***Pacific Gas & Electric Company v. State Energy Resources Conservation & Development Commission* (1983)**

461 U.S. 190

The Federal Government has long regulated the development of nuclear energy under the Atomic Energy Act of 1954 and subsequent legislation. Growing opposition to nuclear power, however, has led some states to impose their own restrictions on its development. The present case involves a California law providing that before additional nuclear power plants could be built, the state energy commission had to determine on a case-by-case basis that there would be adequate capacity for storage of the plant's spent fuel rods. The statute also imposed a moratorium on the certification of new nuclear plants until the energy commission deter- mined that an adequate technology had been developed for the disposal of high-level nuclear waste. Two electric utility companies challenged these provisions, claiming that they had been preempted by the Atomic Energy Act.

A federal district court ruled in favor of the utility companies. However, a federal court of appeals ruled that the moratorium on certification of new nuclear power plants was not preempted and that the provision dealing with capacity for storing spent fuel rods was not ripe for review. (For a discussion of ripeness, see Chapter 3.) The excerpts from the U.S. Supreme Court's decision presented below focus on whether federal legislation had preempted the state moratorium on certification of new plants.

Opinion of the Court: White, Burger, Brennan, Marshall, Powell, Rehnquist, O'Connor.

Concurring opinion (in part): Blackmun, Stevens.

JUSTICE WHITE delivered the opinion of the Court.

It is well-established that within Constitutional limits Congress may preempt state authority by so stating in express terms. Absent explicit preemptive language, Congress' intent to supercede state law altogether may be found from a "scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room to supplement it," "because the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or because "the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose." Even where Congress has not entirely displaced state regulation in a specific area, state law is preempted to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Petitioners, the United States, and supporting *amici*, present three major lines of argument as to why § 25524.2 is preempted. First, they submit that the statute—because it regulates construction of nuclear plants and because it is allegedly predicated on safety concerns—ignores the division between federal and state authority created by the Atomic Energy Act, and falls within the field that the federal government has preserved for its own exclusive control. Second, the statute, and the judgments that underlie it, conflict with decisions concerning the nuclear waste disposal issue made by Congress and the Nuclear Regulatory Commission. Third, the California

statute frustrates the federal goal of developing nuclear technology as a source of energy. We consider each of these contentions in turn.

. . . From the passage of the Atomic Energy Act in 1954, through several revisions, and to the present day, Congress has preserved the dual regulation of nuclear-powered electricity generation: the federal government maintains complete control of the safety and "nuclear" aspects of energy generation; the states exercise their traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like.

The above is not particularly controversial. But deciding how § 25524.2 is to be construed and classified is a more difficult proposition. At the outset, we emphasize that the statute does not seek to regulate the construction or operation of a nuclear powerplant. It would clearly be impermissible for California to attempt to do so, for such regulation, even if enacted out of non-safety concerns, would nevertheless directly conflict with the NRC's exclusive authority over plant construction and operation. Respondents appear to concede as much. Respondents do broadly argue, however, that although safety regulation of nuclear plants by states is forbidden, a state may completely prohibit new construction until its safety concerns are satisfied by the federal government. We reject this line of reasoning. State safety regulation is not preempted only when it conflicts with federal law. Rather, the federal government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states. When the federal government completely occupies a given field or an identifiable portion of it, as it has done here, the test of preemption is whether "the matter on which the state asserts the right to act is in any way regulated by the federal government." A state moratorium on nuclear construction grounded in safety concerns falls squarely within the prohibited field. . . .

That being the case, it is necessary to determine whether there is a non-safety rationale for §25524.2. . . .

Although [several] indicia of California's intent in enacting § 25524.2 are subject to varying interpretation, there are two reasons why we should not become embroiled in attempting to ascertain California's true motive. First, inquiry into legislative motive is often an unsatisfactory venture. What motivates one legislator to vote for a statute is not necessarily what motivates scores of others to enact it. Second, it would be particularly pointless for us to engage in such inquiry here when it is clear that the states have been allowed to retain authority over the need for electrical generating facilities easily sufficient to permit a state so inclined to halt the construction of new nuclear plants by refusing on economic grounds to issue certificates of public convenience in individual proceedings. In these circumstances, it should be up to Congress to determine whether a state has misused the authority left in its hands.

Therefore, we accept California's avowed economic purpose as the rationale for enacting § 25524.2. Accordingly, the statute lies outside the occupied field of nuclear safety regulation.

Petitioners' second major argument concerns federal regulation aimed at the nuclear waste disposal problem itself. It is contended that § 25524.2 conflicts with federal regulation of nuclear waste disposal, with the NRC's decision that it is permissible to continue to license reactors, notwithstanding uncertainty surrounding the waste disposal problem, and with Congress' recent passage of legislation directed at that problem. . . .

The NRC's imprimatur, however, indicates only that it is safe to proceed with such plants, not that it is economically wise to do so. Because the NRC order does not and could not compel a

utility to develop a nuclear plant, compliance with both it and § 25524.2 are possible. Moreover, because the NRC's regulations are aimed at insuring that plants are safe, not necessarily that they are economical, § 25524.2 does not interfere with the objective of the federal regulation.

Nor has California sought through § 25524.2 to impose its own standards on nuclear waste disposal. The statute accepts that it is the federal responsibility to develop and license such technology. As there is no attempt on California's part to enter this field, one which is occupied by the federal government, we do not find § 25524.2 preempted any more by the NRC's obligations in the waste disposal field than by its licensing power over the plants themselves. . . .

Finally, it is strongly contended that § 25524.2 frustrates the Atomic Energy Act's purpose to develop the commercial use of nuclear power. . . .

There is little doubt that a primary purpose of the Atomic Energy Act was, and continues to be, the promotion of nuclear power. The Act itself states that it is a program "to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public." The House and Senate Reports confirmed that it was "a major policy goal of the United States" that the involvement of private industry would "speed the further development of the peaceful uses of atomic energy." The same purpose is manifest in the passage of the Price-Anderson Act, which limits private liability from a nuclear accident. The Act was passed "in order to protect the public and to encourage the development of the atomic energy industry. . . ."

The Court of Appeals' suggestion that legislation since 1974 has indicated a "change in congressional outlook" is unconvincing: . . . The Court of Appeals is right, however, that the promotion of nuclear power is not to be accomplished "at all costs." The elaborate licensing and safety provisions and the continued preservation of state regulation in traditional areas belie that. Moreover, Congress has allowed the States to determine—as a matter of economics—whether a nuclear plant vis-a-vis a fossil fuel plant should be built. The decision of California to exercise that authority does not, in itself, constitute a basis for preemption. Therefore, while the argument of petitioners and the United States has considerable force, the legal reality remains that Congress has left sufficient authority in the states to allow the development of nuclear power to be slowed or even stopped for economic reasons. Given this statutory scheme, it is for Congress to rethink the division of regulatory authority in light of its possible exercise by the states to undercut a federal objective. The courts should not assume the role which our system assigns to Congress.

The judgment of the Court of Appeals is

Affirmed.

JUSTICE BLACKMUN, with whom JUSTICE STEVENS joins, concurring in part and concurring in the judgment.

I join the Court's opinion, except to the extent it suggests that a State may not prohibit the construction of nuclear power plants if the State is motivated by concerns about the safety of such plants. . . .

Congress has not required States to "go nuclear," in whole or in part. The Atomic Energy Act's twin goals were to promote the development of a technology and to ensure the safety of that technology. Although that Act reserves to the NRC decisions about how to build and operate nuclear plants, the Court reads too much into the Act in suggesting that it also limits the States' traditional power to decide what types of electric power to utilize. Congress simply has made the

nuclear option available, and a State may decline that option for any reason. Rather than rest on the elusive test of legislative motive, therefore, I would conclude that the decision whether to build nuclear plants remains with the States. In my view, a ban on construction of nuclear power plants would be valid even if its authors were motivated by fear of a core meltdown or other nuclear catastrophe.