

WALL STREET JOURNAL

Supreme Court Signals Resistance to Blocking Atlantic Coast Pipeline

During oral arguments, justices question lower court ruling that blocked pipeline path under Appalachian Trail



A route for the Atlantic Coast Pipeline in Wintergreen, Va., in 2018.

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Updated Feb. 24, 2020 4:01 pm ET

WASHINGTON—The Supreme Court on Monday suggested it was unlikely to block a planned natural-gas pipeline from running under a section of a major East Coast hiking trail.

At issue is the planned Atlantic Coast Pipeline, which would transport natural gas from West Virginia across 600 miles to sites in Virginia and North Carolina. The project, a partnership in which Dominion Energy Inc. and Duke Energy Corp. are major investors, is designed to reach East Coast markets and respond to demand for cleaner-burning fuel. The price tag for the pipeline, which already has faced delays, is about \$8 billion.

Environmentalists say the path of the pipeline threatens ecologically important national forests, raising the prospect of soil erosion and damage to wildlife habitat. It will impact an especially picturesque section of the Appalachian National Scenic Trail in Virginia, they say. The trail runs more than 2,000 miles from Maine to Georgia.

Multiple environmental groups argued the Trump administration gave their concerns short shrift and sued to challenge the U.S. regulatory process for approving the pipeline, winning a notable decision in 2018 that faulted several facets of the approval.

In the broadest part of that decision, the Richmond, Va.-based Fourth U.S. Circuit Court of Appeals said the U.S. Forest Service didn't have the authority to grant a special-use permit that allowed the pipeline developers to construct a segment underneath a section of the Appalachian Trail located near Reed's Gap, Va., and the Wintergreen Resort.

During Supreme Court oral arguments Monday, conservative justices, who hold a majority, questioned that ruling, as did one of the court's more liberal members, Justice Stephen Breyer.

Chief Justice John Roberts said the environmentalists' arguments could erect an "impermeable barrier" that would prevent any pipeline from crossing the trail and reaching East Coast customers.

"Your position has significant consequences to it, enormous consequences," Justice Brett Kavanaugh told Michael Kellogg, the environmentalists' lawyer.

Mr. Kellogg said any such barrier applied only to federal land, and that dozens of pipelines already run under the trail, via state, local and private land.

Justice Breyer suggested the pipeline may be less of a problem because it was running hundreds of feet below ground, entered and exited on private land, and didn't actually run across the surface of trail.

The key legal issue before the court involved the intersection of several federal agencies and governing statutes, as well as metaphysical discussion of what the word "land" actually means.

The Forest Service can grant a right of pipeline access on national forest land, but it can't do so on lands in the National Park System. The Appalachian Trail is administered by the National Park Service, and environmentalists say this means the Forest Service can't grant the permit.

The pipeline developers and the Trump administration say the trail isn't land, but instead a footpath that traverses land. This distinction means the pipeline permit is valid, they say.

"Except that nobody makes this distinction in real life," said Justice Elena Kagan, who voiced sympathy for the environmentalists in the case.

"When you walk on the trail, when you bike on the trail, when you backpack on the trail, you're backpacking and biking and walking on land, aren't you?" she asked.

Lawyer Paul Clement, arguing for the pipeline, said the Park Service only has administrative control of the trail, not the actual land itself. To make the point, he

cited the national historical trail in Alabama between Selma and Montgomery where civil-rights activists marched in 1965, which the Park Service also administers.

If the environmentalists' position were correct, then parts of downtown Selma and Montgomery are national park lands, which would come as a surprise to people there, Mr. Clement said.

The Selma analogy appeared to resonate with several members of the court, including Justices Breyer and Neil Gorsuch.

Justice Samuel Alito said there might be other good environmental arguments against the pipeline, but he said those issues were in other parts of the case that aren't currently before the court.

A decision is expected by the end of June.