No. 20-1676

IN THE SUPREME COURT OF THE UNITED STATES

PUBLIC WATCHDOGS, A CALIFORNIA 501(C)(3) CORPORATION,

Petitioner,

v.

SOUTHERN CALIFORNIA EDISON COMPANY; SAN DIEGO GAS & ELECTRIC COMPANY; SEMPRA ENERGY; HOLTEC INTERNATIONAL

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a party may evade the Hobbs Act's exclusive avenue for judicial review of the Nuclear Regulatory Commission's final orders by pleading a challenge to those orders as a claim against a private entity.

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STATEMENT OF CASE

1. The Nuclear Regulatory Commission (NRC) is an independent federal commission created by Congress in 1974. See 42 U.S.C. 5841. Administering the Atomic Energy Act (AEA), the NRC protects the public by licensing and regulating civilian storage and use of radioactive materials. Pet. App. 7a; see 42 U.S.C. 5841. In particular, the NRC's regulations establish detailed "requirements for the design, construction, operation, and security of U.S. commercial nuclear power plants." NRC, *2019-2020 Information Digest* 34, NUREG-1350, Volume 31 (Aug. 2019) (NRC Information Digest), https://www.nrc.gov/docs/ML1924/ML19242D326.pdf.

Those regulations govern the storage of spent nuclear fuel (SNF), which is the radioactive waste that is left over after a power plant burns fuel in a nuclear reactor. Pet. App. 9a; see NRC, *Safety of Spent Fuel Storage* 1, NUREG/BR-052 (Apr. 2017) (Storage), https://www.nrc.gov/docs/ML1710/ML17108A306.pdf; see also, *e.g.*, 10 C.F.R. 72.210, 72.212; *State* v. *U.S. Nuclear Regul. Comm'n*, 824 F.3d 1012, 1016 (D.C. Cir. 2016) (rejecting challenge to NRC's 2014 Generic Environmental Impact Statement and rule regarding on-site storage of spent nuclear fuel). Because no repository is yet available for permanently disposing of SNF, the SNF generated by a power plant is usually stored on the plant's property in a specially built facility. See NRC Information Digest 69, 72; Pet. App. 11a. In the first instance, SNF is stored in deep water pools, which keep it cool. NRC Information Digest 70-71. Later, SNF is transferred to a cask or canister for dry storage. The canisters used for dry storage "feature an inner steel canister that contains the fuel

surrounded by 3 feet or more of steel and concrete." *Id.* at 68; see Pet. App. 9a-10a.

The NRC regulates and oversees dry storage of SNF in several different ways. First, the NRC has issued a general license for the storage of SNF in NRC-certified containment systems at power reactor sites to any entity licensed to possess or operate a nuclear power reactor under 10 C.F.R. Parts 50 or 52. Under such license, the entity may store SNF on site in dry storage casks or canisters that the NRC has certified. See Pet. App. 10a; 42 U.S.C. 10153, 10198; 10 C.F.R. 72.210, 72.212. Before certifying a dry storage system, the NRC undertakes a rigorous safety review and approval process, including notice-and-comment rulemaking. See Pet. App. 11a; 10 C.F.R. 72.236; Spent Fuel Storage 3-11 (describing NRC's technical evaluations of dry storage systems).[1]

Second, the NRC undertakes inspections and investigations and brings enforcement actions to ensure the safety of SNF storage. See NRC Information Digest 5. When the NRC identifies a violation, it may impose a significant civil penalty. See 42 U.S.C. 2282; 85 Fed. Reg. 2445 (Jan. 15, 2020). The NRC also may amend, suspend, or revoke a license in order to remedy hazardous conditions or to address license violations. See 10 C.F.R. 2.202.

The public may participate in those regulatory actions and also may affirmatively request that the NRC take action to remedy a perceived problem. The public may of course participate in any notice-and-

[1] To the extent that a licensee wishes to use a storage system that the NRC has not certified, the NRC may grant a site-specific license after an intensive safety review. NRC Information Digest 68-69; Pet. App. 10a. No such license is at issue in this case.

comment rulemaking that the NRC undertakes, including the rulemakings by which dry storage systems are certified. Pursuant to 42 U.S.C. 2239(a), any person with an affected interest may request a hearing before the NRC in any ongoing proceeding for the issuance, modification, suspension, or revocation of an NRC license and in "any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees." And pursuant to 10 C.F.R. 2.206, "[a]ny person may file a request to institute a proceeding…to modify, suspend, or revoke a license, or for any other action as may be proper."

Under the Hobbs Act, courts of appeals have exclusive subject-matter jurisdiction over petitions for review of "all final orders" of the NRC "made reviewable by" 42 U.S.C. 2239. See 28 U.S.C. 2342. Section 2239(b) allows review of "[a]ny final order entered in any proceeding of the kind specified in subsection (a) of this section," and subsection (a) specifies (*inter alia*) proceedings "for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control" and "for the issuance or modification of rules and regulations dealing with the activities of licensees." 42 U.S.C. 2239. Pursuant to those provisions, "review of orders resolving issues preliminary or ancillary to the core issue in a[n NRC] proceeding should be reviewed in the same forum as the final order resolving the core issue." *Fla. Power & Light Co.* v. *Lorion*, 470 U.S. 729, 743 (1985).

2. This case relates to the NRC's regulatory and licensing decisions about the storage of SNF at the San Onofre Nuclear Generating Station (SONGS) in Southern California, which began operation in the 1960s. See Pub. L. No. 88-83, 77 Stat. 115 (1963); Pet.

App. 12a. While in operation, SONGS had three nuclear reactors (Units 1, 2, and 3), all of which were granted NRC licenses. Pet. App. 12a. Unit 1 ceased operation in 1992, and Units 2 and 3—the two units at issue in this case—ceased operation in 2013. Pet. App. 12a.

In 2015, the NRC approved changes to the Facility Operating Licenses for Units 2 and 3 (the 2015 License Amendments). Pet. App. 13a. The 2015 License Amendments allow "actions necessary to decommission the plant and continue to maintain the facility, … the storage, control and maintenance of the spent fuel, in a safe condition." Pet. App. 13a.[2]

Southern California Edison, San Diego Gas & Electric, Sempra Energy, and Holtec International (the private respondents) are responsible for carrying out or assisting with those decommissioning activities. The private respondents elected to store SNF from Units 2 and 3 onsite at SONGS in the Holtec system, a "canister-based SNF storage system" that the NRC has approved via issuance of a Certificate of Compliance. Pet. App. 13a; see 10 C.F.R. 72.214 (listing approval of Certificate Number 1040 for the Holtec system).

In deciding that storing SNF in the Holtec System could "be conducted without endangering the health and safety of the public," Pet. App.15a (citation omitted), the NRC undertook an extensive analysis and provided opportunity for public comment, see Pet. App. 13a-14a. The NRC considered the Holtec System's shielding and radiation protection; its

[2] The NRC's review of the 2015 License Amendments was open to public comment and intervention. Petitioner did not participate. Pet. App. 13a.

susceptibility to chemical, galvanic, or other reactions; and its potential performance in the event of an accident. Pet. App. 14a; see Pet. App. 15a (NRC specifically "evaluated the susceptibility to and effects of stress corrosion cracking and other corrosion mechanisms on safety significant systems") (citation omitted). Ultimately, the NRC concluded that the Holtec System "will safely store SNF and prevent radiation releases and exposure consistent with regulatory requirements." Pet. App. 15a (citation omitted).

All Unit 2 and 3 SNF is currently stored in the Holtec System at SONGS while SONGS undergoes decommissioning. If and when an offsite facility is ready to receive the SNF, the SNF can be transported to that facility. In the meantime, the NRC continues to regulate and inspect the decommissioning and SNF storage activities at SONGS and regularly publishes reports on those activities. Pet. App. 16a-18a, 52a.

3. Petitioner has filed numerous proceedings attempting to stop the decommissioning activities at SONGS, including the instant case.

a. Petitioner filed suit in federal district court in 2017 against respondents SCE and SDG&E , as well as against various federal entities and officials. See Dkt. No. 1, No. 17-cv-2323 (S.D. Cal.). Petitioner alleged that the storage of fuel at SONGS violated the terms of a land lease between the federal government and the SONGS licensees. See *ibid.*

The district court dismissed the complaint for lack of Article III standing. See Dkt. No. 24. Petitioner filed an amended complaint, but then voluntarily dismissed the action in 2019 before the court could act on a renewed motion to dismiss. See Dkt. No. 50.

b. On September 24, 2019, while the instant action was pending, petitioner filed a petition with the NRC under 10 C.F.R. 2.206 requesting suspension of decommissioning activities at SONGS. The allegations "supporting [that] petition with the NRC… closely mirror th[e] allegations" in the complaint in the instant case. Pet. App. 20a.[3]

Less than a month later, petitioner filed a mandamus petition in the Ninth Circuit stating that the NRC had unreasonably delayed in responding to the Section 2.206 petition. The Ninth Circuit denied the mandamus petition because the agency had not engaged in any delay. Pet. App. 20a.

On February 26, 2020, the NRC declined to grant petitioner relief under the Section 2.206 petition, finding no "threat to public health and safety." Pet. App. 56a. Petitioner then filed a petition for review in the Ninth Circuit challenging that decision. See Dkt. No. 1, No. 20-70899 (9th Cir. Mar. 30, 2020). The court of appeals denied petitioner's request for emergency injunctive relief suspending decommissioning activities at SONGS, Dkt. Nos. 3, 23, and deemed the agency's declination of an enforcement proceeding to be "unreviewable." Pet. App. 53a. The court explained that the NRC had already "addressed safety concerns relating to the specific dry cask storage system used at SONGS in its notice-and-comment rulemaking issuing a certificate of compliance for that storage system and in its inspection reports reviewing the decommissioning activities at SONGS." Pet. App. 52a; see Pet. App. 57a-61 (NRC determination detailing in-

[3] Petitioner also later filed another Section 2.206 petition with the agency seeking the same relief. Pet. App. 23a n.4.

depth consideration NRC had given to each purported safety concern petitioner raised).

c. i. On August 29, 2019, shortly before filing the Section 2.206 petition, petitioner filed the action now before this Court. Pet. App. 15a. Petitioner's amended complaint alleged that the NRC acted unlawfully in certifying the Holtec system and in granting the 2015 License Amendments. Pet. App. 15a-16a. The complaint also alleged that private respondents had mishandled Holtec canisters, pointing to NRC inspection reports on the subject and the NRC's imposition of a fine, and that Holtec canisters were in any event destined to fail. Pet. App. 17a-18a, 43a, 93a-94a. Based on those allegations, petitioner alleged that the NRC had violated the APA and that the private respondents had violated California nuisance law, California product-liability law, and the Price-Anderson Act, a federal statute that permits a "public liability action" in the event of a "nuclear incident" if the specially hazardous properties of nuclear material cause injury, death, or property damage. See 42 U.S.C. 2014(q), 2210(n)(2); Pet. App. 18a. Petitioner also sought a preliminary injunction to invalidate the 2015 License Amendments and the Certificate of Compliance for the Holtec system.

c. ii. The district court dismissed the action and denied petitioner's request for preliminary injunctive relief. Pet. App. 22a, 115a.

The district court ruled that petitioner had sufficiently alleged Article III standing on the ground that petitioner's allegations "tended to show there is a credible threat that a probabilistic harm will materialize." Pet. App. 21 (citation and internal quotation marks omitted); see Pet. App. 81a-82a. But the court ruled that it nevertheless lacked jurisdiction

because all of petitioner's claims fall within the scope of the Hobbs Act, which grants exclusive jurisdiction to the court of appeals. The district court concluded that the APA claim against the NRC "related to the July 2015 License Amendment and the Certificate of Compliance for the Holtec system, both of which are final orders of the NRC relating to the grant or amendment of a license for purposes of the Hobbs Act." Pet. App. 87a (citing 10 C.F.R. 72.210, 72.212, 72.214). As to the private respondents, the court concluded that petitioner's claims all "trace back" to the challenges to the 2015 License Amendment and the Certificate of Compliance and are therefore likewise covered by the Hobbs Act. Pet. App. 93a. The district court also admonished petitioner for its attempt to seek duplicative review: "The Court is troubled by [petitioner's] decision to seek the same relief—a temporary cessation of the decommissioning efforts at SONGS—simultaneously before this Court, the NRC, and the Ninth Circuit. [petitioner's] scattershot approach has resulted in duplicative review of issues." Pet. App. 88a fn.4.

The district court also ruled that petitioner's claims would fail even assuming that jurisdiction existed. Pet. App. 94a-114a. The court explained that the amended complaint failed to allege that there was any release of radiation above federal limits at SONGS causing any bodily harm or property damage—a precondition to a claim under the Price-Anderson Act. Pet. App. 99a-102a. Further, the court explained that the AEA preempted petitioner's nuisance and product liability claims and that petitioner had not alleged facts sufficient to make out either of those claims in any event. Pet. App. 97a, 102a-114a.iii. The Ninth Circuit affirmed. The court of appeals noted that in *Lorion* this Court ruled that in the Hobbs Act Congress

intended "to provide for initial court of appeals review of *all* final orders in [NRC] licensing proceedings," including NRC orders denying Section 2.206 petitions and other NRC "decisions *not* to suspend, revoke, or amend" a license. Pet. App. 25a (quoting *Lorion*, 470 U.S. at 738-739). This Court also "held that review of orders resolving *issues preliminary or ancillary to the core issue* in a proceeding should be reviewed in the same forum as the final order resolving the core issue." Pet. App. 26 (quoting *Lorion*, 470 U.S. at 743).

The court of appeals concluded that petitioner's claims fall within the scope of the Hobbs Act. The court of appeals explained that petitioner's claim against the NRC directly challenged NRC's final orders granting the 2015 License Amendments and the Holtec Certificate of Compliance. Pet. App. 30a-31a. In addition, the court stated, if that claim were read to challenge other alleged NRC "final actions" (for instance, "accepting amendments to certificates of compliance"), the Hobbs Act would cover that aspect of the claim as well, for two independent reasons. First, the actions raised issues ancillary to the final orders because they were taken "under the authority of" those orders and merely allowed the transfer and storage authorized by the orders to continue. Pet. App. 36a; see Pet. App. 29a & n.9, 32a-35a. Second, petitioner challenged "NRC enforcement decisions *not* to suspend a license or licensed operations" by halting decommissioning activities and sought "relief that should have first been pursued before the NRC in a § 2.206 petition"—the very matters that *Lorion* held to be within the Hobbs Act's scope. Pet. App. 37a (citation omitted); see Pet. App. 38a-39a. Indeed, the court observed, petitioner did "file a § 2.206 petition that addressed the *same* conduct and sought the *same* remedy that it sought before the district court"—thus

addressing the body with "special competence" in nuclear-plant decommissioning activities—and then separately "appeal[ed]" the agency's decision on that petition "*directly*" to the Ninth Circuit. Pet. App. 39a-40a.

As to petitioner's claims against the private respondents, the court of appeals determined that those claims were nothing more than "a veiled challenge" to "the 2015 License Amendments, the Certificate of Compliance for the Holtec System, and actions taken by the licensees under the authority of both of those final NRC orders." Pet. App. 44a, 47a; see Pet. App. 44a (explaining that claims rest on assertion that the amendments were "improperly granted" and that the Holtec system is unsafe). Moreover, the court explained, "to the extent [petitioner's] claims…also challenge the [private respondents'] conduct that is expressly licensed, certified, and regulated by the NRC," the Hobbs Act applies because the "2015 License Amendments and the Certificate of Compliance are inextricably intertwined with the NRC's regulatory and enforcement decisions that are in turn related to the challenged conduct of the" private respondents. Pet. App. 48a (internal quotation marks omitted). The court concluded that petitioner "cannot avoid the Hobbs Act's exclusive avenue of judicial review," which encompasses issues "ancillary or incidental to NRC licensing decisions," by "artfully pleading its challenge to the 2015 License Amendments and the Certificate of Compliance for the Holtec System as a Price-Anderson, public nuisance, or strict products liability claim." Pet. App. 47a-49a. And, the court reasoned, that conclusion was bolstered by the fact that petitioner had filed a Section 2.206 petition that encompassed and challenged private respondents'

same alleged misconduct, sought the same remedy, and had already sought Ninth Circuit review of the agency's denial of that petition. Pet. App. 48a.

ARGUMENT

The action that petitioner filed in the district court against the private respondents was nothing more than a thinly veiled, artfully pled challenge to agency orders that the Hobbs Act says must be challenged directly in a court of appeals. The Ninth Circuit's conclusion that the Hobbs Act applies in those circumstances is unremarkable, and it does not conflict with any decision of this Court or any decision from any other court of appeals. To the contrary, the decision below is fully consistent with longstanding law. Moreover, this case does not raise any of the policy concerns that petitioner presses, since an expert agency is satisfied with the safety of private respondents' actions and since the decision below does not bar a private plaintiff from bringing claims where (unlike here) an allegation of an injury caused by some safety-related problem actually exists. Finally, this case has many vehicle problems, including the existence of serious questions about petitioner's standing; a decision below that does not even rely on any of the legal principles that petitioner contends this Court should decide; the fact that petitioner has already obtained court of appeals review of the underlying allegations; and numerous grounds, ruled upon by the district court, for dismissing petitioner's suit even if petitioner were to prevail in this Court on the question presented. Accordingly, this Court's review is not warranted.

I. THERE IS NO SPLIT IN AUTHORITY ON APPLICABILITY OF THE HOBBS ACT

Petitioner asserts that the decision below conflicts with decisions of this Court and of the court of appeals. There is no such conflict. The decisions on which petitioner relies address a grab-bag of issues that have no bearing on this case. And the decision below is, in fact, fully consistent with the approach taken by other courts in similar cases.

1. a. Petitioner argues (Pet. 28) that the Ninth Circuit's decision "conflicts with this Court's reasoning in" *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238 (1984). But *Silkwood* addresses only preemption, a legal issue distinct from the question of jurisdiction under the Hobbs Act. *Silkwood* never so much as mentioned the Hobbs Act, and certainly did not discuss the circumstances in which the Hobbs Act bars claims that are nothing more than "artful[ly]" pled challenges to NRC decisions. Pet. App. 47a.

In *Silkwood*, the Court considered whether federal law as it existed in 1984 preempted recovery of punitive damages under state tort law by the estate of a woman who was contaminated with radioactive material while working at a plant manufacturing plutonium fuel pins. See 464 U.S. at 241-244. The Court ruled that "insofar as damages for radiation injuries are concerned," federal law did not preempt state tort law on either a field preemption or conflict preemption theory. *Id.* at 256; see *id.* at 251-255. The Court acknowledged that the NRC was most "qualified to determine what type of safety standard should be enacted in this complex area." *Id.* at 250. But the Court explained that "in the circumstances of this case" there was no "irreconcilable conflict between the federal and state standards" or reason to believe that

"imposition of a state standard in a damages action would frustrate the objectives of the federal law." *Id.* at 256. The Court left open for further decision whether there might be some other "instance in which the federal law would preempt the recovery of damages based on state law" for a nuclear-related injury. *Ibid.*

Silkwood is irrelevant here. The Ninth Circuit did not decide any preemption issue or apply any preemption analysis in this case. [4] It decided only that the Hobbs Act applies because the claims at issue represent an attack on NRC orders and seek to change the way that the NRC regulates private respondents' activities, and because petitioner had already asserted the same underlying allegations and obtained judicial review in a separate appeal that followed the correct Hobbs Act procedure. Pet. App. 47a-49a. *Silkwood* did not confront a case in which claims attacking NRC orders were asserted; the plaintiff in that case sought damages and did not allege NRC orders. See 464 U.S. at 241-244. In addition, the Ninth Circuit only

[4] The district court ruled that federal law preempts petitioner's state-law claims. *See* Pet. App. 104a-106a. Although the court of appeals did not address the issue, the district court was correct—and, as discussed below, its ruling represents an independent reason why this Court's review is not warranted. See p. 32, *infra*. *Silkwood* does not cast any doubt on the district court's preemption ruling, since petitioner here sought an injunction and directly challenged NRC orders—neither of which was true in *Silkwood*. See Pet. App. 105a; *see also*, e.g., *Brown* v. *Kerr-McGee Chem. Corp.*, 767 F.2d 1234, 1242 (7th Cir. 1985) ("[P]laintiffs' request for an injunction ordering the [nuclear] wastes moved elsewhere is preempted because, if granted, the injunction would stand 'as an obstacle to the accomplishment of the full purposes and objectives' of federal regulation of radiation hazards.") (quoting *Silkwood*, 464 U.S. at 248); *Pennsylvania* v. *Gen. Pub. Utils. Corp.*, 710 F.2d 117, 120 (3d Cir. 1983) (similar).

addressed the Price-Anderson Act by holding that petitioner's Price-Anderson Act claim was nothing more than veiled attempt to artfully plead around the Hobbes Act. The Ninth Circuit did not rule on the issue of preemption, and *Silkwood* has nothing to say about the rule against artful pleading to circumvent the Hobbs Act.

Virginia Uranium, Inc. v. *Warren*, 139 S. Ct. 1894 (2019), which petitioner says "interpreted *Silkwood* to mean that 'state tort law…fell beyond any fair understanding of the NRC's reach under the AEA," Pet. 31 (quoting 139 S. Ct. at 1905), is similarly irrelevant. In *Virginia Uranium*, this Court held that the AEA does not preempt a state law banning uranium mining. See 139 S. Ct. at 1900. *Virginia Uranium* did not purport to extend *Silkwood* in any way; it merely discussed the case in passing in support of the proposition that an examination of state legislative purposes was not relevant to the preemption inquiry. See *id.* at 1905. Again, the Court said nothing about the Hobbs Act and focused only on preemption questions.

1. b. Petitioner also argues (Pet. 28-31) that the decision below conflicts with the Tenth Circuit's decision in *Cook* v. *Rockwell International Corp.*, 790 F.3d 1088 (10th Cir. 2015). *Cook* is inapposite here for the same reason that *Silkwood* and *Virginia Uranium* are inapposite: it is a preemption case.

In *Cook*, the Tenth Circuit addressed a field preemption argument: that the Price-Anderson Act leaves "no room" for state causes of action arising from exposure to nuclear radiation, even if the event falls short of the kind of nuclear "incident" as to which the Act imposes liability. See 790 F.3d at 1092, 1094; see *id.* at 1092. The court rejected that argument,

concluding that "[t]here's just nothing like that in the statutory text" of the Price-Anderson Act. *Id.* at 1095.

Like *Silkwood*, *Cook* never mentions the Hobbs Act at all. And *Cook* did not involve any direct or indirect challenge to any NRC order and does not deal with the rule precluding artful pleading to circumvent exclusive review under federal statutes. See 790 F.3d at 1088. Petitioner's argument that *Cook* conflicts with the decision below is therefore mystifying.

1. c. In addition, petitioner contends (Pet. 4, 14-16, 18) that the decision below runs afoul of this Court's decision in *PDR Network, LLC* v. *Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051 (2019). According to petitioner (*e.g.*, Pet. 5, 14), even though *PDR Network* does not address whether a claim against a private party can fall within the Hobbs Act's scope, the majority opinion in *PDR Network* along with Justice Kavanaugh's concurrence, contain such a holding.

Petitioner misreads *PDR Network*. There is no conflict between the decision below and *PDR Network*. In that case, this Court was presented with the question of whether a defendant in a private enforcement action was bound by an interpretation of the relevant statute found in a preexisting FCC order, having failed to challenge that order via the exclusive review provisions found in the Hobbs Act. 139 S. Ct. at 2053. But the Court did not answer that question. Instead, the Court remanded for further consideration of two antecedent questions: the "legal nature" of the FCC order and whether the defendant had "a 'prior' and 'adequate' opportunity to seek judicial review of the [o]rder." *Id.* at 2055-2056. The Court's decision thus does not speak to the question of whether a plaintiff bringing suit against a private party can be deemed subject to the Hobbs Act on the ground that

its claims are thinly veiled attacks on agency orders that are otherwise subject to the Hobbs Act.

The concurrence by four Justices in *PDR Networks* is of no greater aid to petitioner. Of course, that concurrence is not a decision of this Court, and any conflict with it would not be adequate grounds for review. See S. Ct. R. 10. In any event, nothing in the concurrence is in any tension with the Ninth Circuit's decision. The concurring opinion holds that "the Hobbs Act does not bar a defendant in an enforcement action from arguing that the agency's interpretation of the statute is wrong." 139 S. Ct. at 2058 (Kavanaugh, J., concurring). In the view of the concurring Justices, any other rule would be unfair, as it would deprive a defendant of the ability to defend itself even though the defendant might not have had an incentive to challenge the agency's interpretation when it issued and, in fact, might not even have existed at that time. See *id.* at 2061-2062.

That understanding of the Hobbs Act does not clash with what the court of appeals said here, as the court below explained "Justice Kavanaugh's concurrence addressed a question wholly irrelevant to the case at hand." See Pet App. 27a-28a n.7. *PDR Network* asked whether a defendant forced to defend itself should be bound by an agency rule. The court here said only that a *plaintiff* attacking agency orders had to abide by Hobbs Act procedures that were fully available to it and that it had already pursued. *PDR Networks* involved whether agency's interpretation of statutory language—an area in which the judiciary has special competency—is binding on a *defendant* in an enforcement action. This case involves agency orders governing actions (or inactions) by regulated parties, such as use of a particular canister to store

SNF—that is, exactly the kind of agency order that an aggrieved party has full opportunity and incentive to challenge in the first instance through required procedures, including appellate review under the Hobbs Act. Cf. *PDR Network*, 139 S. Ct. at 2055 (distinguishing between a legislative rule and an "interpretive rule" that "simply 'advis[es] the public of the agency's construction of the statutes and rules which it administers'"). And the *PDR Networks* concurring opinion says nothing about a private action in district court naming the agency as a defendant along with private parties and taking direct aim at agency orders that the Hobbs Act says should be reviewed by the court of appeals in the first instance. In short, even if this Court were ultimately to adopt the view expressed in the concurring opinion, the decision below would remain unaffected by that analysis.

1. d. Finally, without formally asserting the existence of a split in authority, petitioner refers at various points in the petition to decisions that purportedly undermine the Hobbs Act analysis in the decision below. None of those decisions conflict with the decision in this case.

i. First, petitioner says (Pet. 13-14) that *United States* v. *Any & All Radio Station Transmission Equip.*, 204 F.3d 658 (6th Cir. 2000), and *Manuel* v. *NRA Group LLC*, 722 F. App'x 141 (3d Cir. 2018), both hold that the Hobbs Act cannot apply as to a claim asserted by one private party against another private party. That is incorrect.

Any & All Radio Station involved "quasi-criminal" in rem forfeiture actions brought by the United States seeking forfeiture of the equipment of unlicensed radio stations that were broadcasting at impermissible

strength. 204 F.3d at 667; see *id.* at 661-664. The Sixth Circuit ruled that a defendant was entitled to raise as a defense a constitutional challenge to an FCC regulation, explaining that Congress had not "enacted a statute that allows the government to forfeit a person's property while denying the owner the right to defend himself by challenging the legal basis of the government's forfeiture case." *Id.* at 667. That principle has nothing to do with this case, in which petitioner is a civil plaintiff, is not threatened with any government penalty, and has already exercised the right to bring a separate challenge directly in the court of the appeals.

Manuel is equally far afield. In that unpublished decision, which involves claims similar to those at issue in *PDR Network*, the Third Circuit affirmed a grant of summary judgment to a plaintiff asserting that a defendant violated the Telephone Consumer Protection Act of 1991 by placing more than 100 unconsented-to debt collection calls. 722 F. App'x at 143. In a single sentence buried in a footnote of the decision, the Third Circuit stated in passing that "[b]ecause we do not address the validity of" FCC orders interpreting the TCPA, "we need not address [plaintiff's] contention that the Hobbs Act…restricts our jurisdiction." *Id.* at 144 n.5. Contrary to petitioner's characterization, *Manuel* does not say that the Hobbs Act never applies in a suit against a private party, or anything close to that proposition. Here, the Ninth Circuit squarely concluded that adjudicating petitioner's claims would indeed require addressing the validity of NRC orders—and so reached a different result than the Third Circuit on different facts.

ii. Second, petitioner says that the court of appeals' statement that the Hobbs Act covers "NRC decisions

that were ancillary or incidental to" NRC orders, Pet. App. 47a-48a, conflicts with this Court's decision in *Lorion* a decision on which the court below heavily relied. Again, no such conflict exists. *Lorion* made clear that the Hobbs Act applies to "orders resolving issues preliminary or ancillary to the core issue" and that such issues "should be reviewed in the same forum as the final order resolving the core issue." *Lorion*, 470 U.S. at 743; see *ibid.* ("[w]hen Congress decided on the scope of judicial review, it did so solely by reference to the subject matter of the Commission action"). That rule avoids exactly the kind of "duplicative review" that petitioner sought here when it proceeded both to petition for review of an agency order and to bring this challenge against the NRC and private parties. *Id.* at 744-745.

Petitioner's claim of conflict rests on the fact that the court of appeals added "incidental" to "preliminary" and "ancillary"—the words that are found in *Lorion* itself. But nothing here turned on that addition. For one thing, the court of appeals does not appear to have actually relied on the notion that matters preliminary, ancillary, or incidental to NRC orders are subject to Hobbs Act review. Rather, the court said clearly that it understood petitioner's claims against the private respondents to *directly* challenge NRC orders—and only after making that holding, further stated that, "to the extent" that the claims involved some broader challenge, that challenge would involve matters "preliminary, ancillary, or incidental" to the orders and so would also fall within the scope of the Hobbs Act. Pet. App. 47a-48a. The holding that petitioner's claims are barred for multiple, independent, different reasons (as direct, ancillary, preliminary, and incidental challenges to NRC orders)

cannot form the basis of a conflict warranting this Court's review.

Further, the court of appeals did not say that any such broader challenge involved a matter that was "incidental" to an NRC order as opposed to "preliminary or ancillary" to it. The court did not distinguish between those terms, and it is perfectly likely that the court believed that the matters at issue here fell only into the "preliminary or ancillary" categories, or into all three categories. Petitioner tries to parse the decision below like a statute, citing dictionary definitions (Pet. 19) in an effort to show that "incidental" means something meaningfully different than "ancillary." But a court's decision is not a statute, and in common parlance all of the terms the court of appeals used here get at the same idea: something that is necessarily intertwined to or goes closely along with an order but is not the order itself. That is exactly what *Lorion* said fell within the scope of the Hobbs Act—and any claimed conflict here is illusory.

2. Far from creating any conflict, the decision below represents a straightforward application of principles established by this Court and consistently applied in the courts of appeals.

First, courts have often held that a suit between private parties cannot proceed if the real gravamen of the plaintiff's complaint is an attack on agency orders within the scope of a statutory scheme providing that agency orders are to be exclusively reviewed in an appellate court. For instance, in *Self* v. *Bellsouth Mobility, Inc.*, 700 F.3d 453, 462 (11th Cir. 2012), the Eleventh Circuit held that the Hobbs Act barred district-court jurisdiction over a suit by a private party against another private party to recover damages under state law for imposition of a telephone

surcharge. See *id.* at 462-464. The court of appeals ruled that the state-law claims, by their nature, "depend[ed] on the district court being able to collaterally review the correctness or validity" of FCC orders requiring the surcharge, which the Hobbs Act makes exclusively reviewable in the courts of appeals. *Id.* at 462. On that basis, the court of appeals affirmed the district court's dismissal of the claims. See *id.* at 464.

In *Dougherty* v. *Carver Federal Savings Bank*, 112 F.3d 613 (2d Cir. 1997), a case between private parties, the Second Circuit reached a similar result. The Second Circuit noted the existence of a statute that "designates the court of appeals as the exclusive forum for judicial review of" final actions by the Office of Thrift Supervision approving or disapproving a bank "plan of conversion." *Id.* at 619. The court explained that "there is a danger that some litigants seeking review of the OTS decision to approve or disapprove the plan of conversion will recast the allegations in their complaints to assert securities fraud claims" against the bank "in order to circumvent the exclusive review provisions contained in the conversion statute." *Id.* at 620. The court concluded that, "[t]o prevent this end-run around" the exclusive-review statute, "trial courts" must "review carefully the substance of securities fraud causes of action" against private parties "allegedly arising out of a conversion in order to ensure that by means of artful pleading litigants do not obtain prohibited district court review of an OTS conversion approval." *Ibid.* (collecting similar cases from other circuits); see also generally *Whitney Nat'l Bank* v. *Bank of New Orleans & Tr. Co.*, 379 U.S. 411, 420 (1965) ("Where Congress has provided statutory review procedures designed to permit agency expertise

to be brought to bear on particular problems, those procedures are to be exclusive."). [5]

Second, as the court of appeals noted (Pet. App. 28a n.8), other courts have relied on *Lorion* in reading the Hobbs Act to encompass issues adjacent and related to direct challenges to NRC orders. For example, in *Citizens Awareness Network, Inc.* v. *United States*, 391 F.3d 338 (1st Cir. 2004), the First Circuit examined *Lorion* and concluded that "original jurisdiction in the courts of appeals is proper to review any NRC action that could be cognizable in a petition for review," consistent with "the *Lorion* Court's instruction that jurisdictional statutes should be construed so that agency actions will always be subject to initial review in the same court, regardless of the procedural package in which they are wrapped." *Id.* at 347. Decisions of other courts of appeals are of a piece. See, *e.g., Commonwealth Edison Co.* v. *U.S. Nuclear Regulatory Comm'n*, 830 F.2d 610, 612-613 (7th Cir. 1987) (recognizing that "issues preliminary or ancillary to the core issue" to a licensing proceeding should be reviewed in the court of appeals); *Brodsky* v. *United States* NRC, 578 F.3d 175, 182 (2d Cir. 2009); *N.J. Dep't of Envtl. Prot. & Energy* v. *Long Island Power Auth.*, 30 F.3d 403, 410 (3d Cir. 1994).

Both of those well-grounded principles are plainly correct. If a plaintiff could circumvent the Hobbs Act

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[5] Courts have likewise held that they lack jurisdiction to consider disputes between private properties if such disputes feature challenges to NRC regulations. *Liesen v. La. Power & Light Co.*, 636 F.2d 94, 95 (5th Cir. 1981); *Chi. v. United States Nuclear Regulatory Com.*, 701 F.2d 632, 652 n.21 (7th Cir. 1983) affirming *City of West Chicago, Illinois v. United States Nuclear Regulatory Comm'n*, 542 F.Supp. 13, 15 (N.D. Ill. 1982); *Simmons v. Ark. Power & Light Co.*, 655 F.2d 131, 134 (8th Cir. 1981).

by asserting claims against private parties subject to agency orders as a means of attacking the orders themselves, as petitioner did here, then the strictures of the Hobbs Act would have no practical effect. That cannot be what Congress intended in creating that channeling mechanism for review of agency determinations. In addition, if a party could sidestep the Hobbs Act simply by challenging a matter that (as the court of appeals put it here) is "inextricably intertwined" with an agency order, Pet. App. 48a, then that too would render the Hobbs Act meaningless, since it would be possible to employ that stratagem in virtually every case in which a party is aggrieved by such an order. The court of appeals was right to reject that sort of gamesmanship and adhere to Congress's jurisdictional commands. And it was particularly right to do so in light of the importance of having the NRC review complaints like petitioner's in the first instance, given the NRC's special expertise and the nature and significance of determinations about nuclear safety.

Notably, petitioner's only attempt to address the Ninth Circuit's holding that it wrongfully engaged in artful pleading is to briefly argue that the Ninth Circuit's misapplied its own authority (*American Bird Conservancy v. FCC*, 545 f.3d 1190, 1195 (9th Cir. 2008) and *Cal. Save Our Streams Council, Inc. v. Yeutter*, 887 f.2d 908, 911 (9th Cir. 1989)) because those cases did not involve private litigant defendants. Pet. at 27. Not only is the Ninth Circuit's purported misapplication of its own precedent not cognizable grounds for review, but the Ninth Circuit's holding is also in accord with this Court's long-standing disfavor

of attempts to circumvent statutory schemes through artful pleading.[6]

Simply put, "[a] plaintiff cannot evade the Hobbs Act by draping its claims in artful pleading designed to 'disguise the donkey.'" *Flat Creek Transp., Ltd. Liab. Co. v. Fed. Motor Carrier Safety* 2017 U.S. Dist. LEXIS 152528, at *17 (M.D. Ala. Sep. 20, 2017). Indeed, the fact petitioner challenges NRC final orders by bringing claims against private defendants *cuts against* petitioner because such artful pleading is a wrongful attempt to deprive the NRC of its right to defend its own orders. *Port of Bos. Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 70 (1970) (the point of the administrative scheme is "to ensure that the Attorney General has an opportunity to represent the interest of the Government whenever an order of one of the specified agencies is reviewed."); *Peoria v. Gen. Elec. Cablevision Corp. (GECCO)*, 690 F.2d 116, 119 (7th Cir. 1982) ("Peoria's action against GECCO to declare the [Agency] rule invalid was brought in the wrong court at the wrong time against the wrong party… And the proper party defendant in

[6] *See e.g.*, *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 324, (1981) ("compliance with the intent of Congress cannot be avoided by mere artful pleading."); *Brown v. GSA*, 425 U.S. 820, 833-34 (1976)("It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading…a precisely drawn, detailed statute pre-empts more general remedies.").

the judicial review proceeding is the [Agency] not a private company…").[7]

II. THE DECISION BELOW DOES NOT INTERFERE WITH OPERATION OF THE PRICE-ANDERSON ACT OR WITH PRIVATE PARTIES' ABILITY TO SEEK OTHER REMEDIES AND DOES NOT GIVE RISE TO ANY POLICY CONCERNS

1. Contrary to petitioner's contention, there is no reason to fear that under the decision below private parties will not be able to seek a remedy for allegedly unsafe conditions at a nuclear power plant.

A private party seeking such a remedy has a variety of options with which the decision here does not interfere. For instance, to the extent such a party has an issue with an NRC order or action or inaction, that party can file a petition with the NRC under Section 2.206 and then ask a federal court of appeals to review the NRC's decision. See p. 3, *supra*. Indeed, petitioner separately pursued that course of action here—and petitioner's choice to bring its grievances directly to the NRC supported the Ninth Circuit's decision here that the district court lacked jurisdiction to adjudicate petitioner's claims. See Pet. App. 48a-49a. Moreover, if an NRC proceeding is already ongoing, a party can ask for a hearing and can

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[7] *See also Sandwich Isles Communs., Inc. v. Nat'l Exch. Carrier Ass'n*, 799 F. Supp. 2d 44, 52 (D.D.C. 2011) ("the gravamen of the complaint is plaintiffs' disagreement with an agency decision that is not yet final. And once the FCC issues a final order, plaintiffs will have to take it up with the court of appeals."); *see also Natural Res. Def. Council v. Nuclear Regulatory Comm'n*, 666 F.2d 595, 602-03 (D.C. Cir. 1981) ("back door procedural challenges" to NRC regulations are improper and disallowed.)

intervene in the proceeding; that party can also obtain appellate review once the NRC has acted. See p. 3, *supra*.

In the event of a nuclear incident, a private party can bring an action under the Price-Anderson Act, a statute that Congress enacted to give monetary redress to any party actually injured in person or property by the release of radioactive material. See 42 U.S.C. 2014(q), 2210(n)(2). The Act states that a claim under the act is proper if an "occurrence" has taken place that has "caus[ed]" physical injury, sickness, death, or property damage." 42 U.S.C. 2014(q); see *ibid.* (defining "nuclear incident" as "any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material").

As this Court has explained, the Price-Anderson Act deals with how such an injury should be compensated. The Act imposes strict liability under certain circumstances, "limit[s] the aggregate liability for a single nuclear incident," and spreads responsibility for payment of the amount owed among the federal government, private insurers, and owners of private nuclear power plants. *Duke Power Co.* v. *Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 64-67 (1978); see 42 U.S.C. 2210; see also, *e.g.*, *Rainer* v. *Union Carbide Corp.*, 402 F.3d 608, 623-624 (6th Cir. 2005). Accordingly, although a properly pled claim under the Price-Anderson Act may be brought against an NRC licensee, such a claim does not attack NRC

orders or the actions that a licensee has taken under those orders, as petitioner's claim in this case indisputably does. Rather, a properly pled claim simply establishes that a nuclear incident caused the statutorily required type of harm and sets forth the amount of damages. And that kind of claim does not run afoul of the Hobbs Act, because it rests on the indisputable fact of a wrongful injury, not on an argument that the NRC should have acted differently or that private parties should have carried out the NRC's directives in a different way.

Petitioner's argument that the decision below "effectively eliminates [Price-Anderson Act] public liability actions against NRC licensees," Pet. 21, is thus incorrect. All that the court of appeals held was that a litigant cannot circumvent the Hobbs Act through "artful pleading" that disguises a direct challenge to NRC final orders as a Price-Anderson Act claim. Pet. App. 48a. That decision does not prevent private parties from pleading viable claims under that statute in district court so long as those parties can plausibly allege the existence of harm resulting from an actual nuclear incident and they do not attempt to use the Act as a means of making thinly veiled challenges to NRC final orders.

There is no inconsistency between the decision here and the decisions of other courts of appeals stating the basic proposition that the Price-Anderson Act provides for federal district court jurisdiction. See Pet. 5-6, 21-22, 24 (citing *Cook*, 790 F.3d at 1090, *Acuna* v. *Brown & Root Inc.*, 200 F.3d 335, 340 (5th Cir. 2000), *Roberts* v. *Florida Power & Light Co.*, 146 F.3d 1305, 1307 (11th Cir. 1998), and *In re TMI Litig. Cases Consol. II*, 940 F.2d 832, 853-54 (3d Cir. 1991)); see 42 U.S.C. 2014(hh), 2210(n)(2). None of those decisions involves

a Price-Anderson Act claim that fails to meet the requirements of that statute and is being used merely as a vehicle to challenge agency orders that the plaintiff says increase the risk of some *future* injury—and, therefore, none addresses the commands of the Hobbs Act. Those decisions thus do not speak to the situation presented here. See *In re Hanford Nuclear Reservation Litig.*, 534 F.3d 986, 997 (9th Cir. 2008) (agreeing that in the normal course Price-Anderson Act claims belong in federal district court).

2. Given the role played by the NRC and the ability of the public to bring the NRC's attention to an issue or otherwise to assert the claims discussed above, any future problem relating to the storage of SNF or to some other nuclear issue can and will be swiftly addressed. Despite petitioner's repeated attempts to conjure the specter of some disaster, there is no danger here, and certainly no "urgent issues that must be addressed now." Pet. 31 (capitalization altered). There has been no harm caused by SNF storage at SONGS. The NRC—the expert agency charged with maintaining nuclear safety in the United States—conducts inspections and otherwise monitors decommissioning at SONGS on an ongoing basis. In doing so, the NRC takes into account all of the relevant facts and circumstances, including the location of the SONGS site and the materials used to store the SNF. And the NRC will continue to carry out that role whether or not a centralized location for disposal of SNF is established (see Pet. 3)—a matter that is for Congress, not the courts, to address.

III. THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE QUESTION PRESENTED

This case is an exceptionally poor vehicle for addressing the question presented, for numerous reasons.

First, in order to reach the question presented this Court would first have to grapple with a serious issue of Article III standing, which the court of appeals did not address. The district court said that petitioner, an association, has standing here on the ground that it alleged the possibility that storage of SNF at SONGS could perhaps someday lead to release of radiation, which the court characterized as an allegation of "a credible threat that a probabilistic harm will materialize." Pet. App. 21. That analysis is now incorrect, as it predates this Court's recent admonition that "there is a significant difference between…actual harm that has occurred but is not readily quantifiable…and a mere risk of future harm." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2211 (2021) (finding that at minimum petitioner must "factually" establish a future risk). This Court has made clear that standing exists only if a plaintiff has suffered an injury in fact that is "concrete" and "certainly impending." *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 410-411 (2013). A "highly attenuated chain of possibilities" is not sufficient to satisfy that standard. *Ibid.*; see, *e.g.*, *California* v. *Texas*, 141 S. Ct. 2104, 2119 (2021) ("speculation" is not enough for standing); *Lujan*, 504 U.S. at 560 (injury must be "actual or imminent, not conjectural or hypothetical"). But petitioner has offered nothing more than a speculative, attenuated chain of possibilities: there has been no leak of SNF

at SONGS, there is no reason to think that such a leak will occur, and the highly expert agency in charge of overseeing the storage of that SNF has considered the possible dangers involved and has concluded that there is reasonable assurance of public safety. Because the standing issue is jurisdictional, this Court could not resolve any issue about the Hobbs Act in this case without concluding that petitioner has standing to bring its claims—and it does not.

Second, even setting side that jurisdictional flaw, the best reading of the decision below is that the court of appeals did not rely on the notion that any issue "incidental" to an NRC order falls within the scope of the Hobbs Act—a notion that is a foundation of petitioner's attack on that decision. See Pet. 18-21; p. 10, *supra*. As discussed above, the court of appeals' primary ruling was that petitioner's claims against the private respondents were an artfully pled and direct attack NRC final orders, representing "an attempt to challenge the 2015 License Amendments, the Certificate of Compliance for the Holtec System, and actions taken by the licensees under the authority of both of those final NRC orders." Pet. App. 47a. The court went on to say that "*to the extent* [petitioner's] claims against the [private respondents] *also* challenge" other conduct by the private respondents, such a challenge would represent an attack on "NRC decisions that were ancillary or incidental to NRC licensing decisions." Pet. App. 47a-48a (emphasis added). In other words, the court did not decide that petitioner's claims extended so far as to encompass those "ancillary or incidental" NRC decisions. Nor did it decide whether such decisions were in fact "ancillary" (a term drawn directly from this Court's decision in *Lorion*) or whether they were instead "incidental," let alone what the difference between

those two categories (if any) might be. The concept of an "incidental" decision therefore does not play any necessary role in the Ninth Circuit's analysis—and this Court's review of an issue that does not form a basis of the court of appeals' decision is not warranted.

Third, this Court's review of the question presented here is especially unwarranted when petitioner has already availed itself of the very form of review for which the Hobbs Act provides. At the same time that petitioner pursued this suit, it also filed a Section 2.206 petition at the NRC and then sought review of the NRC's denial of that petition in the Ninth Circuit, which declined to disturb the NRC's decision. As the panel in this case emphasized, petitioner's arguments in those separate proceedings were virtually identical to the arguments it raised in this case, and petitioner sought an identical remedy in both contexts. See Pet. App. 39a-40a, 48a. Because petitioner has already gone down the jurisdictional road mandated by the Hobbs Act, there is no reason for this Court to give petitioner a second a second bite at the apple—and no unfairness in treating the Ninth Circuit's denial of petitioner's Hobbs Act-sanctioned petition for review as determinative. See *Lorion*, 470 U.S. at 744 (explaining that "[o]ne crucial purpose of the Hobbs Act and other jurisdictional provisions that place initial review in the courts of appeals is to avoid the waste attendant upon" a "duplication of effort").

Finally, even if petitioner were to convince this Court that standing exists and to prevail on the question presented, that would not change the ultimate result of this case. Although the court of appeals did not reach the district court's alternative grounds for dismissal, those grounds are sound ones that would bar petitioner from proceeding past the

motion-to-dismiss stage, let alone from obtaining any relief. For example, as the district court explained, the Price-Anderson Act authorizes an action only in the event of a "nuclear incident"—that is, an event causing "bodily injury, sickness, disease, or death" or property damage "arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material." Pet. App. 100a (citations omitted). But no such incident has occurred here. There has been no personal injury or property damage of any kind, because the SNF is safely stored at SONGS under the NRC's regulatory oversight. Pet. App. 100a-102a. Accordingly, no Price-Anderson claim arises. And petitioner's two state-law causes of action are equally deficient, since they are preempted by the AEA, "which occupies the field for protection against hazards of radiation and the disposal of radioactive materials," Pet. App. 104a; see Pet. App. 102a, 105a-106a (citing *Silkwood*, which involved preemption under the Price-Anderson Act rather than the AEA), and are otherwise barred by state law requiring a showing of injury and immunizing conduct taken pursuant to statutory authority, Pet. App. 106a-114a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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