

Nos. 18-1584 and 18-1587

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In The  
**Supreme Court of the United States**

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UNITED STATES FOREST SERVICE, et al.,  
*Petitioners,*

v.

COWPASTURE RIVER PRESERVATION  
ASSOCIATION, et al.,  
*Respondents.*

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ATLANTIC COAST PIPELINE, LLC,  
*Petitioner,*

v.

COWPASTURE RIVER PRESERVATION  
ASSOCIATION, et al.,  
*Respondents.*

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

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**BRIEF FOR THE STATES OF VERMONT,  
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS,  
MARYLAND, MASSACHUSETTS, MINNESOTA,  
NEW JERSEY, NEW MEXICO, NEW YORK,  
OREGON, RHODE ISLAND, AND THE  
DISTRICT OF COLUMBIA AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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**QUESTION PRESENTED**

Whether the United States Forest Service has statutory authority under the Mineral Leasing Act to grant a gas pipeline right-of-way across the Appalachian National Scenic Trail.

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**INTERESTS OF THE *AMICI* STATES<sup>1</sup>**

*Amici* States benefit greatly from the National Park System and have an interest in ensuring its protection to the full extent required by Congress. The National Park System consists of America's most spectacular natural resources, spread across all States and territories. These irreplaceable wonders include several long-distance through-hikes, such as the Appalachian Trail, which traverse many *amici* States.<sup>2</sup> While long-distance hiking trails present certain conservation challenges, their preservation is essential to *amici* States' economic, environmental, cultural, and human health interests. Visitors to National Park System lands contribute billions of dollars to *amici* States' economies. Two million people visit the Appalachian Trail every year, spending between \$125 and \$168 million to do so.<sup>3</sup> Recent studies suggest that National Parks may also be responsible for direct physical and mental health savings to States and state residents, on the order of billions of dollars.<sup>4</sup>

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<sup>1</sup> *Amici* States submit this brief pursuant to Supreme Court Rule 37.4.

<sup>2</sup> Even States that do not contain long-distance trails have residents that use and value the trails and other natural resources provided by neighboring states.

<sup>3</sup> Am. Hiking Soc'y, *Hiking Trails in America* 14 (June 2015), [https://americanhiking.org/wp-content/uploads/2015/05/AHS\\_RPT\\_fnl\\_LOW.pdf](https://americanhiking.org/wp-content/uploads/2015/05/AHS_RPT_fnl_LOW.pdf).

<sup>4</sup> One study from Australia estimates an annual health services value of \$100 billion U.S. per year from Australia's National Parks, and between \$4 and 31 trillion per year in

*Amici* States own land through which the Appalachian Trail and other National Scenic and Historic Trails pass. States have a strong interest in maintaining sovereignty over state lands, including an interest in defending states' power to grant rights-of-way across any such trails on state-owned lands. As *amici* States read the Mineral Leasing Act, that Act applies only to federal lands. Thus, States retain full power to grant rights-of-way across the Appalachian Trail and any other trail on state lands, pursuant to state-level priorities and regulatory programs. The Appalachian Trail crosses state-owned land in many areas not dedicated to conservation, such as state roads and bridges, which could be well suited to host the kind of easement at issue in this case.

Some *amici* States contain national forests through which the Appalachian Trail passes. These States have a particular interest in protecting the

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mental health savings from national parks globally. Ralf Buckley et al., *Economic Value of Protected Areas Via Visitor Mental Health*, *Nature Comm.* 4-5 (Nov. 12, 2019), <https://www.nature.com/articles/s41467-019-12631-6.pdf>; see also Douglas A. Becker et al., *Is Green Land Cover Associated with Less Health Care Spending? Promising Findings from County-Level Medicare Spending in the Continental United States*, *Urb. Forestry & Urb. Greening* (May 2019), <https://doi.org/10.1016/j.ufug.2019.02.012> (finding significant inverse correlation between forest or shrub cover and median Medicare fee-for-service spending); Mathew P. White et al., *Spending at Least 120 Minutes a Week in Nature Is Associated with Good Health and Wellbeing*, *Sci. Reps.* (June 13, 2019), <https://www.nature.com/articles/s41598-019-44097-3.pdf> (finding positive health associations with time spent in nature for British adults).

integrity of the Trail from pipeline crossings within national forests. The Appalachian Trail stretches from Georgia to Maine and takes many months to complete in its entirety. Within the otherwise densely developed East Coast region, the Appalachian Trail allows multiple consecutive days—even weeks—of backpacking through uninterrupted stretches of wilderness. Many of these long stretches occur where the Trail passes through national forest.

In Vermont, for example, one of the State’s most treasured resources is the “Long Trail,” a 272-mile through-hike that spans the length of Vermont, from Massachusetts to Canada.<sup>5</sup> The Long Trail is the oldest long-distance hiking trail in the United States and served as inspiration for the Appalachian Trail. In the words of Appalachian Trail founder Benton MacKaye: “What the Green Mountains are to Vermont the Appalachians are to eastern United States. What is suggested, therefore, is a ‘long trail’ over the full length of the Appalachian skyline . . . .” Benton MacKaye, *An Appalachian Trail: A Project in Regional Planning*, 9 J. of the Am. Inst. of Architects 325 (Oct. 1921).<sup>6</sup> Today, the Long Trail and the Appalachian Trail are co-located within southern Vermont, where they run together through the Green Mountain National Forest.

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<sup>5</sup> Green Mountain Club, *The Long Trail: Long Trail Overview*, greenmountainclub.org, <https://www.greenmountainclub.org/the-long-trail/> (last visited Jan. 6, 2020).

<sup>6</sup> Text of article available at <https://www.appalachiantrail.org/docs/default-document-library/2011/04/16/An%20Appalachian%20Trail-A%20Project%20in%20Regional%20Planning.pdf>.



As this case’s impact will be felt exclusively on those portions of trails crossing federal land—and land in national forests in particular—Vermont is doubly concerned about the potential implications for both the Appalachian Trail and the Long Trail in this part of the State.

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### SUMMARY OF ARGUMENT

The Mineral Leasing Act is a blanket authorization from Congress to all federal agencies to allow oil and gas pipeline easements on federal land. Because the jurisdiction of the Mineral Leasing Act is limited to federal land, it does not affect the rights of state or private landowners in any way.

Federal land in the National Park System is expressly exempted from the Act’s broad pipeline authorization.<sup>7</sup> Congress defines the National Park System as land “administered”—not “owned”—by the National Park Service. The National Park Service administers only America’s most precious natural resources. While Congress often designates which areas to include in the Park System, in the case of National Scenic and Historic Trails delegated to the Secretary of the Interior, Congress has allowed the Secretary to choose

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<sup>7</sup> The National Park System is one of three categories of federal land not covered by the Mineral Leasing Act, which reads: “‘Federal lands’ means 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.” 30 U.S.C. § 185(b)(1).

which agency will administer each trail—and therefore to choose whether each trail belongs in the Park System. The Secretary of the Interior assigned administration of the Appalachian Trail to the National Park Service. The Park Service, in turn, has published criteria for inclusion in the Park System, and designated the Appalachian Trail as one of only three trails deserving that status. While the Appalachian Trail is administered overall by the Park Service, Congress has authorized a cooperative management system for National Trails, which naturally often traverse land under various ownership. As a result, different federal, state, and private entities manage different segments of the Trail, but all parties recognize that the Park Service has administrative authority over the entire Trail.

Congress could have crafted the Mineral Leasing Act to say that any federal agency, except for the National Park Service, may grant easements for oil and gas pipelines across federal land. But Congress chose instead to say that no federal agency may grant easements for oil and gas pipelines across federal land in the National Park System. The distinction is important in those limited instances where, as here, other federal agencies manage segments of the National Park System.

Reading the Mineral Leasing Act as Congress intended—to protect the nation’s most valuable natural resources from pipeline crossings on federal land—will preserve the essential wilderness character of the Trail without infringing upon the rights of States and private landowners.

Moreover, preserving the National Park System as Congress intended will provide economic and other benefits to the *amici* States. Visitors to the Appalachian Trail and other National Parks contribute billions of dollars to *amici* States' economies. The availability of these unique resources also contributes to the physical and mental health of *amici* States' residents.

This case does not imperil the availability of adequate energy sources or even this particular pipeline project. The Atlantic Coast Pipeline might still be built by crossing the Trail on non-federal land, or the project may fail because of other problems, including those identified by the Fourth Circuit that are not before this Court. But even if the Atlantic Coast Pipeline is not built, States already have other energy options. In fact, *amici* States have committed to increasing reliance on renewable energy sources in the coming decades. Renewable energy creates jobs and economic growth, as well as health and financial benefits to state residents.

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## ARGUMENT

### **I. The Mineral Leasing Act's jurisdiction is limited.**

Petitioners and their *amici* argue at length that, if this Court finds that the U.S. Forest Service does not have authority to grant this right-of-way for this pipeline across the Appalachian Trail, then the entire Appalachian Trail and many other trails nationwide will

become impenetrable barriers to development. This catastrophic view of the decision below is incorrect.

**a. The Mineral Leasing Act only applies to federal lands.**

By its plain terms, the Mineral Leasing Act only authorizes federal agencies to grant pipeline rights-of-way through “Federal lands.” 30 U.S.C. § 185(a). And it defines such lands as “all lands owned by the United States except lands in the National Park System.” § 185(b)(1). The Mineral Leasing Act simply does not speak to granting pipeline rights-of-way through non-federal lands. This authority belongs to the states and other landowners.

The Appalachian Trail includes 57,000 acres of non-federal lands, including lands held by *amici* States.<sup>8</sup> And, contrary to the suggestion of Petitioners and their *amici*, federal and non-federal lands are interspersed along the Trail, creating a permeable system through which pipelines might still be constructed. In fact, most National Park System units contain a mix of federal and non-federal land.<sup>9</sup> The Mineral Leasing Act does not address pipelines on non-federal land, regardless of whether the land falls within a National Park System unit.

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<sup>8</sup> Nat’l Park Serv., *Listing of Acreage (Summary)* 1 (2016), <https://www.nps.gov/subjects/lwcf/upload/NPS-Acreage-9-30-2019.pdf>.

<sup>9</sup> *Id.*

To the extent that the decision below did not discuss the limitation of the Act to federal land only, *amici* States urge this Court to do so. This limitation is of great concern to *amici* States. The Appalachian Trail crosses state conservation lands in eleven of the fourteen states through which it passes.<sup>10</sup> It additionally crosses or coincides with hundreds of state and county roads and bridges,<sup>11</sup> many of which provide crucial infrastructure for the Trail as it traverses non-wilderness areas and crosses major roads and rivers. The Mineral Leasing Act says nothing about whether non-federal landowners may grant easements—for pipelines or otherwise—across the Appalachian Trail on these state and local roads or other non-federal land.

From a policy perspective, it makes sense that Congress spoke only to federal lands in the Mineral Leasing Act. State and local control over state and local lands will best protect the Trail while serving the needs of the surrounding communities. The States are committed to protecting the Trail on non-federal lands through their own regulatory schemes.<sup>12</sup> At the same

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<sup>10</sup> The exceptions are West Virginia, Tennessee, and North Carolina. See Nat'l Park Serv., *Comprehensive Plan for the Protection, Management, Development and Use of the Appalachian National Scenic Trail* 10 (1987), [https://www.nps.gov/appa/learn/management/upload/CompPlan\\_web.pdf](https://www.nps.gov/appa/learn/management/upload/CompPlan_web.pdf).

<sup>11</sup> On average, the Trail crosses a road every four miles. Appalachian Mountain Club, *Appalachian Trail FAQs*, <https://www.outdoors.org/conservation/trails/appalachian-trail-faq> (last visited Jan. 16, 2020).

<sup>12</sup> For example, in 1994, Vermont denied a request by the U.S. Forest Service to lease state land to erect a new radio tower on Bromley Mountain, because of the impact to the Appalachian

time, the presence of the Trail has not hindered development on the roads and bridges over which the Trail must pass. If and when a State determines that development of a new pipeline would be in its interest, the State may set the price and conditions for that pipeline to cross the Trail on its own lands.

Petitioner Atlantic Coast Pipeline emphasizes the “arduous” process it pursued to obtain “33 separate regulatory approvals from more than a dozen federal and state agencies, as well as numerous local approvals.” ACP Br. at 12-13. But that is how the American system of property ownership works. No entity could mow a 50-foot wide strip of land over 600 miles to construct a pipeline of combustible gas without reckoning with every affected property owner along the way. And *amici* States’ regulatory programs are not designed to be arduous; they are doing what they are designed to do—protect the health, safety, and wellbeing of state residents.<sup>13</sup>

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Trail. Letter from Ed Leary, Lands Adm’r, Vt. Dep’t of Forest, Parks & Recreation, to Donald Laflam, Radio Sys. Coordinator, Green Mountain & Finger Lakes Nat’l Forest (Nov. 2, 1994) (on file with the Vermont Attorney General’s Office).

<sup>13</sup> For instance, Vermont’s primary statewide land use and development statute requires consideration of air and water quality, water supplies, transportation, local schools and services, municipal costs, and historic and natural resources, as well as local land-use plans. Vt. Stat. Ann. tit. 10, § 6086.

**b. Congress intended to protect any federal land administered by the National Park System, including the Appalachian Trail.**

Of all the land owned and administered by the federal government, the National Park System is the most fiercely preserved. The sole purpose of the National Park Service has remained unchanged since the Service's Organic Act was passed in 1916: "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." 54 U.S.C. § 100101(a). Congress has consistently reaffirmed its intent that the National Park System contain "superlative natural, historic, and recreation areas in every major region of the United States" and that "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." § 100101(b)(2) (language added in 1970 and 1978). In keeping with the National Park Service's mission of pure conservation for recreation and enjoyment, lands in the National Park System are restricted to much narrower uses than other federal lands.<sup>14</sup>

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<sup>14</sup> Other federal lands have multiple uses. For instance, lands administered by the Bureau of Land Management or the

With this background in mind, Petitioners’ preferred reading of the Mineral Leasing Act is wrong: Statutory text, agency regulations, and agency practice make clear that the Trail—a Park unit—counts as “land in the National Park System” along those segments of the Trail where the Park unit includes federal land in a national forest.

**i. Statutes allow the Appalachian Trail to be in the National Park System.**

Congress defines the National Park System to include “any area of land and water *administered* by the Secretary, acting through the [National Park System] Director, for park, monument, historic, parkway, recreational, or other purposes.” 54 U.S.C. § 100501 (emphasis added). Congress could have defined the System to include only land acquired by the National Park System, but it did not. Because the definition of the System focuses on what the Secretary *administers*, rather than *acquires*, “land in the National Park System” may include land that was not originally acquired by the National Park Service. And in fact, many National Park System units contain private and/or federal land that has not been acquired by the National Park

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Forest Service are open to more mining, mineral extraction, commercial grazing, and logging than Park Service lands. *See, e.g.*, 43 U.S.C. §§ 1701(a), 1702(c) (establishing multiple uses for land administered by Bureau of Land Management); 16 U.S.C. §§ 528-31 (same for land administered by the Forest Service).



Service.<sup>15</sup> And the operative statute defines a National Park “System unit” simply as one of the areas comprising the National Park System (*i.e.*, administered by the System Director). § 100102. So the exemption in the Mineral Leasing Act for “land in the National Park System” applies to federal land that is administered, but not originally acquired, by the Park System.

When Congress established the Appalachian Trail, it provided that the Trail “shall be administered” by the Secretary of the Interior, using “authorities related to units of the national park system.” 16 U.S.C. §§ 1244(a)(1), 1246(i). Unsurprisingly, and for reasons discussed further below, the Secretary of the Interior delegated administration of the Appalachian Trail to the National Park Service. *See* Responsibility for Planning and Operation of Programs and Projects, 34 Fed. Reg. 14,337 (Sept. 12, 1969) (assigning administration of Appalachian Trail to Park Service).

**ii. Agency practice and regulation confirm the Appalachian Trail is one of only three trails in the National Park System.**

While Congress often specifies which areas are to be designated as part of the Park System, in the case of National Trails assigned to the Secretary of the

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<sup>15</sup> For instance, Grand Teton National Park contains about 920 acres of private land and nearly 35,000 acres of federally owned land that has not been acquired by the National Park Service. *See* Nat’l Park Serv., *supra* note 8.

Interior, Congress allows the Secretary to determine the proper administering agency and method of administration, thereby determining which trails will be part of the System and which will not.<sup>16</sup> As demonstrated by the Park Service’s criteria for inclusion, the Appalachian Trail deserves its place in the National Park System.

To determine whether particular land merits Park System designation, the Secretary of the Interior considers whether it “possess[es] national significant natural or cultural resources,” whether it is both a suitable and a feasible addition to the system, and whether it

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<sup>16</sup> The Secretary of the Interior delegates administration of its trails either to the National Park Service or to the Bureau of Land Management—or sometimes to both. *See, e.g.*, Bureau of Land Mgmt., *National Scenic and Historic Trails*, <https://www.blm.gov/programs/national-conservation-lands/national-scenic-and-historic-trails> (last visited Jan. 2, 2020) (listing trails for which the Bureau of Land Management has management responsibilities); Bureau of Land Mgmt., *Old Spanish Trail National Historic Trail*, <https://www.blm.gov/visit/old-spanish-nht> (last visited Jan. 7, 2020) (explaining that “[b]y memorandum from the Secretary of the Interior, the Old Spanish National Historic Trail is jointly administered by the BLM and the National Park Service”). When choosing the agency primarily responsible for administering a National Trail, the Secretary of the Interior has explained: “Primary consideration for such assignments will be given to the [Department of the Interior] land administering bureau having jurisdiction over the majority of the land over which . . . trails in the national system pass.” U.S. Dep’t of Interior, 710 *Departmental Manual*, ch.1, p.3 (1977) (noting primary administration of the Appalachian Trail by the Park Service), available at [https://www.doi.gov/sites/doi.gov/files/elips/documents/Chapter%20%201\\_%20PURPOSE%2C%20POLICY%2C%20RESPONSIBILITY.doc](https://www.doi.gov/sites/doi.gov/files/elips/documents/Chapter%20%201_%20PURPOSE%2C%20POLICY%2C%20RESPONSIBILITY.doc). As described above, however, that is not the only consideration for designation as a full unit of the National Park System.

“require[s] direct [National Park Service] management instead of protection by other public agencies or the private sector.” Nat’l Park Serv., *Management Policies* (“*Management Policies*”) § 1.3 (2006).<sup>17</sup> As the Secretary explains: “These criteria are designed to ensure that the national park system includes only the most outstanding examples of the nation’s natural and cultural resources.” *Id.* “National significance” considers, among other things, whether an area is an “outstanding example of a particular type of resource”; “offers superlative opportunities for public enjoyment or for scientific study”; and “retains a high degree of integrity as a . . . relatively unspoiled example of a resource.” *Id.* § 1.3.1. “Suitability” takes into account whether an area is a “resource type that is not already adequately represented in the national park system” or comparably protected by other entities. *Id.* § 1.3.2. “Feasibility” reflects whether the area is “capable of efficient administration by the Service at a reasonable cost,” as well as “size,” “boundary configurations,” “current and potential uses of the study area and surrounding lands,” “public enjoyment potential,” “access,” “current and potential threats to the resources,” “landownership patterns,” “staffing requirements,” and “local planning and zoning.” *Id.* § 1.3.3. And finally, “direct NPS management” evaluates whether the National Park Service’s direct management “is identified as the clearly superior alternative,” or whether there are other entities better able to manage the resource. *Id.* § 1.3.4.

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<sup>17</sup> Available at [https://www.nps.gov/policy/MP\\_2006.pdf](https://www.nps.gov/policy/MP_2006.pdf).

Congress made clear that the Trail was “nationally significant” when it designated it as one of the first two National Scenic Trails in 1968, and it continues to be “an outstanding example” of a long-distance through-hike today. *Id.* § 1.3.1 (national significance). The Trail summits many of the East Coast’s highest peaks.<sup>18</sup> Ecologically, the Appalachian mountain chain “is home to one of the most biologically diverse temperate forests in the world.”<sup>19</sup> “Protection of the Appalachian Trail has left a corridor that allows species to migrate into more hospitable ecosystems as conditions change,” a unique and valuable characteristic given the heavy development along the rest of the East Coast.<sup>20</sup> The number of people completing all 2,000+ miles of the Appalachian Trail has increased every decade, from 3 people in the 1940s to 9,261 people in the 2010s.<sup>21</sup> Hikers of all ages have hiked the complete Trail, including about 750 people in their 60s.<sup>22</sup> The oldest through-hiker was 82.<sup>23</sup> Millions more people hike sections of the Trail every year—as day hikes,

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<sup>18</sup> See *10 Highest Peaks on the Appalachian Trail*, Appalachian Trail.com, <https://appalachiantrail.com/20140619/10-highest-peaks-appalachian-trail/> (last visited Jan. 9, 2020).

<sup>19</sup> The Nature Conservancy, *Appalachian Inspiration*, nature.org (July/August 2013), <https://www.nature.org/en-us/magazine/magazine-articles/appalachian-inspiration-1/>.

<sup>20</sup> *Id.*

<sup>21</sup> See *Interesting Facts*, appalachiantrail.org, <http://www.appalachiantrail.org/home/community/2000-milers> (last visited Jan. 9, 2020).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

weekend overnights, or longer.<sup>24</sup> And the Trail has inspired countless works of literature.<sup>25</sup>

The Trail was also highly “suitable” for inclusion in the System because there was no similar long-distance hike represented in the System at the time. *Management Policies* § 1.3.2 (suitability). The House Report on the National Trails System Act called the establishment of the Appalachian Trail “a pilot program . . . designed to determine whether it is feasible to extend to other areas of the Nation the principles which have already made the Appalachian Trail an outstanding outdoor recreation resource.” H.R. Rep. No. 90-1631, at 9 (1968).

Next, the Trail was “feasible” as a new System unit. While trails are inherently long and narrow—and can be unwieldy to conserve for those reasons—the Appalachian Trail was pre-established by volunteers and traversed multiple preexisting National and State Parks and Forests. *Id.* At the same time, no other entity had the resources to protect the Trail like the National Park Service did, particularly after Congress

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<sup>24</sup> Am. Hiking Soc’y, *supra* note 3; Nat’l Parks Conservation Assoc., *Appalachian National Scenic Trail: A Special Report 1* (2010), <https://www.nps.gov/appa/learn/management/upload/AT-report-web.pdf>.

<sup>25</sup> *See, e.g.*, Bill Bryson, *A Walk in the Woods: Rediscovering America on the Appalachian Trail* (1998), *adapted for film*, *A Walk in the Woods* (Broad Green Pictures 2015). For a list of 70 books about the Appalachian Trail, see *Listopia: Best Appalachian Trail Books*, Goodreads.com, [https://www.goodreads.com/list/show/1208.Best\\_Appalachian\\_Trail\\_Books](https://www.goodreads.com/list/show/1208.Best_Appalachian_Trail_Books) (last visited Jan. 9, 2020).

provided significant funding for land acquisition to preserve and protect the Trail. National Trails System Act Amendment, Pub. L. No. 95-248, § 5, 92 Stat. 159, 160 (1978) (authorizing \$30 million per year for three years for land acquisition); National Trails System Act, Pub. L. No. 90-543, § 10, 82 Stat. 919, 926 (1968) (authorizing \$5 million for land acquisition for establishment of the Appalachian Trail). In addition, the public enjoyment potential and accessibility of the Trail were high, given the proximity of the Trail to the population centers of the East Coast. These factors continue to grow every year. Today, “half of the U.S. population, more than 150 million people, lives within a day’s drive of the Appalachian Trail, giving it an outsized role in connecting people to nature.”<sup>26</sup> Moreover, the unusual, volunteer-based management model for many segments of the Appalachian Trail inspires community involvement in all fourteen Trail States. In 2014, a total of 5,617 volunteers spent 241,936 hours maintaining the trail.<sup>27</sup>

Finally, direct National Park Service management was and is the “clearly superior” option for the Appalachian Trail. *Management Policies* § 1.3.4 (direct NPS management). After noting the progress made by the Appalachian Trail Conference—the

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<sup>26</sup> The Nature Conservancy, *supra* note 19.

<sup>27</sup> Appalachian Trail Conservancy, *Volunteers Donate More than 200,000 Hours in 2014 to Maintaining the Appalachian Trail* (Jan. 8, 2015), <http://appalachiantrail.org/home/community/news/2015/01/08/volunteers-donate-more-than-200-000-hours-in-2014-to-maintaining-the-appalachian-trail>.

volunteer organization that originally established the Trail—the 1968 House Report went on: “In spite of all that has been, and is being done to maintain the integrity and values of the Appalachian Trail, its continued existence is in jeopardy because of scattered intrusions [*sic*] along the trailway.” H.R. Rep. No. 90-1631, at 8-9 (1968). Administration by the National Park Service was necessary to preserve the Trail across all fourteen states.

In contrast, the vast majority of other National Trails are not administratively designated by the Park Service as full units of the Park System. Thus, the map included on page 27 of the *amicus* brief authored by West Virginia is misleading at best.<sup>28</sup> Most of the longest trails in the National Trails System are not administered by the Park Service at all. Six are administered primarily by the Secretary of Agriculture, via the Forest Service.<sup>29</sup> Twelve more are divided into segments, with the Park Service administering some segments and the Bureau of Land Management others.<sup>30</sup> Of the

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<sup>28</sup> Map found at: Nat’l Park Serv., *National Trails System 50th Anniversary Map* (2018), <https://www.nps.gov/subjects/national-trailssystem/upload/National-Trails-50th-Map-02-09-18.pdf>.

<sup>29</sup> These include the Pacific Crest Trail, the Continental Divide National Scenic Trail, the Nez Perce National Scenic Trail, the Pacific Northwest National Scenic Trail, the Arizona National Scenic Trail, and the Florida National Scenic Trail. 16 U.S.C. § 1244(a). Many of these are also jointly managed by the Bureau of Land Management.

<sup>30</sup> These include the Mormon Pioneer National Historic Trail, the Lewis and Clark National Historic Trail, the California National Historic Trail, the Oregon National Historic Trail, the Pony Express National Historic Trail, the Old Spanish National

remaining twelve, only three are administered by the Secretary as National Park System units: the Appalachian National Scenic Trail, the Potomac Heritage National Scenic Trail, and the Natchez Trace National Scenic Trail.<sup>31</sup> The Secretary's designation extends to those three the strongest protection afforded by Congress. At least in the case of the Mineral Leasing Act, those three trails are exempted from pipeline crossings on all federal land.<sup>32</sup>

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Historic Trail, the Juan Batista de Anza National Historic Trail, the Iditarod National Historic Trail, El Camino Real de Tierra Adrento National Historic Trail, the Washington-Rochambeau Revolutionary Route National Historic Trail, the Captain John Smith Chesapeake National Historic Trail, and the Star-Span-gled Banner National Historic Trail. See Bureau of Land Mgmt., *National Scenic and Historic Trails*, <https://www.blm.gov/programs/national-conservation-lands/national-scenic-and-historic-trails> (last visited Jan. 16, 2020). The Bureau's website also cross-lists several of the trails assigned by Congress to the Department of Agriculture and one trail administered as a unit of the National Park Service (the Potomac Heritage National Scenic Trail).

<sup>31</sup> See Nat'l Park Serv., *National Park Service System Plan: One Hundred Years* 136 (Jan. 2017) (listing those three trails, and no others, as System units), <http://npshistory.com/publications/nps-system-plan-2017.pdf>; Nat'l Park Serv., *The National Parks: Shaping the System* 76 (1991) (recognizing the three trails as System units), <http://npshistory.com/publications/shaping-the-system-1991.pdf>.

<sup>32</sup> The Park Service has not administratively designated the remaining trails as units of the National Park System, counting them instead as "related areas." See Nat'l Park Serv., *National Park System: About Us*, <https://www.nps.gov/aboutus/national-park-system.htm> (last visited Jan. 16, 2020) (scroll down to "Related Areas" and click on "National Trails"). As stated in the Service's *Management Policies*, the Service supports "the successful management of important natural and cultural resources by



**c. Existing Appalachian Trail pipeline crossings and utility easements will be unaffected by this case.**

This case does not jeopardize existing pipeline crossings or public utility easements across the Appalachian Trail. It does not jeopardize utility easements because a specific statute—not at issue in this case—expressly authorizes such easements through National Parks. *See* 54 U.S.C. § 100902 (titled “rights of way for public utilities and power and communication facilities”). By contrast, the Mineral Leasing Act, with its particular jurisdictional limitations, applies only to rights-of-way “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). Just as it is silent regarding non-federal lands, the Mineral Leasing Act says nothing about other utility easements, including pipelines for purposes unrelated to oil, natural gas, synthetic liquids, or gaseous fuels.

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other public agencies, private conservation organizations, and individuals.” *Management Policies* § 1.3.4. “Unless direct NPS management of a studied area is identified as the clearly superior alternative, the Service will recommend that one or more of these other entities assume a lead management role, and that the area not receive national park system status.” *Id.* “In cases where a study area’s resources meet criteria for national significance but do not meet other criteria for inclusion in the national park system, the Service may instead recommend an alternative status, such as ‘affiliated area.’” *Id.*

This case also does not jeopardize existing pipeline crossings. As described in Respondents' brief, existing pipeline crossings were all constructed prior to federal acquisition of interests in land, or co-located in existing easements. Resp'ts' Br. at 8. Therefore, no existing pipelines appear to cross the Trail under Mineral Leasing Act authority. Moreover, at least in Vermont, easement deeds acquired by the National Park Service for passage of the Appalachian Trail contain the same standard limitation: "Subject to existing easements for public roads and highways, public utilities, railroads and pipelines."<sup>33</sup>

**d. Trails and land administered by other agencies will be generally unaffected by the narrow impact of this case.**

The Mineral Leasing Act has the clear but narrow effect of foreclosing oil and gas pipelines in National Park units on federal lands, an effect that must be understood within the context of a statutory backdrop that allows federal agencies in most cases to permit

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<sup>33</sup> These include two easement deeds from the State of Vermont in 1997 and one from a private corporation in 1983. Donation Deed for Right-of-Way Easement between State of Vermont, Grantor and United States of America, Grantee for Tract 211-04 (Dec. 1, 1997) (on file with the Vermont Attorney General's Office); Donation Deed for Right-of-Way Easement between State of Vermont, Grantor and United States of America, Grantee for Tract 212-10 (Dec. 1, 1997) (on file with the Vermont Attorney General's Office); Grant of Easement between Sherburne Corporation, Grantor and United States of America, Grantee (Sept. 28, 1983) (on file with the Vermont Attorney General's Office).

pipelines on other lands owned by the United States or otherwise administered or managed by federal agencies. Congress assigns federal land to agencies not based on acquisition, but on administration, and accordingly writes statutes specific to each agency's administration. So, too, has Congress assigned National Trails based on overall trail administration. Congress also distinguishes between overall trail administration and trail segment management. In practice, agencies often work together to manage each trail. Congress therefore provides for segment-managing agencies to either apply authority from their own statutes or borrow authority from those statutes that govern the trail-administering agency. Managing agencies can therefore administer trails seamlessly with surrounding lands, including with regard to authorized pipeline development.

Congress's scheme for the general administration of federal lands is not perfectly aligned with which federal agency originally acquired that land. Just like with the National Park System, Congress defines the National Forest System and the Bureau of Land Management's public lands in terms of land those agencies "administer," rather than the land they acquired. See 16 U.S.C. § 1609 (definition of the Forest System includes "units of federally owned forest, range, and related lands," but also includes "other lands, waters, or interests therein which are *administered* by the Forest Service or are *designated for administration* through the Forest Service as part of the system" (emphasis added)). 43 U.S.C. § 1702(e) (jurisdiction of the Bureau

of Land Management over public lands includes “any land and interest in land owned by the United States within the several States and *administered* by the Secretary of the Interior through the Bureau of Land Management, *without regard to how the United States acquired ownership*” (emphasis added)).

Aside from the Mineral Leasing Act, each trail-administering agency has statutory authority to grant utility easements—for many kinds of utilities, other than oil and gas pipelines—on land it administers. The Forest Service and the Bureau of Land Management have the same utility easement statute, which explicitly exempts pipelines for “oil, natural gas, synthetic liquid or gaseous fuels, or any refined product therefrom, and for storage and terminal facilities in connection therewith.” 43 U.S.C. § 1761. And, as noted, the Park System has its own utility easement statute, which also does not cover oil or gas pipelines. 54 U.S.C. § 100902. The national trails system also has an easement provision, which allows the Secretaries of the Interior and Agriculture to grant easements “in accordance with the laws applicable to the national park system and the national forest system, respectively.” 16 U.S.C. § 1248.

An overall, trail-administering agency administers an entire trail, even though specific trail segments may be managed by other agencies. The National Scenic Trails Act distinguishes between overall “administration” of a trail and “management” of any segment

of a trail. 16 U.S.C. § 1246(a)(1)(A), (B).<sup>34</sup> Congress further provides that different “segments” of a trail may be managed by different agencies. *Id.* An agency which manages only a segment of a trail, but which is not the overall trail administrator, may enter into a memorandum of agreement with the administering agency allowing the segment-management agency to utilize its own “laws, rules, and regulations” in managing the trail. § 1246(a)(1)(B). Otherwise, “authorities related to units of the national park system or the national forest system, as the case may be” remain available to the administering agency. § 1246(i).

In this regard, the Park Service and the Forest Service have entered into several cooperative agreements and memoranda of understanding for joint trail management. As explained in the 2017 *National Trails System Memorandum of Understanding*, since the National Scenic Trails Act was passed, the Bureau of Land Management, National Park Service, and U.S. Forest Service “have become administrators of one or more National Trails, a special trail-wide role delegated to these agencies by the Secretary of Agriculture or the Interior.” U.S. Dep’t of Interior et al., *National Trails System Memorandum of Understanding* 2

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<sup>34</sup> The National Park Service, interpreting the National Scenic Trails Act, defines trail “administration” as “exercising trail-wide authorities” and “provid[ing] trailwide coordination and consistency.” Nat’l Park Serv., *Reference Manual 45: National Trails System* 8 (Jan. 2019), [https://www.nps.gov/policy/Reference\\_Manual\\_45](https://www.nps.gov/policy/Reference_Manual_45). The Park Service defines “management” as, *e.g.*, “local visitor services, managing visitor use,” and “planning and development of trail segments or sites.” *Id.* at 10.

(2017).<sup>35</sup> The Memorandum designates these agencies as “National Trail administering agencies.” *Id.* The Memorandum goes on to explain that these agencies, plus the U.S. Bureau of Reclamation, Fish and Wildlife Service, and U.S. Army Corps of Engineers, also “serve as ‘National Trail managing agencies’ that are responsible for many of the sites and segments along” National Trails. *Id.*

In practice, even though there is one trail administrator, most trails are managed by more than one agency across various trail segments. Not surprisingly, the Park Service and the Forest Service reached an agreement shortly after the National Scenic Trails Act was passed to “maintain—to the extent that available funds permit—the portions of the [Appalachian] Trail which pass through areas under their separate jurisdiction . . . .” *Memorandum of Agreement between the National Park Service, Department of the Interior, and the Forest Service, Department of Agriculture, concerning Appalachian National Scenic Trail* (“1970 MOU”), at 4 (1970).<sup>36</sup> An arrangement by which the Park Service administers the entire trail, but allows the Forest

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<sup>35</sup> Available at [https://www.nps.gov/subjects/nationaltrails/system/upload/National\\_Trails\\_System\\_MOU\\_2017-2027.pdf](https://www.nps.gov/subjects/nationaltrails/system/upload/National_Trails_System_MOU_2017-2027.pdf).

<sup>36</sup> Available at <https://www.nps.gov/appa/getinvolved/upload/MOA-NPS-USFS-AT-1970.pdf>. The two agencies also agreed to “cooperate in developing uniform regulations,” to “meet from time to time for a discussion of matters of mutual concern affecting administration, development and use of the Trail,” and to each allow the other agency “opportunities to review and comment on development plans with a view to harmonizing each others use and development programs for the Trail.” 1970 MOU at 4-6.

Service to manage segments that overlap national forests, is a practical and efficient use of resources.

Petitioners and their *amici* point to the references in the 1970 MOU to “segments of the Trail located on Federal lands under [the agencies’] separate jurisdictions” and similar language to claim that the Trail itself is separate from the land, that the land underneath the Trail in the National Forest is and has always been the National Forest, and that therefore it cannot possibly be land in the National Park System. 1970 MOU at 5; *see, e.g.*, U.S. Br. at 34. This view ignores three key points. *First*, it ignores the statutory definitions of each system described above, which depend on “administration,” and Congress’s clear designation of the Secretary of the Interior as the overall administrator of the Trail. *Second*, it ignores one essential purpose of the 1970 MOU, which was to clarify that the Forest Service will manage parts of the Trail within National Forests even though the Park Service is the acknowledged “administering agency” for the Trail. *See* 1970 MOU at 6.<sup>37</sup> And *third*, it ignores the plain language of the Mineral Leasing Act, which only

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<sup>37</sup> The 1970 MOU acknowledges the special trail-wide role played by the Park Service. While the agreement mostly entails similar responsibilities and cooperation from each agency for its managed segments, the Forest Service must report to the Park Service “all acquisitions of lands and interests in lands which are undertaken by the Forest Service for Trail purposes”; the Park Service must keep records of any such purchases; and the “Park Service, as administering agency, will be responsible for developing and publishing any needed maps, brochures, press releases, etc., of a general nature for the entire Trail.” *Id.* at 2-3, 6.

authorizes a single agency head to grant a right-of-way permit if “the *surface* of all of the Federal lands involved . . . is under the jurisdiction of one Federal agency.” 30 U.S.C. § 185(c)(1) (emphasis added). If, however, “the *surface* of the Federal lands involved is administered . . . by two or more Federal agencies,” the agencies must coordinate between themselves. § 185(c)(2). The Mineral Leasing Act itself therefore defines agency jurisdiction of land based on the surface of the land—where the Trail runs—not any subsurface jurisdiction. And it recognizes that “administration” of federal land can be assigned to multiple agencies, with potentially competing mandates.

Thus, while the segment of the Appalachian Trail running through the George Washington National Forest is locally managed by the Forest Service, it also counts as a unit of the Park System for overall administration. Nothing prevents the Forest Service from granting non-pipeline utility easements over that portion of the Trail, in consultation with the Park Service—under forest service easement statutes which, unlike the Mineral Leasing Act, do not have an explicit exclusion for federal land in the National Park System.<sup>38</sup>

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<sup>38</sup> For the same reasons, a trail administered primarily by the Forest Service, such as the Continental Divide Trail, that runs through Park System lands, such as Yosemite National Park, is perfectly administrable. Either the Forest Service can manage the trail directly, or the Park Service can manage that segment under 16 U.S.C. § 1246(a)(1)(B), pursuant to park or forest system authorities. Because the Continental Divide Trail is indisputably surrounded by land in the National Park System as



Congress could have allowed oil and gas pipeline easements to be part of 43 U.S.C. § 1761, the easement statute applicable to the Forest System and Bureau of Land Management, and could have simply withheld from the Park Service the authority to grant any pipeline easements. But it did not. Congress structured the Mineral Leasing Act such that *no* federal agency may use it to grant a pipeline easement across Park System lands. The text of the Act therefore addresses exactly the question presented here: whether a gas pipeline may be constructed across (1) federal lands which are (2) in the National Park System, but (3) managed by a different federal agency. By exempting the entire National Park *System* from the pipeline easement statute, and not just the actions of the National Park *Service*, Congress ensured that no other federal agency would attempt to grant a pipeline easement across Park System lands, even lands for which that agency otherwise has responsibility. The Mineral Leasing Act thus does not divest the Forest Service of its ability to grant utility easements across those segments of the Trail that the Forest Service manages. The Act simply does not give the Forest Service the power to grant an oil or gas pipeline easement across the Trail on federal land.

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it traverses Yosemite, as a practical matter the Mineral Leasing Act will not authorize pipelines to cross that segment anyway—so the issue in this case will not arise.

## II. Preserving the National Park System benefits *amici* States.

The statutory question before the Court does not depend on how many billions of dollars are at stake. Petitioners and their *amici* suggest, however, that affirming the decision below will have economically devastating consequences.<sup>39</sup> That suggestion is misguided for several reasons.

*First*, the Appalachian Trail—and National Parks in general—provide significant economic and health benefits to state residents. The two million people visiting the Appalachian Trail every year spend between \$125 and \$168 million, including \$27 million direct spending in local economies.<sup>40</sup> Local economies along the Appalachian Trail tend to be small, such that hikers’ spending can constitute a much-needed source of revenue.<sup>41</sup> In addition, the forests protected by the Appalachian Trail corridor provide substantial biodiversity and also “anchor[] the watersheds that provide drinking water to more than 10 percent of the nation’s

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<sup>39</sup> Atl. Coast Pipeline Br. at 1; Br. of *Amici* the United Assoc. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Indus. et al. at 15-24; Br. of *Amici* W. Va. et al. at 21-25; Br. of *Amici* Rep. Jeff Duncan et al. at 12-15.

<sup>40</sup> See Am. Hiking Society, *supra* note 3.

<sup>41</sup> See Appalachian Trail Conservancy, *Appalachian Trail Community Program*, [appalachiantrail.org](https://appalachian-trail.org/home/conservation/a-t-community-program), <https://appalachian-trail.org/home/conservation/a-t-community-program> (last visited Jan. 16, 2020) (listing over 40 small communities along the Trail that market themselves specifically to Trail hikers).

population.”<sup>42</sup> And hikers commonly report mental health benefits from through-hiking the Trail.<sup>43</sup> Shorter hikes and time spent in nature also provide health benefits.<sup>44</sup> As a result of these effects, National Parks likely save America billions of dollars in mental health care annually.<sup>45</sup> Nationwide, 318 million people visited National Parks in 2018.<sup>46</sup> National Parks visitors directly spent \$20.2 billion in 2018, which translates to total economic effects of \$40 billion.<sup>47</sup> Again, these economic effects accrue mainly to “park gateway communities,” many of which are small, often rural communities, dispersed across America.<sup>48</sup>

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<sup>42</sup> Nat’l Parks Conservation Assoc., *supra* note 24, at 9. The Trail corridor, which is “one of the largest units of the National Park System in the eastern United States,” also includes “some of the most significant and rare ecosystems remaining along the East Coast.” *Id.* at 1.

<sup>43</sup> Kathleen D. Seal, Value, Meaning and Therapeutic Notions of the Appalachian Trail, at 158-68 (Dec. 2014) (unpublished Ph.D. dissertation, Texas State Univ.), <https://digital.library.txstate.edu/bitstream/handle/10877/5455/SEAL-DISSERTATION-2014.pdf?sequence=1&isAllowed=y>.

<sup>44</sup> *See* White, *supra* note 4.

<sup>45</sup> *See* Buckley, *supra* note 4.

<sup>46</sup> Nat’l Park Serv., *News Release: National Park Visitor Spending Contributed \$40 Billion to U.S. Economy* (May 23, 2019), <https://www.nps.gov/orgs/1207/national-park-visitor-spending-contributed-40-billion-to-u-s-economy.htm>.

<sup>47</sup> *Id.*; *see also generally* Catherine C. Thomas et al., U.S. Geological Survey & Nat’l Park Serv., *2018 National Park Visitor Spending Effects* (May 2019), [https://www.nps.gov/nature/customcf/NPS\\_Data\\_Visualization/docs/NPS\\_2018\\_Visitor\\_Spending\\_Effects.pdf](https://www.nps.gov/nature/customcf/NPS_Data_Visualization/docs/NPS_2018_Visitor_Spending_Effects.pdf).

<sup>48</sup> Nat’l Park Serv., *supra* note 46.

*Second*, there has been no showing that the Atlantic Coast Pipeline cannot or will not be built over an Appalachian Trail easement on non-federal land. Nor will a reversal in this case guarantee the pipeline's construction. The Fourth Circuit identified a number of flaws with the permit granted in this case, most of which are not before this Court and have yet to be resolved. *See* App. to U.S. Forest Serv. Pet. for Writ of Cert. 14a-55a.

*Finally*, as a practical matter, even if the Atlantic Coast Pipeline is not built, East Coast states have other sources of energy. Even if affirming the Fourth Circuit in this case would slightly restrict the East Coast's access to natural gas, state economies increasingly have alternatives for energy sources and associated economic growth.

*Amici* States all rely, to varying degrees, on natural gas pipelines as part of their energy infrastructure. As noted, many pipelines already cross the Appalachian Trail, including those connecting gas-producing hydraulic fracturing fields in Pennsylvania and West Virginia with consumers in Virginia and North Carolina.<sup>49</sup> Many East Coast States also import natural gas by ship, via specially built Liquefied Natural Gas terminals.<sup>50</sup>

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<sup>49</sup> *See* U.S. Energy Info. Admin., *U.S. Energy Mapping System*, <https://www.eia.gov/state/maps.php> (last visited Jan. 16, 2020) (select map layer "Natural Gas Inter/Intrastate Pipeline").

<sup>50</sup> Georgia, Maryland, and Massachusetts all serve their respective regions with Liquefied Natural Gas import facilities. *See* U.S. Dep't of Energy, Fed. Energy Reg. Comm., *North American*

Gas is not the only option for fueling state economies and growth, however. In fact, economies with diversified energy sources are more resilient to economic shocks and other disruptions. U.S. Dep't of Energy, *Valuation of Energy Security for the United States: Report to Congress* 12 (2017).<sup>51</sup> Renewable energy sources are widely acknowledged to be better for the environment and for human health than fossil fuels, including natural gas.<sup>52</sup> Renewable energy is energy from resources

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*LNG Import Terminals: Existing*, <https://www.ferc.gov/industries/gas/indus-act/lng/lng-existing-import.pdf> (Dec. 17, 2019).

<sup>51</sup> Available at [https://www.energy.gov/sites/prod/files/2017/01/f34/Valuation%20of%20Energy%20Security%20for%20the%20United%20States%20%28Full%20Report%29\\_1.pdf](https://www.energy.gov/sites/prod/files/2017/01/f34/Valuation%20of%20Energy%20Security%20for%20the%20United%20States%20%28Full%20Report%29_1.pdf). Even Pennsylvania, the second-largest natural gas producing state after Texas, consumes more energy from all other sources combined than from natural gas alone. See U.S. Energy Info. Admin., *Pennsylvania State Profile and Energy Estimates, Pennsylvania Energy Consumption Estimates 2017*, <https://www.eia.gov/state/?sid=PA#tabs-1> (last visited Jan. 4, 2020).

<sup>52</sup> For instance, natural gas extraction and transmission causes emissions of methane, a potent greenhouse gas. U.S. Energy Info. Admin., *Natural Gas Explained* (Sept. 23, 2019), <https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php>. Increases in these emissions associated with natural gas development have been linked to conditions including asthma and cancer. N.Y. State Dep't of Health, *A Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development* 5 (Dec. 2014), [https://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](https://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf); Vt. Agency of Nat. Resources & Dep't of Env'tl. Conservation, *A Report on the Regulation and Safety of Hydraulic Fracturing for Oil or Natural Gas Recovery* xi, ix (Feb. 2015), <https://legislature.vermont.gov/assets/Legislative-Reports/ANR-REPORT-REGULATION-OF-HF-FOR-OIL-OR-NATURAL-GAS-RECOVERY-2015.02.12.FINAL.pdf>.

that are, unlike fossil fuels, virtually inexhaustible.<sup>53</sup> Moreover, “[e]nergy security is improved when electricity can be generated without posing a threat to the environment[.]” U.S. Dep’t of Energy, *Valuation of Energy Security*, *supra* at 15.

For these reasons, the majority of States have passed ambitious renewable energy and efficiency goals.<sup>54</sup> Each *amici* State has enacted such a goal.<sup>55</sup> For instance, 75% of all Vermont’s annual retail electric sales must be from renewable sources by 2032. Vt. Stat. Ann. tit. 30, § 8005(a)(1)(B). Likewise, Massachusetts law requires immediate and long-term emission reductions, most notably under its 2008 Global

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<sup>53</sup> Sources often considered renewable include hydropower; geothermal; wind; solar; biomass, wood and wood waste; municipal solid waste; landfill gas and biogas; ethanol; and biodiesel. U.S. Energy Info. Admin., *Renewable Energy Explained*, <https://www.eia.gov/energyexplained/renewable-sources/> (last visited Jan. 16, 2020).

<sup>54</sup> See, e.g., NC Clean Energy Technology Center, DSIRE, *Programs*, <https://programs.dsireusa.org/system/program?type=38&> (last visited Jan. 16, 2020) (listing 49 state and local renewable portfolio standards passed nationwide).

<sup>55</sup> See, e.g., Conn. Gen. Stat. § 16-245a; Del. Code Ann. tit. 26, § 354; D.C. Code § 34-1432; Haw. Rev. Stat. § 269-92; Ill. Comp. Stat. ch. 20 § 3855/1-75(c); Md. Code Ann., Pub. Util. § 7-703; Mass. Gen. Laws ch. 25A, § 11F; Minn. Stat. Ann. § 216B.1691; N.J. Stat. Ann. § 48:3-87; N.M. Stat. Ann. § 62-16-4; Or. Rev. Stat. §§ 469A.050, 469A.052, 469A.055, 469A.065; R.I. Gen. Laws § 39-26-4; Vt. Stat. Ann. tit. 30, § 8005; N.Y. Pub. Serv. Comm., *Order Adopting a Clean Energy Standard* (Aug. 1, 2016), <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7b44C5D5B8-14C3-4F32-8399-F5487D6D8FE8%7d>; see also Vt. Dept. of Pub. Serv., *Comprehensive Energy Plan 2016*, [https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP\\_Final.pdf](https://outside.vermont.gov/sov/webservices/Shared%20Documents/2016CEP_Final.pdf).

Warming Solutions Act, which mandates economy-wide reductions of greenhouse gas emissions of 80% below 1990 levels by 2050.<sup>56</sup>

*Amici* States are already making progress toward these goals. Vermont's in-state electricity generation is already 99.7% from renewable sources.<sup>57</sup> Hawai'i exceeded its renewable portfolio target by 12% in 2017.<sup>58</sup> And Rhode Island, New York, Hawai'i, Connecticut, Massachusetts, Maryland, and Vermont are among the ten states that consume the least energy per capita.<sup>59</sup>

As *amici* State efforts to develop it have shown, renewable energy industries provide economic benefits in the form of jobs, lowered energy costs, and health benefits from improved environmental quality. Solar is by far the electric-power-generation sector that

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<sup>56</sup> Mass Gen. Laws ch. 21N; *see also* Mass. Exec. Off. of Energy and Env'tl. Affairs, *GWSA Implementation Progress*, <https://www.mass.gov/service-details/gwsa-implementation-progress> (last visited Jan. 16, 2020).

<sup>57</sup> U.S. Energy Info. Admin., *Vermont State Profile and Energy Estimates* (July 18, 2019), <https://www.eia.gov/state/print.php?sid=VT>.

<sup>58</sup> Haw. State Energy Office, *Hawaii Energy Facts and Figures 1* (June 2018), [https://energy.hawaii.gov/wp-content/uploads/2018/06/HSEO\\_2018\\_EnergyFactsFigures.pdf](https://energy.hawaii.gov/wp-content/uploads/2018/06/HSEO_2018_EnergyFactsFigures.pdf).

<sup>59</sup> U.S. Energy Info. Admin., *U.S. Overview: State Total Energy Rankings, 2017*, <https://www.eia.gov/state/> (last visited Jan. 22, 2020).

employs the most people, a total of 242,343—more than natural gas and coal combined.<sup>60</sup> The runner up is wind, which employs 111,166 people.<sup>61</sup> Looking forward, the two occupations with the overall highest predicted growth in the United States between 2018 and 2028 are solar photovoltaic installer and wind turbine service technician (both of which are expected to grow over 50% faster than the next-fastest-growing occupation, home health aide).<sup>62</sup>

Renewable energy also saves consumers money, health, and time. For example, in just one year, states' renewable-portfolio standards saved customers an estimated \$1.3 billion to \$3.7 billion from lower natural-gas prices due to decreased demand for natural gas.<sup>63</sup> States' standards additionally resulted in between \$2.6 billion and \$9.9 billion in health benefits for Americans in one year, just through improved air quality.<sup>64</sup> This estimate reflects the prevention of between 320 and 1,100 deaths, 160 to 290 avoided emergency

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<sup>60</sup> Energy Futures Initiative & Nat'l Ass'n of State Energy Officials, *U.S. Energy and Employment Report* 52 (2019), <https://www.usenergyjobs.org/s/USEER-2019-US-Energy-Employment-Report.pdf>.

<sup>61</sup> *Id.*

<sup>62</sup> See Bureau of Labor Statistics, *Occupational Outlook Handbook: Fastest Growing Occupations* (Sept. 4, 2019), <https://www.bls.gov/ooh/fastest-growing.htm>.

<sup>63</sup> Ryan Wiser et al., *A Retrospective Analysis of the Benefits and Impacts of U.S. Renewable Portfolio Standards* 44 (Jan. 2016), <https://www.nrel.gov/docs/fy16osti/65005.pdf>.

<sup>64</sup> *Id.* at 24.



room visits for asthma, and 195 to 310 hospital admissions for respiratory and cardiovascular symptoms.<sup>65</sup> As a result of these and other avoided health problems, states' renewable standards saved the national economy 38,000 to 64,000 lost work days altogether.<sup>66</sup>

This case involves a modest exception to the otherwise broad authority granted by the Mineral Leasing Act to allow oil and gas pipeline development on federal lands. Namely, the Act exempts lands in the National Park System—including the Appalachian Trail, where it traverses federal lands. Given that the Act does not implicate state or private lands; that there are numerous alternatives to development; and that *amici* States have already embraced an energy transition, Petitioners' and their *amici*'s fears of the impact of this exception are overblown.



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<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 24 & n.41.

**CONCLUSION**

The decision below should be affirmed.

January 22, 2020

Respectfully submitted,

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