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Press Statement/Web Statement

U.S. Supreme Court Validates Oneida-Herkimer System

The Oneida and Herkimer Counties Solid Waste Management Laws were upheld by the United States Supreme Court in a Decision issued April 30, 2007. The Decision written by Chief Justice John Roberts' validates the integrated solid waste management system owned and operated by the Oneida-Herkimer Solid Waste Authority.

Oneida and Herkimer Counties are a Central New York region of approximately 300,000 people. The Authority system consists of a Recycling Center, Green Waste Compost Facility, Household Hazardous Waste Facility, Land Clearing Debris Disposal Facility, 3 Transfer Stations, and a landfill. The Authority is a New York public benefit corporation created in 1988 at the request of the Counties.

The Court validated the integrated system approach with an integrated system fee – a recognition that local communities are entitled to develop the kinds of facilities and programs that meet their unique needs and that local communities can set up a fee structure that encourages waste reduction, recycling and detoxification. The Supreme Court Decision said:

“The ordinances give the Counties a convenient and effective way to finance their integrated package of waste disposal services. While “revenue generation is not a local interest that can justify discrimination against interstate commerce,” we think it is a cognizable benefit for purposes of the Pike test.

At the same time, the ordinances are more than financing tools. They increase recycling in at least two ways, conferring significant health and environmental benefits upon the citizens of the Counties. First, they create enhanced incentives for recycling and proper disposal of other kinds of waste. Solid waste disposal is expensive in Oneida-Herkimer, but the Counties accept recyclables and many forms of hazardous waste for free, effectively encouraging their citizens to sort their own trash. Second, by requiring all waste to be deposited at Authority facilities, the Counties have markedly increased their ability to enforce recycling laws. If the haulers could take waste to any disposal site, achieving an equal level of enforcement would be much more costly, if not impossible. For these reasons, any arguable burden the ordinances impose on interstate commerce does not exceed their public benefits.”

The Decision by the Supreme Court tracked closely with the earlier decisions by the Second Circuit Court of Appeals which affirmed the constitutionality of the Oneida-Herkimer system. At the heart of the Authority system is environmental protection. Residents of Oneida-Herkimer have been stung by improper disposal practices that resulted in huge clean up costs at polluting private disposal facilities. In response, the public demanded accountability – they wanted a system that would recycle as much as possible, detoxify the waste stream, and then dispose of the remaining nonrecyclable waste in the most environmentally sound manner.

The Supreme Court recognized and validated these public purposes in further defining the public-private distinction:

“Unlike private enterprise, government is vested with the responsibility of protecting the health, safety and welfare of its citizens...Here the flow control ordinances enable the Counties to pursue particular policies with respect to the handling and treatment of waste generated in the Counties, while allocating the costs of the policies on citizens and businesses according to the volume of waste they generate.”

The contrary approach of treating public and private entities the same under the dormant Commerce Clause would lead to unprecedented and unbounded interference by the courts with state and local government. The dormant Commerce Clause is not a roving license for federal courts to decide what activities are appropriate for state and local government to undertake, and what activities must be the province of private market competition. In this case, the citizens of Oneida and Herkimer Counties have chosen the government to provide waste management services, with a limited role for the private sector in arranging for transport of waste from the curb to the public facilities. The citizens could have left the entire matter for the private sector, in which case any regulation they undertook could not discriminate against interstate commerce. But it was also open to them to vest responsibility for the matter with their government, and to adopt flow control ordinances to support the government effort. It is not the office of the Commerce Clause to control the decision of the voters on whether government or the private sector should provide waste management services. “The Commerce Clause significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce, but it does not elevate free trade above all other values.”

We should be particularly hesitant to interfere with the Counties’ efforts under the guise of the Commerce Clause because “[w]aste disposal is both typically and traditionally a local government function.”

This landmark Decision resolves any doubts that were created by the 1994 Carbone v. Clarkstown Decision. In the Decision the distinction between Clarkstown and Oneida-Herkimer was clearly established:

“The only salient difference is that the laws at issue here require haulers to bring waste to facilities owned and operated by a state-created public benefit corporation. We find this difference constitutionally significant. Disposing of trash has been a traditional government activity for years, and laws that favor the government in such areas – but treat every private business, whether in-state or out-of-state, exactly the same – do not discriminate against interstate commerce for purposes of the Commerce Clause.

Applying the Commerce Clause test reserved for regulations that do not discriminate against interstate commerce, we uphold these ordinances because any incidental burden they may have on interstate commerce does not outweigh the benefits they confer on the citizens of Oneida and Herkimer Counties.”

The Supreme Court recognized that solid waste management is a traditional local government function and the Court established a clear and concise finding that can serve as a foundation for public systems:

“We hold that the Counties’ flow control ordinances, which treat in-state private business interests exactly the same as out-of-state ones, do not “discriminate against interstate commerce” for purposes of the dormant Commerce Clause.”

The lawsuit started in 1995 with a small group of disgruntled haulers prompted by the National Solid Waste Management Association, a Washington D.C. based lobbyist for companies like Waste Management Incorporated. By 2001 NSWMA had taken over the case and directed the litigation through the Supreme Court Decision. NSWMA’s attempt to characterize all local public solid waste management systems as being identical to Clarkstown (and therefore unconstitutional) was rejected by the Supreme Court. NSWMA’s appeal to judicial policy making was forcefully rejected.

“The haulers nevertheless ask us to hold that laws favoring public entities while treating all private businesses the same are subject to an almost per se rule of invalidity, because of asserted discrimination. In the alternative, they maintain that the Counties’ laws cannot survive the more permissive Pike test, because of asserted burdens on commerce. There is a common thread to these arguments: They are invitations to rigorously scrutinize economic legislation passed under the auspices of the police power. There was a time when this Court presumed to make such binding judgments for society, under the guise of interpreting the Due Process Clause. (Lochner v. New York). We should not seek

to reclaim that ground for judicial supremacy under the banner of the dormant Commerce Clause.”

Contrary to the public relations statements by NSWMA, the Oneida-Herkimer system is strongly supported by the business community. The regional economic development agency EDGE and 10 local private haulers filed an Amicus Brief in support of the Authority position. The Authorities fees are 18% lower than in 1995. Support also came from the environmental community in an Amicus Brief filed by Environmental Defense, a leading national environmental group. Amici were also filed by New York State, 25 other states, other New York Counties, the National League of Cities, the Council of State Governments, the U.S. Conference of Mayors, the National Conference of State Legislatures, and over 20 waste organizations from across the Country.

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