No. 16-970

In The
Supreme Court of the United States

BRANDON LANCE RINEHART,
Petitioner,

v.

PEOPLE OF CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of California

SUPPLEMENTAL BRIEF OF PETITIONER

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Table of Contents

Argument 1

I. The United States Correctly Rejects the Supreme Court of California's Holding 1

II. The United States Casts No Doubt On the Conflict Between the Supreme Court of California and the Eighth Circuit, Federal Circuit, and Colorado Supreme Court 2

III. The United States' Remaining Arguments Lack Merit 3

Conclusion 5

Table of Authorities

Cases

Brubaker v. Bd. of Cnty. Commissioners,
652 P.2d 1050 (Colo. 1982).. 3

California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987) 3

Crosby v. Nat'l Foreign Trade Council,
530 U.S. 363 (2000) 1

Hines v. Davidowitz, 312 U.S. 52 (1941)................ 1, 4

McCulloch v. Maryland,
17 U.S. (4 Wheat.) 316 (1819) 1

Skaw v. United States,
740 F.2d 932 (Fed. Cir. 1984) 2-3

South Dakota Mining Association v. Lawrence County,
155 F.3d 1005 (8th Cir. 1998) 2-3

Statutes

30 U.S.C. § 1281... 4

Cal. Water Code § 13172.5(b)(3)................................ 4

Pub. L. No. 91-631, 84 Stat. 1876 (Dec. 31, 1970),
codified at 30 U.S.C. § 21a..................................... 4

Rule

S. Ct. R. 15.8 1

Pursuant to this Court's Rule 15.8, Brandon Rinehart submits this supplemental brief responding to the Brief for the United States as *Amicus Curiae*.

Argument

I

The United States Correctly Rejects the Supreme Court of California's Holding

"The United States agrees [with Rinehart] that a state prohibition on all mining within its borders would be preempted as applied to unpatented mining claims on federal land because it would stand as 'an obstacle to the accomplishment and execution of the full purposes and objectives' of the Mining Act." Br. of United States 14 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). In taking that position, the United States is rejecting the Supreme Court of California's holding that the Mining Law only "protect[s] miners' real property interests" from federal interference but imposes no limits on "the states' police powers[.]" *See* Pet. App. A-1 to A-2; *see also* Reply Br. 7-8.

If, as it appears, the United States argues preemption would apply *only* when a state completely bans all mining within its borders, that extremely limited view of preemption is contrary to this Court's precedents. The "unavoidable consequence" of the Supremacy Clause, *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819), is that states cannot erect "obstacle[s] to the accomplishment and execution of the *full* purposes and objectives of Congress," *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (emphasis added). The United States' proposed test would invite states to frustrate Congress' objectives almost entirely, if they permit some trivial

amount of mining somewhere within their borders. Such a test would prove unworkable in practice.

More importantly, in proposing a new test that is contrary to the Supreme Court of California's holding, as well as the Eighth Circuit's, Federal Circuit's, and Colorado Supreme Court's, the United States has reinforced the need for this Court's review. If the United States' view of preemption were accurate, this Court's review would correct two errant lines of conflicting precedent.

II

The United States Casts No Doubt On the Conflict Between the Supreme Court of California and the Eighth Circuit, Federal Circuit, and Colorado Supreme Court

The Supreme Court of California's decision cannot be reconciled with the Eighth Circuit's decision in *South Dakota Mining Association v. Lawrence County*, holding that the Mining Law preempts state laws that are "prohibitory, not regulatory[.]" 155 F.3d 1005, 1011 (8th Cir. 1998). Like this case, *South Dakota Mining* concerned a ban on a particular mining method (surface metal mining) that was the only practicable means to mine certain federal lands. *See id*. Although the county conceded on appeal that its ban was preempted, the United States ignores that an intervenor stepped in to defend the ban. *See id*. at 1008 n.3. Thus, the question was properly before the court, which resolved it in a way that clearly conflicts with the decision below. *See* Pet. 23-25.

The United States' efforts to dismiss the Federal Circuit's and Colorado Supreme Court's decisions fare no better. *See Skaw v. United States*, 740 F.2d 932

(Fed. Cir. 1984); *Brubaker v. Bd. of Cnty. Commissioners*, 652 P.2d 1050 (Colo. 1982). Although those decisions predate *California Coastal Commission v. Granite Rock Co.*, 480 U.S. 572 (1987), both are entirely consistent with that decision. *See* Pet. 22-23. *Granite Rock* held that Congress has left states with some authority to regulate mining on federal lands, but left open whether particular regulations go too far. *See Granite Rock*, 480 U.S. at 593. The Eighth Circuit, Federal Circuit, and Colorado Supreme Court have all answered that question the same way: states cross the line when they prohibit mining in lieu of regulating it. *See* Pet. 23-27.

III

The United States' Remaining Arguments Lack Merit

The United States makes two arguments against resolving the question presented in this case. First, it criticizes Rinehart for relying on the Mining Law for his preemption claim, rather than several other federal land-use laws. Second, it argues that this conflict between state and federal law may prove short-lived because California might, someday, lift its prohibition. Both arguments lack merit.

Rinehart's preemption argument properly focuses on the Mining Law because it establishes the congressional purposes that are frustrated by California's ban. *See South Dakota Mining*, 155 F.3d at 1011 (holding a county ban on surface metal mining preempted by the Mining Law). Congress has updated the Mining Law several times to accommodate federal and state environmental regulations, including through the laws cited by the United States. For

instance, Congress has authorized the Secretary of Interior to withdraw federal lands from the Mining Law at the request of a state; a process California has opted not to pursue. 30 U.S.C. § 1281; *see* Pet. 9. The question presented plainly encompasses these laws updating the Mining Law. *See* Pet. i (asking whether "the Mining Law of 1872, as amended" preempts state mining bans); Pet. 8-9 (describing those laws). Congress has expressly confirmed that the Mining Law's purpose has endured through these updates. *See* Pub. L. No. 91-631, 84 Stat. 1876, § 2 (Dec. 31, 1970), *codified at* 30 U.S.C. § 21a (confirming "the continuing policy" to encourage mining on federal land). Thus, it is that purpose that must be considered in determining whether California's ban stands as "an obstacle to the accomplishment" of Congress' "full purposes and objectives[.]" *Hines*, 312 U.S. at 67.

Finally, the United States suggests this is a poor vehicle to resolve the conflict among the courts of appeals because California *may* lift its ban at some unknown time in the future. This argument poses no vehicle problems because:

(1) The Supreme Court of California placed no import on the theoretically temporary nature of the ban, *see* Pet. 5;

(2) California's ban is not set to expire at any set time but can continue indefinitely, *see* Pet. 12;

(3) California recently amended its law to permit agencies to issue regulations that could lift the ban but (a) imposes no requirement that they do so, (b) sets no timeline for them to act, and (c) expressly authorizes them to permanently prohibit mining, *see* Pet. 12-13; Cal. Water Code § 13172.5(b)(3); and

(4) No regulations to lift the ban have been proposed, much less adopted.

Conclusion

The petition for a writ of certiorari should be granted.

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