

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-1275

VIRGINIA URANIUM, INC., ET AL., PETITIONERS

v.

JOHN WARREN, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioners and requests that the United States be allowed ten minutes of argument time. Petitioners have consented to an allocation of ten minutes of their argument time to the United States.

This case presents the question whether the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 et seq., preempts a state law that prohibits an activity within a State's regulatory

jurisdiction (here, conventional uranium mining), when such a law is grounded in radiological-safety concerns about related activities that are federally regulated under the AEA (here, the milling of uranium ore and the disposal of "tailings" byproduct). Because this case directly implicates federal regulatory responsibilities, the United States has a substantial interest in the Court's resolution of the preemption issue.

On July 26, 2018, the United States filed a brief as amicus curiae supporting petitioners. In its brief, the United States argues that the AEA occupies the field of nuclear-safety regulation, and that it preempts any state uranium-mining ban that is grounded in concerns about the radiological safety of federally regulated uranium milling and tailings management. U.S. Br. 15-21. Because petitioner's complaint credibly alleged that Virginia's uranium-mining ban was motivated by such radiological-safety concerns, the United States argues that the complaint should not have been dismissed. Id. at 22-30. The United States further argues in its brief that, if Virginia's uranium-mining ban was motivated by radiological-safety concerns, it is also barred by conflict-preemption principles because it is inconsistent with the judgment of federal authorities that uranium milling and tailings management can be safely conducted if performed in accordance with federal requirements. Id. at 30-34.

At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case. The United States has participated in oral argument as amicus curiae in other cases involving the preemptive scope of the AEA. See English v. General Elec. Co., 496 U.S. 72 (1990); Goodyear Atomic Corp. v. Miller, 486 U.S. 174 (1988); Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984); Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190 (1983). The government's participation in oral argument will provide the Court with the federal perspective in this case, and division of argument will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

AUGUST 2018