



## Shut Out of the Courtroom: When Procedure Trumps Policy in Nuclear Waste Litigation

The U.S. Supreme Court's decision in *NRC v. Texas* (June 18, 2025) clarifies who can challenge federal nuclear licensing decisions, focusing on procedural barriers rather than the underlying merits of private nuclear waste storage policy.

### Case Background

The case involved the Nuclear Regulatory Commission (NRC) granting a 40-year license to Interim Storage Partners (ISP) to operate a private off-site nuclear waste storage facility in the Permian Basin in West Texas. The State of Texas and Fasken Land and Minerals, a local business, contested the license, arguing that federal law does not permit private off-site nuclear waste storage and citing environmental and safety risks.

### Legal Issues

The key issue before the Court was not whether the NRC had statutory authority to issue such a license, but whether Texas and Fasken were "parties" with the right to judicial review under the Hobbs Act and the Atomic Energy Act. The Court held that only the original license applicant or those who successfully intervene in the NRC's licensing proceeding gain "party" status and access to judicial review. Submitting public comments or attempting to intervene (without success) does not confer such rights.

## **Court's Holding**

The U.S. Supreme Court reversed the U.S. Court of Appeals for the Fifth Circuit, ruling that neither Texas nor Fasken had standing to challenge the NRC's license in federal appeals court, as they were not admitted as parties to the agency's hearing. The Court did not address the substantive legality of off-site nuclear waste storage, leaving prior NRC regulations and interpretations in place.

## **Dissent and Broader Implications**

Associate Justice Neil Gorsuch's dissent, joined by Justices Clarence Thomas and Samuel Alito, criticized the procedural obstacles that prevented meaningful judicial review and contended that federal law forbids private off-site nuclear waste storage – but the majority relied strictly on jurisdictional grounds and did not address this underlying statutory debate. The outcome means that, unless a party is directly admitted to the agency hearing process, major policy decisions regarding nuclear waste storage are insulated from court challenges – even by affected states or landowners who participated through public comment.

## **Fifth Circuit Response Court's Holding**

Texas state officials, including Governor Greg Abbott, opposed the Nuclear Regulatory Commission's issuance of a license allowing a private entity to store nuclear waste in the Permian Basin, arguing that it violated federal law and posed risks of environmental havoc, including contamination and harm to endangered species, as well as threats to national energy security from potential accidents or terrorism. The Fifth Circuit had previously applied Circuit precedent to allow the state to challenge the agency's action as *ultra vires* under the Hobbs Act. However, due to the U.S. Supreme Court reversal and remand of this judgment, on September 22, the Fifth Circuit concluded that it lacked jurisdiction to consider the petition and dismissed it as required by the Court.

## **Conclusion**

This decision re-emphasizes the importance of agency procedure in regulatory law and signals that congressional action, not judicial review, will be the primary avenue

for changing federal nuclear waste storage policy.

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