

Bolinger, Dickinson and Richards in Law360: What To Watch For As High Court Mulls NRC's Powers

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Haynes Boone attorneys [Jake Bolinger](#), [Léa Dickinson](#) and [Sam Richards](#) authored an article for *Law360* as two concurrent cases in separate courts challenging the authority of the U.S. Nuclear Regulatory Commission are ongoing. Haynes Boone Partners [Michael Mazzone](#), [Diana Liebmann](#) and [Ellen Conley](#) also contributed to the article.

Read an excerpt below.

Texas may be at cross purposes in two concurrent cases in separate courts challenging the authority of the U.S. Nuclear Regulatory Commission, or NRC.

Texas's case before the U.S. Supreme Court could ultimately impede the state's nuclear ambitions, an effort central to [a separate suit](#) filed before the U.S. District Court for the Eastern District of Texas in December.

While both cases seek to limit the NRC's authority, Texas' attempt to circumvent the NRC's hearing processes may have serious adverse consequences for aspiring NRC licensees, including potential nuclear power plant operators.

The Supreme Court [heard oral arguments](#) on March 5, in the consolidated cases of NRC v. Texas and Interim Storage Partners LLC v. Texas. The state of Texas and fellow respondent Fasken Land and Minerals Ltd. are challenging the authority of the NRC to license private, offsite storage of spent nuclear fuel to Interim Storage Providers, or ISP.

In 2021, after regulatorily required hearings were conducted in accordance with the Hobbs Act, the NRC issued ISP a license to temporarily store nuclear waste in Texas.

Texas and Fasken petitioned the U.S. Court of Appeals for the Fifth Circuit to void the license, despite neither having participated in the regulatory process.

The Hobbs Act holds that only a "party aggrieved" may challenge a license — with party status predicated on participation in the NRC's proceedings under review. The Fifth Circuit recognized an ultra vires exception to the party requirement to allow review where the agency action is attacked as exceeding its power.

On the merits, the Fifth Circuit held that the Atomic Energy Act, or AEA, does not authorize the NRC to license temporary storage away from reactor sites. The Supreme Court subsequently granted NRC cert.

The arguments before the Supreme Court addressed both jurisdictional and substantive issues. Questioning started not on the "party aggrieved" jurisdictional axis, nor the Fifth Circuit's ultra vires

exception, but instead Justices Clarence Thomas and Elena Kagan questioned the NRC's intervention rules.

Per NRC regulations, intervening in licensing proceedings requires that one must both be an interested person (one whose interests are affected by the outcome) and have an admissible contention (something more than a vague comment on the proceedings).

To read the full article on *Law360*, click [here](#).