The State and Local Legal Center (SLLC) filed an amicus brief arguing for this result. The SLLC brief encouraged the Court to not inquire into the intent of the Virginia legislature in deciding whether the statute was preempted. Justice Gorsuch, writing for himself and Justices Thomas and Kavanaugh, went to such great length discussing “the perils of inquiring into legislative motive,” that Justices Ginsburg, joined by Justices Sotomayor and Kagan, only joined his plurality opinion as to its result (not its reasoning).

Virginia law “flatly” prohibits uranium mining in the state. The Supreme Court rejected Virginia Uranium’s arguments that the AEA preempts this ban.

First, looking at the text and the structure of the AEA the Court noted it grants “exclusive [federal] authority to regulate nearly every aspect of the nuclear fuel life cycle except mining.”

Section 2021(k) states: “Nothing in this section [that is, §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.” Virginia Uranium argued that under this provision any state law enacted for the purposes of protecting the public against “radiation hazards,” including Virginia’s uranium mining ban, is preempted. The plurality concluded the statute is much more narrow reasoning “only state laws that seek to regulate the activities discussed in §2021 without an NRC agreement—activities like the construction of nuclear power plants—may be scrutinized to ensure their purposes aim at something other than regulating nuclear safety.”

Virginia Uranium next argued that Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Commission (1983) indicated the Court should look into the legislative intent to determine whether the Virginia legislature adopted the mining ban to address radiation safety. According to Justice Gorsuch: “It is one thing to do as Pacific Gas did and inquire exactlying into state legislative purposes when state law prohibits a regulated activity like the construction of a nuclear plant, and thus comes close to trenching on core federal powers reserved to the federal government by the AEA. It is another thing to do as Virginia Uranium wishes and impose the same exacting scrutiny on state laws prohibiting an activity like mining far removed from the NRC’s historic powers.”

Finally, the plurality rejected the argument that Virginia’s ban was preempted because it conflicts with the AEA. More specifically, Virginia Uranium argued that even if “the text of the AEA doesn’t touch on mining in so many words, but its authority to regulate later stages of the nuclear fuel life cycle would be effectively undermined if mining laws like Virginia’s were allowed.” According to the plurality, the text and the structure of the AEA don’t support this conflict preemption argument.

John J. Korzen, Wake Forest University School of Law Appellate Advocacy Clinic, wrote the SLLC amicus brief which was joined by the National Conference of State Legislatures, the National League of Cities, and the International City/County Management Association.

By:
Monday, June 17, 2019 at 12:15 PM
Tags:
Atomic Energy Act, Supreme Court, conflict preemption, field preemption, preemption, state law, uranium mining, Policy Area, Environment, Waste, Nuclear Waste