

GERMANO & CAHILL, P.C.

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Germano & Cahill, P.C. Wins United States Supreme Court Decision

Long Island Firm Successfully Argues Landmark Case

Case information:

United Haulers Association, et. al.

v.

**Oneida-Herkimer Solid Waste Authority,
County of Oneida, County of Herkimer**

Plaintiffs: Local association of six waste haulers supported in recent years by the National Solid Wastes Management Association (NSWMA), a Washington D.C.-based trade association representing private waste companies, including interstate collection and disposal firms.

Defendants: Oneida-Herkimer Solid Waste Management Authority, Counties of Oneida and Herkimer, located in the Mohawk Valley of Central NY, including the cities of Utica and Rome.

Holbrook, NY... Michael Cahill, partner in the law firm of Germano & Cahill, P.C., has successfully argued a 'David vs. Goliath' case for the firm's client, the Oneida-Herkimer Solid Waste Authority, before the United States Supreme Court. The Supreme Court's decision, which was handed down on April 30, 2007, sets the precedent for State and local government efforts to manage solid waste and promote recycling.

The argument centered around whether local governments have the ability to adopt laws that direct local waste to public recycling, composting, and landfill facilities as part of a comprehensive plan to manage solid waste, or whether local haulers can take that waste to facilities of their choice, and disregard the local plan.

According to Michael Cahill, the attorney who argued the case for the defendants, "For Oneida-Herkimer, this decision means that the Counties' 'recycling-first' management philosophy will survive and prosper; it also sets a precedent for State and local government efforts nationwide to manage solid waste and promote recycling."

The case began with a complaint filed April 14, 1995, setting off 12 years of federal litigation resulting in the following decisions:

- Decision for plaintiffs in March 2000, reversed by U.S. 2nd Circuit Court of Appeals in July 2001, remanded to district court;
- Decisions in favor of Authority & Counties by U.S. Magistrate David Peebles on March 17, 2004, confirmed by U.S. District Judge Norman Mordue, May 2005;
- Decision affirmed by U.S. 2nd Circuit Court of Appeals in February 2006;
- Decision affirmed again by US Supreme Court April 30, 2007.

At issue in the case were local “flow control” laws designed to direct local waste to public landfill, recycling and composting facilities. Laws were adopted as result of the collapse of a fragmented waste disposal system in the 1980’s (see Sup. Ct. decision pgs. 1-4). The Counties determined to create a comprehensive waste system focused on recycling, composting and waste reduction, while safely disposing of non-recyclable waste at a public landfill.

“Flow control laws are designed to help cities and counties to create comprehensive management plans with a focus on environmental protection, and keep public investment on a sound financial footing,” added Cahill. “In affirming the prior decisions, the Supreme Court confirms the traditional role of local governments to regulate waste disposal under the exercise of their police powers.”

In effect, the Supreme Court’s decision confirms that the commerce clause of the U.S. Constitution does not prevent local government from adopting such flow control laws; even where costs may be higher than haulers might pay elsewhere.

Germano & Cahill, P.C., provides legal counsel and business guidance in matters related to Real Estate, Zoning, Planning and Land Use, Environmental Law, Government Contracts, Administrative Law, and Agricultural Law. The firm is based in Holbrook, NY. More information is available by visiting www.germanocahill.com.

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