Environmental groups have fought valiantly to stop the construction of the MVP project, and the Fourth Circuit has repeatedly upheld their legal claims. Congress recently gave the pipeline the go-ahead. The Fourth Circuit quickly halted it again but was overturned earlier today by the Supreme Court. I'm no fan of natural gas pipelines or of shortcutting the normal appeals process. But this time I think the Court got it right.

The issues revolved around Congress's intervention in the dispute. The statutory provision upholding the pipeline was part of the 2023 debt ceiling law. It was terrible public policy. Congress should not intervene on decisions about particular projects, and natural gas pipelines fuel global warming. But Congress has the power to do bad things as well as good ones.

The environmental groups argued that part of the provision should be read very narrowly and that the main portion was unconstitutional. Although I'm sympathetic to their arguments, in the end I think the law is clearly against them.

The most debatable part of the 2023 law eliminated the jurisdiction of the courts to hear any challenge to the MVP. This is a tricky area of constitutional law. On the one hand, Congress clearly has no business telling a court how to decide a particular case. On the other hand, Congress clearly does have control over jurisdiction. When these principles bump up against each other, it can be hard to draw the line.

I think Congress was on the constitutional side of the line in this case. It deprived the courts of the authority to hear a category of cases, not just one that happened to be already pending. The loss of jurisdiction wasn't conditional on how a court might rule on the merits of a case. Thus, this is something more than a disguised effort to dictate a court's findings of fact or legal conclusions.

As I indicated earlier, this is a tricky issue. But the other parts of the 2023 law seem clearly constitutional and sufficient by themselves to overturn the Fourth Circuit's stay of the pipeline.

One of those other provisions requires challenges to the 2023 law to be heard by the D.C. Circuit, not the Fourth Circuit. The environmental groups argued that this would apply only if they brought a separate case challenging the 2023 law. It's a nice try, but that's clearly not what Congress meant.

It would have been strange for Congress to require attacks on the statute to be in the D.C. Circuit if they were separate lawsuits but not if they were part of other lawsuits. The same panel of Fourth Circuit judges had issued multiple orders against the MVP, and Congress clearly wanted the constitutional issue to be heard by a different court with no predispositions about the case. Even if the jurisdiction-stripping part of the law was unconstitutional, all the Fourth Circuit could do would be to ask the D.C. Circuit to decide that issue.

Finally, Congress also said that it was ratifying the issuance of the permits for the pipeline and it directed the government to issue the permits and keep them in effect. Congress has the power to exempt a project from environmental laws, and no one argues that this is unconstitutional. In essence, that's what Congress was doing here. That means that, even if the Fourth Circuit had jurisdiction, the environmental group's arguments against the pipeline had become moot.

To issue a stay against the pipeline, the Fourth Circuit had to find that the environmental groups were likely to prevail on all of their arguments about the 2023 law. It's very hard to see how that standard was met here.

The Supreme Court should nearly always let lower court litigation take its course before intervening. In this case, however, the Court's intervention seems justified. At some point, bad as a project might be, Congress does have the ultimate power to decide that it should be built. It may be painful, but the duty of the courts is to enforce that congressional judgment.