

## **SUPREME COURT UPHOLDS TRASH FLOW CONTROL ORDINANCE**

In *United Haulers Assn., Inc. v. Oneida- Herkimer Solid Waste Management Authority*, 127 S.Ct.1786 (2007), the United States Supreme Court ruled that an ordinance requiring private haulers to obtain permits to collect solid waste and deliver it to county collection sites did not discriminate against interstate commerce in violation of the Commerce Clause of the United States Constitution. (The Commerce Clause states that only Congress can erect barriers to trade between the states.)

Historically, each municipality in New York's Oneida and Herkimer Counties was responsible for disposing of its own waste. Like most Vermont municipalities during that same time period, these communities utilized local landfills, some of which operated without permits and in violation of state regulations. Responding to these and other related problems, the Counties requested, and New York created, the Oneida-Herkimer Solid Waste Management Authority (the Authority), a quasimunicipal public benefit corporation.

The Authority was authorized by law to collect, process and dispose of solid waste generated in the Counties. Additionally, it could impose "immediate and reasonable limitations on competition" by, for instance, adopting "laws requiring that all solid waste...be delivered to a specific solid waste management-resource recovery facility."

In 1989, the Authority and the Counties entered into an agreement under which the Authority agreed to manage all solid waste within the Counties. Private haulers would remain free to pick up citizens' trash from the curb, but the Authority would take over the job of processing the trash, sorting it, and sending it off for disposal. The Authority collected tipping fees to cover its operating and maintenance costs for its facilities. If the Authority's operating costs and debt service were not recouped through tipping fees and other charges, the agreement provided that the Counties would make up the difference.

While the Authority's powers were broad, the agreement had a flaw: citizens could have their waste hauled to less expensive facilities that were outside the territory of the Authority. To avoid being stuck with the bill for facilities that citizens voted for, but then chose not to use, the Counties enacted "flow control" ordinances requiring that all solid waste generated within the Counties be delivered to the Authority's processing sites. Private haulers were also required to obtain a permit from the Authority to collect waste in the Counties.

Trash haulers operating in the area objected, arguing that these ordinances stifled competition and that without them, they could dispose of solid waste in out-of state facilities for far less money. In rejecting the haulers' arguments, the Court noted that disposing of waste has been a traditional government activity for years, and "compelling reasons justify treating such laws differently from laws favoring particular businesses over their competitors." Laws that favor the government in such areas – but treat every private business exactly the same – do not discriminate against interstate commerce for purposes of the Commerce Clause, and any incidental burden they may have on interstate

commerce does not outweigh the benefits they confer on citizens. “It bears mentioning,” wrote the Court, “that the most palpable harm imposed by the ordinances – more expensive trash removal – is likely to fall upon the very people who voted for the law.”

A copy of the full decision can be obtained at:  
<http://www.supremecourtus.gov/opinions/06pdf/05-145.pdf>.

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