

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-1584

UNITED STATES FOREST SERVICE, ET AL., PETITIONERS

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.

No. 18-1587

ATLANTIC COAST PIPEPLINE, LLC, PETITIONER

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.

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

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States Forest Service and the other federal parties, respectfully seeks leave to divide the oral argument for petitioners in the above cases. This Court consolidated the two cases and allocated a total of one hour for oral argument. We move to allocate fifteen minutes of oral

argument time to the federal petitioners in No. 18-1584 and fifteen minutes to Atlantic Coast Pipeline, LLC, the petitioner in No. 18-1587. Counsel for Atlantic Coast Pipeline has authorized us to state that he agrees with that allocation and therefore joins in this motion. Granting this motion would not require the Court to enlarge the overall time for argument.

1. In the administrative action under review in this case, the United States Forest Service authorized Atlantic Coast Pipeline to use National Forest System land as part of a route for a natural-gas pipeline, which was approved by the Federal Energy Regulatory Commission (FERC). The pipeline route passes through the George Washington and Monongahela National Forests. As relevant to these cases, the Forest Service determined that it had authority under the Mineral Leasing Act, 30 U.S.C. 185, to grant a right-of-way for the pipeline through the relevant sections of the National Forests, including through land in the George Washington National Forest traversed by the Appalachian Trail.

After the Forest Service issued its authorization, respondents filed a petition for review in the Fourth Circuit, and Atlantic Coast Pipeline intervened in support of the Forest Service. As relevant to this case, the court of appeals held that the Forest Service lacked statutory authority to grant a right-of-way for the section of the proposed pipeline that would lie

underneath the segment of land in the George Washington National Forest traversed by the Appalachian Trail.

2. This Court granted certiorari on the question, presented in both petitions, whether the Forest Service has authority to grant a right-of-way under the Mineral Leasing Act through lands traversed by the Appalachian Trail within National Forests. We believe that dividing the argument time for petitioners between the federal petitioners and Atlantic Coast Pipeline would be of material assistance to the Court. The United States has a significant interest in and perspective on the question presented, because the case concerns federal statutes administered by several federal agencies. The ruling of the court of appeals threatens adverse consequences both for the development and maintenance of the Nation's energy infrastructure in the eastern United States, and more generally for the Forest Service's ability to appropriately administer and manage the National Forests under its jurisdiction. At the same time, Atlantic Coast Pipeline has a significant interest in this case and can offer the Court a distinct perspective, because it has been granted authorization by FERC to build the major pipeline at issue in this case and because both it and the customers the pipeline is intended to serve will be directly affected by this Court's decision.

For the foregoing reasons, the government requests that the Court grant the motion for divided argument.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JANUARY 2020