

**No one is above the law**  
**By Tim Echols**

I squeezed into the front row of the Court of Appeals in Washington, D.C., two weeks ago for the oral arguments of the Yucca Mountain case. What I heard coming from the government lawyers, however, confirmed that federal agencies have become way too powerful for their own good. And that unchecked power is doing untold damage in Georgia and other states.

You may remember that the Nuclear Regulatory Commission (NRC) in 2011 abruptly stopped the licensure procedure of the Yucca Mountain — the Nevada storage facility for nuclear waste. The reason for the shutdown? They didn't have a reason. When they started to dismantle the program, there was \$29 million in funds appropriated by Congress. There was a specific instruction from Congress in the law that required the review. Yet the chair of the agency, former staff member to Nevada Sen. Reid, effectively shut down both the program and eventually the review process.

During the oral argument, counsel for the NRC specifically acknowledged the agency has a clear statutory duty to conduct the proceedings, and that, even now, the NRC still has \$10.4 million to pursue the review. Their explanation to the judges? In an incredible display of agency chutzpah, the NRC's counsel claimed the agency shut down the program office because the agency "knew" Congress would not provide funding last year, and will not provide funding again in the future. By the way, this they proclaimed after the efforts to dismantle the program office and short-circuit the license review were well under way. In the D.C. courtroom, two of the judges appeared contemptuously skeptical of this argument.

The problem, which more than one of the three judges suggested during the oral arguments, is that an agency cannot capriciously ignore the direct commands of the Congress — even if the president did promise to do so. Our Congress authorized and appropriated money for the review and construction of this geologic repository for spent nuclear material, and the NRC put the brakes on the license review process. Granted, the money is coming in tiny appropriated increments, and in this budget year the Congress appropriated no money. But as one judge pointed out, until the NRC spends the \$10.4 million they have on hand for the project, no excuse nor speculation about the future allows them to ignore a congressional edict.

Remember, we have more than 60,000 tons of nuclear waste around the country. We minimize our chances for terrorist attack or accidents by consolidating it to one central location, as France has done. Moreover, we substantially reduce costs through consolidation.

So why is this case so important to Georgia? First of all, our ratepayers have been charged almost \$800 million in fees to build this Yucca facility, and it continues to rise every day. Yet all of our nuclear waste sits at our two plants — one in Baxley and other in Waynesboro, near Augusta. Actually, the power companies have had to improvise and store the waste on site at an additional cost — which they have passed on to customers.

While this issue is not on the front page of newspapers, the parties are concerned. In the state of Georgia, the power companies sued the government to recover some of the costs they have spent. After many years of litigation, they were recently awarded over \$50 million.

My hope is that two of these three judges will decide for us — Georgia ratepayers — and mandate that the NRC follow the law and continue with the licensure process. Let's then get this repository built and doing the job Congress intended for it to do.

Echols is chairman of the Georgia Public Service Commission.