

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

1100 FIRST AVE ASSOCIATES	:	
LP, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 99-3275
	:	
WASTE SYSTEM AUTHORITY	:	
OF EASTERN MONTGOMERY COUNTY,	:	
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

November 8, 1999

Presently before the Court in this 42 U.S.C. §1983 action is Defendant Waste System Authority of Eastern Montgomery County’s (“Defendant” or “WSA”) Rule 12(c) Motion for Partial Judgment on the Pleadings and Plaintiff 1100 First Avenue Associates LP, et al’s (“Plaintiffs”) response thereto. Defendant seeks the Court’s disposal of the First Count of Plaintiffs’ Complaint.

I. BACKGROUND

Defendant was part of a financing arrangement to build a trash-to-steam facility (the “Facility”) in the Eastern District of Montgomery County, Pennsylvania, which cost approximately \$160 million. Defendant agreed to provide sufficient revenue to pay for the financing of the Facility. In 1988, Defendant and Montgomery County (the “County”) established a scheme of flow control ordinances that would capture the flow of waste generated

in the district and generate the necessary revenues through tipping fees charged to the haulers that brought the waste to the Facility. On May 16, 1994, the United States Supreme Court decided the case of C & A Carbone, Inc. v. et al v. Town of Clarkstown, 511 U.S. 383 (1994)¹, and the WSA recognized the existing flow control scheme was violative of the Commerce Clause. The County eventually appointed a Blue Ribbon Panel (the “Panel”) to formulate a new scheme to replace the flow control ordinance.

In January 1998, the Panel provided a report of its efforts in an attempt to find an alternative arrangement which would assure both adequate revenues and a stream of waste to the Facility. The Report proposed a scheme by which the owners of real property in the district would be charged directly by the WSA enough fees each year to provide the revenues to pay for the Facility and the haulers would be permitted to dump the waste generated in the district at the Facility for a zero tipping fee. This scheme was the Waste Generation Fee (WGF) system. The WGF system resulted in the haulers paying nothing to dump at the Facility and economically compelled the real property owners to have to engage haulers who would dispose of the waste only at the Facility or else pay additional charges to have the waste disposed of other than at the Facility.

The First Count of Plaintiffs’ Complaint asserts that the WGF system, both facially and as applied, improperly regulates interstate commerce in violation of the Commerce Clause, by compelling the Plaintiffs to dispose of their waste at the Facility and paying the WGF

1. Both Plaintiffs and Defendant concede that the Carbone case does not deal with the issue of standing, but rather, with the issue of the dormant Commerce Clause.

to the WSA. Defendant responds by contending that Plaintiffs lack standing to bring such a claim and seek partial judgment disposing of the First Count of Plaintiffs' Complaint.

II. STANDARD

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12 (c) is treated under the same standard as a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). See Regalbuto v. City of Philadelphia, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995) (Padova, J.), aff'd without op., 91 F.3d 125 (3d Cir.), cert. denied, 117 S. Ct. 435 (1996). Consequently, judgment under Rule 12 (c) will only be granted where the moving party has clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. See Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc., 931 F.2d 1002, 1005 (3d Cir.), cert. denied, 502 U.S. 909 (1991). Additionally, the court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993).

III. DISCUSSION

A. Standing

i. Constitutional Requirements:

Defendant contends that Plaintiffs, as individual property owners and waste generators, do not have standing to assert Commerce Clause challenges against waste disposal systems. In order to have standing under Article III of the United States Constitution, a plaintiff must show (1) an actual injury that is (2) causally connected to the conduct complained

of and (3) likely to be "redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal quotation marks omitted). The injury must consist of an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Id. at 560, 112 S.Ct. 2130 (citations and internal quotation marks omitted).²

ii. Prudential Limitations:

The concept of standing also encompasses prudential limits on federal-court jurisdiction. Powell v. Ridge, 189 F.3d 387, 404 (3d. Cir. 1999) See Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). "Courts require plaintiffs to satisfy certain prudential concerns in an effort 'to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim.'" Id. (quoting Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99-100, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979)). Thus, it is required that:

- (1) that the injury alleged not be a 'generalized grievance' that is 'shared in substantially equal measure by all or a large class of citizens,'
- (2) that the plaintiff assert his/her own legal rights rather than those of other parties, and (3) that 'the plaintiff's complaint . . . fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'

Id. (quoting Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 474-75, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (internal quotation marks omitted)). Defendant does not contend that the Plaintiffs are asserting third party claims or general grievances for purposes of the three-prong prudential standard test. Thus, our focus

2. Defendant concedes that Plaintiffs have Article III "case or controversy" standing and, as a result, the Court will not address this aspect of the standing issue any further.

will be on the third prong--the zone of interest protected or regulated by the Commerce Clause of the United States Constitution.

The United States Court of Appeals for the Third Circuit has established a “liberal” application of the “zone of interest” test. UPS Worldwide Forwarding, Inc. v. United States Postal Service, 66 F.3d 621, 630-31 (3d Cir. 1995). The precise issue of whether or not individual waste generators have standing to raise a dormant Commerce Clause violation has not been addressed by the Third Circuit. However, the issue has been discussed and decided in three other Circuit Courts in the United States.

In 1997, the United States Court of Appeals for both the Eighth and Ninth Circuits have ruled on this very issue. In Responsible Government, Inc. v. Washoe County, 110 F.3d 699 (9th Cir. 1997), the Ninth Circuit applied the third-prong “zone of interest” test to determine whether or not waste generators had standing to assert a dormant Commerce Clause violation. In Washoe County, the Appellants asserted that two county ordinances interfered with interstate commerce by preventing them from utilizing dump sites outside of the State of Nevada. Id. at 702. The Ninth Circuit, in determining that the Appellants lacked standing, stated that “[t]o ascertain whether appellants have standing to raise the dormant Commerce Clause challenge . . . , it must be determined whether the interests bear more than a marginal relationship to the purposes underlying the dormant Commerce Clause.” Id. at 703. The Court noted that the alleged injury was simply that, “Washoe County’s garbage collection ordinance forces them ‘to pay for unnecessary and unwanted garbage services.’” Id. Plaintiffs, in the case at bar, clearly raise the same claim and just as the Washoe County Court ruled, we find that such an injury is not even marginally related to the underlying purpose of the dormant Commerce Clause.

It is also important to address the United States Court of Appeals for the Eighth Circuit's decision in Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin County, 115 F.3d 1372 (8th Cir. 1997). In Hennepin County, the Circuit Court found that the trash generator plaintiffs could not claim any personal right under the dormant Commerce Clause to lower garbage bills. Id. at 1381. The Court required a special relationship between the rights of the plaintiffs and the rights of a third party warranting the plaintiffs to assert the rights of that third party. Id. "The generators' status as purchasers of disposal services does not constitute such a relationship. If such were the case, then end-line consumers could always assert the Commerce Clause claims of the businesses from whom they purchase goods or services." Id.

The Eighth Circuit also found the generator plaintiffs to lack standing under the "zone of interest" test. In agreeing with the Ninth Circuit in Washoe County, the Court found that the interest of waste generators is not one protected by the Commerce Clause. The Court went on to state that the Commerce Clause "is intended to prevent economic protectionism and retaliation between states and to allow markets to flourish across state borders, thus prohibiting 'laws that would excite . . . jealousies and retaliatory measures' between states. Id. at 1382. (citing Carbone, 511 U.S. at 390). As in Hennepin County, the plaintiffs in the case at bar are alleging that they have to pay higher bills for the disposal of their garbage, and we find that such harm is too narrow, personal and local to cause retaliation or jealousies in neighboring states such as, inter alia, New York, New Jersey, and/or Delaware.³

3. This issue was also briefly addressed by the United States Court of Appeals for the First Circuit. In Houlton Citizens' Coalition, et al. v. Town of Houlton, 175 F.3d 178 (1st Cir. 1999), the Court cited both the Eighth and Ninth Circuits, stating that "the purpose of the dormant Commerce Clause is to curtail states' abilities to hinder interstate trade, and that the injury claimed by the individual garbage generators--being compelled to pay higher prices for services they neither required nor desired--was not even marginally related to this purpose." Town of

(continued...)

While Defendant relies heavily on the Eighth and Ninth Circuit decisions, Plaintiffs disagree with the rationale and the application of both decisions to the case at bar. Plaintiffs claim that neither decision complies with the United States Supreme Court's standard set in Clarke v. Securities Industry Ass'n, 479 U.S. 388, 399 (1987) (the zone of interest test "is not meant to be especially demanding). Plaintiffs also assert that instead of following the Eighth and Ninth Circuits' application of a "reactionary" narrow, "not even marginally related" test to the Commerce Clause, this Court should follow the Third Circuit's "liberal" standard to the facts of this case. However, this suggestion is not merited in this case. While it is acknowledged that the Third Circuit has applied a liberal standard to its zone of interest cases, the particular issue raised in the case at bar is one that has not been addressed by any Circuit Court outside of the First, Eighth and Ninth Circuits. See UPS Worldwide Forwarding, Inc. v. United States Postal Service, 66 F.3d 621, 630-31 (3d Cir. 1995). We are inclined to follow the rulings of both the Washoe County and Hennepin County Courts, in finding that the Plaintiffs, as individual waste generators, are not within the zone of interest of the dormant Commerce Clause, for their interests are not marginally related to its underlying purpose.⁴ Even under a liberal standard, one cannot ignore the purpose of prudential limits as set forth on page 4 of this brief. It does not seem prudent to allow one whose injury does not even have a marginal impact on interstate to assert a claim under the dormant Commerce Clause.

3. (...continued)

Houlton, 175 F.3d at 182 (citing Hennepin County, 115 F.3d at 1382; Washoe County, 110 F.3d at 703).

4. This is not to say that no parties lack standing to raise this claim, however, Plaintiffs' argument does not pass muster. Clearly, there are underlying Commerce Clause concerns in this case, yet the Plaintiffs are not the ones who may have a claim here.

IV. CONCLUSION

The Plaintiffs, as a collection of individual waste generators, lack standing to raise a dormant Commerce Clause challenge. As a result, the merits of the First Count will not be addressed and that Count will be dismissed pursuant to Rule 12 (c) of the Federal Rules of Civil Procedure.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

1100 FIRST AVE ASSOCIATES	:	
LP, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 99-3275
	:	
WASTE SYSTEM AUTHORITY	:	
OF EASTERN MONTGOMERY COUNTY,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 8th day of November, 1999, upon consideration of Defendant Waste System Authority of Eastern Montgomery County's Motion for Partial Judgment on Count One of the Pleadings, and Plaintiffs 1100 First Ave Associates LP, et al's responses thereto, it is hereby ORDERED and DECREED that Count One of the Amended Complaint is DISMISSED with prejudice.

BY THE COURT:

RONALD L. BUCKWALTER, J.