

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

The Court saw the ordinance as a form of economic protectionism, in that it “hoard[ed] solid waste, and the demand to get rid of it, for the benefit of the preferred processing facility.”¹¹⁴⁷ The Court found that the town could not “justify the flow control ordinance as a way to steer solid waste away from out-of-town disposal sites that it might deem harmful to the environment. To do so would extend the town’s police power beyond its jurisdictional bounds. States and localities may not attach restrictions to exports or imports in order to control commerce in other states.”¹¹⁴⁸ The Court also found that the town’s goal of “revenue generation is not a local interest that can justify discrimination against interstate commerce. Otherwise States could impose discriminatory taxes against solid waste originating outside the State.”¹¹⁴⁹ Moreover, the town had other means to raise revenue, such as subsidizing the facility through general taxes or municipal bonds.¹¹⁵⁰ The Court did not deal with—indeed, did not notice—the fact that the local law conferred a governmentally granted monopoly—an exclusive franchise, indistinguishable from a host of local monopolies at the state and local level.¹¹⁵¹

In *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Management Authority*,¹¹⁵² the Court declined to apply *Carbone* where haulers were required to bring waste to facilities owned and operated by a state-created public benefit corporation instead of to a private processing facility, as was the case in *Carbone*. The Court found this difference constitutionally significant because “[d]isposing 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,

¹¹⁴⁷ 511 U.S. at 392. The Court added: “Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate state interest.” *Id.*

¹¹⁴⁸ 511 U.S. at 393.

¹¹⁴⁹ 511 U.S. at 393–94.

¹¹⁵⁰ 511 U.S. at 394.

¹¹⁵¹ See *The Supreme Court, Leading Cases, 1993 Term*, 108 HARV. L. REV. 139, 149–59 (1994). Weight was given to this consideration by Justice O’Connor, 511 U.S. at 401 (concurring) (local law an excessive burden on interstate commerce), and by Justice Souter, *id.* at 410 (dissenting).

¹¹⁵² 550 U.S. 330 (2007).