

05-1345 UNITED HAULERS ASSN., INC. V. ONEIDA-HERKIMER SOLID WASTE

DECISION BELOW:438 F3d 150

LOWER COURT CASE NUMBER: 05-2024

QUESTIONS PRESENTED:

This Court held in *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 386 (1994), that “a so-called flow control ordinance, which require[d] all solid waste to be processed at a designated transfer station before leaving the municipality,’ discriminated against interstate commerce and was invalid under the Commerce Clause because it “depriv[ed] competitors, including out-of-state firms, of access to a local market.” This case presents two questions, the first of which is the subject of an acknowledged circuit conflict:

1. Whether the virtually per se prohibition against “hoard[ing] solid waste” (*Id.* at 392) recognized in *Carbone* is inapplicable when the “preferred processing facility” (*ibid.*) is owned by a public entity
2. Whether a flow-control ordinance that requires delivery of all solid waste to a publicly owned local facility and thus prohibits its exportation imposes so “insubstantial” a burden on interstate commerce that the provision satisfies the Commerce Clause if it serves even a “minimal” local benefit.

CERT. GRANTED 9/26/2006