People v. Rinehart, Conflicting Jurisprudence, and Certiorari

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I. INTRODUCTION

On August 22, 2016, the California Supreme Court rendered a decision in *People v. Rinehart* that upheld an effective ban on suction dredge mining in the state.[2] Suction dredge mining is a method that uses a high powered suction device to vacuum loose material from streambeds and then separate the silt and gravel from valuable minerals, often gold. This method of mining is known to disturb endangered coho salmon habitats and contribute to mercury poisoning in humans and fish. At the same time, miners argue that it is the only practicable method of excavating gold.[3] These conflicting interests were described by the *Rinehart* court as "arising from the competing desires to exploit and to preserve [the state's] various resources."[4]

Despite the court's ruling, this may not be the end of the line for the case. James Buchal, the attorney arguing against the ban, has said he might appeal to the United States Supreme Court.[5] The defendant has ninety days from the entry of state court judgment to file for certiorari.[6] It is difficult to predict the chances that the Supreme Court would grant certiorari, but for the reasons below, the defendant may have a viable prospect to get before the Court.

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2. People v. Rinehart, 377 P.3d 818 (Cal. 2016).
3. *Id.* at 820.
4. *Id.* at 820–21.
5. Sudhin Thanawala, *California Court Keeps Ban on Dredging Gold*, U.S. NEWS, Aug. 22, 2016, http://www.usnews.com/news/business/articles/2016-08-22/california-court-to-decide-fight-over-gold-mining-technique [https://perma.cc/3BHC-B3DS].
6. SUP. CT. R. 13.

II. BACKGROUND

In 2012, defendant Brandon Rinehart was convicted of a misdemeanor and sentenced to three years of probation for operating a suction dredge without a permit on federal land in California. Suction dredging in California requires a permit issued by the Department of Fish and Wildlife, but the issuance of such permits has been legislatively banned.[7] The California legislature imposed the ban in response to concerns that suction dredging was having adverse environmental impacts. At issue in *Rinehart* was whether this ban was preempted by the federal Mining Law of 1872, which declares "[e]xcept as otherwise provided, all valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase . . . ."[8] The law allows miners "to enter onto federal public lands, stake a claim, and obtain the exclusive right to mine the land, without payment to the United States government."[9] The Mining Law was enacted in the mid-nineteenth century in reaction to the discovery of gold in the Sierra Nevada mountains. Since its adoption, the scope of the law has narrowed in application to hard rock minerals such as gold, silver, lead, copper, and iron.[10]

State law can be preempted if it "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress."[11] The California Supreme Court did not believe the suction dredge ban was preempted because "no general federal right to mine, superior to the exercise of state police powers, was intended" by the Mining Law of 1872. After looking into the legislative history of the Mining Law, the court concluded that its principal motivation was "removing federal obstacles to mining." According to the court, the law was intended "simply [as] an assurance that the ultimate original landowner, the

7. Cal. Fish & Game Code §§ 5653, 5653.1 (2012).

8. 30 U.S.C. § 22 (2012).

9. Tyler L. Weidlich, *The Mining Law Continuum—Is There a Contemporary Prospect for Reform?*, 44 BRANDEIS L.J. 951, 951 (2006).

10. *Id.* at 953.

11. Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 581 (1987).

United States, would not interfere by asserting its own property rights."[12]

III. THE LIKELIHOOD THAT THE SUPREME COURT WILL GRANT CERTIORARI

Attaining certiorari before the U.S. Supreme Court is no easy feat—only about 80 out of 8,000 certiorari petitions are granted each term.[13] Justices have "virtually unfettered discretion" in deciding which cases to accept, and the process "lacks most of the trappings of traditional judicial decisionmaking—collegial deliberation, constraining criteria, majority rule, and public accountability."[14] Despite this uncertainty, there is significant evidence that conflict between federal and state courts "dramatically increases the probability that the Court will grant a case."[15] A study of the Court's 1982 term found that the presence of conflict increased the chances of certiorari being granted by 33%.[16] Rule 10 of the Supreme Court Rules states that whether "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" is an important factor in granting certiorari.[17] The phrase "*important* federal question" implies that conflict alone is not enough to render a federal question important.

A. Existence of a Conflict

The *Rinehart* decision creates such a conflict between the California Supreme Court and the federal Eighth Circuit Court of Appeals. In *South Dakota Mining Ass'n v. Lawrence County*, the Eighth Circuit held that a county ordinance in South Carolina banning surface metal mining was preempted by the

12. *Rinehart*, 377 P.3d at 825–26.

13. Frequently Asked Questions, U.S. SUPREME CT., https://www.supremecourt.gov/faq.aspx.

14. Margaret M. Cordray & Richard Cordray, *The Philosophy of Certiorari: Jurisprudential Considerations in Supreme Court Case Selection*, 82 WASH. U. L.Q. 389, 398 (2004).

15. *Id.* at 407.

16. Emily Grant et al., *The Ideological Divide: Conflict and the Supreme Court's Certiorari Decision*, 60 CLEV. ST. L. REV. 559, 572 (2012).

17. SUP. CT. R. 10.

Mining Law of 1872.[18] There, the court determined that the Mining Law had several purposes, including "the encouragement of exploration for and mining of valuable minerals located on federal lands . . . , and allowing state and local regulation of mining so long as such regulation is consistent with federal mining law." The court then reasoned that because surface metal mining was the only practicable way of mining the resource deposits, the ordinance was effectively a ban on mining in the area and thus preempted by federal law.[19]

Rinehart fundamentally conflicts with *Lawrence County*. While *Rinehart* considers the congressional purpose of the Mining Law narrowly, *Lawrence County* considers it broadly. How congressional purpose is construed in this context is crucial. If, as *Rinehart* holds, the purpose of the Mining Law is primarily to prevent federal obstacles to mining, then the state law banning suction dredges does not conflict with the purpose. But if, as *Lawrence County* holds, the purpose of the mining law is to encourage mining on federal land, the suction dredge ban does conflict with the purpose, particularly to the extent that suction dredge mining is the only practicable technique to extract certain minerals.

Rinehart acknowledges this conflict. Referring to *Lawrence County*, the court wrote:

> We do not disagree that Congress adopted a real property regime in the Mining Law of 1872 with the larger purpose in mind of encouraging ongoing mineral exploration across the West. Where we part company is with the conclusion that such general, overarching goals would be frustrated by state and local determinations that the use of particular methods, in particular areas of the country, would disserve other compelling interests.[20]

Rinehart does not attempt to distinguish *Lawrence County* or limit it to its facts. Instead, *Rinehart* makes explicit that the two courts "part company."

18. *S.D. Mining Ass'n v. Lawrence Cty.*, 155 F.3d 1005 (8th Cir. 1998).
19. *Id.* at 1010–11.
20. People v. Rinehart, 377 P.3d 818, 830 (2016).

B. Importance of the Federal Question

The question addressed in *Rinehart* is significant. The Mining Law of 1872 is "the fundamental statute governing hard rock mineral development on [federal] public lands[,]" and it is not without controversy.[21] Environmentalists consider the law "a hurtful and embarrassing reminder of the worst of nineteenth-century thinking[,]"[22] while the mining industry argues that heightened regulations would "make many mines economically infeasible, thus depriving the nation of vital domestic resources and inducing economic devastation for many rural communities."[23] The law is so frequently the object of dispute, that one expert has estimated it has sparked the most judicial opinions of any statute.[24]

In any event, it is clear that the California Supreme Court's decision in *Rinehart* is a significant victory for environmentalists. By holding that the Mining Law was principally motivated by a desire to remove federal obstacles to mining, the court has opened the door to more state regulation of mining on federal land. Under the reasoning of *Rinehart*, no state regulation would frustrate congressional purpose if the Mining Law is seen to be aimed at federal regulations. Indeed, the California Supreme Court disagreed with the Eighth Circuit that "state and local determinations" on "the use of particular methods, in particular areas of the country" would frustrate the goals of Congress. While the language of "particular methods" and "particular areas" seems limiting at first blush, in reality it is quite the opposite. Any regulation on any form of mining can be considered a "particular method" in a "particular area." Short of a state ban on all mining, it is hard to imagine what would not fall under the umbrella of the *Rinehart* court's decision as unpreempted. And significantly, in *Rinehart*, suction dredge mining was (allegedly) the only practicable form of mining gold in the area.

21. Roger Flynn, *The 1872 Mining Law as an Impediment to Mineral Development on the Public Lands: A 19th Century Law Meets the Realities of Modern Mining*, 34 LAND & WATER L. REV. 301, 302 (1999).

22. Alan Steptoff, *An Unhappy Birthday for the 1872 Mining Law*, EARTH ISLAND J. (May 17, 2016), http://www.earthisland.org/journal/index.php/elist/eListRead/an_unhappy_birthday_for_ the_1872_mining_law [https://perma.cc/BX46-UA8H].

23. Weidlich, *supra* note 9, at 952.

24. J. LESHY, THE MINING LAW: A STUDY IN PERPETUAL MOTION 20 (1987).

IV. CONCLUSION

The existence of a clear and significant conflict among state supreme courts and/or federal courts of appeals is an important factor in the Supreme Court's decision to grant certiorari. Given the explicit admission by the California Supreme Court that they disagree with the Eighth Circuit Court of Appeals on the preemptive scope of the Mining Law of 1872, there is a clear conflict between the courts. The significance of this conflict is demonstrated by both the outcome of the case, and its implications for future preemption claims under the Mining Law.

While it is impossible to objectively predict *Rinehart*'s chances of being granted certiorari, its chances are better than average. However small those chances may still be, it is surely worth the petition for the defendant's counsel. Perhaps the justices will be swayed by the conflict between state and federal court interpretations as well as the impact on environmental policies and the amount of litigation surrounding the Mining Law.