WASHINGTON LEGAL FOUNDATION
February 21, 2020

On the Merits:

UNITED STATES FOREST SERVICE, *et al.*,

Petitioners,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, *et al.*,

Respondents.

Nos. 18-1584, 18-1587
United States Supreme Court

Question Presented: Whether the United States Forest Service has the authority under the Mineral Leasing Act and National Trails System Act to grant rights-of-way through national forest lands traversed by the Appalachian Trail.

Summary of the Case: Following a three-year regulatory-review process, Petitioner Atlantic Coast Pipeline, LLC secured the necessary approvals and permits to construct a 600-mile pipeline that would bring natural gas from West Virginia and Pennsylvania to consumers in Virginia and North Carolina. As part of that approval, the U.S. Forest Service granted, under the Mineral Leasing Act of 1920 (MLA), a right-of-way for the pipeline to cross small portions of the George Washington National Forest, including a 0.1-mile stretch that is some 700 feet beneath the Appalachian Trail. Respondents, environmental and preservationist nonprofits, challenged the pipeline's approval on several grounds, including the theory that the entire Trail and the land underneath it is National Park System land.

Because the MLA does not authorize any federal agency to grant pipeline rights-of-way across National Park System lands, the plaintiffs petitioned the Fourth Circuit to vacate the Forest Service's permitting decision. The Fourth Circuit granted the petition and held that the Forest Service lacks authority under the MLA to grant rights-of-way beneath the Trail. According to the court, the more than 1,000 miles of land traversed by the Trail under the control of various federal, state, and private entities are all part of the National Park System and thus not subject to rights-of-way.

On the Merits:
Judgment for Petitioner
Lawson Fite
American Forest Research Council

This case concerns how to interpret interlocking public land laws to give effect to the whole body of law. The Fourth Circuit took a superficial approach to the statutory scheme, resulting in a fatally flawed ruling.

The MLA permits federal agencies to grant rights-of-way across federal lands for energy pipelines, except for certain "lands within the National Park System." 30 U.S.C. § 185(b)(1). The Appalachian Trail was established by the National Trails System Act of 1968 and is to "be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture." 16 U.S.C. § 1244(a)(1). These respective authorities have been delegated to the Park Service and Forest Service.

The Fourth Circuit reasoned that a trail administered by the Park Service, since it is a unit of the National Park System, becomes "lands within the National Park System" to which the broad authority of the MLA does not apply. This was despite the National Trails System Act's admonition that "[n]othing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law." 16 U.S.C. § 1246(a)(1)(A).

Reversal is warranted, first, on the plain text of the statutes at issue. The court of appeals first determined that "land in the National Park System" includes "any area of land and water administered by the Secretary [of the Interior]" through the Park Service. For this proposition, the court cited the Parks Organic Act, 54 U.S.C. § 100501, which merely provides that the National Park System "shall include any area of land and water administered by the Secretary, acting through the Director, for park, monument, historic, parkway, recreational, or other purposes." This section of the Act does not define "land," though, so the Fourth Circuit's reasoning is circular. That is, land in the Park System is land in the Park System. But it says nothing about whether a Trail is "land."

Not to fear, says the panel, the Trail is a "unit" of the Park System. 911 F.3d at 180. So it has to be "land" within the Park System. But what is a Park System unit? According to the Parks Organic Act, a "System Unit" is "one of the areas described in section 100501." 54 U.S.C. § 100102(6). We have now returned to square one. The appeals court determined that "unit" necessarily means "land" when the converse is true—land is a subset of unit. Moreover, the Trail is part of the National *Trails* System and happens to be administered by the Park Service. That does not make it "land" or a Park System unit.

The Fourth Circuit's opinion renders much of the Trails Act superfluous, including those sections which clarify that trail administration is not a transfer of general authority or jurisdiction, § 1246(a)(A); the detailed procedure for transfer of such authority, § 1246(a)(1)(B); the proviso that designated uses shall not supersede any other authorized uses, § 1246(j); the Forest Service's explicit role in administering the Appalachian Trail, § 1244(a)(1); and the retention by the Park Service and Forest Service of all other authority over trail administration, §1246(i). The court of appeals thus violated a "cardinal principle" of statutory construction: "to save and not to destroy." *United States v. Menasche*, 348 U.S. 528, 538–39, (1955) (quoting *Nat'l Labor Relations Bd. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937)).

The Fourth Circuit also erred by failing to consider the statutory context. Federal lands are a patchwork of overlapping jurisdictions, agencies, and statutory mandates, developed over many decades through a series of Acts of Congress. Public land laws must be construed with an eye to this context, with special attention to the varied types of agency power and authority. One cannot simply equate "unit" and "land." In deliberations on the National Parks and Recreation Act of 1978, the last major legislation in this arena, accordingly, Congress referred to the separate "National Park and National Trail *Systems*," plural. H.R. Rep. No. 95–1165, 95th Cong., 2d Sess., at 58 (May 15, 1978) (emphasis added).

Public land statutes operate in three dimensions; they can be area-, agency-, or function-specific. This is more than warp and woof; it is a three-dimensional lattice. The thicket of public land laws is of course "hardly a model of neat organization and uniform planning." *Wilderness Soc'y v. Morton*, 479 F.2d 842, 881 (D.C. Cir. 1973). But that means courts must pay special attention to reconciling potentially conflicting statutes and avoid resting, as did the Fourth Circuit, on similarities that "close examination reveals . . . to be merely superficial." *See id.* Both the Trails Act and MLA are sui generis statutes that overlie the public lands; each is entitled to due consideration.

We must remember, as well, how public lands came to be held by the public. They were an integral part of the Constitution, ceded by Western states to the new federal government in exchange for the assumption of war debt. *Lessee of Pollard v. Hagan*, 44 U.S. (3 How.) 212, 224 (1845). Control over these lands is vested in Congress by the Property Clause, enabling the making of "all needful rules and regulations." U.S. Const., Art. IV, § 3, cl. 2. Madison viewed the Property Clause as establishing "a power of very great importance," which "was probably rendered absolutely necessary by jealousies and questions concerning the Western territory sufficiently known to the public." The Federalist No. 43. Among these jealousies were Gouverneur Morris's efforts to constrain the formation of states from the territory in the West, fearful that Westerners would not be "equally enlightened to share in the administration of our common interests." P.W. Gates, *History of Public Land Law Development* 74 (1968) (quoting M. Farrand, 1 *The Records of the Federal Convention* 583 (1911)). The Founders, in their wisdom, placed faith in Congress as a deliberative body to negotiate land development, an enlightened posture that courts are bound to respect.

The judgment is reversed.

Dissenting View:
Sarah Harrington
Goldstein & Russell, P.C.

This is a case about statutory interpretation—and a pretty easy one at that. Because the applicable statutes prohibit the Forest Service from granting a right-of-way for a natural gas pipeline across the Appalachian Trail, I would affirm the Fourth Circuit's decision.

The Mineral Leasing Act authorizes "the Secretary of the Interior or appropriate agency head" to grant a right-of-way "through any Federal lands" "for pipeline purposes for the transportation of . . . natural gas." 30 U.S.C. § 185(a). The Act defines the term "Federal lands"—"[f]or the purposes of" Section 185 only—to "mean[] all lands owned by the United States except," *inter alia*, "lands in the National Park System." *Id.* § 185(b). The central question in this case is whether Appalachian Trail lands located within a national forest are "lands in the National Park System" for purposes of the MLA and therefore exempt from the definition of "Federal lands" through or under which a natural gas pipeline may pass. The only sensible reading of the statutory text compels the conclusion that that they are.

Although the MLA itself does not define the term "lands in the National Park System," the National Park Service Organic Act and the National Trails System Act together make clear that the Trail comprises lands in the National Park System.

First, the Organic Act defines the term "National Park System" to "mean[] the areas of land and water described in" 54 U.S.C. § 100501. *Id.* § 100102. Section 100501, in turn, provides that "[t]he System shall include any area of land and water administered by the Secretary [of the Interior], acting through the Director [of the National Park Service], for park, monument, historic, parkway, recreational, or other purposes." *Id.* § 100501. Under the plain text of that definition, the Trail is part of the National Park System because it is (1) administered by the Secretary of the Interior, (2) through the Director of the National Park Service, (3) for recreational purposes.

Second, the Trails Act makes clear that the Trail satisfies the definition of "National Park System" in the Organic Act. The Trails Act specifies that "[n]ational scenic trails" are intended "to provide for maximum outdoor recreation potential," 16 U.S.C. § 1242(a)(2), designates the Trail as a national scenic trail, and directs that the AT "shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture," *id.* § 1244(a)(1). Since 1977, the Secretary of the Interior has delegated authority to "administer[]" the Trail to the Director of the National Park Service. The Trail is therefore an "area of land . . . administered by the Secretary, acting through the Director, for . . . recreational purposes," 54 U.S.C. § 100501—which makes it part of the "National Park System," as that term is defined in 54 U.S.C. § 100102. Consistent with that plain-text

understanding, the National Park Service has promulgated a regulation, issued a Management Policies handbook, and published maps of the National Park System, all of which treat the AT as part of that System.

Because the Trail comprises "lands in the National Park System," the segments of the Trail on "lands owned by the United States" do not qualify as "Federal lands" under the MLA. 30 U.S.C. § 185(b). The MLA therefore does not authorize either the Secretary of the Interior or the Secretary of Agriculture to grant a right-of-way through Trail segments on federally owned land for natural gas pipelines.

The Pipeline and Forest Service's arguments to the contrary are unconvincing. First, they argue that nothing in the applicable statutes divests the Forest Service of authority to manage Trail lands within national forests. That is correct, of course, but irrelevant: Trail lands within a national forest are *both* under the jurisdiction of the Forest Service *and* part of the National Park System. They are therefore exempt from pipeline authorization by the MLA. Second, the Pipeline argues that reading the statutes according to their plain text will erect an impenetrable barrier to natural gas pipelines along the entire 2,000 miles of the Trail. That is obviously wrong because the MLA excludes from pipeline authorization only "lands owned by the United States" that are in the National Park System—and even the Pipeline admits that large swaths of the Trail are not federally owned.

Congress can choose to authorize pipelines across the Trail if it wants to, but it has chosen to forbid them. I would affirm the Fourth Circuit's decision.

Lawson Fite is General Counsel for the American Forest Research Council, a regional trade association that advocates for socially and scientifically responsible forestry on both public and private forest lands. **Sarah Harrington** is a Partner at Goldstein & Russell, P.C. in Washington, D.C.; she has argued 21 cases before the U.S. Supreme Court.

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