

IN THE SUPREME COURT OF THE UNITED STATES

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Nos. 23-1300 & 23-1312

UNITED STATES NUCLEAR REGULATORY COMMISSION AND UNITED STATES OF AMERICA,

AND

INTERIM STORAGE PARTNERS, LLC,

*Petitioners,*

v.

STATE OF TEXAS, GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS,  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; FASKEN LAND AND MINERALS, LTD.,

AND PERMIAN BASIN LAND AND ROYALTY OWNERS,

*Respondents.*

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**JOINT MOTION OF RESPONDENTS STATE OF TEXAS,  
GREG ABBOTT, GOVERNOR OF THE STATE OF TEXAS,  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, AND  
FASKEN LAND AND MINERALS, LTD. FOR DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rule 28.4, respondents State of Texas, Greg Abbott, Governor of the State of Texas, and Texas Commission on Environmental Quality (“Texas”) and respondent Fasken Land and Minerals, Ltd. (“Fasken”) – jointly move for divided argument. Texas and Fasken request to divide evenly their 30 minutes of argument time, with Texas receiving 15 minutes and Fasken receiving 15 minutes. On January 17, 2025, petitioners in Nos. 23-1300 and 23-1312 moved for divided argument.

These cases concern Texas’s and Fasken’s challenges to a license that petitioner United States Nuclear Regulatory Commission (“NRC”) issued to petitioner Interim Storage Partners LLC (“ISP”) authorizing ISP to build and operate an above-ground storage facility for 5,000 metric tons (with plans to expand to 40,000

metric tons) of spent nuclear fuel. JA12, 41-42. The site of ISP's facility is Andrews County, Texas. *Id.* The facility would be mere miles from land on which Fasken operates thousands of oil wells, grazes thousands of cattle, and constructs numerous real estate projects. JA64, 186.

Both Fasken and Texas sought to participate in NRC's licensing proceeding. Fasken moved to dismiss the licensing proceedings, filed multiple objections to the proposed license with NRC, and moved to intervene in the licensing proceeding. *In re Interim Storage Partners LLC*, 90 N.R.C. 31, 43-45 (Aug. 23, 2019). NRC found that Fasken had standing, but also rejected Fasken's objections on the merits and so denied it intervenor status. *Id.* at 52-53, 109-18. Both Texas and Fasken submitted comments on NRC's draft Environmental Impact Statement. JA115 (comment of Governor Greg Abbott); JA123, 186 (comments of Fasken); JA201 (comment of Texas Commission on Environmental Quality). NRC granted the license over Fasken's and Texas's objections. JA275.

Fasken and Texas filed separate petitions for review of NRC's license grant in the Fifth Circuit. The Fifth Circuit considered the two petitions together, upheld jurisdiction, and vacated the license. App. 2a. The Fifth Circuit held it had jurisdiction because NRC had acted *ultra vires* in granting the license, App. 18a-20a, and also observed that Fasken and Texas each were "part[ies] aggrieved" under "the fairest reading of the Hobbs Act," App. 17a-18a. The Fifth Circuit then vacated the license, holding NRC lacked authority "to issue licenses for private parties to store spent nuclear fuel away-from-the-reactor" under the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982 ("NWPA"). App. 2a, 21a-22a, 29a.

NRC and ISP filed separate petitions for a writ of certiorari, which this Court granted and consolidated. These cases present two basic questions – whether NRC had statutory authority to issue the ISP license and whether the Fifth Circuit had jurisdiction to hear Texas’s and Fasken’s challenges to that license.

Both Fasken and Texas urge the Court to affirm the Fifth Circuit’s judgment, but their interests differ. Fasken and Texas respectfully submit that, in resolving these cases, this Court would materially benefit from hearing argument from both Fasken and Texas.

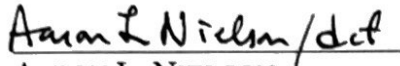
This Court routinely allows divided argument when, as here, both governmental entities and a private party are on the same side of a dispute. *See, e.g., American Legion v. American Humanist Ass’n*, 586 U.S. 1125 (2019) (Nos. 17-1717 & 18-18) (dividing argument between Maryland-National Capital Park and Planning Commission and private petitioners); *see also Department of Commerce v. New York*, 139 S. Ct. 1543 (2019) (No. 18-966) (state and private petitioners); *Tennessee Wine & Spirits Retailers Ass’n v. Blair*, 586 U.S. 1062 (2019) (No. 18-96) (state and private petitioner); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 583 U.S. 991 (2017) (No. 16-111) (state agency and private respondents). That practice recognizes the benefits of hearing the unique perspectives governmental and private parties possess and represent in argument.

Here, Texas and Fasken have unique perspectives on both questions presented, and neither can fully represent the interests of the other before the Court. On the merits question, the NWPA gives Texas, as a sovereign State, additional protections and participation rights regarding the siting of interim storage facilities

that Fasken, as a private party, does not have. *See* 42 U.S.C. § 10155(d). And Fasken, as a large operator and landowner with oil and gas wells, cattle, and real estate near the ISP site, in both Texas and New Mexico, has a unique perspective on the commercial ramifications of NRC's license grant. On the jurisdictional question, Fasken, having moved to dismiss ISP's license application and having moved to intervene, has jurisdictional arguments different from those of Texas, which did not. Texas's and Fasken's counsel also have complementary domains of expertise on the issues discussed in each brief, such that divided argument will benefit the Court.

For these reasons, hearing argument from both Texas and Fasken will materially assist the Court in its resolving the questions presented. Texas and Fasken therefore respectfully request that the Court allow divided argument for respondents, with 15 minutes allocated to Texas and 15 minutes allocated to Fasken. This allocation will not require any enlargement of argument time.

Respectfully submitted,



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