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## Virginia Uranium, Inc. v. Warren

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*Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894 (2019)

Nyles G. Greer

The Supreme Court of the United States recently ruled that the Atomic Energy Act did not preempt a Virginia law prohibiting uranium mining in the Commonwealth. The Court held that although the Act delegated substantial power over the nuclear life cycle to the Nuclear Regulatory Commission, it offered no indication that Congress sought to strip states of their traditional power to regulate mining on private lands within their borders.

I. INTRODUCTION

In *Virginia Uranium, Inc. v. Warren*, the Supreme Court ruled that a state law could prohibit uranium mining on private land despite federal regulations addressing other aspects of the uranium industry.<sup>1</sup> Seeking declaratory and injunctive relief, petitioner Virginia Uranium, Inc. (“Virginia Uranium”) initially sued the Commonwealth of Virginia (“Commonwealth”), arguing that the Atomic Energy Act (“AEA”) preempted Virginia law under the United States Constitution’s Supremacy Clause.<sup>2</sup> Virginia Uranium averred that the AEA dictated the Nuclear Regulatory Commission (“NRC”) as the sole regulator in the field, and because the NRC’s regulations did not mention uranium mining, Virginia Uranium could mine uranium in Virginia.<sup>3</sup> The Court rejected this argument, however, finding that the AEA did not preempt state laws that prohibit mining on private lands within their borders.<sup>4</sup>

II. FACTUAL AND PROCEDURAL BACKGROUND

Virginia Uranium sought to mine uranium from a site in Virginia using conventional extraction methods.<sup>5</sup> The company intended to mill the uranium ore at the mine site, with the end goal of selling the pure uranium to enrichment facilities.<sup>6</sup> However, Virginia law prohibited uranium mining on private lands within the Commonwealth.<sup>7</sup> In an attempt to challenge the law, Virginia Uranium filed suit in U.S. District Court for the Western District of Virginia.<sup>8</sup> The District Court granted summary judgment for the Commonwealth, finding that the AEA did not preempt

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1. 139 S. Ct. 1894 (2019).

2. *Id.* at 1901.

3. *Id.*

4. *Id.* at 1909.

5. *Id.* at 1900.

6. *Id.*

7. *Id.* at 1901; *see* VA. CODE ANN. §§ 45.1–161.292:30, 45.1–283 (2013).

8. *Virginia Uranium*, 139 S. Ct. at 1901.

the Virginia law.<sup>9</sup> Virginia Uranium appealed and the Fourth Circuit affirmed.<sup>10</sup> The Supreme Court granted certiorari to resolve whether Congress intended to eliminate states' regulatory power over mining on private lands through the AEA.<sup>11</sup>

### III. ANALYSIS

#### A. *The AEA Did Not Preempt State Law*

The Court first addressed Virginia Uranium's argument that the AEA granted the NRC sole authority to regulate uranium mining for the purpose of addressing nuclear safety concerns.<sup>12</sup> The Court was quick to note that "[u]nlike many federal statutes, the AEA contain[ed] no provision preempting state law."<sup>13</sup> In addition, the Court specified that while the AEA provided the NRC with authority to regulate most areas of the nuclear fuel life cycle, it did not address mining.<sup>14</sup> Although mining companies must abide by the NRC's regulations in most contexts of uranium mining, this regulatory power begins "*after* [uranium's] removal from its place of deposit in nature."<sup>15</sup> Accordingly, the Court determined the NRC's power vested after nuclear material is mined.<sup>16</sup>

The Court noted that the AEA as a whole supported this contention because it addressed mining in the context of a narrow exception.<sup>17</sup> The Act provided that "[o]n *federal* lands . . . the NRC may regulate uranium mining."<sup>18</sup> Accordingly, the Court found that Congress had directly spoken to the issue, "and every bit of what it[] said indicates that the state authority remains untouched."<sup>19</sup>

Moreover, the Court observed that Congress added a provision to the AEA which allowed the NRC to give states some of its regulatory powers, provided the NRC retained control over sensitive activities such as "construction of nuclear power plants."<sup>20</sup> Virginia Uranium suggested

9. *Id.* at 1901; *see* Virginia Uranium, Inc. v. McAuliffe, 147 F. Supp. 3d 462 (W.D. Va. 2015).

10. *Virginia Uranium*, 139 S. Ct. at 1901; *see* Virginia Uranium, Inc. v. Warren, 848 F.3d 590, 593–94 (4th Cir. 2017).

11. *Virginia Uranium*, 139 S. Ct. at 1901.

12. *Id.*

13. *Id.* at 1902 (emphasis added) (internal citations omitted).

14. The "nuclear fuel life cycle" is the cycle nuclear material undergoes from the beginning process of mining, to its use as a power source, and its subsequent storage after use. *Id.*

15. *Id.* (emphasis in original) (citing 42 U.S.C. § 2092 (2012)).

16. *Id.* (citing Brief for United States as *Amicus Curiae* 14; *In re Hydro Resources, Inc.*, 63 N.R.C. 510, 512 (2006)).

17. *Id.*

18. *Id.* (emphasis in original) (citing 42 U.S.C. § 2097).

19. *Id.*

20. The court stated that "the NRC may now, by agreement, pass to the States some of its preexisting authorities to regulate various nuclear materials 'for the protection of the public health and safety from radiation hazards.'" *Id.* (citing 42 U.S.C. § 2021(c), (b)).

the added provision expanded the preemptive nature of the AEA and “demand[ed] the displacement of any state law (touching on mining or any other subject) if that law was enacted for the purpose of protecting the public against ‘radiation hazards.’”<sup>21</sup> In the Court’s view, however, Congress added the subsection in question, 42 U.S.C §2021(k), to guide courts, similar to a “non-preemption clause.”<sup>22</sup> Reading the statute as Virginia Uranium suggested would “turn the provision on its head[,]” and lead to an impermissible result because both the state and the NRC would lack authority to regulate uranium mining for radiation safety.<sup>23</sup> Therefore, the Court concluded that the subsection did not “displace traditional state regulation over mining or otherwise extend the NRC’s grasp to matters previously beyond its control.”<sup>24</sup>

*B. The Court Has Not Adopted A Different Reading of the AEA*

Virginia Uranium additionally argued that prior Court precedent adopted an alternative reading of the AEA.<sup>25</sup> In *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*,<sup>26</sup> the Court found a preemption challenge to a California law prohibiting the construction of nuclear power plants untenable.<sup>27</sup> Virginia Uranium argued that *Pacific Gas* upheld the state law at issue because the legislature enacted the statute to address economic development.<sup>28</sup> Accordingly, “any state law enacted with the purpose of addressing nuclear hazards must fall thanks to [the Court’s] precedent.”<sup>29</sup> The Court rejected this argument, stating that *Pacific Gas* dismissed the idea that the federal government enjoyed the sole regulatory power over all nuclear matters.<sup>30</sup> In addition, the Court determined that none of the holdings in *Pacific Gas* were applicable or persuasive.<sup>31</sup> The Court explained that regulating nuclear power plant construction is one area that the NRC has played a “significant role in” and “where the NRC generally cannot devolve its responsibilities to the States.”<sup>32</sup> Additionally, the Court noted that “because § 2021 classifie[d] the construction of nuclear power plants as one of the core remaining areas of special federal concern, any state law regulating that activity risks being

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21. *Id.* at 1903.

22. The court restated subsection (k) which reads, “Nothing in [§ 2021] shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.” *Id.* at 1902 (emphasis removed) (citing 42 U.S.C § 2021(k)).

23. *Id.* at 1903.

24. *Id.*

25. *Id.*

26. 461 U.S. 190 (1983).

27. *Virginia Uranium*, 129 S. Ct. at 1903–04.

28. *Id.* at 1904 (citing *Pacific Gas*, 461 U.S. at 205).

29. *Id.*

30. *Id.* (citing *Pacific Gas*, 461 U.S. at 205).

31. *Id.* (citing *Pacific Gas*, 461 U.S. at 205, 209, 210).

32. *Id.* (citing 42 U.S.C § 2021(c); see *Pacific Gas*, 461 U.S. at 197–98, 206–07).

subject to an inquiry into its purposes under subsection (k).<sup>33</sup> On the other hand, the Virginia law regulated mining on private land, which is not mentioned under the AEA, and thus the Court found judicial inquiry was not authorized.<sup>34</sup>

Nevertheless, the Court addressed a “wrinkle” which Virginia Uranium argued should impact the analysis.<sup>35</sup> In *Pacific Gas*, the Court considered the legislative purpose behind the challenged law, and thus Virginia Uranium claimed it should do the same for the Virginia statute.<sup>36</sup> However, the Court disagreed, stating that the cases were distinguishable. *Pacific Gas* involved state laws that came close to infringing on federal powers, while the Virginia statute involved authority historically removed from the NRC.<sup>37</sup> The Court further stated that the “preemption of state laws represents ‘a serious intrusion into state sovereignty.’”<sup>38</sup> In the Court’s view, ordering preemption on such a “questionable judicial gloss” would represent “significant judicial intrusion into state sovereignty” and “significant judicial intrusion into Congress’s authority to delimit the preemptive effect of its laws.”<sup>39</sup> The Court noted that in a case decided after *Pacific Gas* it did not “inquire in state legislative purposes” with respect to the purposed preemption of state tort law, because state tort law was outside of the NRC’s authority under the AEA.<sup>40</sup> Also, in *English v. General Electric Company*,<sup>41</sup> “[the Court] went further still, casting doubt on whether an inquiry into state legislative purposes had been either necessary or appropriate in *Pacific Gas* itself.”<sup>42</sup> Finally, the Court noted that *Pacific Gas* warned against diving into inquiries of state legislative intent, as these are frequently “unsatisfactory ventures.”<sup>43</sup>

### C. The AEA Did Not Displace State Law Through Conflict Preemption

Virginia Uranium additionally claimed that the AEA displaced state law through conflict preemption.<sup>44</sup> Virginia Uranium averred that “Virginia’s mining law stands as an impermissible ‘obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’”<sup>45</sup> Specifically, Virginia Uranium argued that the

33. *Virginia Uranium*, 129 S. Ct. at 1903; see 42 U.S.C § 2021(k).

34. *Virginia Uranium*, 129 S. Ct. at 1903; see 42 U.S.C § 2021(k).

35. *Virginia Uranium*, 129 S. Ct. at 1903.

36. *Id.*

37. *Id.*

38. *Id.* (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 488 (1996) (plurality opinion)).

39. *Id.* at 1905 (“This Court’s later cases confirm the propriety of restraint in this area.”).

40. *Id.*; see *Silkwood v. Kerr-Mcgee Corp.*, 464 U.S. 238 (1984).

41. 496 U.S. 72 (1990).

42. *Virginia Uranium*, 129 S. Ct. at 1905 (citing *English*, 496 U.S. at 84–85 n.7)

43. *Id.* at 1907 (citing *Pacific Gas*, 461 U.S. at 216).

44. *Id.*

45. *Id.* (citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

Commonwealth's ban on uranium mining disrupted the "balance" that Congress attempted to strike through the AEA between environmental and safety costs and the utilization of nuclear power.<sup>46</sup>

The Court noted, however, that "only federal laws 'made in pursuance of' the bicameralism and presentment, are entitled to preemptive effect."<sup>47</sup> Evidence that a statute has an expressed or implied pre-emptive purpose must be found in the statute's text and structure.<sup>48</sup> Additionally, the Court warned that complex problems arise when attempting "to ascribe unenacted purposes and objectives to a federal statute."<sup>49</sup> Legislative compromises could go unnoticed and "perfectly legitimate" laws may be overturned "on the strength of 'purposes' that only we can see."<sup>50</sup> Ultimately, the Court stated that the only thing it can be sure of is "what can be found in the law itself."<sup>51</sup> Based on the statutes at hand, the Court concluded that "Congress elected to leaving mining regulation on private land to the [s]tates."<sup>52</sup>

#### IV. DISSENT

In dissent, Chief Justice Roberts, joined by Justices Breyer and Alito, argued that the Court did not address the actual question of whether a state can regulate a non-preempted field as a means of regulating fields that are preempted.<sup>53</sup> The dissent averred that the crux of the issue was whether the Commonwealth implemented the ban on uranium mining as a means to ban the steps that follow mining, such as milling and storing tailings.<sup>54</sup> Furthermore, preemption is required if a state law's purpose "is to regulate within a preempted field."<sup>55</sup> Thus, the dissent argued that an inquiry into Virginia's legislative intent was necessary under the statute and precedent.<sup>56</sup>

#### V. CONCLUSION

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46. *Id.*

47. *Id.* (citing U.S. CONST. ART. VI, CL. 2; Puerto Rico Dept. of Consumer Affairs v. ISLA Petroleum Corp., 485 U.S. 495, 503 (1988)).

48. *Id.* (citing CSX Transp., Inc v. Easterwood, 507 U.S. 658, 664 (1993)).

49. *Id.*

50. *Id.* at 1908.

51. *Id.*

52. *Id.*

53. *Id.* at 1916. Justice Ginsburg, joined by Justices Sotomayor and Kagan, wrote a concurrence in which they stated agreement with most of the opinion but did not believe the Court should have discussed the issue of legislative intent. *Id.* at 1909.

54. *Id.* at 1916.

55. *Id.* (citing *Pac Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212–13 (1983)).

56. *Id.* at 1920.

*Virginia Uranium* demonstrated how the Court will review a claim regarding preemption of state law by the AEA. As it stands, the AEA does not preempt state law in areas that are specifically not under the authority of the NRC and not involved in nuclear safety. The Court made clear that it will not decipher the purposed preemptive effect of a statute without the existence of sound evidence—in the text and structure of the statute—to suggest that Congress intended for preemptive effect. Thus, for now, state laws that ban uranium mining on private lands are secure. However, as the Court articulated, the decision does not mean the land could not be mined; the federal government would just have to acquire the property by purchase or eminent domain.