

Richard J. Pierce, Jr.

*Waiting for Vermont Yankee II*

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Abstract by Suzanne Shams

In this Article, Pierce likens his suggestion that the Supreme Court declare unlawful the First Circuit's presumption of formal adjudication to that of Paul Verkuil's previous suggestion that the Court declare unlawful the circuit court practice of second-guessing agencies on their choices of procedure without basing this "hard look" on the Constitution or a statute, due to the resulting adverse effects of both judicial practices. In Verkuil's case, the Court eventually declared the circuit court practice unlawful in its *Vermont Yankee* decision, which Pierce hopes the Court will eventually do regarding his suggestion as well.

The problem Pierce sees with the First Circuit is that it presumes the term "hearing" in a statute must require an agency to conduct formal adjudication with cross-examination. Pierce is keen to point out, however, that the term "hearing" is an ambiguous term and that the First Circuit is simply applying an arbitrary definition. Pierce examines the case of *Citizens Awareness Network, Inc. v. United States* to demonstrate the First Circuit's stubborn application of the term "hearing" to preclude the NRC from holding informal adjudication due to its presumption in favor of formal adjudication. He stresses that the First Circuit is basing its decision to do so on a precedent that is over twenty-five years old, ignoring later Supreme Court decisions that say otherwise.

The author concludes by noting that the decision he wants the Supreme Court to issue would be a combination of the "major elements" of the Supreme Court's opinions in *United States v. Allegheny-Ludlum Steel Corp.*, *Chevron v. Natural Resources Defense Council*, and *Benefit Guaranty Corp. v. LTC Corp.*