23-1312 INTERIM STORAGE PARTNERS, LLC V. TEXAS

DECISION BELOW: 78 F.4th 827

LOWER COURT CASE NUMBER: 21-60743

QUESTION PRESENTED:

1. Whether the Nuclear Regulatory Commission's exercise of authority to issue a license to a private party to temporarily possess spent nuclear fuel at a location away from an operating nuclear power reactor was lawful under the applicable statutes (as the D.C. and Tenth Circuits have held) or not (as the Fifth Circuit, deliberately splitting from those other circuits, held in this case).

2. Whether, notwithstanding an allegation of "*ultra vires*" agency action, a person must take steps to become a "party" to an agency proceeding under the Hobbs Act, 28 U.S.C. 2344, in order to then subsequently challenge the agency action resulting from that proceeding in court (as the Second, Seventh, Tenth, and Eleventh Circuits have held), or whether an allegation of "*ultra vires*" agency action can override statutory limitations on jurisdiction (as the Fifth Circuit, deliberately splitting from those other circuits, held in this case).

CONSOLIDATED WITH 23-1300 FOR ONE HOUR ARGUMENT.

CERT. GRANTED 10/4/2024