

16-1275 VIRGINIA URANIUM, INC. V. WARREN

DECISION BELOW: 848 F.3d 590

LOWER COURT CASE NUMBER: 16-1005

QUESTION PRESENTED:

This Court has held that the Atomic Energy Act ("AEA") "occupie[s] the entire field of nuclear safety concerns," *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 212 (1983), and it has "defined the preempted field, in part, by reference to the motivation behind [a challenged] state law," *English v. General Elec. Co.*, 496 U.S. 72, 84 (1990). In accordance with these precedents, the Tenth Circuit has held that "a state cannot use its authority" over activities indisputably subject to State regulation as a pretextual "means of regulating radiological hazards" arising from activities entrusted by the AEA to the Nuclear Regulatory Commission ("NRC"). *Skull Valley Band of Goshute Indians v. Nielson*, 376 F.3d 1247-48 (10th Cir. 2004). *Accord, e.g., Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 416 (2d Cir. 2013). In contrast, the divided panel below held that so long as a challenged state law "does not [on its face] purport to regulate an activity within the [AEA]'s reach," courts may *not* "conduct a pretext analysis" to "decipher whether the legislature was motivated" by radiological safety concerns." App.14a, 15a, 18a.

The question presented is:

Does the AEA preempt a state law that on its face regulates an activity within its jurisdiction (here uranium mining), but has the purpose and effect of regulating the radiological safety hazards of activities entrusted to the NRC (here, the milling of uranium and the management of the resulting tailings)?

CERT. GRANTED 5/21/2018