

No. 21-60743

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, GREG ABBOTT, Governor of Texas,
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,
FASKEN LAND AND MINERALS, LIMITED, and
PERMIAN BASIN LAND AND ROYALTY OWNERS,
Petitioners,

v.

NUCLEAR REGULATORY COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

On Petition for Review of Action
by the Nuclear Regulatory Commission

**UNOPPOSED MOTION FOR LEAVE
TO FILE SUPPLEMENTAL BRIEFING**

Federal Respondents (the Nuclear Regulatory Commission and United States of America) and Intervenor Interim Storage Partners, LLC (ISP) seek leave for the parties to file short supplemental briefs addressing the Supreme Court's recent decision in *West Virginia v. EPA*, 2022 WL 2347278 (U.S. June 30, 2022). Petitioners State of Texas, Governor Greg Abbott, and the Texas Commission on Environmental Quality (the Texas Petitioners), and Petitioners Fasken Land and

Minerals, Limited, and Permian Basin Land and Royalty Owners (Fasken Petitioners) do not oppose this request.

1. On June 30, 2022, the Supreme Court issue its decision in *West Virginia*. On July 6, 2022, the Texas Petitioners filed a notice of supplemental authority under Fed. R. App. P. 28(j), contending that “*West Virginia* confirms that this case implicates the major questions doctrine.” Texas Rule 28(j) Letter at 1.

2. Rather than filing a Rule 28(j) letter in response, Federal Respondents believe that the Court would benefit from supplemental briefing on whether the major questions doctrine articulated in *West Virginia* applies to this case.

Thus, Federal Respondents and Intervenor ISP request that the Court grant leave for each party (Federal Respondents, Texas Petitioners, Fasken Petitioners, and Intervenor ISP) to file a supplemental brief of no more than 10 pages by August 3, 2022.

Dated: July 11, 2022

/s/ Justin D. Heminger

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), it contains 210 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Andrew P. Averbach

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CERTIFICATE OF SERVICE

I certify that on July 11, 2022, I served a copy of the foregoing **MOTION FOR LEAVE** upon counsel for the parties in this action by filing the document electronically through the CM/ECF system. This method of service is calculated to serve counsel at the following e-mail addresses:

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