No. _____

In the
Supreme Court of the United States

ATLANTIC COAST PIPELINE, LLC,

Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION; HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT; SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION; SHENANDOAH VALLEY NETWORK; SIERRA CLUB; VIRGINIA WILDERNESS COMMITTEE; WILD VIRGINIA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
WILLIAM K. LANE III
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 389-5000
paul.clement@kirkland.com

Counsel for Petitioner

June 25, 2019

QUESTIONS PRESENTED

The Mineral Leasing Act ("MLA") authorizes federal agencies to grant pipeline rights-of-way over federal lands within their jurisdiction. Exercising that authority, the U.S. Forest Service granted Atlantic Coast Pipeline a right-of-way to cross small portions of the George Washington National Forest, including a 0.1-mile stretch that is approximately 700 feet beneath, and without surface impacts to, the Appalachian National Scenic Trail. While more than 50 pipelines presently cross under that footpath pursuant to similar rights-of-way, the Fourth Circuit concluded in the decision below that the Forest Service—indeed, *every* federal agency—lacks the power to grant rights-of-way to cross beneath the Trail pursuant to the MLA, rendering the footpath a 2,200-mile barrier separating resource-rich areas to its west from consumers to its east. The court reached that result by deeming more than 1,000 miles of land traversed by the Trail under the control of various federal, state and private entities instead to be considered lands in the National Park System, which, unlike other federal lands, are not subject to rights-of-way under the MLA. In doing so, the court not only rejected the federal government's long-settled views, but has called into question dozens of existing rights-of-way under the Trail and upset petitioner's massive investments in a pipeline designed to get natural gas to Virginia and North Carolina for the benefit of millions of people.

The question presented is:

Whether the Forest Service has the authority under the MLA and National Trails System Act to

grant rights-of-way through national forest lands that the Appalachian Trail traverses.

PARTIES TO THE PROCEEDING

Petitioner is Atlantic Coast Pipeline, LLC ("Atlantic"). It was intervenor-respondent in the court of appeals.

Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, and Wild Virginia are respondents before this Court and were petitioners in the court of appeals.

The Forest Service, an agency of the U.S. Department of the Agriculture; Kathleen Atkinson, in her official capacity as Regional Forester of the Eastern Region; and Ken Arney, in his official capacity as Acting Regional Forester of the Southern Region, are also parties to the proceeding.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states as follows:

Dominion Energy, Inc. owns more than 10% of Atlantic Coast Pipeline, LLC's stock. Duke Energy ACP, LLC and Piedmont ACP Company, LLC, subsidiaries of Duke Energy Corporation, also own more than 10% of Atlantic Coast Pipeline, LLC's stock. No other company owns 10% or more of Atlantic Coast Pipeline, LLC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

PETITION FOR WRIT OF CERTIORARI

After an arduous three-year process, involving extensive regulatory reviews and intensive due diligence, petitioner secured the necessary approvals and permits to construct a 600-mile pipeline that will bring natural gas—and substantial tax revenues and hundreds of millions of dollars in annual savings along with it—from resource-rich West Virginia and Pennsylvania to consumers in Virginia and North Carolina. That approval process involved scrutiny by more than a dozen state and federal agencies, including the U.S. Forest Service, the Federal Energy Regulatory Commission, and the National Park Service. Each agency considered issues within its own jurisdiction and approved the pipeline, both with the knowledge that it would be constructed via a horizontal drill approximately 700 feet under a 0.1-mile segment of the Appalachian National Scenic Trail on National Forest System land and with the understanding that approval authority for that right-of-way rested with the Forest Service. The Forest Service's decision to grant that right-of-way was hardly unprecedented; some 50-plus pipelines already cross under the Trail, including on Forest Service land, hidden from the view of those enjoying the scenery on the footpath above.

Several environmental groups challenged the pipeline on numerous grounds, including the novel theory that the Forest Service lacked statutory authority to grant a right-of-way because the entire Trail and the land underneath is National Park System land under the exclusive authority of the National Park Service. Because the MLA does not

authorize any federal agency to grant pipeline rights-of-way across National Park System land, the import of this theory was not that the *wrong* federal agency had granted the right-of-way under the Trail, but that *no* agency had that power.

While both the Forest Service and the Park Service have long rejected that reading and had no doubt that approval authority rests with the Forest Service, the Fourth Circuit had other ideas. Indeed, consistent with its handling of other challenges to this pipeline, the Fourth Circuit endorsed nearly all of the environmental groups' challenges, including their novel theory that the Forest Service cannot grant a right-of-way through what the federal government has always understood to be national forest land. While the procedural defects perceived by the court in the approval process can be fixed by further administrative proceedings, the Fourth Circuit's decision deeming the Trail to be land in the National Park Service has far more serious consequences. The decision converts a Trail that is primarily on land owned or operated by private, state, and Forest Service entities into a 2,200-mile Park-Service barrier separating critical natural resources from consumers along the East Coast, given that the federal government disclaims the authority to grant rights-of-way for pipelines through National Park System land without specific Congressional authorization. Accordingly, the decision imperils not just the billions of dollars invested in this pipeline, but future projects that will cross under the Trail, the 50-some pipelines that *already* cross under the Trail that require ongoing regulatory approvals from other state and federal

agencies, and potentially other projects (including electrical transmission lines, telecommunications sites, municipal water facilities, roads, and grazing areas) that cross national trails administered by the National Park Service.

In short, the decision below is both profoundly wrong and profoundly important. It misreads federal statutes that make clear that the designation of a trail does not transfer authority over the land being crossed. It will chill investment, harm millions of energy consumers, and unsettle long-held agency views. This decision plainly warrants this Court's plenary review.

OPINIONS BELOW

The Fourth Circuit's opinion is reported at 911 F.3d 150 and reproduced at App.1-66.

JURISDICTION

The Fourth Circuit issued its decision on December 13, 2018, and denied timely petitions for rehearing en banc filed by Petitioner and the federal respondents. App.67-68. On May 16, 2019, the Chief Justice extended the time for filing a petition to and including June 25, 2019. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

The relevant provisions of the MLA, 30 U.S.C. §181 *et seq.*, and the National Trails System Act, 16 U.S.C. §1241 *et seq.*, are reproduced at App.237-301.

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

In 1911, Congress enacted the Weeks Act, which authorized the Secretary of Agriculture to acquire certain lands to be "permanently reserved, held, and administered as national forest lands." 16 U.S.C. §521; 36 Stat. 963 (1911). Pursuant to that authority, the Secretary acquired what initially was established as the Shenandoah National Forest, *see* 40 Stat. 1779 (1918), and later renamed the George Washington National Forest, *see* Exec. Order No. 5,867 (1932). Today, the George Washington National Forest spans roughly one million acres of Virginia and West Virginia.

As part of the National Forest System, the George Washington National Forest is administered by the Forest Service. 16 U.S.C. §1609. Congress has charged the Forest Service with ensuring the orderly development and use of the natural resources that national forests contain. The Forest Service (through the Secretary of Agriculture) "is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom." *Id.* §529. That mandate stands in contrast to the charge of the Park Service with respect to lands in the National Park System. While the National Forest System and the National Park System were both established around the turn of the twentieth century, only land in the latter was set aside principally for conservation. Accordingly, the National Park Service is charged with "conserv[ing] the scenery, natural

and historic objects, and wild life" of national parks and "provid[ing] for the[ir] enjoyment ... in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. §100101.

In 1968, Congress enacted the National Trails System Act, an act designed "to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation." 16 U.S.C. §1241(a). The Trails Act contemplates a variety of different types of national trails, some established administratively, *id.* §1243, and others by Congress itself, *id.* §1244. Two trails were established contemporaneously with the Trails Act: the Appalachian National Scenic Trail and the Pacific Crest National Scenic Trail. *See id.*

National trails can (and do) traverse all manner of lands—lands separately owned and administered by the Forest Service, the Park Service, other federal agencies, states and even private parties. The Appalachian Trail is a case in point. The Trail, which was completed in 1937, is a 2,200-mile footpath stretching from Maine to Georgia. JA1778.[1] Along the way, it winds through 14 states and crosses hundreds of miles of private land; 60 state game lands, forests, or parks; one National Wildlife Refuge; six National Parks; and eight National Forests, including the George Washington National Forest. JA1778; *see also Nationwide Sys. of Trails:*

[1] "JA" refers to the Corrected Deferred Joint Appendix filed with the Fourth Circuit.

Hearing on S. 827 Before the Comm. on Interior and Insular Affairs, 90th Cong. 67 (1967) (around 800 trail miles privately owned when trail was established). Since its inception, then, the Trail has encompassed land administered by a wide variety of federal, state, and private interests. JA3186.

Cognizant of that dynamic, Congress chose not to convert the land that national trails traverse into Forest System or Park System land, or to put national trails under the exclusive jurisdiction of any one agency. Instead, Congress decided to give either the Interior Secretary or the Agriculture Secretary, on a case-by-case basis, principal responsibility for administering each *trail*. The Secretary with that responsibility was then authorized to obtain "rights-of-way" for the portions of the trail "across Federal lands under the jurisdiction of another Federal agency," pursuant to an agreement with that agency. 16 U.S.C. §1246(a)(2). But that right-of-way for the trail left the ownership of and jurisdiction over the underlying lands otherwise unaffected, and left administration of those lands to the agency that administered them before the trail designation. Accordingly, while Congress has identified which Secretary should administer each trail, the Trails Act expressly also provides: "Nothing 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." *Id.* §1246(a)(1)(A).

Underscoring the point, Congress ordered whichever Secretary it charged with administering

the trail to do so in cooperation and conjunction with any agencies that administer the lands that the trail traverses. For example, the Secretary must "establish an advisory council" that includes "the head of each Federal department … administering lands through which the trail route passes." *Id.* §1244(d). And the Secretary may not issue regulations governing the trail without the "concurrence of the heads of any other Federal agencies administering lands through which [the] trail passes." *Id.* §1246(i). Congress has reinforced that cooperative approach when designating specific trails as well. For instance, the statutory provision establishing the Appalachian Trail provides that it "shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture." *Id.* §1244(a)(1). The Trails Act thus preserves, rather than overrides, the division of land management that preceded it.

That approach stands in stark contrast to Congress' approach in other statutes. Notably, on the same day that it enacted the Trails Act, Congress enacted the Wild and Scenic Rivers Act ("Rivers Act"), Pub. L. No. 90-542, §6, 82 Stat. 906, 912 (1968). Unlike the Trails Act, which makes clear that it was *not* effectuating any transfers of jurisdiction over underlying lands, the Rivers Act expressly provides that "[a]ny component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system." 16 U.S.C. §1281(c). The Rivers Act also provides a mechanism through which agencies with jurisdiction over federal land that is

designated part of the National Wild and Scenic Rivers System may transfer their jurisdiction to the Secretary of Agriculture, at which point the land will "become national forest land[]." *Id.* §1277(e). Congress was thus well aware of how to transfer jurisdiction over federal land: it chose to do so in the Rivers Act, but not in the contemporaneous enacted Trails Act.

Today, some national trails are administered by the Bureau of Land Management, some by the National Park Service, and some by the Forest Service. As these agencies have repeatedly made clear, including in the specific context of the Appalachian Trail, each agency's administration of *a trail* does not override the administrative powers and responsibilities of other agencies over the land that the trail traverses.

For example, the Park Service, to which the Secretary of the Interior has designated his statutory responsibility to administer the Appalachian Trail, has repeatedly explained: "While responsibility for overall Trail administration lies with the National Park Service, land-managing agencies retain their authority on lands under their jurisdiction." Nat'l Park Serv., Appalachian Trail Management Plan 12-13 (1981), Nat'l Park. Serv., Appalachian Trail Management Plan III-1 (2008); General Regulations for Areas Administered by the National Park Service, 48 Fed. Reg. 30,252-01, 30,253 (June 30, 1983); Director's Order No. 45: National Trails System, 6-8 (2013); Dep't of the Interior, 710 Department Manual 1.4(C)(4) (1977). The Forest Service likewise has confirmed that it retains its duty and power to

administer and manage the Forest System land over which the Trail passes. *See, e.g.*, Forest Service Manual 1531.32a, ¶9 (2004), *available at* https://bit.ly/2xcwcr9. Accordingly, while the Appalachian Trail passes through (among others) the George Washington National Forest, those parts of the forest that the trail traverses remain, as they have always been, "permanently reserved, held, and administered as national forest lands." 16 U.S.C. §521.

This division of authority over the underlying lands traversed by the Trail has important implications for which agency, or whether any agency, may grant rights-of-way for pipelines to cross under the Trail. The MLA generally authorizes "the Secretary of the Interior or appropriate agency head" to grant "[r]ights-of-way through any Federal lands … for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom." 30 U.S.C. §185(a). Thus, as a general matter, federal agencies may grant rights-of-way for pipelines to cross the federal lands they administer. For example, the Forest Service generally may grant rights-of-way across national forest lands, and the Secretary of Interior may grant rights-of-way across BLM lands. There is, however, an exception for National Park System lands, as the MLA defines "Federal lands" as "all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf." *Id.* §185(b). Congress can specifically authorize the National Park Service to grant rights-of-ways under Park

Service lands. It has done so, for example, with respect to the Blue Ridge Parkway, which is located on Park Service land and largely parallels the Appalachian Trail. 16 U.S.C. §460a-3; *see* S. Rep. No. 93-207 (1973).

Thus, under the MLA, the Forest Service generally has the authority to grant rights-of-way for pipelines over Forest Service land. And unless the designation of the Appalachian Trail converted Forest Service lands into Park System lands, the Forest Service retains that authority with respect to Forest Service lands traversed by the Trail. The Forest Service has long taken the position that it does indeed have that authority and has granted such a right-of-way here.

B. Factual Background

In 2014, Atlantic proposed to build a 600-mile pipeline to carry natural gas from Harrison County, West Virginia to the eastern portions of Virginia and North Carolina. App.2-3. The pipeline, as designed, will be capable of transporting up to 1.5 billion cubic feet of natural gas per day and, according to Federal Energy Regulatory Commission ("FERC"), will develop "gas infrastructure that will serve to ensure future domestic energy supplies and enhance the pipeline grid by connecting sources of natural gas to markets." JA690, 714. The pipeline's planned route crosses five noncontiguous miles of the Monongahela National Forest and 16 noncontiguous miles of the George Washington National Forest. JA11, 3571. Within the George Washington National Forest, approximately 700 feet beneath the surface, the pipeline would cross a 0.1-mile segment of the Trail.

Consistent with the longstanding understanding and universal practice of the federal government, Atlantic sought rights-of-way from the Forest Service to cross portions of the Monongahela National Forest and the George Washington National Forest, including the 0.1-mile segment traversed by the Trail in the latter. After carefully considering all relevant factors, and participating as a cooperating agency in an environmental impact statement prepared by the FERC pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, the Forest Service issued Atlantic a special use permit granting the requested rights-of-way. App.13; JA9, 14-15, 3570.

Needless to say, the granting of a right-of-way over any federal land is just one of literally dozens of regulatory approvals necessary to authorize the massive undertaking involved in the construction and operation of a significant pipeline. All told, Atlantic and its affiliates obtained 33 separate regulatory approvals from more than a dozen federal and state agencies, as well as numerous local approvals.

C. Proceedings Below

Throughout its efforts to secure the necessary approvals to build the pipeline, Atlantic has faced opposition and litigation by environment groups at every turn. *See, e.g.*, *Sierra Club* v. *U.S. Dept. of the Interior*, 899 F.3d 260 (4th Cir. 2018). This approval proved no exception. Almost as soon as the Forest Service granted Atlantic the rights-of-way, a contingent of environmental groups ("respondents")

petitioned the Fourth Circuit to vacate the agency's decision.

Respondents claimed that the Forest Service's decision-making process was deficient in numerous respects under NEPA, the National Forest Management Act ("NFMA"), 16 U.S.C. §1604, and the Administrative Procedure Act ("APA"). Not content with raising procedural roadblocks, respondents also asserted a novel *substantive* barrier to the pipeline: In their view, the MLA prohibits *any* agency from granting a right-of-way across the Appalachian Trail because the entirety of the Trail—including those parts that cross national forests—is actually part of the National Park System.

The Fourth Circuit granted the petition in whole and faulted the agency in multiple respects. The court variously criticized the Forest Service for a supposed change of "tenor" during its administrative review, and for modifying its views about how much information it would need to reach a decision. App.11. For example, the court objected that the Forest Service initially asked Atlantic to present ten studies about landslide risks, but ultimately approved the pipeline after reviewing two of these studies (though still requiring review and approval of the other eight as a precondition to construction). App.46-49. The court similarly faulted the agency for modifying its views on how much pre-decisional information it would need to assess erosion and water degradation risks. App.49-57. Notably, the court did not hold that the Forest Service's initial demands were statutorily *mandated*; it merely faulted the agency for inadequately explaining its

"shift" in position during the approval process. In a rhetorical flourish, the court ultimately accused the Forest Service of having "abdicated its responsibility" to "'speak for the trees, for the trees have no tongues.'" App.66 (quoting Dr. Seuss, *The Lorax* (1971)).

Like respondents, the court was not content to identify perceived procedural faults that could be fixed in further agency proceedings. It went on to impose the substantive barrier that respondents sought. According to the Fourth Circuit, by giving the Secretary of the Interior authority to administer the Appalachian Trail, the Trails Act converted all of the Forest System lands underlying the Trail into National Park System lands across which an agency may not grant a right-of-way under the MLA. App.57-61. In reaching that conclusion, the court not only effected a massive unauthorized land transfer from the Forest Service to the Park Service—over the express objections of both agencies—but also imperiled the Eastern Seaboard's ability to access inland oil and gas sources.

The decision below does not stand alone, but is part of a pattern of Fourth Circuit decisions frustrating this pipeline and others like it. As noted, this pipeline required a host of federal approvals, and environmental groups have brought successful petitions challenging many of those approvals before this same panel. For example, last year, the same panel ruled against the pipeline on multiple occasions. *See Sierra Club*, 899 F.3d 260. The first deemed the U.S. Fish and Wildlife Service's issuance of an Incidental Take Statement to be arbitrary and

capricious. *See id.* at 266. Even after the agency addressed the perceived deficiencies, the Fourth Circuit stayed the agency's action without explanation. *See* Order Granting Mot. for Stay, *Defenders of Wildlife v. U.S. Dept. of the Int.,* No. 18-2090 (4th Cir. Dec. 7, 2018). A second ruling found the Park Service's grant of a right-of-way underneath the Blue Ridge Parkway to be arbitrary and capricious. Although the Blue Ridge Parkway Organic Act grants the Park Service the power to grant rights-of-way to cross the Parkway, 16 U.S.C. §460a-3, the panel nonetheless faulted the Park Service for insufficiently "explain[ing] how the pipeline crossing is not inconsistent with the purposes of the Parkway and the overall National Park System." *Sierra Club*, 899 F.3d at 266. As a result, the court vacated the decisions of both agencies. *See id.* at 295.[2]

REASONS FOR GRANTING THE PETITION

The decision below gets an exceptionally important question exceptionally wrong. According to the Fourth Circuit, the entire Appalachian Trail is land in the National Park System and thus no agency may authorize a pipeline to cross it under the MLA. Never mind that neither federal agency involved has ever taken that view, as evidenced by the approximately 56 pipelines that currently cross the Trail at various points. Never mind that the decision

---

[2] The pending Mountain Valley Pipeline project has suffered a similar fate. *See Sierra Club, Inc.* v. *U.S. Forest Serv.*, 897 F.3d 582, 595-96 (4th Cir. 2018), *reh'g granted in part*, 739 Fed. Appx. 185 (4th Cir. 2018). *Sierra Club v. U.S. Army Corps of Eng'rs*, 909 F.3d 635, 639 (4th Cir. 2018).

below would convert the Trail, which primarily traverses private, state, and federal land not managed by the National Park Service, into a barrier separating natural resources west of the Trail from population centers to the east. And never mind that the decision threatens to strand billions of dollars in investments made in good-faith reliance on dozens of regulatory approvals. None of that mattered to the Fourth Circuit, which rejected long settled agency interpretations of federal statutes to erect the latest and greatest of judicial obstacles to a project that has been approved—and now repeatedly so—by more than a dozen expert agencies. That decision should not stand as the last word on this critically important issue.

The MLA allows federal agencies to grant pipeline rights-of-way to cross any federal lands except (as relevant here) "lands in the National Park System." 30 U.S.C. §185(b)(1). Neither the Trails Act nor any other statute declares the entirety of the Appalachian Trail to be National Park System land. And for good reason, as the Appalachian Trail (like many national trails) is not composed exclusively of federal land, let alone Park System land. The Trail traverses hundreds of miles of land belonging to private parties and public agencies, both state and federal. Accordingly, while the Trails Act makes the Interior Secretary responsible for *administering* the footpath, it does not transfer authority or ownership of the lands that the Trail traverses. Instead, it sensibly preserves the authority of other state and federal agencies over the land that the Trail traverses. Indeed, the Trails Act preserves the role of other federal agencies in no uncertain terms,

emphatically providing: "Nothing 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).

The Fourth Circuit nonetheless treated the National Park Service's responsibility to administer the footpath as the equivalent of deeming the entire Trail "lands in the National Park System," with the consequence that the Forest Service has lost its long-standing authority to grant rights-of-way over Forest Service land traversed by the Trail. That holding not only flies in the face of the Trails Act and long-held agency understandings, but finds no support in the Park Service Act, 54 U.S.C. §100101 *et seq.*, which respects and preserves the distinction between Park System land and national trails.

The decision below is not just profoundly wrong, but profoundly consequential. In this case alone, it has stymied a pipeline that is projected to generate billions of dollars in economic activity, hundreds of millions in consumer savings, and millions in tax revenue. And that is just one pipeline; left standing, the decision below will impede pipelines from reaching eastern Virginia and North Carolina, and undoubtedly will chill investments in pipelines that cross any national trail that is nominally managed by the National Park Service. The decision also casts doubt on the future of the 50-some pipelines that already cross the Appalachian Trail—not to mention multiple other rights-of-way that the Forest Service has granted on Forest Service property traversed by

the Trail. In short, the stakes could hardly be higher. This exceptionally important question readily warrants this Court's review.

I. The Decision Below Erroneously Converts The Appalachian Trail Into A 2,200-Mile Barrier To Critical Infrastructure.

The Appalachian Trail has never been understood to constitute an impediment to pipeline construction. Indeed, approximately 56 pipelines currently cross the Trail at various points. The Fourth Circuit's radical transformation of the Trail into a barrier separating energy sources from energy consumers is at fundamental odds with the very statutes that the court purported to interpret.

A. The Trails Act Expressly Preserves the Authority of Other Federal Agencies Over Lands that a National Trail Traverses.

1. The MLA authorizes "the Secretary of the Interior or appropriate agency head" to grant "[r]ights-of-way through any Federal lands … for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom." 30 U.S.C. §185(a). The "appropriate agency head" is the head of whatever agency has jurisdiction over the federal lands at issue. *Id.* §185(b). Here, unless the Trails Act effectuated a heretofore-unnoticed massive land transfer, that agency is the Forest Service. The 0.1-mile segment of the Appalachian Trail at issue traverses part of the George Washington National Forest, all of which Congress declared more than a century ago in the Weeks Act "shall be permanently reserved, held, and administered as national forest

lands." 16 U.S.C. §521. As the agency with jurisdiction over federal lands in national forests, the head of the Forest Service is clearly the "appropriate agency head" to grant a right-of-way over national forest land.

The fact that the Appalachian Trail is part of a national trail administered by the Park Service does not change that analysis. Indeed, far from repealing the Weeks Act and converting "national forest lands" into National Park System lands, the Trails Act goes out of its way to make clear that it does *not* effect transfers of lands or jurisdiction over them. The Act provides that the "Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture," *id.* §1244(a)(1), and empowers the Secretary of the Interior to obtain "rights-of-way" for the Trail over "Federal lands under the jurisdiction of another Federal agenc[ies]," *id.* §1246(a)(2), without divesting those other agencies of jurisdiction. Indeed, the Act expressly provides: "Nothing 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." *Id.* §1246(a)(1)(A). Accordingly, the Forest Service's authority to grant pipeline rights-of-way across Forest Service lands under the MLA is undisturbed either by the Trails Act generally or by the contemporaneous designation of the Appalachian Trail in particular.

That conclusion is reinforced by the many provisions of the Trails Act confirming that it preserves the powers of federal agencies that administer lands traversed by a trail or footpath. For instance, as noted, the Act does not transfer plenary jurisdiction over lands traversed by a trail, but envisions that the agency with administrative authority over a trail will obtain a right-of-way over "Federal lands under the jurisdiction of other Federal agencies," and to endeavor to obtain comparable rights-of-way over state and private lands. Moreover, the Secretary charged with administering the trail must "establish an advisory council" that includes "the head of each Federal department … administering lands through which the trail route passes." *Id.* §1244(d). And that Secretary may not issue regulations governing the trail without the "concurrence of the heads of any other Federal agencies administering lands through which [the] trail passes." *Id.* §1246(i); *see also, e.g.*, *id.* §1244(b) (Secretary shall study "feasibility and desirability of designating other trails … in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass"); *id.* §1244(e) (Secretary "shall, after full consultation with affected Federal land managing agencies … submit … a comprehensive plan for the acquisition, management, development, and use of the trail").

These provisions would make little sense if the designation of administration of the footpath definitively transferred the federal lands underlying that trail to the Park System. Instead, they reinforce the understanding—explicitly confirmed by

Congress—that the Trails Act transfers only administrative authority over the trail (and only to a limited degree that envisions continuing cooperation), with jurisdiction and ownership over the underlying lands remaining with "other Federal agencies." *Id.* §1246(i). It does not "transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System." *Id.* §1246(a)(1)(A).

That conscious decision stands in stark contrast to the approach Congress took in other statutes. Most notably, the Rivers Act—enacted *the same day* as the Trails Act—does provide for the transfer of all jurisdiction over federal lands traversed by a designated river, but it does not make that transfer automatic, and it provides for that transfer explicitly. Specifically, the Rivers Act authorizes "[t]he head of any Federal department or agency having administrative jurisdiction over any lands" within the National Wild and Scenic Rivers System "to transfer to the appropriate secretary jurisdiction over such lands." *Id.* §1277(e). The statute requires that lands transferred to the Secretary of Agriculture pursuant to this provision "shall upon such acquisition or transfer become national forest lands." *Id.* And it makes explicit that "[a]ny component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system." *Id.* §1281(c).

Congress has enacted numerous other statutes, both before and after the Trails Act, that explicitly

transfer land to a federal agency or give agencies the power to do so. *See, e.g.*, Pub. L. No. 89-446, 80 Stat. 199 (1966) (authorizing "the Secretary of the Interior to transfer certain lands in the State of Colorado to the Department of Agriculture for recreation development, and for other purposes"); Pub. L. No. 89-72, §7, 79 Stat. 213, 217 (1965) (agency heads "authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior"); Pub. L. No. 88-415, 78 Stat. 388 (1964) (authorizing "the Secretary of the Interior to accept the transfer of certain national forest lands in Cocke County, Tennessee, for purposes of the Foothills Parkway, and for other purposes").

As these and other statutes confirm, the notion that Congress intended something comparable to happen automatically in the Trails Act in the absence of any express language and despite an express saving clause to the contrary blinks reality. When Congress wants to transfer jurisdiction over *lands* to the agency charged with administering something that traverses them, Congress says exactly that. Not only did Congress decline to say that in the Trails Act; the Trails Act says exactly the opposite.

In sum, Congress charged the Secretary of the Interior to administer the trail "primarily as a footpath." 16 U.S.C §1244(a)(1). That responsibility did not supplant the Secretary of Agriculture's continuing jurisdiction over the Forest Service lands that are crossed by the footpath.

2. The legislative history of the Trails Act confirms the import of its text. The Congress that enacted the Trails Act (and simultaneously

designated the Appalachian Trail a national trail and enacted the very different language of the Rivers Act) was specifically assured that granting one Secretary responsibility to administer a trail as a footpath would not displace the authority of other federal agencies to "administer" lands over which the trail traversed: "When any portion of [a trail] is within an area administered by another Federal agency, … such portion will be administered as the appropriate Secretary and the head of that agency determine." H.R. Rep. No. 90-1631, at 16 (1968). The Trails Act committee reports likewise made clear that "[w]hen any portion" of a trail "is within an area administered by another federal agency … such portion will be administered as the … Secretary and the head of that agency determine." *Id.*; S. Rep. No. 90-1233, at 15 (1968); *see also* H.R. Rep. No. 98-28, at 5 (1983); S. Rep. No. 98-1, at 6 (1983).

That expectation is evident from Congress' actions in the immediate wake of the enactment of the Trails Act. For example, the week after it enacted the Trails Act and designated the Appalachian Trail a national trail, Congress directed that the famed Blue Ridge Parkway be extended. *See* Pub. L. No. 90-555, §1, 82 Stat. 967, 967 (1968), *codified at* 16 U.S.C. §460a-6. To accomplish this task, Congress authorized the Secretary of the Interior to "relocate and reconstruct portions of the Appalachian Trail, including trail shelters, that may be disturbed by the parkway extension … on non-Federal lands … and [] upon national forest lands with the approval of the Secretary of Agriculture." 16 U.S.C. §460a-7(3). Clearly Congress understood that Forest Service lands traversed by the Trail

retained their character as "national forest lands." *Id.*

Congress' broader treatment of the Blue Ridge Parkway underscores the implausibility of the notion that Congress meant to foreclose pipeline rights-of-way under the Appalachian Trail. When it came to the Blue Ridge Parkway, Congress expressly said that the Parkway and the federal lands it traverses shall be administered and maintained as National Park System lands. *See* 16 U.S.C. §460a-2. That further confirms that Congress knows how to make clear its intention to treat a long stretch of federal lands as National Park System land. But equally important, Congress displayed its view that the 469-mile-long Parkway should not be a 469-mile-long barrier to rights-of-way, expressly granting the Park Service authority to grant rights-of-way that pass under the Parkway. *Id.* §460a-3.

Given that the Parkway and the Appalachian Trail parallel each other for the entirety of the Parkway's length, it is inconceivable that Congress intended rights-of-way to be available to cross the former but not the latter. Indeed, given the proximity of the two, congressionally authorized rights-of-way for the Parkway would be practically worthless if the nearby Trail were a barrier. In the case of the ACP, the pipeline would cross under both the Parkway and the Trail in the same bore. The obvious answer is that Congress never intended the Trails Act to vitiate the Forest Service's power to grant rights-of-way across those parts of national trails that are within national forests.

3. Consistent with the text, structure, and history of the statute, both the Department of the Interior and the Department of Agriculture have consistently taken the position that the Trails Act does not deprive federal agencies of their preexisting jurisdiction over federal lands underlying national trails. Indeed, each department has long taken that position as to the Appalachian Trail itself.

The Forest Service Manual explains that "significant portions of the Appalachian National Scenic Trail traverse lands under the separate administrative jurisdictions of the National Park Service and the Forest Service, as well as privately owned lands within the exterior boundaries of units administered by those Services." Forest Service Manual 1531.32a, at 9 (2004) (containing 1970 "Memorandum of Agreement Concerning Appalachian National Scenic Trail" with National Park Service). The Park Service likewise has stated time and again that "[w]hile responsibility for overall Trail administration lies with the National Park Service, land-managing agencies retain their authority on lands under their jurisdiction." Nat'l Park Serv., Appalachian Trail Management Plan 12-13; *see also, e.g.*, Nat'l Park. Serv., Appalachian Trail Management Plan III-1 ("[T]he Appalachian Trail … crosses an extensive land base administered by many other federal and state agencies" with each entity managing its segment "in accordance with its own administrative jurisdictional responsibilities.").

Indeed, the Park Service has stated unambiguously that the Appalachian Trail is "'multi-jurisdictional,'" with only select "segments of the trail

under the primary land management responsibility of the National Park Service." 48 Fed. Reg. at 30,253; *see* Director's Order No. 45, at 6-8; 710 Department Manual 1.4(C)(4). And the Forest Service has exercised its jurisdiction over parts of the Trail that pass through national forests to grant rights-of-ways pursuant to the MLA. As those and other agency statements and actions confirm, Congress enacted the Trails Act to encourage the creation of national trails, not to reallocate primary authority over long-established federal lands—let alone to convert lands "permanently reserved, held, and administered as national forest lands," 16 U.S.C. §521, into National Park System lands.

B. The Decision Below Misconstrues Both of the Statutes on Which the Court Relied And Is Deeply Flawed.

Notwithstanding the wealth of textual, structural, and historical evidence supporting the agencies' longstanding understanding, the Fourth Circuit adopted the novel conclusion that the Trails Act ousts the Forest Service (and all other federal agencies) of the power to grant pipeline rights-of-way under the Trail. That conclusion cannot be reconciled with the text, structure, or history of the relevant statutes.

1. As noted, the MLA defines the "Federal lands" as to which an agency may grant a right-of-way as "all lands owned by the United States except lands in the National Park System...." 30 U.S.C. §185(b)(1). Although the MLA does not define "lands in the National Park System," the Park Service Act provides a definition of "the National Park System."

Under that statute, "the National Park System" is defined as "the areas of land and water described in section 100501." 54 U.S.C. §100102. Section 100501, in turn, states that "[t]he System shall include any area of land and water administered by the Secretary [of the Interior], acting through the Director, for park, monument, historic, parkway, recreational, or other purposes." *Id.* §100501.

According to the Fourth Circuit, because the Park Service administers the Appalachian Trail as a park unit, the entire Trail constitutes Park Service land exempted from the MLA's general authorization for federal agencies to grant rights-of-way. Indeed, the Fourth Circuit viewed the Trail's status as National Park System land as largely uncontested, pointing to a portion of FERC's final Environmental Impact Statement ("EIS") authorizing the pipeline that noted that the Park Service had informed FERC that "'the entire [ANST] corridor [is] part of the ANST park unit' and a 'unit' of the National Park System." App.57. But the Fourth Circuit conflated the question here: whether the footpath is a "park unit" with the relevant question of whether Forest Service lands underlying that footpath were transformed into National Park System lands. In the process, the Fourth Circuit ignored the position of the Interior Department, the Agriculture Department, and the rest of the federal government that the Trails Act does not convert Forest Service land underlying the Trail into "lands in the National Park System" for purposes of the MLA.

The Fourth Circuit's reasoning fails, first and foremost, because it is flatly inconsistent with the

Trails Act. As explained, *see supra* Part I.A, the Trails Act draws a clear distinction between administration of *a trail* and administration of the lands that a trail traverses, and it expressly declares that it "shall [not] 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). The Trails Act likewise authorizes the agency administering the trail to obtain "rights-of-way across Federal lands under the jurisdiction of another Federal agency" without obtaining jurisdiction or ownership of the underlying lands. *Id.* §1246(a)(2). Thus, no matter how the Park Service classifies the Trail for administrative purposes, the Forest Service lands traversed by the Trail are not transmogrified into "lands in the National Park System," as the Trails Act makes clear. Given the express language of the Trails Act, that should be the end of the matter.

But a closer reading of the Park Service Act confirms the Fourth Circuit's error. In keeping with the Trails Act (and other federal statutes), the Park Service Act makes clear that not everything that the Park Service plays some role in administering constitutes "lands in the National Park System." For example, the Park Service Act grants the Park Service certain limited duties with respect to "related areas." 54 U.S.C. §100801(3). That the Park Service may designate those areas "units of the National Park System" for purposes of accomplishing those objectives does not convert them into National Park System lands.

The Park Service Act also makes clear that land can be treated as part of a park "System unit" without becoming lands of the National Park System. For example, Congress has authorized the Secretary of the Interior "to consolidate Federal land ownership within the existing boundaries of any System unit," *id.* §101102(a)(1), and to "accept title to any non-Federal property or interest in property within a System unit or related area," *id.* §102901(b)(1); *see also id.* §200306(a)(2)(A) (authorizing "the acquisition of land, water, or an interest in land or water within the exterior boundary of … a System unit"). These authorizations would be nonsensical if "System units" were coterminous with "lands in the National Park System." Thus, the Fourth Circuit's effort to convert the entire Appalachian Trail into "lands in the National Park System" is no more consistent with the Park Service Act than with the Trails Act or the MLA.

2. The Fourth Circuit alternatively suggested that the head of the Forest Service is not the "appropriate agency head" to grant a right-of-way because the Trails "Act is clear that the Secretary of the Interior *administers* the entire [Appalachian Trail], while 'other affected State and Federal agencies,' like the Forest Service, *manage* trail components under their jurisdiction." App.60. The court's assertion is doubly incorrect. First, the relevant statute is the MLA, which does not define the appropriate "agency head" as the head of the agency that "administers" a federal system within which federal lands fall. The MLA defines that "agency head" as "the head of any Federal department or independent Federal office or agency,

other than the Secretary of the Interior, *which has jurisdiction over Federal lands*." 30 U.S.C. §185(b)(3) (emphasis added). The question under the MLA is thus not which agency "administers" *the trail* (which traverses all manner of lands, including non-federal lands), but which agency has jurisdiction over the 21-mile stretch of "Federal lands" through which the pipeline would cross (including 0.1-mile beneath the Appalachian Trail). And that agency is the Forest Service, not the Park Service.

The Fourth Circuit compounded its error by claiming that the Trails Act "clearly distinguishes between trail administration and management," and reserves all "*administration* responsibilities" to the Secretary tasked with "administering" the trail itself. App.60. In fact, the Trails Act recognizes that while one agency will be responsible for the "overall administration" of *the trail*, 16 U.S.C. §1246(a)(1)(A), other agencies may *administer* (not just "manage") lands within it.

For example, as noted, the Secretary charged with administering the trail may pass regulations governing the trail only with the "concurrence of the heads of any other Federal agencies *administering* lands through which" it passes. *Id.* §1246(i) (emphasis added). And the Trails Act requires that Secretary to "establish an advisory council" that includes "the head of each Federal department … *administering* lands through which the trail route passes." *Id.* §1244(d). It also makes certain resources available to "[t]he Secretary responsible for the *administration of any segment* of any component of the National Trails System." *Id.* §1246(i)

(emphasis added). On top of all that, the Trails Act repeatedly uses the phrase "federally *administered* lands" to refer to parts of a national trail that are within the jurisdiction of another agency—a label that would be nonsensical if, as the Fourth Circuit claimed, the act reserves all "*administration* responsibilities" over lands that a national trail traverses to the Secretary tasked with "administering" the trail itself, App.54. *See, e.g.*, 16 U.S.C. §1243(b); *id.* §1244(a)(3)-(8), (10)-(11), (13)-(19), (21)(D); *id.* §1246(a)(1)(A), (e), (h)(1), (i).

Finally, the Fourth Circuit's error is underscored by its implications for trails administered by the Secretary of Agriculture that traverse actual National Park Service lands. If what matters is not which agency has ownership and jurisdiction over the underlying lands, but which agency has administrative oversight over the trail, then it would follow that the Secretary of Agriculture could grant pipeline rights-of-way across National Park System lands, if those lands are traversed by trails administered by the Agriculture Secretary. That is not a hypothetical scenario. At the same time Congress designated the Interior Secretary as having primary authority over the Appalachian Trail, it vested the Secretary of Agriculture with primary authority over the Pacific Crest National Scenic Trail, which traverses several national parks, including Yosemite and Sequoia. It makes little sense to think that Congress intended to vest jurisdiction over the lands in those parks, as opposed to administrative jurisdiction over the trail, in the Secretary of Agriculture or to authorize pipeline rights-of-way on parkland. But it makes no more

sense to think Congress intended the converse with respect to Forest Service land traversed by the Appalachian Trail. The far sounder conclusion is that in both instances, the Trails Act left ownership and jurisdiction over the underlying lands unaffected.

* * *

The 0.1-mile segment of the Appalachian Trail under which Atlantic's pipeline will run is and always has been Forest System land. That makes it "Federal lands" within the meaning of the MLA, and it makes the Forest Service the "appropriate agency head" to grant Atlantic a right-of-way. 30 U.S.C. §185(a), (b)(3). To say otherwise—to conclude that the Trails Act effected a massive sub silentio land transfer from the Forest Service, other federal agencies, states and even private landowners to the Park Service—betrays both the various statutes governing the Trail and decades of consistent agency understanding.

II. The Decision Below Will Have Dramatic Consequences Far Beyond This Case.

The Atlantic Coast Pipeline is important to the energy needs of millions of Americans. That the Fourth Circuit's decision imperils the billions of dollars already invested in this pipeline made in good-faith reliance on dozens of regulatory approvals is reason enough for this Court's review. But the impact of the decision below goes much further than one pipeline. The court has effectively erected a 2,200-mile barrier severing the Eastern Seaboard from oil and gas sources west of the Appalachian Trail.

At the outset, the decision below immediately impedes the progress of multiple proposed energy projects. The Appalachian Trail runs the length of the Fourth Circuit and beyond. Most of the land it traverses are now federal lands, and approximately half of those federal lands falls within the Forest System. Accordingly, the decision effectively limits any pipeline from bringing natural gas to eastern Virginia or North Carolina.

The economic impact that will result just from that barrier is massive. The Atlantic Coast Pipeline alone is estimated to generate some $2.7 billion in economic activity, and roughly $4.2 million in tax revenue annually during construction. *See* ACP, "Powering the Future, Driving Change Through Clean Energy," 2, 8, *available at* https://atlanticcoastpipeline.com/resources/docs/resources/acp-factbookversion2.pdf. The project will support 17,240 jobs during its construction and 2,200 jobs once in operation. *Id.* Perhaps most important, the pipeline will provide substantial economic benefits to consumers. Atlantic estimates that the pipeline will bring consumers some *$377 million* in annual savings. *Id.* at 19.

And that is just this pipeline. Left standing, the court's decision may well prevent construction of the Mountain Valley Pipeline, which also would cross National Forest System land traversed by the Appalachian Trail within the Fourth Circuit. *See* 81 Fed. Reg. 71,041 (Oct. 14, 2016). And the decision has almost surely nipped other yet-to-be-proposed projects in the bud by introducing significant and unnecessary regulatory uncertainty.

These and other pipelines are essential to everyday Americans. As the Pipeline and Hazardous Materials Safety Administration ("PHMSA") has explained, pipelines

> enable the safe movement of extraordinary quantities of energy products to industry and consumers, literally fueling our economy and way of life. The arteries of the Nation's energy infrastructure, as well as one of the safest and least costly ways to transport energy products, our oil and gas pipelines provide the resources needed for national defense, heat and cool our homes, generate power for business and fuel an unparalleled transportation system.

PHMSA, "General Pipeline FAQs," available at https://www.phmsa.dot.gov/faqs/general-pipeline-faqs.

Natural gas pipelines like the Atlantic Coast Pipeline also do much for the environment. According to the PHMSA, even a "modest pipeline" eliminates the need for 750 tanker trucks per day, or 225 28,000-gallon railroad tank cars. *Id.* And, when combusted, natural gas produces half the emissions of coal. *See* "Powering the Future, Driving Change Through Clean Energy," at 2. It is no wonder, then, that in recent years the federal government has taken steps that encourage the construction of pipelines. In 2015, for example, Congress passed the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312, which streamlines the permitting process for significant infrastructure

projects. Pipelines are included as a "covered project" under the statute. 42 U.S.C. §4370m(6)(A).

Now, however, any company considering investing in an infrastructure project designed to transport energy from the resource-rich areas west of the Trail to Americans residing on the East Coast will have to reconsider. Indeed, even outside the Fourth Circuit, investors undoubtedly will fear that the (il)logic of the decision below will spread, chilling critical future investment along the Eastern Seaboard and beyond.

The Fourth Circuit's decision casts significant doubt on the approximately 56 pipelines that currently cross the Appalachian Trail. Those pipelines were authorized on the understanding that neither the Trails Act nor the MLA posed a barrier to approval. And federal agency approvals for such crossings are subject to renewal. *See, e.g.*, *Sierra Club v. U.S. Forest Serv.*, 828 F.3d 402, 404-05 (6th Cir. 2016); App.67-68. If the MLA truly does forbid the Forest Service from granting rights-of-way across the Trail, then the Forest Service likely lacks the authority to renew those permits.

And the consequences of the decision do not necessarily stop with pipelines. In the Fourth Circuit alone, the Forest Service has granted dozens of permits for electrical transmission lines, telecommunications sites, municipal water facilities, roads, and grazing areas on Forest System lands traversed by the Appalachian Trail. The decision below suggests all those rights-of-way were granted by the wrong federal agency. Moreover, in declaring the entirety of the Appalachian Trail "lands in the

National Park System," the Fourth Circuit gave absolutely no thought to the consequences for private landowners through whose land the Trail runs. If those landowners have lost the potentially lucrative right to grant rights-of-way under their land, then the Trails Act worked a massive sub silentio taking.

Finally, review is warranted to underscore the proper role of the appellate courts in considering challenges to a pipeline approved by more than a dozen expert agencies. As noted, the decision here does not stand alone, but forms part of a pattern of decisions by the Fourth Circuit (with identical or largely overlapping panels) finding fault after fault in the arduous approval process for pipelines. Those decisions seized on novel procedural impediments with little grounding in the APA. For example, in addition to its novel Trail holding, the decision below faulted the Forest Service for changing its position during the course of the approval process about the number of supporting designs it would first review, even though the Fourth Circuit could not fault the agency for demanding too few studies. *But see Natl. Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658-59 (2007) ("The federal courts ordinarily are empowered to review only an agency's *final* action, *see* 5 U.S.C. §704, and the fact that a preliminary determination by a local agency representative is later overruled at a higher level within the agency does not render the decisionmaking process arbitrary and capricious.").

What separates the question presented here is that it cannot be fixed by adding further details or explanations on remand. And that makes this

Court's intervention imperative. Parties that invest hundreds of millions in securing a host of regulatory approvals should not face countless delays and the risk of investments stranded by the need for a second round of judicial approvals that then produce late-breaking substantive barriers to boot. Necessary infrastructure investments will not be forthcoming if APA review devolves into a war of attrition.

In sum, the Fourth Circuit's decision will have substantial and immediate effects on the economy and the energy supply for millions of Americans residing on the East Coast. In the long-term, the decision will stifle infrastructure development and create regulatory uncertainty along the Appalachian Trail and other national trails for decades to come. That result is contrary to applicable law, and more than suffices to warrant this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
WILLIAM K. LANE III
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave, NW
Washington, DC 20005
(202) 389-5000
paul.clement@kirkland.com

Counsel for Petitioner

June 25, 2019