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**English v. General Electric Company: The State Right to Regulate  
the Nuclear Energy Industry Affirmed - Albeit Indirect**

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## NOTE

# ENGLISH v. GENERAL ELECTRIC COMPANY: THE STATE RIGHT TO REGULATE THE NUCLEAR ENERGY INDUSTRY AFFIRMED—(ALBEIT INDIRECT)

### INTRODUCTION

The early history of the U.S. nuclear energy industry is marked by noticeably lax federal regulation.<sup>1</sup> There are several proposed explanations; most involve economic encouragement by the federal government for the then new industry and focus on the promise of producing nuclear energy "too cheap to meter."<sup>2</sup> During the late 1960s and early 1970s, however, the pro-nuclear consensus of the American public began to break down.<sup>3</sup> In the face of growing public scrutiny and criticism, the federal government's Atomic Energy Commission, created by the Atomic Energy Act of 1946 to encourage research and promote development of nuclear energy, adopted a "much more active regulatory stance."<sup>4</sup>

During the past three decades, the U.S. Supreme Court only infrequently addressed the issue of whether the regulation of the nuclear energy industry was purely a federal responsibility, or phrasing the issue another way, whether the states were pre-empted from playing an active role in regulating this new power source.<sup>5</sup> The Court repeatedly found that, Congress through the legislation it had enacted addressing this issue, intended that the "federal government has exclusive authority under the doctrine of pre-emption to regulate the construction and operation of nuclear power plants. . . ."<sup>6</sup>

More recent Supreme Court decisions, however, suggest that the regulatory authority over the nuclear industry has and is continuing to change. In 1983 for example, Justice Blackmun wrote in *Silkwood*, in the dis-

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1. England & Mitchell, *Federal Regulation and Environmental Impact of the United States Nuclear Power Industry, 1974-1984*, 30 Nat. Res. J. 537, 539 (1990).

2. J. Tomain, J. Hickey Jr. & S. Hollis, *Energy Law and Policy* 392 (1989).

3. *Id.* at 389.

4. England & Mitchell, *supra* note 1, at 540 (citing Freudenburg and Baxter, *Nuclear Reactions: Public Attitudes and Policies Toward Nuclear Power*, 5 Policy Studies Rev. 97-98 (1985)). "Freudenburg and Baxter point out, for example, that whereas the Atomic Energy Commission had fewer than a dozen active regulations in 1970, there were several dozen by 1972, and several hundred by 1977." *Id.*

5. *Power Reactor Dev. Co. v. Inter. Union of Elec., Radio & Machine Workers*, 367 U.S. 396 (1961); *Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council Inc.*, 435 U.S. 519 (1978); *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd mem.*, 405 U.S. 1035 (1972); *Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U.S. 190 (1983); *Silkwood v. Kerr-McGee Corp.* 464 U.S. 238 (1984).

6. *Northern States Power*, 447 F.2d at 1154.

senting opinion by the Supreme Court whose majority had allowed a state court to award punitive damages in a case involving a worker exposed to radiation at a nuclear facility, that states were now in a position to indirectly regulate both radiological hazards and the nuclear energy industry through the use of judicial decisions.<sup>7</sup> However, in 1990 Justice Blackmun wrote the unanimous opinion in *English v. General Electric Company*, a case which held that an employee at a nuclear fuel production facility was not pre-empted by federal law from bringing an action against her employer for intentional infliction of emotional distress.<sup>8</sup> In only seven years, one Supreme Court Justice went from writing a dissenting opinion which criticized the Supreme Court for recognizing the states' ability to regulate (at least indirectly) the nuclear energy industry, to writing an unanimous Supreme Court opinion which allows state-law tort claims against employers in the nuclear energy industry.

This author argues that the decision in *English v. General Electric Company* confirms the opportunity for states to indirectly regulate the nuclear energy industry (and radiological matters) which before were in the exclusive purview of the federal government.

### STATEMENT OF THE CASE

Petitioner Vera English was employed from 1972 to 1984 as a laboratory technician at the nuclear-fuels production facility operated by General Electric Company (GE) in Wilmington, North Carolina.<sup>9</sup> She complained to General Electric's management and to the Nuclear Regulatory Commission (NRC) about several "perceived violations of nuclear safety standards at the facility, including the failure of her co-workers to clean up radioactive material spills in the laboratory."<sup>10</sup> Petitioner's employment was terminated shortly thereafter and she subsequently filed a complaint with the Secretary of Labor charging GE with violating a section of the Energy Reorganization Act of 1974.<sup>11</sup> Section 210(a) of that Act makes it unlawful for an employer in the nuclear industry to discharge an employee in retaliation for initiating a nuclear safety-violation complaint.<sup>12</sup> This provision has become commonly known as the "whistleblower" protection clause.

7. "The punitive damages award therefore enables a State to enforce a standard that is more exacting than the federal standard." *Silkwood*, 464 U.S. at 265. (Blackmun, J., dissenting).

8. *English v. General Electric Company*, \_\_\_ U.S. \_\_\_, 110 S. Ct. 2270, 110 L.Ed. 55 (1990).

9. *Id.* 110 S.Ct at 2273.

10. *Id.*

11. 42 U.S.C. § 5851 (1988) as amended, 92 Stat 2951, § 210.

12. 42 U.S.C. § 210(a) "No employer . . . may discharge any employee because the employee . . .

(1) commenced . . . a proceeding for the administration or enforcement of any requirement imposed under this Act. . . ." 42 U.S.C. § 5851 (a) as amended, 92 Stat 2951.

The controversy was referred to an administrative law judge who found that GE had violated Section 210(a), but dismissed the complaint as untimely because it had not been filed within the allotted time period following the company's final notice of employment termination.<sup>13</sup> Asserting that her inability to proceed with an administrative claim against GE did not preclude her from pursuing a state-law tort claim, petitioner subsequently filed a diversity action against GE in the United States District Court for the Eastern District of North Carolina seeking compensatory and punitive damages from GE for intentional infliction of emotional distress.<sup>14</sup>

Although the District Court found that petitioner stated a valid claim for intentional infliction of emotional distress under North Carolina law, it nevertheless granted GE's motion to dismiss.<sup>15</sup> GE argued that petitioner's claim fell within the field of "nuclear safety."<sup>16</sup> Its argument was that the field of nuclear safety regulations was an area of law that had been completely pre-empted by the Federal Government. Instead, the District Court held that petitioner's claim was pre-empted because it conflicted with three particular aspects of Section 210: (1) a provision that bars recovery under the section to any employee who deliberately causes a violation of any requirement of the Energy Reorganization Act or of the Atomic Energy Act; (2) the absence of any provision generally authorizing the Secretary to award exemplary or punitive damages; and (3) the provisions requiring that the employee invoking the statute file an administrative complaint within 30 days after the violation occurs, and that the Secretary resolve the complaint within 90 days after its filing.<sup>17</sup>

The United States Court of Appeals for the Fourth Circuit affirmed the dismissal of petitioner's claim for intentional infliction of emotional distress.<sup>18</sup> The Appeals Court noted that "[t]he district court's opinion has correctly identified and applied the relevant federal and state law."<sup>19</sup>

The United States Supreme Court granted certiorari because of "an apparent conflict with a decision of the First Circuit."<sup>20</sup> The sole question for the Court's resolution was whether the federal government had "pre-empted petitioner's state-law tort claim for intentional infliction of emotional distress."<sup>21</sup>

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13. *English*, 110 S.Ct. at 2274.

14. *English v. General Electric Company*, 683 F. Supp. 1006 (1988).

15. *English*, 110 S.Ct. at 2274.

16. *Id.*

17. See sections 210(g), 210(b) (1) and 210 (b) (2) (a). 42 U.S.C. § 5851 as amended, 92 Stat 2951.

18. *English v. General Electric Company*, 872 F.2d 22 (1989).

19. *Id.* at 23.

20. *English v. General Electric Company*, 110 S.Ct. at 2275. See *Norris v. Lumberman's Mutual Casualty Company*, 881 F.2d 1144 (1989) (holding that Congress, in the Energy Reorganization Plan of 1974, did not intend to preempt state law actions involving nuclear whistleblowers).

21. *English*, 110 S.Ct. at 2275.

## DISCUSSION AND ANALYSIS

Justice Blackmun, writing for a unanimous Court, analyzed two basic issues:

- A) whether state-law tort claims were in an area or field that Congress intended the Federal Government to occupy exclusively, and
- B) whether state law was pre-empted to the extent that it actually conflicted with federal law.

The Court determined that petitioner's tort claim was not pre-empted by federal law because it was neither motivated by safety concerns nor was its effect direct or substantial enough to place it in the pre-empted field of nuclear safety. Further, the Supreme Court did not agree with the lower court's conclusion that petitioner's claim conflicted with federal law.

### Congressional Pre-emption in the Field of Nuclear Safety

The *English* Court noted this was not the first case in which the Supreme Court considered the extent to which Congress had "pre-empted the field of nuclear safety."<sup>22</sup> In *Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n.*, the Court carefully analyzed the various congressional enactments relating to the nuclear energy industry.<sup>23</sup> The *English* Court, subsequently, relied extensively on that previous Supreme Court analysis. The *English* Court adopted the *Pacific Gas* Court's discussion of congressional actions taken in the nuclear energy realm as well as the conclusions the previous Court drew from reviewing those congressional actions.<sup>24</sup>

### History of Nuclear Energy Regulation in the United States

"Until 1954, the use, control, and ownership of all nuclear technology remained a federal monopoly."<sup>25</sup> During the earliest stages of nuclear energy development, the federal government gave states little authority to regulate the nuclear energy industry. The Atomic Energy Act of 1954, however, reflected Congress' evolving belief that the national interest would be best served if the government encouraged the private sector to "develop atomic energy for peaceful purposes under a program of federal regulation and licensing."<sup>26</sup> The Act implemented this policy decision by allowing private construction, ownership, and operation of commercial

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22. *Id.* at 2276.

23. *Pacific Gas and Electric v. State Energy*, 461 U.S. 190 (1983).

24. *English*, 110 S.Ct. at 2276.

25. *Id.*

26. *Id.*

nuclear-power reactors under the supervision of the Atomic Energy Commission (AEC).<sup>27</sup> With respect to matters of national security and public health and safety, "no significant role was contemplated for the states."<sup>28</sup>

In 1959, Congress amended the Atomic Energy Act to clarify the respective responsibilities of the states and the federal government in relation to the regulation of byproduct, source, and special nuclear materials, and "generally to increase the State's role."<sup>29</sup> This amendment marked the first real, albeit very slight, opportunity for states to participate in the regulation of nuclear energy.

In 1974, Congress passed the Energy Reorganization Act which abolished the AEC and transferred its regulatory and licensing authority to the Nuclear Regulatory Commission (NRC).<sup>30</sup> The 1974 Act also expanded the number and range of safety responsibilities under the NRC's charge.<sup>31</sup> As the Court noted in *Pacific Gas*, the NRC did "not purport to exercise its authority based upon economic considerations," but rather was concerned primarily with public health and safety.<sup>32</sup>

In 1978, Congress amended both the Atomic Energy Act and the Energy Reorganization Act.<sup>33</sup> Among those amendments is Section 210, the provision that encourages employees in the nuclear industry to report safety violations and provides a mechanism for protecting them against retaliation for doing so.<sup>34</sup> GE claimed it was these federal law provisions that pre-empted Vera English from using state tort law to bring an action for intentional infliction of emotional distress against them.

### THE FIELD OF NUCLEAR SAFETY

In *Pacific Gas*, the Supreme Court concluded that "the Federal Government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the States."<sup>35</sup> In addition, the Court stressed that Congress intended that only "the Federal Government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant."<sup>36</sup>

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27. *Id.* "[The federal government's] prime area of concern in the licensing context . . . [was] national security, public health, and safety." *Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council Inc.*, 435 U.S. 519, 550 (1978).

28. *English*, 110 S.Ct. at 2276.

29. *Id.* The 1959 Amendments authorized the NRC, by agreements with state governors to discontinue the federal government's regulatory authority over certain nuclear materials under specific conditions. State regulatory programs adopted under the amendment were required to be "coordinated and compatible with those of the AEC." 42 U.S.C. § 2021(a) (1) & 2021(g) (1988).

30. 42 U.S.C. § 5801 et seq. See specifically section 5841(f).

31. *English*, 110 S.Ct. at 2276.

32. *Pacific Gas and Electric v. State Energy*, 461 U.S. 190, 207 (1983).

33. *English*, 110 S.Ct. at 2276-77.

34. 42 U.S.C. § 5851 (1988) as amended, 92 Stat 2951, § 210(a).

35. *Pacific Gas and Electric v. State Energy*, 461 U.S. at 212.

36. *Id.* at 205.

Vera English and GE disagreed as to whether petitioner's tort action claim fell within the boundaries of the pre-empted field referred to in *Pacific Gas*. Respondent, General Electric, maintained that the pre-empted field is a "large one" and that section 210 is an integral part of it.<sup>37</sup> Specifically, respondent argued that since the Federal Government is in a better position to promote nuclear safety if "whistleblowers" pursue the federal remedy, the whole area or field marked off by section 210 should be considered part of the pre-empted field identified in *Pacific Gas*.<sup>38</sup> Accordingly, General Electric argued that all state-law remedies for conduct covered by section 210 are pre-empted.<sup>39</sup>

Petitioner (and the United States as amicus curiae) maintained that her state law claim for intentional infliction of emotional distress was not pre-empted by federal law because the Supreme Court made clear in *Pacific Gas* that state laws supported by nonsafety rationales do not lie within the pre-empted field of nuclear safety.<sup>40</sup> They argued that since the state tort of intentional infliction of emotional distress is supported by a nonsafety rationale—the state's interest in protecting its citizens from the kind of abuse of which Vera English complained—the cause of action must proceed.<sup>41</sup> The United States Supreme Court determined both arguments to be "somewhat wide of the mark."<sup>42</sup>

The *English* Court found no "clear and manifest" intent on the part of Congress in enacting section 210 to pre-empt all state tort laws that traditionally had been available to persons who, like petitioner, alleged outrageous conduct at the hands of an employer.<sup>43</sup> The Court noted that acceptance of GE's argument would require it to conclude that Congress had displaced not only state tort law, but also state criminal law to the extent that such criminal law is applied to retaliatory conduct occurring

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37. *English*, 110 S.Ct. at 2277.

38. *Id.*

39. *Id.*

40. *Id.* "Despite respondent's portrayal of the claim for damages as an attempt to discourage employer conduct relating to nuclear safety, petitioner is seeking recovery based only on common-law tort principles that bar the intentional infliction of emotional distress; the state cause of action does not reflect any state policy specifically concerning nuclear safety complaints." Brief for the United States as Amicus Curiae, p.13, *English v. General Electric Company*, \_\_\_ U.S. \_\_\_, 110 S.Ct. 2270, 110 L.Ed. 55 (1990).

41. *English*, 110 S.Ct. at 2277.

42. *Id.*

43. *Id.* "In addition to challenging her employer's actions in transferring and ultimately firing her, petitioner alleged that respondent: (1) removed her from the laboratory under guard 'as if she were a criminal'; (2) assigned her to degrading 'make work' in her substitute assignment; (3) derided her as 'paranoid'; (4) barred her from working in controlled areas; (5) placed her under constant surveillance during work hours; (6) isolated her from co-workers, even during lunch periods; (7) conspired to charge her fraudulently with violations of safety and criminal law." Brief for the United States as Amicus Curiae at 3-4 (citing Pet. App. 27(a)), *English v. General Electric Company*, \_\_\_ U.S. \_\_\_, 110 S.Ct. 2270, 110 L.Ed. 55 (1990).

at the site of a nuclear facility.<sup>44</sup> The Supreme Court provided the example that “if an employer were to retaliate against a nuclear whistleblower by hiring thugs to assault the employee on the job . . . respondent’s position would imply that the state criminal law prohibiting such conduct is within a pre-empted field.”<sup>45</sup> The Court did not believe Congress intended such a result and found no basis for respondent’s contention that all state-law claims arising from conduct covered by section 210 are necessarily included in the pre-empted field.<sup>46</sup> Instead, the Court determined that “the District Court was essentially correct in observing that while Section 210 obviously bears some relation to the field of nuclear safety, its paramount purpose was the protection of employees.”<sup>47</sup>

The Court did not, however, accept petitioner’s position either. Vera English argued that since the state-law tort claim was “motivated” by something other than nuclear safety concerns, the claim was not pre-empted.<sup>48</sup> The Court reasoned that even as the *Pacific Gas* decision indicates that part of the pre-empted field is defined by reference to the purpose of the state law in question, it made clear that another part of the field is defined by the state law’s actual effect on nuclear safety.<sup>49</sup> “The real issue, then, is whether petitioner’s tort claim is so related to the radiological safety aspects involved in the operation of a nuclear facility that it falls within the pre-empted field.”<sup>50</sup>

The Court began by emphasizing that “not every state law that in some remote way may affect the nuclear safety decisions made by those who build and run nuclear facilities can be said to fall within the pre-empted field.”<sup>51</sup> For a state law to fall within the pre-empted zone, “it must have some direct and substantial effect on the decisions made by those who build or operate nuclear facilities concerning radiological safety levels.”<sup>52</sup> Justice Blackmun’s opinion, then, provides the reader with an example of one of the potential regulatory-type effects of which he wrote seven years earlier in the *Silkwood* dissenting opinion.

Justice Blackmun’s hypothetical example notes that if “employers find retaliation more costly, they will be forced to deal with complaints by whistleblowers by other means, including altering radiological safety

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44. *English*, 110 S.Ct. at 2277.

45. *Id.*

46. *Id.*

47. *Id.* “[W]e note that the enforcement and implementation of Section 210 was entrusted by Congress not to the NRC—the body primarily responsible for nuclear safety regulation—but to the Department of Labor.” *English*, 110 S.Ct. at 2277 n.6.

48. *English*, 110 S.Ct. at 2278.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

policies."<sup>53</sup> "Nevertheless, we believe that this effect is neither direct nor substantial enough to place petitioner's claim in the pre-empted field."<sup>54</sup>

Justice Blackmun cited the *Silkwood* decision and wrote how in that case the Supreme Court held that "a claim for punitive damages in a state tort action arising out of the escape of plutonium from a federally licensed nuclear facility did not fall within the pre-empted field discussed in *Pacific Gas*."<sup>55</sup> Justice Blackmun also recorded in the *English* decision the Court's thinking that how the Court thought "it would be odd, if not irrational, to conclude that Congress intended to include tort actions stemming from retaliation against whistleblowers in the pre-empted field but intended not to include tort actions stemming from radiation damage suffered as a result of actual safety violations."<sup>56</sup>

Accordingly, the Supreme Court noted that potential liability for the kind of claim at issue in *Silkwood* will affect radiological safety decisions more directly than will potential liability under the kind of claim Vera English brought before the Court.<sup>57</sup> Indeed, "the prospect of compensatory and punitive damages for radiation-based injuries will undoubtedly affect nuclear employers' primary decisions about radiological safety in the construction and operation of nuclear power facilities far more substantially than will liability under the kind of claim petitioner asserts."<sup>58</sup>

Thus, the Supreme Court concluded that Vera English's state-law claim for intentional infliction of emotional distress was not within the pre-empted field of nuclear safety.<sup>59</sup>

### **Did the Lower Court Err in Concluding That Petitioner's Claim Conflicted With Federal Law?**

The Court addressed whether petitioner's state-law tort claim of intentional infliction of emotional distress was preempted by the Energy Reorganization Act because it conflicted with section 210. The district court identified three features of section 210 it believed were incompatible with petitioner's claim.<sup>60</sup>

The district court relied first on section 210(g) which provides that the prohibition on employer retaliation "shall not apply" where an employee deliberately causes a violation of any requirement of the Energy Reor-

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53. *Id.*

54. *Id.*

55. *Id.* at 2278-79.

56. *Id.* at 2279.

57. *Id.*

58. *Id.*

59. *Id.*

60. *English v. General Electric Company*, 683 F.Supp. 1006, 1013 (1988).

ganization Act or of the Atomic Energy Act.<sup>61</sup> The district court and GE believed that section 210(g) reflected a congressional desire to preclude all relief, including state-law remedies, to a whistleblower who deliberately commits a safety violation referred to in section 210(g).<sup>62</sup>

The Supreme Court, however, found that the "text of section 210(g) specifically limits its applicability to the remedy provided by section 210(a)" and does not suggest that it bars state-law tort actions.<sup>63</sup> Section 210(a) prohibits employer retaliation and grants a federal administrative remedy to employees in the nuclear energy industry.<sup>64</sup> In addition, the legislative history of section 210 reveals a clear congressional intent to supplant state-law causes of action that might afford broader relief.<sup>65</sup>

In any event, even if the lower court was correct in concluding that Congress wanted those who deliberately commit nuclear-safety violations to be denied all remedies against employer retaliation, "this federal interest would be served only to the extent that it afforded recovery to such violators."<sup>66</sup> In the case before the bench the administrative law judge found that Vera English had not deliberately committed a safety violation within the meaning of section 210.<sup>67</sup> Thus, the lower court's conclusion that the state-law tort claim conflicted with section 210 was rejected by the Supreme Court because Vera English had not deliberately committed a safety violation.

The second reason why the lower court found that petitioner's claim was in conflict with federal law involved what the district court thought was an absence in section 210 of general authorizations for the Secretary of Labor to award exemplary damages against employers who engage in retaliatory conduct.<sup>68</sup> The district court's reasoning was that if section 210 did not allow awards of exemplary damages, then a state-law tort claim that did would be in conflict with the federal law. The Supreme Court found, however, that according to the federal protections granted whistleblowers under the Energy Reorganization Act, a district court can

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61. "Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended." 42 U.S.C. § 5851 (1988) as amended, 92 Stat. 2951, § 210(g).

62. *English*, 110 S.Ct. at 2280.

63. *Id.*

64. "Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred." 42 U.S.C. § 5851 (1988) as amended, 92 Stat. 2951 § 210(c).

65. *English*, 110 S.Ct. at 2280.

66. *Id.* (emphasis included).

67. *Id.*

68. *Id.*

award exemplary damages in enforcement proceedings brought by the Secretary of Labor.<sup>69</sup> More importantly, the Supreme Court noted that the district court failed to follow the Supreme Court's teaching that "[o]rdinarily, state causes of action are not pre-empted solely because they impose liability over and above that authorized by federal law."<sup>70</sup> Absent some specific language in the text or suggestion in the legislative history of section 210, the Supreme Court could not conclude that Congress intended to pre-empt all state actions that permit the recovery of exemplary damages.<sup>71</sup>

Finally, the Supreme Court addressed the district court's holding that the expeditious time frames provided by Congress for the processing of section 210 claims reflect a congressional decision that no whistleblower should be able to recover under any other law after the time for filing under section 210 had expired.<sup>72</sup> The district court adopted GE's argument that if a state-law remedy is available after the time limit for filing a section 210 complaint has expired, a whistleblower will have less incentive to bring a section 210 complaint.<sup>73</sup> As a result, the argument runs, federal regulatory agencies will remain unaware of some safety violations and retaliatory behavior, and will thus be unable to ensure radiological safety at nuclear facilities.<sup>74</sup>

Justice Blackmun responded by noting that there was some force to that argument, "but we do not believe that problem is as great as respondent suggests."<sup>75</sup> Justice Blackmun reasoned that most retaliatory incidents arise as a response to safety complaints which employees register with federal regulatory agencies.<sup>76</sup> "The Federal Government thus is already aware of these safety violations, whether or not the employee invokes the remedial provisions of Section 210."<sup>77</sup> Finally, the Supreme Court did not agree with respondent's belief that employees will forego their section 210 options and rely solely on state remedies for retaliation.<sup>78</sup> In general, pre-emption is ordinarily not to be implied absent "actual conflict."<sup>79</sup>

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69. "In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages." 42 U.S.C. § 5851 (1988) as amended, 92 Stat. 2951 § 210(d).

70. *English*, 110 S.Ct. at 2280 (quoting *California v. ARC America Corp.* 490 U.S. 93, 99 (1989)).

71. *English*, 110 S.Ct. at 2280.

72. *English*, 683 F.Supp. 1006 at 1014-1015.

73. *English*, 110 S.Ct. at 2281.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 2281. (*E.g.*, *Savage v. Jones*, 225 U.S. 501, 533 (1912)).

The Supreme Court concluded by finding that petitioner's claim for intentional infliction of emotional distress did not fall within the pre-empted field of nuclear safety as that field has been defined by prior cases. Nor did it conflict with any particular aspect of section 210 of the Energy Reorganization Act. The lower court's judgment was reversed and the case remanded for further proceedings consistent with Justice Blackmun's opinion.

### CONCLUSION

The early history of the nuclear energy industry is dominated by almost exclusive federal government control and regulation. In the broadest sense, that history remains intact. Recent Supreme Court decisions, however, indicate that states are now capable of indirect regulation of the nuclear energy industry.

*English v. General Electric* is such an example of a judicial decision with the potential to empower states with an opportunity to indirectly regulate the nuclear energy industry.

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