Virginia has the largest known uranium deposit in the United States. Since its discovery in the 1980s the Virginia legislature has banned uranium mining. Unsurprisingly the land owner, Virginia Uranium, wants to mine. In Virginia Uranium v. Warren the Supreme Court will decide whether the Atomic Energy Act (AEA) preempts the ban.

The AEA allows states to “regulate activities for purposes other than protection against radiation hazards.” Virginia and Virginia Uranium agree uranium mining isn’t an “activity” per the AEA so states may regulate it for safety reasons. Uranium-ore milling and tailings storage are “activities” under the AEA so states can’t regulate them for safety reasons. Milling is the process of refining ore and tailings storage refers to the remaining (radioactive) material which must be stored.

Virginia argued and the Fourth Circuit agreed that its ban on uranium mining isn’t preempted because it doesn’t mention uranium milling or tailings storage. Virginia Uranium points out “no one would want to undertake the pointless expense of constructing a mill and tailings-management complex in Virginia and transporting out-of-state uranium [ore] into the Commonwealth.” But the Fourth Circuit refused to “look past the statute’s plain meaning to decipher whether the legislature was motivated to pass the ban by a desire to regulate uranium milling or tailings storage” when Virginia may ban uranium mining.

Virginia Uranium argued the AEA preempts the mining ban because its purpose and effect is to regulate milling and tailings storage for safety reasons. A dissenting judge agreed with Virginia Uranium that the purpose of Virginia’s ban causes it to be preempted.

According to the dissent, Virginia concedes the purpose of the ban is grounded “on the Virginia legislature’s concerns regarding the radiological safety of uranium ore milling and tailings storage.” The dissent continues: “Until today, each Court of Appeals . . . has held that state statutes enacted to protect against the radiological dangers of activities the AEA regulates are preempted regardless of whether the statutory text reveals that purpose and regardless of whether the statute expressly prohibits an activity the Act regulates.”

Interestingly, the majority opinion argues a 50 state ban on uranium mining “would have little effect.” Ninety percent of uranium used in the United States is imported, states can’t ban mining on federal land, and the federal government can “forcibly expand the production of domestic source material” by buying the land in which uranium is contained.

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