



Appalachian Trail Not a Barrier to Atlantic Coast Pipeline

The United States Forest Service may grant permission for a natural gas pipeline to go underneath the Appalachian Trail, so says the United States Supreme Court in an opinion released on June 15, 2020. Seven of the nine justices voted to reverse a decision by the Fourth Circuit Court of Appeals that had concluded the Forest Service lacked authority to do so for the Atlantic Coast Pipeline (ACP). Only Justice Sonia Sotomayor and Justice Elena Kagan dissented from the decision.

The ACP is a proposed 604-mile pipeline stretching from West Virginia to North Carolina. Approximately 16 miles of the pipeline route goes through the George Washington National Forest, which requires approval from the Forest Service. The Appalachian Trail, a 2,200-mile federally designated footpath from Mount Katahdin in Maine to Springer Mountain in Georgia, also passes through the George Washington National Forest with permission from the Forest Service. The National Park Service administers the Appalachian Trail through various arrangements with the Forest Service. At issue in this case is a 0.1-mile segment of the pipeline that would pass under the Appalachian Trail at a depth of approximately 600 feet. Both the entry and exit locations for this segment of the pipeline would be on private land, would not be visible from the Appalachian Trail, and would not disturb the surface of the trail.

In 2018, the ACP developers obtained the necessary authorizations from the Forest Service to place the pipeline through the National Forest and under the Appalachian Trail. Several organizations challenged these authorizations by arguing that the Forest Service lacked authority to authorize a pipeline to cross under the trail. The Fourth Circuit agreed and vacated the authorizations issued by the Forest Service.

In an opinion by Justice Clarence Thomas, the Court concluded that the various statutes and regulations governing the Appalachian Trail and other national trail systems effectively created a means to establish a right-of-way for the trails to cross National Forest land and other lands. Those statutes and regulations did not, however, effectively convey the land traversed by the trail to the National Park Service or otherwise restrict the Forest Service's statutory authority to grant rights-of-way to cross the trail. The Court rejected the notion that arrangements between the Forest Service and the National Park Service for maintenance and administration of the Appalachian Trail had effectively converted the trail into

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lands within the National Park system, which would place them beyond the Forest Service's authority. Instead, the Court found that the trail enjoyed the benefit of a right-of-way easement through the National Forest while the underlying land is still controlled by the Forest Service. With most easements, the recipient receives rights to use land for a particular purpose, such as to install utility lines or cross into adjacent property. The recipient of an easement typically does not receive ownership or control over how the land is otherwise used. While the National Park Service received easement rights from the Forest Service for the Appalachian Trail, the land traversed by the trail remains under the jurisdiction of the Forest Service. The Forest Service may thus authorize others to cross under the trail. Although not noted in the Court's opinion, more than 50 other pipelines have obtained easements to cross under the Appalachian Trail and do not interfere with the public's use of the trail. As Justice Thomas aptly noted: "Sometimes a complicated regulatory scheme may cause us to miss the forest for the trees, but at bottom, these cases boil down to a simple proposition: A trail is a trail, and land is land."

The Court also observed that portions of the Appalachian Trail crosses lands owned by states, local governments, and private landowners under the authority of easements obtained from those landowners. Under the reasoning adopted by the Fourth Circuit, those portions of the Appalachian Trail, as well as 20 other national trails administered by the National Park Service, could be considered lands controlled by the National Park Service. Such a determination would subject these non-federal lands to all the restrictions and limitations that accompany property governed by the National Park Service, which is something likely not contemplated by the property owners when granting an easement for the trails. As this case illustrates, such a designation could severely restrict the landowners' ability to grant other easements or otherwise use their property.

If you have any questions about the Court's decision or its implications, please contact Robert M. Stonestreet at 681.265.1364 or rstonestreet@babstcalland.com or James Curry at 202.853.3461 or jcurry@babstcalland.com.

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