Nos. 18-1584 & 18-1587

In The Supreme Court of the United States

UNITED STATES FOREST SERVICE, ET AL.,

Petitioners,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,

Respondents.

ATLANTIC COAST PIPELINE, LLC,

Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,

Respondents.

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

AMICUS CURIAE BRIEF OF PAMELA UNDERHILL, JONATHAN B. JARVIS, COALITION TO PROTECT AMERICA'S NATIONAL PARKS, AND NATIONAL PARKS CONSERVATION ASSOCIATION IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

Amici curiae are former high-level National Park Service ("Park Service") officials and non-profit organizations dedicated to conservation of the National Park System, including the Appalachian National Scenic Trail ("Appalachian Trail" or "Trail").[1]

Pamela Underhill is a former Park Service employee and high-level official who served both Republican and Democratic administrations during her nearly four-decade career. Ms. Underhill spent thirty-three years administering and managing the Appalachian Trail, including as Superintendent of the Appalachian Trail from 1995 through 2012. During her more than three decades of Appalachian Trail administration and management (including nearly two decades as Superintendent), Ms. Underhill worked closely with federal, state, and private partners to ensure that actions taken by the Park Service and its partners would not impair the Appalachian Trail or the unique experience it provides to users. As the longest-serving Superintendent of the Appalachian Trail, Ms. Underhill has unique knowledge and unparalleled expertise in the administration and management of the Trail pursuant to federal law. Ms. Underhill retired from federal service in 2012, but remains active in ensuring that the Park Service and its partners administer the

[1] No party or its counsel authored this brief in whole or in part. No party, its counsel, or person other than *amici curiae*, their members, or counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Appalachian Trail in a manner that avoids impairment of Trail resources.

Jonathan B. Jarvis served as the 18th Director of the Park Service from 2009 to 2017. During his forty-year career with the Park Service spanning six administrations, he also served as Superintendent of three national park units, Regional Director of the Pacific West Region, and Chief of Natural and Cultural Resources. Mr. Jarvis joins this brief because, as Park Service Director and in other roles, he gained unique insights into the complex statutory and regulatory framework governing National Park System lands, including the Appalachian Trail and other national scenic trails. Mr. Jarvis retired from federal service in 2017.

The Coalition to Protect America's National Parks ("Coalition") is a 501(c)(3) non-partisan, non-profit organization that works to protect America's national park sites, including the Appalachian Trail. The Coalition's 1,800-plus members are all current, former, or retired Park Service employees and volunteers, including many former Park Service directors, regional directors, and superintendents. The Coalition's membership includes several current, former, or retired Park Service employees who served in the agency's Appalachian Trail Office. As the only professional organization of current and former Park Service staff members, the Coalition collectively represents nearly 40,000 years of professional experience in national park stewardship. Accordingly, the Coalition and its membership have the unique distinction of supplying the Court with the

greatest collective knowledge, familiarity, and expertise with respect to national park administration and management of any party or *amici* in this proceeding.

The National Parks Conservation Association ("NPCA") is a 501(c)(3) non-partisan, non-profit organization that works to conserve America's national parks, trails, and other units for current and future generations. Founded in 1919, NPCA is the only membership organization in the United States focused solely on protection of the National Park System. Through more than a century of stewardship, education, advocacy, and outreach, NPCA has established itself as a leader in national park conservation and as an expert in the application of laws that ensure long-term conservation of national park units such as the Appalachian Trail.

The question presented is whether the Appalachian Trail is a unit of the National Park System due to the fact that Congress charged the Park Service with administration of the Trail, and, therefore, whether the Forest Service lacks authority to grant pipeline rights-of-way across the Trail pursuant to the Mineral Leasing Act. Unlike other parties to submit briefs in this matter, *amici* have spent decades interpreting and applying relevant legal mandates to National Park System units, including the Appalachian Trail, to prevent impairment of resources under the Park Service's administration. Indeed, *amici* and their members have spent tens of thousands of years, collectively, working on National Park System administration and management, including countless scenarios in

which *amici* have had to evaluate the applicable legal framework and make decisions to grant or deny permits, rights-of-way, and other actions consistent with the Park Service's legal obligations. Thus, *amici* offer a unique and well-informed perspective gained through unrivaled experience administering the Appalachian Trail and other Park System units on a day-to-day basis.

SUMMARY OF THE ARGUMENT

Rather than plowing new ground, as Petitioners suggest, the Fourth Circuit's ruling constitutes a straightforward application of the Mineral Leasing Act's longstanding prohibition against federal approval of pipeline rights-of-way in or through federal lands within units of the National Park System, such as the Appalachian Trail. Consistent with repeated legislative pronouncements and common sense, the Appalachian Trail—which is administered by the Secretary of the Interior through the Park Service—is a component of the National Park System and is therefore subject to the conservation mandates Congress has imposed on all National Park System units. It would be anomalous—indeed, contrary to Congress's clear intent—if other federal agencies could authorize environmentally destructive activities in or through units of the National Park System that Congress foreclosed the Park Service itself from authorizing.

Far from creating a draconian moratorium on pipeline construction, the Fourth Circuit's holding

respects the carefully calibrated balance Congress struck in prohibiting federal agencies from authorizing pipelines through units of the National Park System while allowing state, private, and other non-federal entities to authorize such activities through national park lands under non-federal ownership. As exemplified by the many existing pipeline crossings of the Appalachian Trail on non-federal land, affirming the ruling below will not impede pipeline development in the region but will simply require careful routing decisions accounting for land ownership and conservation values—as Congress clearly intended in enacting the Mineral Leasing Act's prohibition against federal authorization of pipeline rights-of-way in or through federal lands in the National Park System.

If, on the other hand, this Court reverses the ruling below, it would elevate resource utilization over conservation on federal lands administered by the Park Service in derogation of Congress's explicit mandates that govern all National Park System units, including the Appalachian Trail. In turn, reversal of the Fourth Circuit's decision would unnecessarily complicate the Park Service's administrative responsibilities by jeopardizing the agency's paramount duty to avoid impairment of National Park System resources located on lands owned by the federal government.

For these reasons, *amici* respectfully request that the Court affirm the judgment of the court of appeals.

ARGUMENT

Petitioners assert that the Fourth Circuit's holding misreads the statutory framework as transferring administrative jurisdiction over Forest Service lands to the Park Service, and thus improperly converts the Appalachian Trail into "lands in the National Park System" that are excluded from pipeline rights-of-way under the Mineral Leasing Act. 30 U.S.C. § 185(a), (b)(1). But the ruling below does no such thing; as the court of appeals implicitly recognized, multiple federal agencies often have cooperative jurisdiction over the same parcel of land, in which case each agency maintains certain responsibilities as set forth by statute or in inter-agency agreements. In this case, because the parcel at issue is *both* located within a unit of the National Park System administered by the Park Service *and* managed in certain respects by the Forest Service, the Fourth Circuit's ruling neither disturbs the delicate, cooperative balance that Congress struck between the two agencies concerning administration and management of this parcel, nor improperly strips the Forest Service of its authority to manage lands in the George Washington National Forest, including in consultation with the Park Service where the Appalachian Trail is concerned.

I. FEDERAL AGENCIES MAY NOT ISSUE PIPELINE RIGHTS-OF-WAY THROUGH FEDERAL LANDS IN UNITS OF THE NATIONAL PARK SYSTEM, INCLUDING THE APPALACHIAN TRAIL, WITHOUT EXPRESS AUTHORIZATION FROM CONGRESS.

A. The Mineral Leasing Act Prohibits Any Federal Agency From Granting Pipeline Rights-Of-Way In Or Through National Park Units.

This case does not present a close call. Dispositive to the question presented, Congress unequivocally prohibited *any* federal agency from granting pipeline rights-of-way in or through National Park System units, such as the Appalachian Trail, on lands owned by the federal government.

In the Mineral Leasing Act, Congress stated that "[r]ights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head," 30 U.S.C. § 185(a), but explicitly exempted from that authority all pipeline rights-of-way in or through "lands in the National Park System. . . ." *Id.* § 185(b)(1). Petitioners' flimsy arguments that the Appalachian Trail does not constitute "land[] within the National Park System" are legally and factually groundless.

From its inception as one of the country's foundational national scenic trails, the Park Service has consistently administered the Appalachian Trail as a "unit," or integral component, of the National Park

System. This longstanding practice is fully in accord with Congress's actions over the past fifty years, which have broadly classified all lands administered by the Park Service as part of the National Park System.

In 1968, Congress determined in the National Trails System Act ("Trails Act") that the Appalachian Trail "shall be administered . . . by the Secretary of the Interior. . . ." 16 U.S.C. § 1244(a)(1). Then, in 1970, Congress amended the Park Service Organic Act to substantially redefine the National Park System.[2]

Prior legislation had "legally defined the National Park System to exclude most areas in the recreational category." Nat'l Park Serv., *National Park System Timeline (Annotated)*, https://www.nps.gov/parkhistory/hisnps/NPSHistory/timeline_annotated.htm. However, in 1970, Congress specifically stated for the first time that "[t]he 'national park system' shall include ***any*** *area of land or water* now or hereafter *administered by the Secretary of the Interior through the National Park Service* for park, monument, historic, parkway, *recreational*, or other purposes." General Authorities Act of 1970, Pub. L. 91-383, § 2(b), 84 Stat. 825, 826 (emphases added). Congress explained that this new, more comprehensive definition of the "national park system" aimed to ensure that "these areas, though distinct in character, are united through their inter-related purposes and resources into one national park

[2] Congress enacted the statute commonly referred to as the National Park Service Organic Act on August 25, 1916. *See* Act of Aug. 25, 1916, Pub. L. 64-235, 39 Stat. 535.

system. . . ." 84 Stat. at 825. Thus, Congress left no doubt in the General Authorities Act of 1970 that "any area of land" administered by the Park Service, including the Appalachian Trail, was an equal component of a unified, singular National Park System.[3]

Congress was thus not writing on a blank slate when, only three years later, it amended the Mineral Leasing Act to prohibit federal authorization of pipeline rights-of-way in or through federal "lands in the National Park System," 30 U.S.C. § 185(b)(1). Rather, Congress used a legal term of art—"lands in the National Park System"—that it had defined very broadly in 1970 to encompass *all* lands administered by the Park Service, including the Appalachian Trail. Accordingly, under basic canons of statutory construction and

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[3] Petitioners and the *amici* supporting them erroneously assert that Congress only recently defined the National Park System to include all lands administered by the Park Service, which in their view undermines the status of the Appalachian Trail as a unit of the National Park System. *See*, *e.g.*, Br. of Fed. Pet'rs at 46 (asserting that the "definition was first enacted in 2014, [and] it came long after the Park Service had adopted its practice of referring to the Trail with similar (but distinct) terminology"). But Congress first enacted this definition of the National Park System in 1970, only two years after expressly conferring administrative jurisdiction over the Trail to the Park Service, and Congress merely carried over that definition in 2014 when reorganizing certain provisions in the U.S. Code and applying this longstanding definition to the terms "System" and "System Unit." *See* 54 U.S.C. § 100102(5), (6); *id.* § 100501. Thus, since 1970, *all* National Park System lands—whether designated as a park, preserve, recreation area, battlefield, site, trail, or otherwise—have been administered and managed in accordance with the Park Service Organic Act and other authorities that apply to the National Park System.

common sense, by using the specific term "National Park System" in the Mineral Leasing Act (which, like the General Authorities Act of 1970, addressed the proper use and disposition of public lands and resources), Congress intended that term to have the meaning that Congress had specified only three years earlier. *See*, *e.g.*, *Smith v. City of Jackson*, 544 U.S. 228, 233 (2005) (plurality opinion) ("[W]e begin with the premise that when Congress uses the same language in two statutes having similar purposes, particularly when one is enacted shortly after the other, it is appropriate to presume that Congress intended that text to have the same meaning in both statutes.").

Likewise, consistent with Congress's delegation of administrative jurisdiction over the Appalachian Trail to the Park Service in the Trails Act, *see* 16 U.S.C. § 1244(a)(1), and Congress's definition of *all* lands administered by the Park Service to be lands in the "national park system," 84 Stat. at 826, the Park Service has since uniformly administered the Trail as an integral component of the National Park System. Before the Park Service officially began utilizing the term National Park System "unit" to refer to parks, trails, and other areas Congress charged the Park Service with administering, the Park Service repeatedly categorized the Appalachian Trail as a "Recreational Area[] Administered By The National Park Service." *See*, *e.g.*, Nat'l Park Serv., *National Parks & Landmarks Index* 72 (1970), http://www.npshistory.com/publications/index-1970.pdf.

In 1975, the Park Service began formally referring to parks, trails, and other National Park System components as "units," and that year the agency first designated the Appalachian Trail as a "Unit[] of the National Park System" in its official documents. *See*, *e.g.*, Nat'l Park Serv., *Index of the National Park System* 95, 97 (1975), http://www.npshistory.com/publications/index1975.pdf. Over the last 45 years, every official Park Service publication has identified the Appalachian Trail, in its entirety, as a unit of the National Park System. Before this case, neither the Forest Service nor any other entity has ever formally objected to the Trail's status as a unit of the National Park System, or to the Park Service's authority to administer the Trail on Forest Service or other federal lands, as directed by Congress. These facts amply establish that the Appalachian Trail constitutes "land[] in the National Park System"—and has for decades—which Congress deemed off-limits to federal grants of pipeline rights-of-way in the Mineral Leasing Act. 30 U.S.C. § 185(a), (b)(1).

Moreover, in an effort to avoid the clear import of the Appalachian Trail's longstanding status as a unit of the National Park System administered in its entirety by the Park Service, Petitioners emphasize that Congress never specifically designated the Trail as a "unit" of the National Park System in the Trail's enabling legislation. *See*, *e.g.*, Br. of Fed. Pet'rs at 45-46 ("The agency's administrative listing decisions are not related to statutory criteria. . . ."). However, Congress frequently enacts enabling legislation for park units

that are indisputably "lands within the National Park System" without formally designating them as "units" in their enabling legislation or elsewhere. For example, under Petitioners' reasoning, Yellowstone National Park, Yosemite National Park, Grand Canyon National Park, Voyageurs National Park, Channel Islands National Park, Biscayne National Park, C&O Canal National Historical Park, and many others would flunk the test as "units" of the National Park System.

Accordingly, Petitioners are wrong to suggest that a National Park System component is not a "unit" absent a specific Congressional designation. To hold otherwise would render the crown jewels and many other units of our National Park System vulnerable to pipeline intrusion, flouting Congress's clear intent in the Mineral Leasing Act. *See* 30 U.S.C. § 185(a) (exempting "lands in the National Park System" from the "Federal lands" through which pipeline rights-of-way may be granted).

Petitioners and their *amici* also illogically contort the statutory language in asserting that the "trail" administered by the Park Service (under Congress's explicit direction) is not synonymous with "lands" in the National Park System that Congress exempted from pipeline rights-of-way, 30 U.S.C. § 185(a), (b)(1). In Petitioners' view, "[a] 'trail' is simply a route 'across,' 'over,' or 'through' a region of land," requiring a major leap of logic in order to conclude that the Trails Act "therefore charges the Secretary [of the Interior] with the administration only of 'a trail,' rather than of the lands that it traverses." Br. of Fed. Pet'rs at 26-28.

Neither practical reality nor common sense countenance such an artificially narrow and self-limiting understanding of the word "trail."

Although Petitioners imply that the Park Service's administration of the Appalachian Trail relates only to an amorphous "route" that exists in the ether above the actual land where Trail users hike, the notion that a "trail" is merely a "route" somehow separated from the "lands" it traverses is nonsensical and contravenes plain statutory language. In reality, the Trails Act makes clear that Congress intended the Park Service to do more than merely administer a "route" for the Appalachian Trail in an abstract sense.

For example, Congress gave the Secretary of the Interior, as "the Secretary charged with the administration" of the Appalachian Trail, the sole authority to determine (and ultimately authorize) "uses along the trail" that the Park Service concludes "will not substantially interfere with the nature and purposes of the trail. . . ." 16 U.S.C. § 1246(c). Similarly, Congress tasked the Park Service (not the Forest Service) with determining whether, and when, "the use of motorized vehicles . . . [is] necessary" on the Appalachian Trail to address emergency situations. *Id.* Most importantly, Congress charged the Park Service with "the development and maintenance of such trails within federally administered areas," thereby creating an ongoing duty for the Park Service to actively maintain *lands* of the

Trail, regardless of underlying ownership or management of those federal lands. *Id.* § 1246(h)(1).[4]

Congress further strengthened the role of the Secretary of the Interior as the sole administrator of the Trail in 1978 when it amended the 1968 Trails Act. *See* Act of Mar. 21, 1978, Pub. L. 95-248, 92 Stat. 159. The amendment charged the Secretary with substantially completing "the land acquisition program necessary to insure the protection of the Trail within three complete fiscal years following the date of enactment of this [provision]." 92 Stat. at 160. The amendment significantly increased appropriations available to the Secretary of the Interior for land acquisition and expanded the Secretary's power of condemnation from twenty-five acres per mile to "an average of [125] acres per mile[.]" *Id.* § 4. Thus, the 1978 amendment provided the Secretary of the Interior—and therefore the Park Service—with the authority and necessary funding to more assertively pursue the land acquisition program for the Trail, which has resulted in the Park Service's acquisition of more than 121,000 acres of *land* for Trail purposes.

Moreover, in the Trails Act, Congress specifically described the use of *lands* within trail boundaries. *See* 16 U.S.C. § 1246(d) ("Within the exterior boundaries of . . . national scenic . . . trail[s], the heads of Federal agencies may use *lands* for trail purposes" (emphasis

[4] As a practical matter, pursuant to its authority under the Trails Act, *see* 16 U.S.C. § 1246(h)(1), the Park Service enters into cooperative agreements with volunteer and other groups to maintain the Appalachian Trail.

added)). By the same token, Congress specified that "[n]ational scenic . . . trails may contain campsites, shelters, and related-public-use facilities." 16 U.S.C. § 1246(c). By definition, while lands may "contain" facilities, routes (divorced from the lands they traverse) cannot and do not "contain" any facilities. *See also* 16 U.S.C. § 1246(e) (describing "the *lands* included in a national scenic or national historic trail" (emphasis added)).

Thus, while the land at issue is managed in some respects by the Forest Service, the Park Service's extensive administrative jurisdiction over, and statutory responsibility for the maintenance of, these parcels establishes them as "lands in the National Park System" that are exempt from pipeline rights-of-way granted by federal agencies under the Mineral Leasing Act. 30 U.S.C. § 185(a), (b)(1).

Indeed, Petitioners appear to concede that it would be irrational to view the Appalachian Trail (and the Park Service's administrative role over the entire Trail) without considering the broader context of the land that comprises the Trail. *See* Br. of Fed. Pet'rs at 29 ("The lands traversed by and adjacent to a trail, of course, have some bearing on the trail, particularly in the context of a nationally designated trail intended for public use."); *id.* at 29-30 ("The lands immediately surrounding a trail are also significant because their condition affects the trail user's experience."). Likewise, the Park Service—as the agency tasked with administering the Appalachian Trail, which includes the construction and application of pertinent congressional

mandates—has repeatedly and consistently stated its interpretation of the laws governing the Trail to mean that the Park Service "administers the entire [Trail] and as such considers the entire Trail corridor to be a part of the [Appalachian Trail] park unit." J.A. 97.[5]

Hence, because the plain language of the laws governing the Trail makes clear that the entire Appalachian Trail constitutes "lands in the National Park System," or, alternatively, because the Park Service's longstanding interpretation of the Trail as an integral component of the National Park System is at least a permissible construction of the laws entrusted to the agency, this Court must affirm the Fourth Circuit's ruling that no federal agency may grant a pipeline right-of-way under the Mineral Leasing Act in or through these federally owned lands in the National Park System. *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984).

In short, there is nothing in the Mineral Leasing Act, the General Authorities Act, the Trails Act, or any other law that authorizes *any* federal agency to grant pipeline rights-of-way across any federal lands of the Appalachian Trail. This is fatal to Petitioners' appeal.

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[5] The Park Service has also interpreted the Mineral Leasing Act to foreclose the agency from granting a pipeline right-of-way through the Appalachian Trail because "[t]he legislative history of the 1973 amendments to the Mineral Leasing Act demonstrate that Congress clearly intended that National Park System units be exempt from a general grant of authority to issue oil and gas pipeline rights-of-way." J.A. 132.

B. Even If Such Authority Existed, The Secretary Of The Interior Is The Appropriate Agency Head To Grant Or Deny Pipeline Rights-Of-Way Through Lands Administered In Whole Or In Part By The Secretary Of The Interior.

Even if Congress had not expressly prohibited federal agencies from authorizing pipeline rights-of-way through the Appalachian Trail, the Forest Service plainly lacks authority to do so. In 1973, Congress revised the Mineral Leasing Act and stated that pipeline "[r]ights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head. . . ." 30 U.S.C. § 185(a). Congress defined "[a]gency head" to mean "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." *Id.* § 185(b)(3).

Recognizing that multiple federal agencies often exert cooperative jurisdiction over the same parcel of land (albeit with differing responsibilities as set forth in law or inter-agency agreements), Congress consciously distinguished between situations involving jurisdiction by a single federal agency and scenarios involving multiple agencies. Thus, "[w]here the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary [of the Interior], is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section." *Id.* § 185(c)(1). However, "[w]here the

surface of the Federal lands involved is administered by the Secretary [of the Interior] or by two or more Federal agencies, the Secretary [of the Interior] is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved." *Id.* § 185(c)(2). Accordingly, Congress authorized the Secretary of the Interior—and *only* the Secretary of the Interior—to grant (or deny) pipeline rights-of-way under the Mineral Leasing Act when *either*: (1) the Secretary of the Interior administers the surface lands involved; *or* (2) multiple federal agencies can assert lawful jurisdiction to administer or manage aspects of the affected surface lands. Both thresholds are satisfied here.

First, no party disputes—and it is indisputable—that, in 1968, Congress explicitly charged the Park Service (through the Secretary of the Interior), and *not* the Forest Service (through the Secretary of Agriculture), with administrative jurisdiction over the entire Appalachian Trail, including those portions passing through Forest Service lands, as part of the Trails Act. *See* 16 U.S.C. § 1244(a)(1) ("The Appalachian Trail *shall be administered* primarily as a footpath *by the Secretary of the Interior*, in consultation with the Secretary of Agriculture." (emphases added)).[6]

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[6] The Secretaries of the Interior and Agriculture delegated their authority and responsibility for the administration of the national trails assigned to them by the National Trail System Act to the Park Service and the Forest Service, respectively. *See* Dep't of the Interior, Departmental Manual, 245 DM 1.1 (delegation to

Therefore, the Park Service has properly exercised primary administrative jurisdiction over the Appalachian Trail for the past fifty years. Moreover, Congress was aware of the fact that it charged the Park Service with administration of the entire Trail when it revised the Mineral Leasing Act only five years after enacting the Trails Act. *Cf. Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (providing that courts must "necessarily assume[] that whenever Congress passes a new statute, it acts aware of all previous statutes on the same subject" (citation omitted)). Hence, under the plain terms of the Mineral Leasing Act, the Secretary of the Interior (rather than the Secretary of Agriculture) is the appropriate agency head to grant or deny a pipeline right-of-way because "the surface of the Federal lands involved is *administered* by the Secretary [of the Interior]," 30 U.S.C. § 185(c)(2) (emphasis added), whereas the Forest Service retains only "management responsibilities" that are limited to "us[ing] lands for trail purposes. . . ." 16 U.S.C. § 1246(a)(1)(A), (d).[7]

Second, even *if* the Forest Service retained any jurisdiction over the land, the Trails Act clearly

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the Park Service); 7 C.F.R. § 2.60(a)(1) (delegation to the Forest Service).

[7] Had Congress desired to assign administrative duties for the Appalachian Trail to the Secretary of Agriculture—thereby divesting the Secretary of the Interior of authority to grant or deny pipeline rights-of-way across the Appalachian Trail on Forest Service lands—it could have done so, as it did in the Trails Act with respect to the Pacific Coast Trail. *Cf.* 16 U.S.C. § 1244(a)(2) ("The Pacific Crest Trail shall be administered by the Secretary of Agriculture. . . .").

assigns jurisdiction to the Park Service too. Thus, the Secretary of the Interior is nevertheless still the appropriate agency head to grant or deny a pipeline right-of-way through this parcel because in that hypothetical, the parcel would be land "administered . . . by two or more Federal agencies." 30 U.S.C. § 185(c)(2). As part of the "cooperative management system" developed over many decades between the Park Service, Forest Service, and other Trail partners, *see* Br. of *Amicus Curiae* Appalachian Trail Conservancy at 4-6, the Park Service and the Forest Service frequently coordinate in executing their distinct, but complementary responsibilities. Simply put, the Park Service lawfully exercises administrative jurisdiction over the surface lands and resources of the Appalachian Trail pursuant to Congress's explicit direction, *see* 16 U.S.C. § 1244(a)(1), and the Forest Service manages in certain respects National Forest System lands, including those that overlap with the Trail, *see* 16 U.S.C. § 475.

Even if the Appalachian Trail were "Federal lands" for purposes of the Mineral Leasing Act, 30 U.S.C. § 185(a), it would be federal land over which two agencies exercise some form of jurisdiction. Congress plainly addressed this circumstance by specifying that "where the surface of the Federal lands involved is administered . . . by two or more Federal agencies, the Secretary [of the Interior] is authorized . . . to grant or renew rights-of-way. . . ." 30 U.S.C. § 185(c)(2). Thus, Congress long ago determined that the Secretary of the Interior is the only agency head with responsibility to grant rights-of-way in this instance. *Id.*

Moreover, in practice, the Forest Service has repeatedly recognized that the Park Service is the only federal agency that retains responsibility for pipeline rights-of-way through the Appalachian Trail. For example, in a 1993 Memorandum of Agreement between the two agencies, the Park Service transferred to the Forest Service management of certain Park Service-acquired Trail lands, but the agencies expressly agreed that "the National Park Service will retain responsibilities for . . . [a]ny future authorization of oil or gas pipeline crossings." Sec'y of the Interior & Sec'y of Agric., *Memorandum of Agreement for the Management of the Appalachian National Scenic Trail* at 2-3 (Jan. 26, 1993), http://bit.ly/2TqeUmC.[8]

For these reasons, the Fourth Circuit correctly held that the Secretary of Agriculture is not the appropriate "agency head" to authorize (or deny) the pipeline right-of-way requested by Atlantic Coast Pipeline, LLC.

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[8] The Park Service (as delegated by the Secretary of the Interior) has clarified its longstanding interpretation, accepted across multiple administrations, that it cannot grant a pipeline right-of-way through the Appalachian Trail because Congress specified that the Park Service must administer trails under its jurisdiction "in accordance with the laws applicable to the national park system," 16 U.S.C. § 1248(a), which do not generally authorize the agency to grant pipeline rights-of-way. J.A. 132.

II. THERE EXIST OTHER WELL-ESTABLISHED MEANS OF OBTAINING AUTHORIZATION FOR PIPELINE RIGHTS-OF-WAY IN OR THROUGH NATIONAL PARK SYSTEM LANDS.

Petitioners and their *amici* strenuously argue that the Mineral Leasing Act's prohibition against federal authorization of pipeline rights-of-way in or through National Park System lands such as the Appalachian Trail would achieve a draconian result by precluding *any* pipeline construction through any portion of the Appalachian Trail or any other unit of the National Park System. *See*, *e.g.*, Br. of Pet'r Atl. Coast Pipeline, LLC at 41 (asserting that, under the Fourth Circuit's ruling, "non-federal property owners have been divested of property rights, including the right to withhold or grant a right-of-way" across the Appalachian Trail); Br. of *Amici Curiae* Rep. Jeff Duncan and Sixty-One Additional Members of the House of Representatives at 11 ("concluding that neither the Forest Service *nor anyone else* can grant rights-of-way through the Appalachian Trail makes no sense" (emphasis added)). These assertions, however, are simply not accurate.

As a threshold matter, it is not the case even on federal land that pipeline rights-of-way can never be granted in or through units of the National Park System. Indeed, Congress recognized in amending the Mineral Leasing Act that "separate authority" would be needed to grant pipeline "rights-of-way through the National Park System." S. Rep. No. 207, 93d Cong., 1st Sess. 29 (1973). However, rather than delegating that

authority to the Park Service or other federal agencies (which it strictly prohibited from authorizing pipeline rights-of-way across National Park System lands), Congress retained that authority for itself.

In fact, whereas the Mineral Leasing Act plainly forecloses federal agencies from granting pipeline rights-of-way in or across National Park System lands, Congress itself routinely approves such requests after considering the relevant factors. *See*, *e.g.*, Denali National Park Improvement Act, Pub. L. 113-33, § 3, 127 Stat. 514, 516 (2013) (authorizing "a high-pressure natural gas transmission pipeline (including appurtenances) in nonwilderness areas within the boundary of Denali National Park"); Act of Jan. 14, 2013, Pub. L. 112-268, § 1, 126 Stat. 2441, 2441 (instructing the Secretary of the Interior to issue pipeline rights-of-way in Glacier National Park); New York City Natural Gas Supply Enhancement Act, Pub. L. 112-197, § 2, 126 Stat. 1461, 1461 (2012) (authorizing pipeline right-of-way in Gateway National Recreation Area); Act of Aug. 21, 2002, Pub. L. 107-223, §§ 1-2, 116 Stat. 1338, 1338-39 (authorizing rights-of-way for multiple pipelines in Great Smoky Mountains National Park).

Accordingly, Congress's longstanding practice of considering (and approving) requests for pipeline rights-of-way in or through National Park System units on federal lands further underscores that Congress intended for itself—rather than the Park Service, the Forest Service, or any other federal agency—to review and ultimately approve pipeline rights-of-way in

or through any federal lands in the National Park System.

Much in the same way that Congress's active role in approving pipeline rights-of-way on federal lands in the National Park System belies Petitioners' contention that such access is impossible under the Fourth Circuit's ruling, there is also no legal basis for the contention that the Mineral Leasing Act hinders the ability of state and private landowners to grant pipeline rights-of-way across lands they own within the Appalachian Trail. Indeed, as the Appalachian Trail Conservancy notes, "more than 50 oil and gas pipelines currently cross the [Appalachian] Trail in some way . . . and it is not likely those will be the only ones ever to do so." Br. of *Amicus Curiae* Appalachian Trail Conservancy at 32.

Because Congress expressly limited the reach of the Mineral Leasing Act to "[r]ights-of-way through any *Federal lands*," 30 U.S.C. § 185(a) (emphasis added), there is no legitimate argument that the Act's prohibition against granting pipeline rights-of-way through National Park System lands restricts *non-federal* entities in any way whatsoever, *id.* § 185(b)(1). Therefore, the Mineral Leasing Act represents a carefully crafted balance in which Congress reserved for itself, rather than federal agencies, the ability to grant pipeline rights-of-way across federally owned National Park System lands, but explicitly avoided imposing any restrictions on the ability of non-federal entities to grant analogous rights-of-way on non-federal lands and inholdings in the National Park System. *Cf. Mass.*

Lobstermen's Ass'n v. Ross, 945 F.3d 535, 543-44 (D.C. Cir. 2019) (rejecting "slippery slope" argument that statutory construction would improperly allow the federal government to regulate state and private lands, and holding that on "state and private lands, where other entities—namely, states and private parties—possess competing authority, [it] weaken[s] any federal government claim to exercise control over such lands").

Congress's deliberate decision to avoid regulating non-federal entities in the Trails Act and the Mineral Leasing Act is an unremarkable exercise in cooperative federalism. Rather than directly burden non-federal landowners, Congress instead encouraged the Park Service and other federal agencies to "enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area." 16 U.S.C. § 1246(h)(1). Congress enacted these laws against a Constitutional backdrop in which the Tenth Amendment reserves to the states all powers not expressly delegated to the federal government, and in which the Fifth Amendment prohibits the federal government from taking private property without just compensation.

Accordingly, with those principles in mind, Congress struck a considered balance by prohibiting federal agencies from granting pipeline rights-of-way through *federal lands* in National Park System units absent express congressional approval, while declining to interfere with the rights of any state or private

entity to authorize pipelines to cross *non-federal lands* of the Appalachian Trail or other National Park System units. *See*, *e.g.*, *New York v. United States*, 505 U.S. 144, 161 (1992) (holding that the Tenth Amendment prohibits Congress from "commandee[ring] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program" (internal quotation marks and citation omitted)); *Bd. of Nat. Res. of Wash. v. Brown*, 992 F.2d 937, 947 (9th Cir. 1993) (finding Tenth Amendment violation where Congress prohibited State of Washington from exporting certain timber products harvested on state-owned lands).

Similarly, Congress deliberately limited the reach of the Mineral Leasing Act by charging the Secretary of Agriculture—rather than the Secretary of the Interior—with administration of certain national scenic trails, such as the Pacific Crest Trail. *See* 16 U.S.C. § 1244(a)(2). Because that trail, in its entirety, is not "administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes," 84 Stat. at 826, many segments of the Pacific Crest Trail (i.e., those areas falling outside National Park System units) are not subject to the statutory prohibition against pipeline rights-of-way. In other words, for the Pacific Crest Trail and other national scenic trails administered by the Forest Service, the Mineral Leasing Act's right-of-way prohibition does not apply. Instead, the Act's prohibition only applies where a pipeline right-of-way would cross through lands in the National

Park System, but would not apply to other federal lands within those trails.[9]

III. CONGRESS'S DELEGATION TO THE PARK SERVICE OF ADMINISTRATIVE JURISDICTION OVER THE APPALACHIAN TRAIL ALSO ENSURES THE TRAIL'S LONG-TERM CONSERVATION IN THE MANNER CONGRESS INTENDED.

As designed by Congress, the Park Service and the Forest Service operate under very different management regimes in light of their distinct missions. Accordingly, as explained below, Congress's delegation of administrative authority over the entire Appalachian Trail—including on lands managed by the Forest Service—ensures that conservation of the Trail is a paramount consideration in agency decision-making.

In contrast to most other federal lands, the National Park System's principal purpose is conservation.

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[9] Petitioners disingenuously assert that Congress's delegation of administrative jurisdiction to the Secretary of Agriculture over the Pacific Crest Trail divests the Park Service of *any* management jurisdiction over the eight national parks and monuments the trail crosses. *See* Br. of Fed. Pet'rs at 36-37; Br. of Pet'r Atl. Coast Pipeline at 42-43. But this illogical argument fails to recognize the deep-rooted concept that multiple federal agencies can exercise jurisdiction over the same parcel of land, regardless of underlying land ownership. In practice, the laxer regulations of the Forest Service give way to the more conservation-focused authorities of the Park Service when users of the Pacific Crest Trail are on Park Service lands within that trail, including more stringent restrictions on campfire use.

Mich. United Conservation Clubs v. Lujan, 949 F.2d 202, 207 (6th Cir. 1991) ("[U]nlike national forests, Congress did not regard the National Park System to be compatible with consumptive uses."); *Nat'l Parks Conservation Ass'n v. U.S. Dep't of the Interior*, 835 F.3d 1377, 1386 (11th Cir. 2016) ("Agency decisions that fail to promote conservation over recreation [in National Park System units] run contrary to the express directives of Congress and cannot be upheld.").

To that end, Congress has mandated that the administration and management of National Park System units, including the authorization of activities therein, must adhere to those conservation values and must avoid impairing park resources. *See*, *e.g.*, 54 U.S.C. § 100101(a) (stating that the "fundamental purpose" of the Park Service "is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations"); *id.* § 100101(b)(2) ("The authorization of activities shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress."). Thus, "[t]he Organic Act prohibits uses which impair park resources and

values." *Greater Yellowstone Coal. v. Kempthorne*, 577 F. Supp. 2d 183, 194 (D.D.C. 2008).[10]

For other federal land management agencies—including the Forest Service—Congress set forth very different management regimes in which the mission is not conservation, but rather to balance many uses of public lands, including economic and recreational uses. This "multiple use" framework explicitly authorizes the Forest Service to allow economically productive, but environmentally destructive, uses of lands under its management, often to the detriment of conservation. *See* 16 U.S.C. § 475 (explaining that the major purpose of the national forest system is "to furnish a continuous supply of timber"); *id.* § 528 (stating that national forests "shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes"); *id.* § 1604(e)(1) (stating that the Forest Service shall "provide for multiple use and sustained yield of the products and services"); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2004) (describing the similar multiple-use management framework

[10] With various amendments to the Park Service's governing statutes, Congress has "eliminate[d] the distinctions" between national park units, and mandated that the Park Service "treat all units as it had been treating those parks that had been expressly within the ambit of the Organic Act, the natural and historic units, with resource protection the overarching concern." *Bicycle Trails Council of Marin v. Babbitt*, 82 F.3d 1445, 1453 (9th Cir. 1996). Thus, the provisions of the Organic Act apply with equal force to the Appalachian Trail as they do to any other national park unit.

delegated to the Bureau of Land Management under the Federal Land Policy and Management Act).

Given the sharply differing management frameworks that Congress designed for the Park Service and the Forest Service, Congress's assignment of administrative authority over the entire Appalachian Trail to the Park Service (including on lands managed by the Forest Service) is eminently sensible. Because Congress aimed to promote "the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which [national scenic] trails may pass," 16 U.S.C. § 1242(a)(2), and in light of the monumental conservation effort necessary to maintain and preserve a 2,193-mile trail through the highly populated East Coast region without compromising the integrity and user experience of the Trail, it was prudent for Congress to assign administrative authority to the Park Service—i.e., the agency with far greater expertise in achieving a conservation mandate.

Indeed, once again, only two years after Congress formally delegated administrative authority of the Appalachian Trail to the Park Service in the Trails Act, Congress enacted the General Authorities Act of 1970 and left no doubt that the Trail is a component of the National Park System, which Congress defined as "includ[ing] any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes." 84 Stat. at 826. At the same time, Congress clarified that

the Organic Act's conservation mandate "shall . . . be applicable to *all areas* within the national park system. . . ." *Id.* (emphasis added).

The applicability of the Park Service Organic Act and its conservation mandate to federal lands within the National Park System (regardless of underlying land ownership or management) is also supported by the Trails Act, which requires the agency head with trail administration responsibility (here, the Park Service) to apply that agency's legal authorities. *See* 16 U.S.C. § 1246(i) ("The Secretary responsible for the administration of any segment of any component of the National Trails System . . . may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component."). In addition, Congress explained in the Trails Act that "[t]he Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system *in accordance with the laws applicable to the national park system* and the national forest system, respectively. . . ." *Id.* § 1248(a) (emphasis added).

Accordingly, the plain language of the Trails Act and the General Authorities Act of 1970 makes clear that Congress's selection of the Park Service as the administrator of the Appalachian Trail has significant legal consequence. By appointing the Park Service as the administrator of the Appalachian Trail, Congress required the application of the Park Service's more

stringent conservation mandate to the consideration of actions that could adversely impact federally managed portions of the Trail as a National Park System unit. Congress deliberately chose this more conservation-focused approach over the multiple-use mandate that ordinarily prevails on Forest Service lands. By utilizing the Park Service Organic Act (rather than far more permissive Forest Service authorities) as the focal point for agency decision-making, Congress aimed to better protect, promote, and enhance the important mission and purpose that led Congress to designate the Appalachian Trail in the first instance.[11]

For example, consistent with the Park Service Organic Act, the Secretary of the Interior has promulgated regulations, as the Trail administrator, prohibiting "[t]he use of bicycles, motorcycles or other motor vehicles," and substantially regulating the use of snowmobiles on or across the Appalachian Trail. 36 C.F.R. § 7.100(a). However, if such decisions were subject to the standards contained in Forest Service laws and regulations, such activities could be allowed adjacent to, on, and across the Trail, as they are in many

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[11] Not only do governing statutes make plain that the Park Service Organic Act must guide agency decision-making on federally managed lands in the National Park System (regardless of underlying ownership), but the Park Service has also long interpreted the laws in this manner. *See*, *e.g.*, Nat'l Park Serv., *Director's Order # 45: National Trails System* at 2-3 (May 24, 2013), https://www.nps.gov/policy/DOrders/DO_45.pdf (discussing the "authorities governing [Park Service]-administered national scenic and historic trails" as including the Park Service Organic Act, Trails Act, and General Authorities Act of 1970).

national forests (including other portions of the George Washington National Forest). *See*, *e.g.*, Forest Serv., *Record of Decision for the Revised Land and Resource Management Plan for the George Washington National Forest* at 21 (Nov. 2014), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3822823.pdf (authorizing "smaller all-terrain vehicles and motorbikes that use ATV trails" in parts of the George Washington National Forest). In that event, the Trail would lose much of its iconic character, setting, and feel, and the user experience of these National Park System lands would be permanently impaired in derogation of the Organic Act's conservation mandate.[12]

In sum, Congress made a deliberate choice to charge the Secretary of the Interior with administration of the Appalachian Trail, and in so doing Congress expressly elevated conservation of all federally managed Trail lands above other uses. This Court should not upset the delicate balance Congress deemed necessary to ensure long-term protection of the Appalachian Trail and the unique values it provides to our nation and the millions of people who hike segments of the Trail each year. J.A. 131 (Park Service letter stating

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[12] Without the backstop of the Park Service Organic Act and its conservation mandate, the Forest Service could not only authorize activities that would impair Trail resources, but could also undermine the ability of the Appalachian Trail to be permanently listed on the National Register of Historic Places. *See* J.A. 131 ("[T]he Trail is eligible for listing in the National Register of Historic Places (NRHP), and the [Park Service] has prepared documentation to formally list it on the NRHP.").

that the Trail "is enjoyed by an estimated 2 to 3 million people each year" and "is arguably the most famous hiking path in the world").

CONCLUSION

While the Forest Service and its staff members are critically important partners in cooperatively managing the Appalachian Trail on Forest Service lands, Congress recognized that the Park Service was best situated to play a special role in administering the entire stretch of this unique national treasure and assuring that its purposes are fulfilled in perpetuity. As such, it is imperative that this Court affirm the Fourth Circuit's ruling, which will ensure that this foundational national scenic trail continues to be overseen and conserved as a crown jewel of the National Park System, in the manner that Congress envisioned when it deliberately charged the Park Service with administering the Appalachian Trail.

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