or submission of this brief. Both Petitioner Atlantic Coast Pipeline and Respondent Cowpasture River Preservation Association have filed blanket consents to the filing of this *amicus curiae* brief. Consent was received by letter for the filing of this *amicus curiae* brief from the Solicitor General.

asserting federal territorial powers when federal land is involved creates dissension because Congress, federal bureaucrats and federal departments are completely unaccountable to the states and people in making decisions regarding federal territorial lands. On federal territorial land each federal department has an overriding federal interest to meet based on whatever interest that agency has elevated as its priority. These federal interests are random, contradictory, unpredictable and completely unaccountable to state, local and individual interests. As this case aptly demonstrates, the competing federal interests, unlike general state interests, do not translate to create workable cooperative management plans. No federal agency exercising management authority over the federal territorial lands under the Property Clause is constrained by any clause of the Constitution or Bill of Rights.

The Department of Justice is openly hostile to defining any federal land as a federal enclave. The Department of Justice was created during Reconstruction to enforce many of the changes brought by the Civil War. The legislation creating it enforces the Radical Republican's desire to punish the Southern States and claim spoils of war for the victorious North. The direct grant of war powers to the Department of Justice has made it the de facto enemy of state sovereignty since it was created. The Department of Justice enforces the territorial land issues by intermixing the use of its own delegated war power authority with the 1871 Indian policy. While CERF has presented this Court with multiple amicus briefs

discussing the misuse of the federal war powers from the 1871 Indian policy, CERF has never before directly addressed the use of the general war powers granted in the Department of Justice legislation.

There are two clauses of the Constitution that allow for the federal government to own land. The Enclave Clause, Art. 1, Sec. 8, Cl. 17 and the Property Clause, Art. IV, Sec. 3, Cl. 2, were designed very differently by the Framers. The Property Clause was written to ensure that the federal territorial lands would be disposed of to form new states. The permanent ownership of federal land was only supposed to be allowed under the Enclave Clause. But as the situation with the governance of the District of Columbia demonstrates, this balance so carefully made by the Framers to control the territorial war powers was easily reinterpreted by a Department of Justice created in the Reconstruction era that could make its own opinions regarding the war powers. Just like the federal district has not been treated as a federal enclave since the Civil War by Congress, neither have any federal lands. Just as in this case, the Department of Justice does not want to argue any land status but overriding federal territorial authority to force through the right of way.

The deliberate manipulation of the war powers by the Department of Justice not only affects federalism but as the 10th Amendment predicted directly impacts the liberty interests of the people. In this case, there is potential real harm in allowing a pipeline to interrupt the scenic beauty of the Appalachian trail. The bigger harm is that it would be

another step in the Department of Justice agenda that is killing all state jurisdiction, private property rights and the faith of individuals that they are governed by laws that are limited by the Constitution. There are no individual rights against the territorial war powers. It is time to recast why federalism is necessary and base it not on state interests but on the right of every American to hold their government accountable under the Constitution. While this case regarding a right of way cannot address constitutional issues not raised by the parties. This case can be decided in a way that makes clear that the Department of Justice cannot use the territorial war powers over land to commandeer state, local and individual interests and ram through a right of way across the Appalachian trail.

ARGUMENT

Amicus did not realize until this Court issued its decision in *Herrerra v. Wyoming*, 139 S. Ct. 1686 (2019) last term, how completely many of the Justices of this Court had been taken in by the arguments of the Department of Justice to subvert the authority of the sovereign states. The primary author of this brief was present for the first oral argument in *Sturgeon v. Frost*, 136 S. Ct 1061 (2016) when the Solicitor General's attorney told this Court that she did not have to explain where the powers came from to alter the jurisdiction of Alaska over waters in national conservation areas. Given that this Court decided *Sturgeon v. Frost II*, 139 S.Ct 1066 (2019) in a unanimous opinion last term, CERF believed that the Justices all understood that

the Department of Justice and the Solicitor General whose office was created in the same legislation were manipulating the war powers to apply generally to all land disputes to cancel out state jurisdiction and state/local interests.

The majority opinion in *Herrera* proved that CERF was wrong and that a majority of this Court did not realize that the Department of Justice has always promoted its own agenda based on its enabling legislation. CERF then became further stressed when this Court could not reach a decision in *Sharp (Carpenter) v. Murphy*, Docket No. 17-1107. CERF began looking for a case in which it could address the agenda of the Department of Justice in a straight federal lands case, like this one that concerns whether the Forest Service can grant a right of way across the Appalachian Trail that is under the authority of the National Park Service. *See* 16 U.S.C. 1244(a)(1). A true federal lands case is not infused with guilt over how the Indians were mistreated. In this case there is no cloud of guilt to prevent this Court from using its judicial review responsibility to protect the constitutional structure and to protect the rights of all people.

I. THE FRAMERS REJECTED FEDERAL RESERVED RIGHTS OVER TERRITORIAL LAND.

The Framers of the Constitution believed that keeping the territorial war powers separated from the operation of the domestic laws of a constitutional government was crucial. While Great Britain had

learned over centuries and through many revolts to prevent the territorial powers from limiting individual rights in the British Isles, its colonial structure fully used these powers to keep control and prevent dissent. Americans could never have the rights of Englishmen while they remained in British Colonies. The Framers had to find a way to limit the national government's authority to make a war or national emergency that suspended constitutional governance. An entire constitutional structure separating powers and creating checks and balances was designed to prevent the power of the people from being usurped. Even then, George Mason did not think it was enough given the fact of slavery and the Indians being treated separately from the majority. He insisted that a Bill of Rights was necessary to further protect individual rights. The Tenth Amendment of that Bill of Rights summed up their position. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." As so clearly stated in this amendment, any reserved powers were to belong to the States or the people.

To decide this case, it is necessary to determine the authority behind the Mineral Leasing Act and whether the right of way section applies to the land status of the Appalachian trail. The Department of Justice opines that the Mineral Leasing Act which is a statute written pursuant to Congress' authority under the Property Clause as applying to all federal public lands should be applied to lands that were purchased to form a National Forest and the Appalachian trail

corridor under the National Park Service. Purchased lands generally fall under the authority of Congress under the Enclave Clause.

A. Constitutional Background of the Enclave Clause.

The Enclave Clause, Art. I, Sec. 8, Cl. 17, is the constitutional provision that created the District of Columbia as a federal district to be the capitol of the government of the United States. The maximum ten mile square area was supposed to set the jurisdictional terms over how the federal government could own land permanently in all of the sovereign states. The clause specifically requires the legislature of the state to agree to cede exclusive legislative jurisdiction over the land to the Congress when the land is purchased. Exclusive legislative jurisdiction over the enclave has been defined in several major cases. For purposes of this case, the important precedent for the definition of exclusive legislative jurisdiction is *Collins v. Yosemite Park Co.*, 304 U.S. 518 (1938) that applies to national park lands. The Appalachian National Scenic Trail was placed by Congress under the Secretary of the Interior who delegated the authority to the National Park Service. See 16 U.S.C. 1244(a)(1). All national parks could be considered federal enclaves. The five most famous and most visited national parks are actual federal enclaves. (Yellowstone, Yosemite, Grand Canyon, Sequoia and Acadia).

The Framers did not give a size or shape limit for any enclave for a fort, arsenal, dock yard or other

buildings. The Framers did make the Enclave Clause directly apply to all land and physical buildings owned by the military within any sovereign state. This was an express limitation on the powers of the military and Congress to apply war powers against a State to obtain the physical resources needed to maintain the national defenses. *See generally Fort Leavenworth R.R. v. Lowe*, 114 U.S. 125 (1885). The Enclave Clause was intended to apply to all permanently held federal lands.

The Enclave Clause has been interpreted since the founding of the Constitution to create a jurisdictional balance between the competing sovereign interests of the national government and the state governments. It is this jurisdictional balance that seems to so offend the Department of Justice that they refuse to ever classify any federal land as an enclave unless direct precedent applies. Congress still treats lands administered by the National Park Service like federal enclaves because of the heightened interests of all in protecting those lands. *See* 54 U.S.C. 100101. Instead the DOJ insists it can ram a right of way through the federal forest service lands using the territorial war powers under 30 U.S.C. 185(b)(1). Why should the DOJ deign to negotiate with a state or local interests over jurisdiction of a right of way or anything else when they were delegated permanent war powers in their enabling legislation to overcome state jurisdiction with any reasonable argument they concoct and this Court accepts?

B. The Property Clause

Before the Civil War, this Court determined that Congress had plenary territorial war power authority to determine the processes and rights of persons in the territories until those territories become States. *See American Insurance Co. v. Canter*, 26 U.S. 511 (1828). As inherited from the law of Great Britain, constitutional government was not considered applicable in the wilderness. Until basic forms of government were in place, the King and Parliament exercised unlimited authority with all of the war powers conceivable under British law. The Framers were the victims of the territorial war powers of Britain. They fought the Revolutionary War to free themselves from the permanent territorial war powers of Great Britain. They intentionally tried to create a new system for domesticating new land areas by applying the principles of the Enlightenment Era. Because constitutional law does not apply in a territory the Framers required that Congress “dispose of the territories.” Property Clause, Art. IV, Sec. 3, Cl. 2. This requirement to dispose of the territory and create new States known as the Equal Footing Doctrine was defined by this Court as allowing the United States to retain territorial land only on a temporary basis. *See Pollard’s Lessee v. Hagan*, 44 U.S. 212, 221 (1845). This specific requirement was meant to prevent the United States from being able to use the territorial war powers in domestic law against the States and individuals.

The Property Clause was redefined in its entirety in *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

In the *Scott* majority opinion, Chief Justice Taney methodically removed most of the safeguards set up so carefully by the Framers to prevent the national government from exercising the war powers as normal authority under the constitution. Beginning with the interpretation that the Property Clause, Art. IV, Sec. 3, Cl. 2, only applied to the original colonies and the lands expressly ceded by them, Taney dismantled the requirement “to dispose of the territories” that insured that the territorial war powers could not be permanent. *Id.* 443-444. He then used this interpretation to reverse the Ordinance of 1787 that had been the contemporaneous interpretation by the Framers of the Property Clause as applied in the lands ceded by Virginia and the other colonies to allow the federal government to be formed. This had to be done by the Chief Justice to change the fact that the slave Dred Scott had lived in a free territory technically making him a free man under the terms of the Northwest Ordinance of 1787. Chief Justice Taney then addressed the Missouri Compromise to construct his own new interpretation of the Property Clause to rule that Congress had no authority to constrict the taking of the property of slaves into any federal territory as the final answer to permanently protect slavery. The 13th Amendment ended Taney’s slavery policy but did nothing to alter or address the unleashing of unlimited authority to acquire land that could be treated as territory. Taney defined the unlimited territorial war powers as “the inevitable consequence of the right to acquire territory.” *Id.* at 444.

At the end of the Civil War the fact that Chief Justice Taney had obliterated the restraints on the Property Clause to protect slavery, became the main excuse for the federal government to use these exact same territorial war powers to “reconstruct” the Southern States that had seceded from the Union. President Lincoln argued strenuously against his Secretary of War Edwin Stanton who vehemently wanted to punish the South. President Lincoln realized that to put the Constitution back together that the territorial war powers had to be limited and could not become a war spoil of the North. Lincoln tried to explain that the Southern States had never actually seceded in attempting to restore all of the safeguards that had protected the constitutional structure, including federalism, in place before the Civil War. Lincoln believed all should be forgiven when the Southern States accepted the end of slavery by ratifying the Thirteenth and the proposed Fourteenth Amendments. When President Lincoln was assassinated, Secretary Stanton became a virtual dictator pushing his desire to Reconstruct the Southern States with the territorial war powers that Great Britain used against its colonies.

II. RECONSTRUCTION UNLEASHED THE TERRITORIAL WAR POWERS THAT ARE NOW DESTROYING OUR CONSTITUTIONAL GOVERNMENT

The Department of Justice was created during Reconstruction to enforce the changes reconstructing

the Southern states was intended to accomplish. President Abraham Lincoln did not sign the first set of Reconstruction Acts. Lincoln believed that allowing the national government permanent territorial war powers would destroy self-governance as he said in the last speech he ever made. Lincoln wanted to end the use of the war powers when the war ended and restore constitutional government at both the national and state levels.

Secretary of War Stanton wanted to keep the territorial war powers operative to punish the South and enforce the supremacy of the national government. With Lincoln's assassination Secretary Stanton attempted to assume authority. When President Andrew Johnson tried to remove Stanton from office the impeachment against Johnson began. This political fight became a constitutional fight with the impeachment proceedings. Secretary Stanton wrote the legislation to create the Department of Justice and the Office of the Solicitor General in 1868 when he was removed from his position as Secretary of War.

Even though the huge fight broke out over punishing the Southern States there seems to have been very little controversy about punishing the Indians for how many tribes had joined with the Southern Confederacy. The creation of a new very harsh military policy towards the Indian tribes began almost immediately after the war ended. Multiple acts to punish the Indians were passed by Congress and signed by the President culminating with the Act of March 3, 1871, ch.120, 16 Stat. 566. This policy that ended treaty making with the Indian tribes and placed

them under the direct war power authority of Congress became known as the Indian policy of 1871. It was the source and justification for the Indian War period of our history. As CERF has said in many amicus briefs over the years, it was the 1871 Indian policy that made all of the territorial war powers unleashed in the *Dred Scott* decision the new law of the land.

A. **The 1871 Indian Policy**

After the Civil War, Congress changed federal Indian policy. The 1871 policy ended treaty making with the Indian tribes but preserved the tribal interests made in the Indian treaties. This formally ended the assimilation policy of the Northwest Ordinance and began a much harsher direct war power policy toward the Indians. *See* 25 U.S.C. § 71, 1 Rev. Stat. § 441 and § 442. *See also U.S. v. Lara*, 541 U.S. 193, 201 (2004). The Indian policy of 1871 was based on all Indians and Indian tribes as a race being potential belligerents against the authority of the United States. This change happened because so many Indian tribes raised hostilities during the Civil War. Many Indian tribes formed alliances with the Confederate States. *See Holden v. Joy*, 112 U.S. 94 (1872). “Indians not taxed” were specifically omitted from the protections of the Fourteenth Amendment. This codification of the Reconstruction power over Indians preserved the territorial war powers used to fight the Civil War. They were the same powers needed to Reconstruct the Southern states following the war. *See War Powers* by William Whiting (43rd edition) p. 470-8.

As inherited from the laws of Great Britain, the war powers displace all civil law under the assumption that they are being invoked in a public emergency. The overriding need to protect the physical integrity of the land and people in a war was necessary to ultimately preserve the very existence of the nation. In other words, invoking the virtually unlimited war powers to fight the Civil War comported with the use of the war powers under British law. This was the argument of President Lincoln at the end of the Civil War. What was done during the war was very different than keeping these powers active after the war.

When the 1871 federal Indian policy was adopted, Congress was out for punishment and the Indian tribes were the easy target for revenge. The atrocities and massacres executed against the Native Americans in the name of this federal policy over the next 30 years were all sanctioned by these laws that are still in effect today. It is this 1871 Indian policy that formally separated the Indians from being protected by the Constitution as wards of the United States. *See Act of March 3, 1871, ch.120, 16 Stat. 566.*

B. The Creation of the Department of Justice

The first bill to create the Department of Justice was introduced by Ohio Congressman William Lawrence in 1868. The bill was obviously written by Secretary Stanton who was a good friend of Lawrence. Although the first bill to create the Department of Justice did not pass, it was reintroduced with very little

change after the deaths of Stanton and Congressman Thaddeus Stevens in 1870 and was passed. The Department of Justice in its enabling legislation was given the authority to define and use the war powers to advocate for federal interests. *See* 16 Stat. 162, Ch. 150, June 22, 1870. By expressly granting the newly created Department of Justice the authority of the naval judge advocate general and solicitor of the War Department, the general war powers were given to an executive department as normal domestic law. *See* 16 Stat. 162, Secs. 3, 6. The fact that the Department of Justice was not created earlier to enforce the Military Reconstruction Act of 1867 or to defend the many social reforms contained in the legislation for the Freedmen's Bureau makes it appear that the creation of the department was to transfer the authority of the War Department to a new department when Secretary Stanton was finally forced to leave office as Secretary of War in February 1868. It was in this last gasp of the Radical Republicans, that they won the Reconstruction fight against President Lincoln.

The Department of Justice and Office of Solicitor General were created after the Radical Republicans main tenets had failed. The Freedmen's Bureau was created and enforced by the Military Reconstruction Act of 1867. The Freedmen's Bureau ended unceremoniously in 1868 on the same day as part of the 1871 Indian Policy was officially codified in the laws of the United States. Ch. 245, 15 Stat. 193, Ch. 248, 15 Stat. 198, July 27, 1868. The only direct war powers used against the South to convert title to property were contained in the two part Emancipation Proclamation

that converted the property title of the slaves in the rebellious states. Since the Emancipation Proclamation was then backed up by the Thirteenth Amendment, the freeing of the slaves has been considered a constitutional change and not a compelled change by the federal government under the war powers. When Military Reconstruction ended in 1877, the only positive change in the Southern States was the ratification of the Civil War Amendments.

The act creating the Department of Justice was expertly written by an attorney intimately familiar with how the territorial war powers work in application. The legislation of the Indian Policy of 1871 contains specific details of what war powers can be used to enforce the specific goals of Congress in forcing all of the Indian tribes on to reservations and then detailing how the reservations will be governed. The legislation creating the Department of Justice simply includes the powers of the War Department solicitors of the Army and Navy in two general sections empowering the new department and office without any constraints. Unless carefully read, even a lawyer might not realize the major change in law contained in empowering federal attorneys to use unlimited war powers in all cases brought before any kind of federal court. Unlike the very direct war powers applied in the federal Indian policy of 1871 by Congress, the grant of war powers in the enabling legislation of the Department of Justice and Solicitor General is insidious. There are no requirements for the Department of Justice or Solicitor General to disclose when the war powers are being

invoked instead of laws made pursuant to the constitution.

III. THE DEPARTMENT OF JUSTICE USES THE TERRITORIAL WAR POWERS IN EVERY FEDERAL LANDS CASE

As this case aptly demonstrates, it is much easier for the Department of Justice to claim that the right of way provision of the Mineral Leasing Act, 30 U.S.C. 185(a) or the National Trails System Act, 16 U.S.C. 1248(a), applies to allow the Forest Service to grant a right of way for the pipeline across the Appalachian trail than it is to negotiate a right of way with all the contending interests that might have to be approved by overlapping federal departments, local interests, a state legislature and potentially Congress. Obviously it is far more expedient for the Department of Justice if this Court would again allow it to assert general federal jurisdiction to acquire territorial land for this right of way as it has allowed for Indian interests against every state, local and private property interest using 25 U.S.C. 5108. The decision in *Herrera v. Wyoming* last term, ended the Equal Footing Doctrine by denying that the States gain any jurisdictional interest in lands within their boundaries at statehood. Since it is the states that vest the private property rights, the *Herrera* decision also implicates every piece of private property in the nation. Individual rights are all based on rights developed for private property. With the *Herrera* decision, the Department of Justice no longer needs the excuse of promoting tribal sovereignty

that the Nixon Administration added to Secretary Edwin Stanton's scheme.

The use of the war powers by the Department of Justice makes the federal government completely unaccountable to the people. The Department of Justice can use the insidious territorial war powers in this case without ever openly admitting that is the real basis of their argument just as they did in *Sturgeon v. Frost*, 136 S.Ct 1061 (2016) because this Court has never called out these powers for what they really are. The Roberts Court has treated these cases as legitimate statutory construction cases continually empowering the Department of Justice to make even more outrageous stretches of statutory application. The very idea that the right of way provisions of the Mineral Leasing Act could be applied to approve this pipeline across the Appalachian trail is ludicrous. This should be a frivolous suit. Because this Court has deliberately and consistently whitewashed what the real power behind these statutory stretches is, this case could be decided to allow the Department of Justice more unaccountable power to force rights of way through national park areas.

A. The Agenda of the Department of Justice

Since their creation the Department of Justice and Office of the Solicitor have been expanding the reach of the territorial war powers against the states and people. CERF has provided two physical documents to this Court in a previous amicus brief that

prove how the Department of Justice has over time created the federal reserved water rights doctrine to impugn the equal footing doctrine. “The Federal Irrigation Water Rights” memorandum written by Ethelbert Ward, dated June 22, 1930 was submitted as an appendix with the CERF amicus brief in the second hearing of *Sturgeon v. Frost*, 139 S. Ct 1066 (2019). Also cited in the second *Sturgeon* amicus was “The Embargo on the Upper Rio Grande” by Ottamar Hamеле. This document was entered into the docket in *Texas v. New Mexico*, Orig. 141, Doc. 266, before the special master in the Eighth Circuit Court of Appeals. Both of these documents are available in their entirety at millelacsequalrightsfoundation.org.

Since 1970 and the publication of “One Third of the Nation’s Lands” all lands owned by the United States no matter how previously classified have all been treated as federal territorial lands. See <https://ir.library.oregonstate.edu/concern/defaults/8623j2463>. This very long diatribe on the federal lands is more political than factual as almost everything from the Nixon Administration was. Just as the Nixon Administration fully weaponized the 1871 Indian Policy by promoting tribal sovereignty, the same was done for the federal lands. The federal land issues could not be separated from the tribal issues so both were fully weaponized as his original bill proposals prove.²

² If there is any doubt as to the agenda of President Nixon please refer to the original bills to be introduced section on millelacsequalrightsfoundation.org. Counsel’s integrity would be

Whether the reserved rights doctrine as developed by the Department of Justice prior to the Nixon administration was actually in the national interest cannot be determined today when the continued existence of the federal reserved rights doctrine now threatens the civil rights and liberties of every person in the United States. This brief is a good example of what is happening nationally. CERF has been primarily interested in Indian issues and is writing this brief in a federal lands case that has the Department of Justice treating the people that live around and use the section of the Appalachian trail where this pipeline is to be built as though they are living in Indian country and have lost all of their constitutional rights. The Department of Justice is completely against the Appalachian Trail corridor being treated as a unit of the National Park Service arguing to overcome the designation using either 30 U.S.C. 185(a) or 16 U.S.C. 1248(a). The Department of Justice wants to ram this pipeline through national forest lands without opposition.

If the Justices of this Court do not see the forest through the trees and realize that allowing these territorial war powers to be a spoil of war to the victorious North is depriving all Americans of all due process and constitutional rights we are not going to keep this Constitution. Most Americans do not believe that the Constitution limits the federal government in

called into question for asserting what the Nixon administration actually proposed for the federal lands.

any way today. This Court needs to start holding the Department of Justice accountable and call out the true source of its claimed power to force a right of way across the Appalachian Trail corridor as actual war powers being used against constitutional law.

CONCLUSION

The decision of the Fourth Circuit should be upheld.

Respectfully submitted,

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