

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

C & A CARBONE, INC. v. TOWN OF CLARKSTOWN,
NEW YORK

CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF
NEW YORK, SECOND JUDICIAL DEPARTMENT
No. 92-1402. Argued December 7, 1993—Decided May 16, 1994

Respondent town agreed to allow a private contractor to construct within town limits a solid waste transfer station to separate recyclable from nonrecyclable items and to operate the facility for five years, at which time the town would buy it for one dollar. To finance the transfer station's cost, the town guaranteed a minimum waste flow to the facility, for which the contractor could charge the hauler a tipping fee which exceeded the disposal cost of unsorted solid waste on the private market. In order to meet the waste flow guarantee, the town adopted a flow control ordinance, requiring all nonhazardous solid waste within the town to be deposited at the transfer station. While recyclers like petitioners (collectively Carbone) may receive solid waste at their own sorting facilities, the ordinance requires them to bring nonrecyclable residue to the transfer station, thus forbidding them to ship such waste themselves and requiring them to pay the tipping fee on trash that has already been sorted. After discovering that Carbone was shipping nonrecyclable waste to out-of-state destinations, the town filed suit in state court, seeking an injunction requiring that this residue be shipped to the transfer station. The court granted summary judgment to the town, finding the ordinance constitutional, and the Appellate Division affirmed.

Held: The flow control ordinance violates the Commerce Clause. Pp. 4-10.

(a) The ordinance regulates interstate commerce. While its immediate effect is to direct local transport of solid waste to a designated site within the local jurisdiction, its economic effects are interstate in reach. By requiring Carbone to send the nonrecyclable portion of waste it receives from out of State to the

transfer station at an additional cost, the ordinance drives up the cost for out-of-state interests to dispose of their solid waste. It also deprives out-of-state businesses of access to the local market, by preventing everyone except the favored local operator from performing the initial processing step. Pp. 4-5.

(b) The ordinance discriminates against interstate commerce, and thus is invalid. See *Philadelphia v. New Jersey*, 437 U. S. 617, 624. Although the ordinance erects no barrier to the import or export of any solid waste, the article of commerce here is not so much the waste itself, but rather the service of processing and disposing of it. With respect to this stream of commerce, the ordinance discriminates, for it allows only the favored operator to process waste that is within the town's limits. It is no less discriminatory because in-state or in-town processors are also covered by the prohibition. Cf., e.g., *Dean Milk Co. v. Madison*, 340 U. S. 349. Favoring a single local proprietor makes the ordinance's protectionist effect even more acute, for it squelches competition in the waste-processing service altogether, leaving no room for outside investment. Pp. 5-8.

(c) The town does not lack other means to advance a legitimate local interest. It could address alleged health and safety problems through nondiscriminatory alternatives, such as uniform safety regulations that would ensure that competitors do not underprice the market by cutting corners on environmental safety. Justifying the ordinance as a way to steer solid waste away from out-of-town disposal sites that the town might deem harmful to the environment would extend its police power beyond its jurisdictional boundaries. Moreover, the ordinance's revenue generating purpose by itself is not a local interest that can justify discrimination against interstate commerce. If special financing is needed to ensure the transfer station's long-term survival, the town may subsidize the facility through general taxes or municipal bonds, but it may not employ discriminatory regulation to give the project an advantage over rival out-of-state businesses. Pp. 8-10.
182 App. Div. 2d 213, 587 N. Y. S. 2d 681, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SCALIA, THOMAS, and GINSBURG, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment. SOUTER, J., filed a dissenting opinion, in which REHNQUIST, C. J., and BLACKMUN, J., joined.