VIRGINIA URANIUM, INC.
v. JOHN WARREN

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Whether the Atomic Energy Act pre-empts 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 Nuclear Regulatory Commission (here, the milling of uranium and the management of the resulting tailings).
Petitioners own the largest natural uranium deposit in the United States.

They are challenging a 1983 Virginia statute passed by the state’s General Assembly which enacted a moratorium on uranium mining:

“Notwithstanding any other provision of law, permit applications for uranium mining shall not be accepted by any agency of the Commonwealth prior to July 1, 1984, and until a program for permitting uranium mining is established by statute.”
Virginia Uranium, Inc.’s Arguments

1. The Virginia moratorium is pre-empted by the Atomic Energy Act, which generally precludes states from regulating matters of radiation safety that come within the jurisdiction of the Nuclear Regulatory Commission.

2. The moratorium should fall because it conflicts with the AEA’s purpose of promoting nuclear development in the United States.
Who Has Jurisdiction?

The NRC does not have jurisdiction to regulate traditional uranium mining on private lands; that authority belongs to the states.

The AEA requires mills and tailings-disposal facilities to hold NRC licenses.

The AEA provides that nothing in the relevant sections affects states’ authority to “regulate activities for purposes other than protection against radiation hazards.”
### Related Cases

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<td>• The Supreme Court <strong>upheld</strong> a California statute that imposed a moratorium on new nuclear power plants in the state until the United States developed a means of disposing of spent nuclear fuel.</td>
<td>• The 10th Circuit <strong>rejected</strong> a Utah law that established a licensing scheme for private storage of spent nuclear fuel.</td>
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<td>• Although the challengers contended that the state was motivated by safety concerns, the Supreme Court accepted the state’s economic rationale and refused to evaluate the state’s “true motive.”</td>
<td>• The court reasoned that the law’s clear purpose was to regulate radiation safety.</td>
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Key Issue

- The real issue is whether the Supreme Court is willing to inquire into legislative motive to define the scope of the pre-emption.

- On its face, the moratorium extends only to uranium mining—a matter that unquestionably lies well within state authority. If the Court stops here, it would uphold the moratorium.
  - This was the outcome in at the District Court and at the 4th Circuit.

- On the other hand, the Court could decide to examine whether radiation safety concerns (from milling and tailings management) played any role in the General Assembly’s decision to pass the moratorium.
  - Virginia Uranium argues that there is evidence of an impermissible safety-related motive behind the moratorium.
Virginia Uranium’s counsel argued that the court should ask whether a prohibited purpose was a “motivating factor.”

The U.S. Solicitor General argued that a plausible non-safety rationale could save a statute unless it was entirely foreclosed by the legislative history.

The Commonwealth’s counsel reinforced the fact that the statute regulates only uranium mining, not milling or tailings management.
How Will the Supreme Court Rule?

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Ryan represents and advises energy industry participants and investors in litigation, transactional, and regulatory matters before the U.S. Nuclear Regulatory Commission, NRC Agreement States, the U.S. Department of Energy, and in federal court. Ryan has extensive experience in NRC licensing matters and related safety and environmental proceedings before the Commission and the Atomic Safety and Licensing Board. He also has conducted numerous independent investigations for NRC licensees, represented clients in whistleblower proceedings, and advised clients on investigations by the NRC’s Office of Investigations.

Prior to joining Morgan Lewis, Ryan was an attorney in the Office of the General Counsel at the NRC, where he advised and represented the Commission and agency staff, and served as acting Regional Counsel in the NRC’s Region III office.
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