JUSTICE WERDEGAR, STATE POLICE POWER AND OBSTACLE PREEMPTION:

An Enduring Legacy

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Among former California Supreme Court Justice Kathryn Werdegar's important legacies is her body of opinions interpreting the scope of implied federal preemption of state laws. Justice Werdegar's opinions in this area reveal her understanding of the legitimate scope of state police-power protection of public health, consumer protection, and the environment in the face of federal preemption defenses to state law claims. In some cases, preemption of a particular state law is not clear on the face of the federal statute, but a defendant contends that Congress' objectives will be frustrated by the state law at issue and consequently seeks to apply "obstacle preemption" as a defense. In the opinions where she addressed obstacle preemption, Justice Werdegar viewed implied federal preemption in an appropriately bounded way. Her opinions acknowledge the room for state authority to apply expansively in these important areas, where state policy power is at its strongest, in the absence of a clear intent by Congress to forbid application of state law. Her cogent approach to preemption has ensured that California retains its proper authority to exercise police-power functions for the betterment of the state's residents.

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OBSTACLE PREEMPTION IN THE CALIFORNIA SUPREME COURT

The doctrine of obstacle preemption requires that state laws cannot coexist with federal laws "where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' "[1] Frequently, defendants faced with liability under state statutes will attempt to invoke obstacle preemption, claiming that liability available under the state law frustrates the will of Congress in enacting a federal statute in a related area of law. There are many areas where federal and state laws cover similar conduct or have overlapping jurisdiction, so over-application of this doctrine, especially in fields where state regulatory authority is traditionally robust, creates the potential for widespread invalidation of state statutes meant to regulate or prohibit conduct that the California Legislature believes to be potentially injurious to California residents.

In the final decade of her long career on the bench, Justice Werdegar authored several unanimous opinions addressing the scope of obstacle preemption in a range of contexts. Three of her opinions on obstacle preemption stand out as particularly noteworthy: *Viva! Int'l Voice for Animals v. Adidas Promotional Retail Operations, Inc.*;[2] *Quesada v. Herb Thyme Farms, Inc.*,[3] and *People v. Rinehart*.[4] These opinions demonstrate the justice's consistent application of a judicial philosophy — consistent with longstanding precedent — that limits obstacle preemption to a narrow range of cases where application of state law truly frustrates Congress' purpose. This approach retains states' ability to protect health, safety, consumer rights, and the environment even where Congress has enacted laws on the same subject.

These opinions follow precedent in California, including a much-cited opinion authored by former Chief Justice Ronald George, that applies a similar philosophy.[5] All these cases, in turn, follow clear federal precedent — now potentially at risk as the U.S. Supreme Court's composition changes

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[1] Arizona v. United States, 567 U.S. 387, 399–400 (2012) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

[2] 41 Cal.4th 929 (2007).

[3] 62 Cal.4th 298 (2015).

[4] 1 Cal.5th 652 (2016).

[5] Bronco Wine Co. v. Jolly, 33 Cal.4th 943 (2004), as modified (Oct. 13, 2004).

under President Donald Trump — applying a presumption against federal preemption of state laws. This presumption is particularly strong in obstacle preemption cases.[6] And the cases are consistent with Ninth Circuit precedent, including the recent case *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris*,[7] in which a three-judge panel upheld very strict regulations on the production of foie gras in California against a preemption challenge.

Where Congress does not explicitly state that it is preempting state authority, courts find implied preemption in three situations. First, state law cannot coexist with federal law when it is clear that Congress intended, by comprehensive legislation, to occupy the entire field of regulation, leaving no room for the states to supplement federal law.[8] Second, state law cannot stand when compliance with both federal and state regulations is an impossibility.[9] And finally, when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," it must yield to federal law.[10]

JUSTICE WERDEGAR'S CONTRIBUTIONS TO OBSTACLE PREEMPTION JURISPRUDENCE

VIVA! INT'L VOICE FOR ANIMALS v. ADIDAS PROMOTIONAL RETAIL OPERATIONS, INC.: STATE AUTHORITY TO PROTECT WILDLIFE

Justice Werdegar made her first major contribution to the jurisprudence of obstacle preemption in *Viva! Int'l Voice for Animals v. Adidas Promotional Retail Operations, Inc.*[11] In *Viva!*, the Court considered the application of a state law that prohibited products made from kangaroo from being imported into or sold within California.[12] The defendant asserted

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6 *See, e.g.,* Quesada v. Herb Thyme Farms, Inc., 62 Cal.4th 298, at 314–15.

7 729 F.3d 937 (9th Cir. 2013).

8 Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947).

9 Florida Avocado Growers v. Paul, 373 U.S. 132, 142–143, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963).

10 Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941). Bronco Wine Co. v. Jolly, 33 Cal.4th 943, at 428.

11 41 Cal.4th 929.

12 Cal. Pen. Code, § 653o.

that the state law thwarted federal policies, embodied in the application of the Endangered Species Act to kangaroos, that were intended to influence the management of kangaroo populations in Australia. The defendant thus urged a finding of preemption. The Court found that the state law was not an obstacle to any federal policy.

In the 1970s, the U.S. Fish and Wildlife Service listed various species of kangaroos as threatened species under the Endangered Species Act. As noted by the court:

> Such a listing carries with it a prohibition on importation of the species, subject to exemptions or permits issued under the Act. (16 U.S.C. §§ 1538, 1539; 50 C.F.R. §§ 17.21(b), 17.31(a) (2007).) Fish and Wildlife thereafter formally banned commercial importation of the three species, as well as their body parts and products made from the bodies of the species. (45 Fed.Reg. 40959 (June 16, 1980); 60 Fed.Reg. 12888 (Mar. 9, 1995).) The ban was to remain in place until those Australian states commercially harvesting the three species "could assure the United States that they had effective management plans for the kangaroos, and that taking would not be detrimental to the survival of kangaroos." (60 Fed.Reg. 12905 (Mar. 9, 1995); see 16 U.S.C. § 1533(d) [authorizing special species regulations]; 50 C.F.R. §§ 17.21(b), 17.31(a) (2007) [import restrictions apply absent special regulation].)[13]

Years later, the Fish and Wildlife Service delisted the species, meaning that federal law no longer prohibits their importation into the United States.[14] The defendant argued that because, under the federal act, states may not "prohibit what is authorized pursuant to an exemption or permit provided for in this chapter or in any regulation which implements this chapter," federal policy will not allow a state to prohibit importation of non-endangered, or delisted, species into the United States. (§ 6(f).)

The Court disagreed. Justice Werdegar found:

> In the end, Adidas's preemption argument rests on the assertion that Penal Code section 653o is an obstacle to federal law because

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[13] *Viva! Int'l Voice for Animals v. Adidas Promotional Retail Operations, Inc.,* 41 Cal.4th 929, at 947.

[14] *Id.*

> the current state of federal law allows kangaroo trade. Not so. The key here is the meaning of the word "authorized" in section 6(f). The trial court and Court of Appeal viewed a "failure to prohibit" as equivalent to "authorization." But if that were so, there would be no room for state regulation, despite an evident federal intention that there be significant room for such regulation. Either an action would be prohibited by federal law, in which case state regulation would be superfluous, or it would not be prohibited by federal law, in which case state regulation would be preempted (in these courts' views). The express language and legislative history of section 6(f) preclude this reading. Instead, every action falls within one of three possible federal categories. An action may be prohibited, it may be authorized, or it may be neither prohibited nor authorized. Within this last gray category of actions — a category that at present includes the import of products made from these three kangaroo species — section 6(f) grants states free room to regulate.[15]

In its analysis, the court relied on the police power interest in regulating wildlife management, citing numerous authorities. The court noted:

> There is a presumption against federal preemption in those areas traditionally regulated by the states: "[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." ([citations omitted]; Bronco Wine Co. v. Jolly, 33 Cal.4th at p. 974 [in areas of traditional state regulation, a "strong presumption" against preemption applies and state law will not be displaced "unless it is clear and manifest that Congress intended to preempt state law"]; Olszewski v. Scripps Health, 30 Cal.4th at p. 815 [presumption against preemption " 'provides assurance that the "federal-state balance" [citation] will not be disturbed unintentionally by Congress or unnecessarily by the courts' "].)[16]

The court found that despite the implication of foreign policy interests and federal application of the Endangered Species Act alongside traditional state police powers, there was no preemption. It summed up its conclusion

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15 *Id*. at 952.

16 *Id*. at 938.

by noting that "Congress has expressly identified the scope of the state law it intends to preempt; hence, we infer Congress intended to preempt no more than that absent sound contrary evidence."

The opinion demonstrates careful attention to legislative text in order to infer intent to preempt or not to preempt state law. Its impact is to confirm that state regulation to address a traditional police power area, wildlife protection, can exist alongside the flagship federal law on the same topic, where Congress did not clearly determine otherwise.

QUESADA V. HERB THYME FARMS, INC.: STATE AUTHORITY TO PROTECT CONSUMERS THROUGH REGULATING FOOD LABELING FRAUD

Justice Werdegar's second significant foray into obstacle preemption analysis was in *Quesada v. Herb Thyme Farms, Inc.*[17] In *Quesada*, the court considered whether a plaintiff could bring a cause of action for fraud or misrepresentation in a California state court alleging that a grower certified under the federal Organic Foods Production Act of 1990[18] is intentionally mislabeling conventionally grown produce and selling it as organic. Thus, while in *Viva!* a state statute was claimed to be incapable of coexisting with a federal statute, the defendant in *Quesada* argued that certain state tort actions, otherwise available under state law, could not apply to specific conduct in light of the federal statutory scheme. Here, too, the court found in favor of state law's ability to address the conduct at issue.

When Congress developed national organic standards, its intention was to provide uniform national standards for consumers. Congress was explicit about its purpose:

> "It is the purpose of this chapter — [¶] (1) to establish national standards governing the marketing of certain agricultural products as organically produced products; [¶] (2) to assure consumers that organically produced products meet a consistent standard; and [¶] (3) to facilitate interstate commerce in fresh and processed food that is organically produced." (7 U.S.C. § 6501.) These three goals interrelate and mutually reinforce each other. A uniform national standard

[17] 62 Cal.4th 298.

[18] 7 U.S.C. §§ 6501–6522.

> for marketing organic produce serves to boost consumer confidence that an "organic" label guarantees compliance with particular practices, and also deters intentional mislabeling, "so that consumers are sure to get what they pay for." In turn, uniform standards "provide a level playing field" for organic growers, allowing them to effectively market their products across state lines by eliminating conflicting regulatory regimes. Standards that enhance consumer confidence in meaningful labels and reduce the distribution network's reluctance to carry organic products may increase both supply and demand and thereby promote organic interstate commerce.[19]

Nonetheless, the law provided no private federal cause of action to enforce its provisions.

The court also considered the field of food labeling in order to assess the role of state regulation in the context of the federal law. It noted that this regulatory authority was an exercise of state police powers:

> The regulation of food labeling to protect the public is quintessentially a matter of longstanding local concern. The first state legislation designed to address fraud and adulteration in food sales was enacted in 1785. California began regulating food mislabeling in the 1860s, just a few years after statehood. In response to widespread mislabeling, misbranding, and adulteration by food suppliers, by the late 18th century "many if not most states exercised their traditional police powers to regulate generally the marketing of impure or deceptively labeled foods and beverages."[20]

Ultimately, the court concluded that a state tort cause of action was very much in concert with Congress' goals:

> By all appearances, permitting state consumer fraud actions would advance, not impair, these goals. Substitution fraud, intentionally marketing products as organic that have been grown conventionally, undermines the assurances the USDA Organic label is intended to provide. Conversely, the prosecution of such fraud, whether

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19 62 Cal.4th 298, at 316 (citations omitted).

20 *Id*. at 313 (citations omitted).

> by public prosecutors where resources and state laws permit, or through civil suits by individuals or groups of consumers, can only serve to deter mislabeling and enhance consumer confidence. (See Bates v. Dow Agrosciences LLC, supra, 544 U.S. at p. 451, 125 S.Ct. 1788 ["Private [state] remedies that enforce federal misbranding requirements" can "aid, rather than hinder" the effectiveness of those labeling requirements].)[21]

In the end, the Court in *Quesada* decisively held that the state cause of action could readily coexist with or even aid in furthering the goals of the federal law, and was not an obstacle to Congress' goals in enacting the statute. Justice Werdegar's close attention to statutory text, in light of the especially strong presumption against implied preemption of core state police powers, led directly to this conclusion.

PEOPLE V. RINEHART: STATE AUTHORITY TO REGULATE MINING'S ENVIRONMENTAL IMPACTS

The capstone of Justice Werdegar's obstacle preemption jurisprudence was her unanimous opinion in favor of the state's moratorium on suction-dredge mining on federal lands in *People v. Rinehart*.[22] This case raised the question whether a state may enact or enforce laws or regulations that have the effect of prohibiting particular methods of mining on federal lands. Justice Werdegar's opinion confirmed that the federal Mining Law of 1872[23] can coexist with robust regulatory authority, for the purpose of environmental protection, over mining on federal public lands.

The narrow question in *Rinehart* was whether the California Legislature could lawfully enact a moratorium on suction-dredge mining in streambeds that included mining on federal lands. But the case necessarily confronts a broader issue: whether a range of state regulations on mining that apply to federal lands may be preempted by the Mining Law. Miners and property-rights advocates have long argued that states' authority to restrict mining on federal lands is very limited. On the other hand, states such as California and Oregon have determined that in certain cases, mining

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[21] *Id*. at 316–17 (citations omitted).

[22] 1 Cal.5th 652.

[23] R.S. §§ 2319 *et seq.* (codified at 30 U.S.C. §§ 22 *et seq.*).

will impair environmental quality or other resources to such an extent that sharply limiting or even prohibiting certain activities is warranted.

The General Mining Law of 1872 allows U.S. citizens to explore for, discover, and mine "valuable minerals" from most federal lands without paying the government for the minerals. (Today, the Mining Law applies to "hard rock" minerals such as metals, but does not apply either to fuel minerals, such as coal, oil and gas, or to "common varieties" including, for example, sand and gravel for use in construction.) The Mining Law facilitated rapid development of parts of the American West and some significant environmental cost.

Federal land management has evolved significantly since the 1870s. Statutes such as the Federal Land Policy and Management Act (FLPMA)[24] and the National Forest Management Act (NFMA)[25] require the government to balance multiple uses before committing to allow particular activities. At the same time, Congress has never amended the Mining Law. And the Mining Law's general framework of allowing hard rock mining activities on federal lands can be in tension with both federal and state agencies' ability to ensure that other values are upheld. The federal government can impose various requirements and restrictions on mining activity to ensure that there is no unnecessary or undue degradation of the land and its resources. These requirements generally include the need for approval of a Plan of Operations as well as adherence to federal regulations.[26] Nonetheless, federal agencies typically allow small-scale "recreational" mining to proceed without any federal permit or other discretionary approval.

At the same time, federal and state agencies and courts have consistently interpreted the Mining Law to allow state and local governments to regulate mining activity on federal lands. Specifically, where state environmental regulatory laws are not in conflict with federal laws, they may limit the activities on federal lands.[27] State laws often, for example, require

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[24] 43 U.S.C. §§ 1701 *et seq.*

[25] 16 U.S.C. §§ 1600 *et seq.*

[26] *See, e.g.*, 36 C.F.R. Part 228, Subpart A ("set[ting] forth rules and procedures through which use of the surface of National Forest System lands in connection with operations authorized by the United States mining laws . . . shall be conducted so as to minimize adverse environmental impacts on National Forest System surface resources").

[27] *See* California Coastal Commission v. Granite Rock Co., 480 U.S. 572 (1987).

mitigation of the environmental impacts of mining activity, as well as reclamation (restoring the landscape after mining activities are completed). State regulation of mining activity existed before, and immediately after, the enactment of the Mining Law, and continues to this day.[28] California has many laws that regulate mining. For example, since 1961, the state has required anyone engaging in suction-dredge mining to obtain a permit and to comply with permit conditions.[29] By imposing a moratorium, the law at issue in this case went considerably further than the regulations that existed previously to govern suction-dredge mining.[30]

According to the State of California's petition for review in *Rinehart*:

> Suction dredge mining is a method for mining from the bed of a water body. This method typically uses a four- to eight-inch wide motorized vacuum, though sometimes a larger vacuum is used; the vacuum is inserted into the bottom of a stream and sucks gravel and other material to the surface, where it can be processed to separate any gold that might be present. Suction dredge mining is a way to recover gold that was placed in waterways by the Nineteenth Century's now-antiquated and highly destructive practice of hydraulic mining.[31]

Unfortunately, suction dredge mining can negatively affect stream and river ecosystems, because their operation creates disturbances in the water and the riverbed.[32]

In 2006, a Native American tribe sued the state Department of Fish and Wildlife, claiming that the state's suction-dredge mining permit program was not environmentally protective enough and needed to undergo environmental review for potential revision. The case was resolved through a consent decree; the department promised to perform environmental review. The state Legislature enacted a moratorium on new permits in 2009,

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28 *See* People v. Rinehart, 1 Cal. 5th 652, at 667–70 (discussing early state regulation of mining activities in California).

29 Cal. Stats. 1961, ch. 1816, § 1, p. 3864 (former Fish & G. Code § 5653).

30 Cal. Stats. 2009, ch. 62, § 1, adding Fish & G. Code (former § 5653.1).

31 People v. Rinehart, 1 Cal.5th 652, at 657.

32 Cal. Stats. 2009, ch. 62, § 2 (finding that "suction or vacuum dredge mining results in various adverse environmental impacts to protected fish species, the water quality of this state, and the health of the people of this state").

until the completion of the environmental review.[33] The moratorium law has been since amended to eliminate the ending date, based on a legislative finding that such mining causes adverse impacts. And the Department of Fish and Wildlife enacted regulations that confirm the ban.[34] Suction-dredge mining nonetheless apparently remained a common practice, at least when the events underlying this case transpired.

The miner in this case, Brandon Rinehart, holds a mining claim within the Plumas National Forest in northern California. He was cited, and charged with two misdemeanors, for suction-dredge mining in a streambed in violation of state law. He claimed in his defense that the state law is preempted by federal law and thus invalid. He contended that by outlawing suction-dredge mining, the state is effectively prohibiting all profitable mining on his claim because suction-dredge mining is only mining method that would allow him to make a profit. He further contended that federal law requires that the state not eliminate his ability to make money from mining the claim.[35]

The legal context for this case arises in part from a U.S. Supreme Court case, *California Coastal Commission v. Granite Rock Co*.[36] In that case, the Supreme Court rejected a facial challenge to a California Coastal Commission requirement that a miner obtain a state permit before mining on federal land. The Court in *Granite Rock* found that Congress did not intend to preempt state regulatory laws when it enacted the Mining Law. The Court assumed that NFMA and FLPMA would preempt state statutes determining the land use for a particular area of federal land; it held nonetheless that state laws that impose reasonable environmental regulations are not preempted by those federal laws, because Congress did not enact the Mining Law with the expectation that it would prevent state and local regulation of mining practices.[37]

In the *Rinehart* case, the trial court sided with the state, finding that the state law is not preempted. Mr. Rinehart appealed, and the Court of

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33 Cal. Stats. 2009, ch. 62.

34 *See generally* Fish & G. Code, §§ 5653, 5653.1, 13172.5; information available at https://www.wildlife.ca.gov/licensing/suction-dredge-permits.

35 People v. Rinehart, 1 Cal.5th 652, at 658–59.

36 480 U.S. 572 (1987).

37 *Id*.

Appeal reversed the trial court decision, agreeing with the miners' argument that the state moratorium violated federal law that generally allows miners to obtain and maintain property rights in federal lands for the purpose of mining. The Court of Appeal held that if application of state law makes a mining claim "commercially impracticable," the Mining Law trumps state law and a state may not apply its law, because the Mining Law contemplates that miners be able to profitably work their claims.[38] In the Court of Appeal's view, the state was, in effect, making a land-use determination to ban all mining by preventing commercially impracticable mining, frustrating the intent of the Mining Law. (The Court of Appeal's order would have remanded the case to the trial court to determine whether the state in this case has, in fact, made mining commercially impracticable for Mr. Rinehart.)

The state successfully petitioned the California Supreme Court to hear its arguments why the Court of Appeal got it wrong.[39] The Supreme Court reversed the Court of Appeal, holding that the state law was not an obstacle to Congress' intended goals under the Mining Law. In an opinion by Justice Werdegar, the court held that "[t]he federal statutory scheme does not prevent states from restricting the use of particular mining techniques based on their assessment of the collateral consequences for other resources."[40]

In her opinion, Justice Werdegar carefully analyzed the historical role of the Mining Law and cases decided by multiple courts since the enactment of that law. The opinion provides a deep and well-articulated analysis of the relationship between state police powers to protect health and safety and the federal Mining Law, concluding:

> The federal laws Rinehart relies upon reflect a congressional intent to afford prospectors secure possession of, and in some instances title to, the places they mine. But while Congress sought to protect miners' real property interests, it did not go further and guarantee

38 People v. Rinehart, 1 Cal.5th 652, at 659.

39 Professors John Leshy (UC Hastings), Eric Biber (UC Berkeley), Alex Camacho (UC Irvine), and I filed an amicus curiae brief in support of the state's position (with assistance from two of Eric's students). The brief is available at http://legal-planet.org/wp-content/uploads/2016/08/S222620_ACB_Leshy.pdf.

40 People v. Rinehart, 1 Cal.5th 652, at 670.

to them a right to mine immunized from exercises of the states' police powers.[41]

Justice Werdegar's opinion displays a nuanced command of the history of the application of the Mining Law and its complex relationship to complementary state laws (once again implementing traditional state police powers) over its long tenure; indeed, it includes a careful analysis and discussion of Congress' reaction to state regulation in the years following the enactment of the Mining Law, supporting the conclusion that the state moratorium at issue in *Rinehart* can coexist with the Mining Law. It also provides a clear and persuasive analysis of the function of the Mining Law, including the well-supported conclusion that "[t]he mining laws were neither a guarantee that mining would prove feasible nor a grant of immunity against local regulation, but simply an assurance that the ultimate original landowner, the United States, would not interfere by asserting its own property rights."[42]

The opinion also provides some insight into how the leading U.S. Supreme Court case on federal preemption of state regulation of mining on federal lands, *California Coastal Comm'n v. Granite Rock Co.,*[43] should be applied. Notably, however, the court avoided some of the core questions left open by the Court in *Granite Rock,* by carefully framing the dispute as one over "obstacle preemption." The court noted that *Granite Rock* "for the first time clearly established the states' authority to regulate on environmental grounds mining claims within their borders,"[44] and the court also implicitly rejected Mr. Rinehart's claim, based on an interpretation of language from *Granite Rock*, that where such regulation "render[s] mining . . . commercially impracticable," it is preempted by federal law. Justice Werdegar's view that this state law was not an obstacle to the federal goal, while not binding in other states, is likely to be noted by government agencies and courts in other states, and thus to empower states to use their regulatory powers more broadly, where appropriate, to restrict mining activities that they find to be harmful to resources.[45]

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41 *Id.* at 657.

42 *Id.* at 666.

43 480 U.S. 572 (1987).

44 People v. Rinehart, 1 Cal.5th 652, at 671.

45 Editor's Note: *cert. denied*, 583 U.S. ___ (Jan. 8, 2018) (No. 16-970).

JUSTICE WERDEGAR'S LEGACY: CAREFUL, SYSTEMATIC REVIEW OF IMPLIED PREEMPTION DEFENSES WHERE THE STATE'S CORE POLICE POWERS ARE AT ISSUE

Each of the three opinions discussed in this essay addresses obstacle preemption in a distinct context, and each bears on important questions of the balance of state and federal authority where state police powers are implicated. Taken together, the opinions affirm and extend prior California Supreme Court precedent, and develop the law consistent with U.S. Supreme Court and Ninth Circuit jurisprudence. First, the opinions apply a strong presumption that Congress did not intend to impliedly preempt state law. Second, they recognize the strength and primacy of regulation under general state police powers, in the absence of congressional intent to deprive a state of the authority to use those powers. Finally, they look carefully at federal statutory text and contextual clues to determine whether the specific state law at issue frustrates Congress' purpose and goals.

In a sense, Justice Werdegar's body of opinions applying obstacle preemption doctrine — solid as it is — is unremarkable. Her opinions straightforwardly and persuasively apply obstacle preemption doctrine to various specific legal controversies. But in another way, the opinions are significant: they present models of how to persuasively and systematically analyze an obstacle preemption defense with reference to a full range of sources, in contexts where the arguments in favor of and against application of state law require significant work to develop and analyze. Because obstacle preemption requires a deep attempt to understand Congress' goals and purposes, courts often need to bring nuanced and complex analysis to bear, drawing on multiple sources, to adequately address these claims. Moreover, Justice Werdegar's opinions are appropriately skeptical of inferences that Congress intended to preempt application of state laws implementing core police powers to protect health, safety, and the environment without clear evidence of intent to do so. Her opinions significantly advance this body of jurisprudence, and will surely stand the test of time.

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