

Red River Service Corporation v. City of Minot, North Dakota: Local Government Controls the Importation of Waste Without Violation of the Commerce Clause

I. OVERVIEW 265
II. BACKGROUND 266
III. THE COURT’S DECISION 270
IV. ANALYSIS 272
V. CONCLUSION 274

I. OVERVIEW

Red River Service Corporation (Red River), a waste transport business, brought an action for damages and injunctive relief against the City of Minot, North Dakota (Minot).¹ Red River claimed Minot: (1) violated the Commerce Clause; (2) violated the Equal Protection Clause; and (3) breached an oral contract, when the city landfill refused to allow them to deposit the municipal waste from a nearby Air Force base at the landfill.² Red River claimed it contracted to haul the base’s waste based on the belief that Minot would accept the waste.³ In response to the complaint, Minot filed a motion for summary judgment.⁴ The district court held that, as Minot was operating as a market participant rather than a market regulator, there was no violation of the Commerce Clause.⁵ Further, the district court found that the City had a rational reason for denying Red River access to the landfill, so there was no violation of the Equal Protection Clause.⁶ The Court of Appeals for the Eighth Circuit agreed with the district court and held that, as a market participant, Minot was able to limit the amount of waste deposited in its landfill.⁷ The court noted that Minot had not attempted to be a market regulator because it did not require that all waste generated in the local area be deposited in its landfill.⁸ The court refused to hold that a landfill was a natural resource, a finding that could have barred the market participant

1. See *Red River Serv. Corp. v. City of Minot*, 146 F.3d 583, 584 (8th Cir. 1998).
2. See *id.* at 584-85.
3. See *id.*
4. See *id.* at 585.
5. See *id.*
6. See *id.*
7. See *id.*
8. See *id.* at 588.

exception.⁹ The court went on to affirm the lower court's holdings concerning the Fourteenth Amendment and breach of contract.¹⁰ *Red River Serv. Corp. v. City of Minot*, 146 F.3d 583 (8th Cir. 1998).

II. BACKGROUND

The United States Constitution declares Congress has the affirmative power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”¹¹ This clause has been recognized as a limitation on state efforts to take protectionist measures to benefit in-state interests by imposing burdens on out-of-state commerce.¹² However, the market participant doctrine allows for a state or local government to operate freely when acting as a regular member of the market, rather than a market regulator.¹³ The Supreme Court has held that when a state is a buyer or seller of goods in the market place, nothing in the Commerce Clause prohibits it from favoring its own citizens.¹⁴

In 1976, the Supreme Court first established the market participant doctrine in *Hughes v. Alexandria Scrap Corp.*¹⁵ In that case, out-of-state car scrap processors challenged Maryland's policy of buying scrapped cars from in-state processors at a higher price.¹⁶ The Court held that the Maryland statute was not in violation of the Commerce Clause because the state was not interfering with the interstate market.¹⁷ A state, when acting like a member of the market, may “exercis[e] the right to favor its own citizens over others.”¹⁸

9. *See id.* It is unclear as to whether there is a natural resource exception to the market participant doctrine that would bar Minot's use of the doctrine. *See id.* at 589. In dicta in *City of Philadelphia v. New Jersey*, the Supreme Court stated that “a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders.” 437 U.S. 617, 628 (1978). However, it is unclear as to whether this exception to the doctrine is still in effect.

10. *See Red River*, 146 F.3d at 590-92. Specifically, the court refused to apply strict scrutiny concerning the Equal Protection claim because Minot had not targeted a suspect class in limiting the use of the landfill. *See id.* at 590. The court went on to hold that Red River had not met the burden of proving that the classification is not rationally related to a legitimate state interest or that the classification is arbitrary and irrational. *See id.* In addition, Red River was unable to satisfy the statute of frauds in the breach of contract claim because the court found there was no part performance of the alleged oral contract. *See id.* at 591.

11. U.S. CONST. art. I, § 8, cl. 3.

12. *See Red River*, 146 F.3d at 586 (citing *Reeves, Inc. v. Stake*, 447 U.S. 429, 440 (1980)).

13. *See* LAURENCE TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 6-11, at 430 (2d ed. 1988).

14. *See Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 810 (1976).

15. *Id.*

16. *See id.* at 800-02.

17. *See id.* at 810.

18. *Id.*

The Supreme Court addressed the limitations of the market participation doctrine most recently in *South-Central Timber Development, Inc. v. Wunnicke*, where the court held Alaska's requirement that timber be processed within the state before it was exported was a violation of the Commerce Clause.¹⁹ Writing for the majority, Justice White explained that in order for the market participation doctrine to be applied correctly, the market must be narrowly defined so as not to become a Commerce Clause loophole.²⁰

The Supreme Court further established the limits of the market participation doctrine in *Camps Newfound/Owatonna, Inc. v. Town of Harrison*.²¹ In that case, a Maine property tax heavily burdened charitable organizations that served nonresidents of Maine.²² In their defense, Harrison argued that the tax exemption scheme was a subsidy of local charities that served Maine residents.²³ Harrison reasoned that it should be viewed as a market participant and purchaser of charitable services in the town, and subsequently should not be held in violation of the Commerce Clause.²⁴ The Court rejected this argument, explaining that even if a tax program had the purpose of subsidizing an industry, that alone did not make it a candidate for the market participant exception to the Commerce Clause.²⁵

Many disputes involving state or local regulatory attempts to limit waste transportation and deposits have been lost due to violations of the Commerce Clause.²⁶ In *City of Philadelphia v. New Jersey*, the Supreme Court held that state laws which discriminate against interstate waste were invalid under the Commerce Clause.²⁷ In *Philadelphia*, a New Jersey law forbade the importation of most waste that was collected outside the state.²⁸ Writing for the majority, Justice Stewart noted the protectionist nature of the statute: "On its face, it imposes on out-of-state commercial interests the full burden of

19. 467 U.S. 82, 100 (1984).

20. *See id.* at 98. In *Wunnicke*, the Court decided that, although Alaska was a market participant in the timber market, it in no way participated in the processing market. Therefore, the definition of "market" would have to be expanded in order for the doctrine to apply. This expansion was denied by the Court. *See id.*

21. 117 S. Ct. 1590 (1997).

22. *See id.* at 1592.

23. *See id.* at 1604-05.

24. *See id.*

25. *See id.* at 1606-07.

26. Robert R.M. Verchick, *The Commerce Clause, Environmental Justice, and the Interstate Garbage Wars*, 70 S. CAL. L. REV. 1239, 1250 (1997).

27. 437 U.S. 617, 627-29 (1978).

28. *See id.* at 618-19.

conserving the State's remaining landfill space."²⁹ Since the Court decided *Philadelphia*, it has heard four other waste cases, which have affirmed and developed the *Philadelphia* holding.³⁰

The Court in *Philadelphia* also addressed the relevance of earlier Court decisions which essentially held that the market participant doctrine could not be used in cases where a state was giving "preferred right of access" to a natural resource for its residents.³¹ After mentioning this exception to the doctrine, the Court never determined whether a landfill qualified as a natural resource and ceased its discussion of the matter. The issue was taken up again in *Reeves, Inc. v. Stake*, where, when discussing if South Dakota could limit its sale of cement to state residents, the Court noted that the doctrine may not be used in cases where states hoard natural resources.³² In *Reeves*, the Court held that cement is not a natural resource, but "is the end product of a complex process whereby a costly physical plant and human labor act on raw materials."³³ Two years later, in *Sporhase v. Nebraska*, the Court questioned the use of the doctrine in a case involving the water supply and did not follow the doctrine's premise.³⁴ In *Sporhase*, the Court held that Nebraska's conservation efforts were responsible for its excess of groundwater and that the excess was more than just a "happenstance" natural resource.³⁵ Because Nebraska made efforts to conserve this surplus of water, the Court held it could reserve its use for its citizens.³⁶

Although the Supreme Court has not addressed the market participation doctrine within waste disposal cases, several lower courts have heard cases in this context.³⁷ In *Swin Resource Systems, Inc. v. Lycoming County*, the Third Circuit held that a county landfill acted as a market participant when it gave residences preference in

29. *Id.* at 628.

30. *See* Verchick, *supra* note 26, at 1249-50; *see also* C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994) (declaring a local ordinance requiring nonrecyclables to be processed at local transfer station unconstitutional); Oregon Waste Sys., Inc. v. Department of Env'tl. Quality, 511 U.S. 93 (1994) and Chemical Waste Management Inc. v. Hunt, 504 U.S. 334 (1992) (declaring disposal fees that were unequally applied against transporters of out-of-state waste unconstitutional); Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources, 504 U.S. 353 (1992) (holding a law which prevented a landfill operator from receiving out-of-state waste unconstitutional).

31. 437 U.S. at 627.

32. 447 U.S. 429, 444 (1980). However, even though there was a shortage, the Court allowed South Dakota to restrict the sale of cement to state residents. *See id.*

33. *Id.* at 444.

34. 458 U.S. 941 (1982).

35. *See id.* at 957.

36. *See id.* at 965.

37. *See* Red River Serv. Corp. v. City of Minot, 146 F.3d 583, 587 (8th Cir. 1998).

use of the landfill.³⁸ The *Swin* case arose from the county landfill's policy to charge less for the reception and disposal of waste generated within the county than from outside the area.³⁹ In its complaint, the plaintiff alleged that this preferential treatment was a violation of the Commerce Clause because the policy interfered with interstate commerce.⁴⁰ Comparing *Swin* to four prior Supreme Court cases that involved the market participation doctrine, the court concluded that Lycoming had narrowed the market it was operating in sufficiently and was not attempting to regulate the waste industry, but only control the volume of its own landfill.⁴¹

The *Swin* court also addressed the issue of whether a landfill is a natural resource and should therefore be an exception to the market participation doctrine.⁴² Noting that the Supreme Court has never addressed the issue thoroughly, the *Swin* court acknowledged that past Supreme Court dicta could be interpreted as barring the use of the market participation doctrine in cases where a state is harboring a scarce natural resource.⁴³ Considering that the landfill could not come into existence without at least some expenditure, preparation, and political and public discussion, the court held that the landfill was not a natural resource and therefore was not an exception to the doctrine.⁴⁴

Several lower courts have addressed the issue of landfills as a natural resource in cases where local governments were claiming market participant status. In *Lefrancois v. Rhode Island*, the dumping of out-of-state waste was prohibited at a state-operated landfill.⁴⁵ The District Court of Rhode Island held that, since a public agency ran the landfill, it was a participant in the market for landfills, and therefore

38. 883 F.2d 245, 254-55 (3d Cir. 1989).

39. *See id.* at 246.

40. *See id.* The complaint also alleged a violation of the Equal Protection Clause. The court ultimately found no violation of the Fourteenth Amendment because the county's pricing scheme was "rationally related to the legitimate purpose of preserving the landfill for local waste-producing residents." *Id.* at 256.

41. *See Swin*, 883 F.2d at 250; *see also* *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82 (1984) (finding Alaska's practice of requiring all timber to be processed within the state unconstitutional); *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204 (1983) (allowing a local government to require those seeking public contracts to have workforces comprised of fifty percent local residents); *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980) (allowing a state-owned cement plant to sell only to its residents); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976) (allowing Maryland to pay bounty for scrapping cars titled within the state).

42. *See Swin*, 883 F.2d at 252-53.

43. *See id.* at 251-52. There, the court was referring to cases like *South-Central Timber Dev., Inc. v. Wunnicke*, where the Court merely mentioned that a natural resource was involved before declaring the regulation unconstitutional. 467 U.S. 82, 96 (1982).

44. *See Swin*, 883 F.2d at 252-54.

45. 669 F. Supp. 1204 (D.R.I. 1987).

no violation of the Commerce Clause existed.⁴⁶ This was held despite the fact that the State managed the only site for nonhazardous solid waste in the state. The policy effectively closed the borders to out-of-state waste.⁴⁷ Similarly, in *County Commissioners of Charles County v. Stevens*, the Maryland Court of Appeals upheld a county regulation that prohibited the disposal of waste generated outside of the county in the county-owned landfill.⁴⁸

III. THE COURT'S DECISION

In the noted case, the Eighth Circuit was asked to find that a city-owned landfill that limits its intake of municipal waste from outside the region is acting in violation of the Commerce Clause.⁴⁹ Emphasizing that the local government was acting as a market participant rather than a regulator, the Court concluded that this exception to the Commerce Clause denied the plaintiff any relief from its claim.⁵⁰ The court also found that the district court correctly held that the plaintiff's equal protection rights were not violated.⁵¹ Further, the court held that the district court did not err in its finding of no breach of contract and its refusal to apply the doctrine of estoppel.⁵²

The court began its examination of Red River's claim with a discussion of relevant precedent.⁵³ Writing for the court, Judge Bataillon stressed that although Minot attempted to prolong the life of its landfill, this did not automatically mean that the city was trying to regulate the flow of all waste in the area.⁵⁴ Referring to the explanation of the doctrine in *South-Central Timber Development, Inc. v. Wunnicke*, the court explained that when a state or local government is a participant in a given market, it is no longer bound by the limits of the Commerce Clause while acting in the market place.⁵⁵

To illustrate the market participant doctrine at work in a similar waste disposal case, the court briefly explained the holding of *Swin Resource System, Inc. v. Lycoming County*, demonstrating how the Commerce Clause does not prevent a local government from discriminating against out-of-state or county citizens when acting as a

46. *See id.* at 1211.

47. *See id.* at 1212.

48. 473 A.2d 12, 21 (Md. 1984).

49. *See Red River Serv. Corp. v. City of Minot*, 146 F.3d 583, 585 (8th Cir. 1998).

50. *See id.* at 590.

51. *See id.* at 590-92.

52. *See id.*

53. *See id.* at 588-89.

54. *See id.* at 588.

55. *See id.* at 586.

market participant.⁵⁶ Acknowledging the financial burden Minot's policy placed on Red River, the court pointed out that while acting as a market participant Minot does not have the responsibility of assuring Red River's economic health.⁵⁷

The court rejected Red River's argument that since the landfill received public funds it should not be considered a market participant.⁵⁸ The court disagreed with Red River's application of the reasoning in *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, pointing out that the use of public funds to run the landfill did not remove its market participant status.⁵⁹ Given Minot's limited intervention within the entire market, the court again found no reason to apply the Commerce Clause.⁶⁰

The court also disagreed with Red River's contention that because Minot was "hoarding a scarce natural resource," the market participant doctrine should not be applied.⁶¹ Although the court acknowledged that whether a landfill qualifies as a natural resource is unclear, it held that the case at hand was no exception to the market participant doctrine.⁶² Noting that a landfill is not a "happenstance" resource, the court explained that environmental, economic, and political considerations are taken into account when choosing a site for a landfill.⁶³ Therefore, the court concluded, Minot may take efforts to maintain its publicly owned resource.⁶⁴

Lastly, the court rejected Red River's claim of protectionist behavior on the part of Minot.⁶⁵ Red River argued that this case was analogous to the various "flow control" cases in which states tried to control the flow of waste in or out of an area and those actions were held to violate the Commerce Clause.⁶⁶ The court explained that the cases Red River relied upon to support its argument were factually different from the case before it and therefore they were inapplicable.⁶⁷ These flow-control cases involved state statutes or

56. *See id.* at 587.

57. *See id.* at 588.

58. *See id.*

59. *See id.*

60. *See id.*

61. *Id.* at 588-89.

62. *See id.*

63. *See id.*

64. *See id.*

65. *See id.*

66. *See id.* at 589.

67. *See id.*; *see also* *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994); *Waste Sys. Corp. v. County of Martin*, 985 F.2d 1381 (8th Cir. 1993) (holding ordinance requiring all waste in the county to be sent to government-run facilities unconstitutional); *Diamond Waste*,

local ordinances that took protectionist measures to control the flow of waste in or out of a given area.⁶⁸ Noting the obvious differences, the court again concluded that Minot had not interfered with interstate commerce and was not violating the Commerce Clause.⁶⁹

IV. ANALYSIS

The noted case relied upon the traditional interpretation of the market participant doctrine in concluding that Minot's policy was not in violation of the Commerce Clause.⁷⁰ Given the facts of the case, any other holding would have been contrary to Supreme Court holdings and their progeny that define the workings and limitations of the doctrine.⁷¹ The court correctly held that Minot's control over one landfill, with limitations imposed on those in the state as well as others out of state, could not be said to interfere with interstate commerce.⁷²

The disposal of solid waste has become an issue of great concern in the United States.⁷³ It is projected that eighty percent of existing solid waste landfills will close by the year 2009 because they have reached maximum capacity.⁷⁴ After various failed attempts by states to limit waste disposal "in their backyard," the market participant doctrine appears to be one of the only methods by which states can control waste disposal without violating the Commerce Clause.⁷⁵ After considering this battle over state interference in waste control in the courts over the past twenty years, the noted case might easily be seen as a victory.⁷⁶ While this use of the doctrine has been previously

Inc. v. Monroe County, 939 F.2d 941 (11th Cir. 1991) (holding that a county regulation limiting waste importation places an undue burden on interstate commerce). The only thing these cases have in common with *Red River* is that they involve waste disposal.

68. See *Red River*, 146 F.3d at 590.

69. See *id.*

70. See *id.* at 586-90.

71. See *South-Central Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82 (1984); *White v. Massachusetts Council of Constr. Employers*, 460 U.S. 204 (1983); *Hughes v. Alexandra Scrap Corp.*, 426 U.S. 794 (1976).

72. See *Red River*, 146 F.3d at 589-90.

73. See Verchick, *supra* note 26, at 1246. "Americans today generate more solid waste than anyone else in the world." *Id.* (citing Nelson Perez, Comment, *The Unconstitutionality of Waste Flow Control and the Environmental Justice Movement's Impact on Incinerators*, 22 RUTGERS COMPUTERS & TECH. L.J. 578, 589 (1996)). In 1995, 208 million tons of municipal solid waste were generated in the United States. The volume of trash in the U.S. is expected to grow to 222 million tons by the year 2000. See Freeman, *More Is Recycled, but There's Also More of It*, CHRISTIAN SCI. MONITOR, July 21, 1997, at 16.

74. See Verchick, *supra* note 26 at 1246.

75. See *id.* at 1281.

76. This assumes that the "battle" began in 1978 with *Philadelphia*.

embraced by the Third Circuit and district courts in landfill cases, this is the first instance in which the Eighth Circuit Court of Appeals has held that municipally-owned landfills can effectively dodge the restrictions of the Commerce Clause via the market participant doctrine. It can be interpreted that the *Red River* holding strengthens the case law in favor of this use of the doctrine. However, there are other factors to consider before concluding that the noted case was a triumph in a state's ability to protect its environment.

As long as a landfill is city or state-owned, the noted case seems to provide a way for states to skirt Commerce Clause violations. However, this is not to say that this practice is economically feasible for state or local governments or will lead to better waste management.⁷⁷ As the business of running a landfill can be an expensive one, because of costly administration and potential liability under environmental laws, few municipalities can afford the high costs involved with running a landfill.⁷⁸ It is also unrealistic to believe that a state can now prevent the flow of interstate waste if it owns all of the landfills within its borders. If a state were ever to deny licenses for private landfills and solely own all landfills within a state, the courts would surely find a violation of the Commerce Clause. This control over landfills would, in effect, be regulating the entire waste disposal market within the state, and would be viewed as precisely the type of protectionist behavior the Commerce Clause was made to prevent.⁷⁹ Further, the practice of having all state-owned landfills is not advisable because local governments do not have the funds to experiment on new methods of waste treatment, and there would be little development in waste management technology.⁸⁰

The noted case also raises interesting issues concerning the natural resource exception to the market participant doctrine. While it is unclear whether this exception still exists, it appears that, in at least the Eighth Circuit, a landfill is not a natural resource. This holding seems consistent with the Court's treatment of the issue in *Sporhase v.*

77. Verchick, *supra* note 26, at 1281.

78. *See id.*

79. Using the balancing test established by the Court in *Pike v. Bruce Church, Inc.*, the court would need to determine if the state's purpose for discrimination exceeded the burden on interstate commerce. 397 U.S. 137, 142 (1970). This issue was already decided by the Supreme Court in *City of Philadelphia v. New Jersey*, where the Supreme Court held that a state may not attempt to isolate itself from the waste disposal problem, since it is an issue common to many states. 437 U.S. 617, 629 (1978). The *Lefrancois* court avoided this issue by noting the availability of licenses for private landfills. *See Lefrancois v. Rhode Island*, 669 F. Supp. 1204, 1211 (D.R.I. 1987).

80. *See Verchick, supra* note 26, at 1246.

Nebraska, in that both governments' efforts to develop their resource were given proper recognition.⁸¹ It is still uncertain, however, how the United States Supreme Court will treat this issue. As landfills become more scarce, the Court might not favor preferential treatment for state or local residents.

V. CONCLUSION

The Eighth Circuit's interpretation of the market participant doctrine is consistent with precedent. It is appropriate that the court held *Minot* was acting freely in the market place rather than regulating it. Consequently, no violation of the Commerce Clause existed.

While this application of the market participant doctrine may help restrict the importation of some out-of-state waste, it is not likely that states will be able to use the doctrine to limit all waste from crossing state borders. This fact, however, does not render the *Red River* holding useless. Even a partial prohibition on state or county waste importation may cause large waste exporters to be responsible for the health hazards that they create. This restriction on the flow of waste may even be responsible for a future increase in recycling programs.⁸²

A landfill should not be considered a natural resource. Even if it can be argued that the land itself is a scarce resource, it must be agreed that certain resources only exist because of efforts to preserve them.⁸³ Selecting a landfill site involves a myriad of social and political concerns. The artificial factors that go into a landfill's making should be enough to convince the courts that a landfill consists of more than the plot of land it exists on. This distinction between natural and state-created resources "is growing in importance, because, as the American frontier continues to close, the natural resources that remain increasingly owe their existence to some

81. 458 U.S. 941, 957 (1982).

82. The United States is already experiencing an increase in the number of recycling programs. In September of 1996, the EPA noted that "[t]here are 7,500 recycling programs . . . compared to 1,000 in 1988, and the number continues to grow. Now about 120 million people, or 48 percent of the population, have access to curbside collection programs." Allen Hershkowitz, *In Defense of Recycling*, 63 SOCIAL RESEARCH 141, 142 (1998) (citing Michael Shapiro, *Sustainability and Recycling: A New Vision for the Future*, Paper presented at the National Recycling Coalition Conference, Pittsburgh, Pa. (Sept. 19, 1996)). Perhaps in time these programs will require mandatory participation.

83. See David Pomper, Comment, *Recycling Philadelphia v. New Jersey: The Dormant Commerce Clause, Postindustrial "Natural" Resources, and the Solid Waste Crisis*, 137 U. PA. L. REV. 1309, 1330 (1989).

form of human investment.”⁸⁴ If the market participant doctrine allows state and local governments to benefit from their own conservation efforts, other states and/or counties might conserve and protect their environments to their benefit as well.

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84. *Id.*