

- US SUPREME COURT FINDS FOREST SERVICE CAN LEASE LAND UNDER APPALACHIAN TRAIL FOR PIPELINE DEVELOPMENT

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In perhaps the most consequential environment and energy case heard by the Supreme Court this term, the justices overruled a decision by the Fourth U.S. Circuit Court of Appeals that the Forest Service did not have the power to authorize the Atlantic Coast Pipeline's natural gas project to pass beneath the trail. In a 7-2 decision in *United States Forest Service v. Cowpasture River Preservation Association*, No. 18-1584 (June 15, 2020), the Court held that the Forest Service has the right under the Mineral Leasing Act ("MLA") to permit the pipeline to run beneath the Appalachian National Scenic Trail. In doing so, the Court reversed the Fourth Circuit's finding that the National Park Service, and not the U.S. Forest Service, had jurisdiction over the Appalachian Trail property. This ruling has implications for other pipeline projects traversing federal land.

This was a consolidated case involving the 600-mile Atlantic Coast Pipeline's passage beneath the Appalachian Trail, with the potential to block development of energy infrastructure along the eastern seaboard. Justice Thomas, writing for the majority, wrote, "the plain language of the Trails Act and the agreement between the two agencies did not divest the Forest Service of jurisdiction over the lands that the Trail crosses. It gave the Department of the Interior (and by delegation the National Park Service) an easement for the specified and limited purpose of establishing and administering a Trail, but the land itself remained under the jurisdiction of the Forest Service." (Slip op., p.10). In particular, Congress has shown its ability to explicitly transfer authority over specified land from one government agency to another, but did not do so here.

Justice Sotomayor drafted the dissent, joined only by Justice Kagan, agreeing with the Fourth Circuit and asserting the Appalachian Trail is Park Service land, which precludes the U.S. Forest Service from granting mineral leasing rights to it.

This was a small victory for the Atlantic Coast Pipeline project, but the war is not over yet. The U.S. Forest Service still must comply with the National Forest Management Act and the National Environmental Policy Act before it can grant the pipeline a special use permit and right-of-way. The Supreme Court's decision returns the case back to the Fourth Circuit to resolve whether the Forest Service complied with these Acts. In the meantime, this case will impact other pipeline projects traversing federal land administered by the National Parks Service as part of the National Trails System.