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# LEGAL BULLETIN

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## Federal Appeals Court Revives Lawsuit Challenging California County's Limits on Out-of-County Waste

A federal appeals court ruled a district court erred by dismissing a constitutional challenge to Solano County's restrictions on out-of-county waste. It directed the lower court to determine if alternate grounds for abstention are warranted.

**FACTS** In 1984, Solano County voters passed a local ordinance called Measure E which limits the importation of out-of-county waste into Solano County to 95,000 tons per year. Solano County enforced Measure E until 1992, when the county's counsel and the Legislative Counsel of California determined that Measure E was unconstitutional under the dormant Commerce Clause.

In the summer of 2009, several environmental organizations filed a lawsuit in state court demanding that Solano County withdraw its approval of the Potrero Hills Landfill expansion and enforce Measure E. In September 2009, a group of solid waste companies and Potrero Hills filed a lawsuit in federal district court under 42 U.S.C. § 1983, seeking a declaratory judgment that Measure E was unconstitutional under the dormant Commerce Clause. The environmental groups intervened in the federal case and sought to dismiss it. In December 2009, the federal court ruled that Measure E presents a "uniquely state interest" and dismissed the case under the abstention doctrine established in *Younger v. Harris*, 401 U.S. 37 (1971). Plaintiffs appealed to the Ninth Circuit. In the interim, the state court ruled in May 2010 that Measure E was enforceable only as to waste originating in California. That decision also has been appealed.

**DECISION** The federal appeals court reversed the district court, and directed the federal lawsuit challenging Measure E be allowed to proceed, even with a state court action underway. The appeals court ruled the principles of comity and federalism raised by *Younger* are not implicated when a private litigant is seeking to enforce a law such as Measure E. The appeals court stated the case provides a "much-needed opportunity" to clarify what is an important state interest for abstention purposes. It noted abstention is an "extraordinary and narrow" exception to the exercise of federal court jurisdiction, adding the key question is whether federal court adjudication would "interfere with the state's ability to carry out its basic executive, judicial, or legislative functions."

The appeals court summarized the district court's identification of two state interests that warranted abstention as follows: (1) the state's interest in enforcing its ballot initiatives; and (2) the state's interest in enforcing its local solid waste laws. The court commented that "it is not the bare subject matter of the underlying state law" that determines whether an important state interest exists. It rejected the argument that the state lawsuits, initiated by private parties, qualify as enforcement proceedings for *Younger* purposes, as "private citizens ... lack executive authority to enforce state laws...." Instead, the appeals court ruled that when a "federal plaintiff seeks relief not from past state actions but merely from prospective enforcement of state law, federal court adjudication would not interfere with the state's basic executive functions in a way *Younger* disapproves."

Similarly, the appeals court rejected the argument that the federal court adjudication of this lawsuit would "unduly interfere with the state's ability to perform its vital judicial or legislative functions." It noted a "vital judicial interest" must "go to the core of the administration of a State's judicial system" and that "general judicial interests" such as providing a state

court forum to hear constitutional claims or allowing state courts to issue writs to enforce voter mandates are insufficient. With regard to legislative interests, the appeals court commented it is "unaware" of any decision in which *Younger* abstention was found appropriate based on the state's interest in protecting its legislative functions, noting further the power of California voters to legislate through the initiative process is not implicated by this case.

In addition, the appeals court observed Solano County - a party to both cases - opposed abstention and sought federal court review of plaintiffs' constitutional claims. The county's voluntary submission to federal court jurisdiction "eliminates the comity and federalism concerns animating the *Younger* doctrine...." And, the State of California also expressly asked the federal court to exercise its jurisdiction to address the federal constitutional question presented by Measure E. Under such circumstances, the appeals court declared "we find *Younger* abstention particularly unwarranted."

The appeals court briefly reviewed an alternative grounds for abstention (*Railroad Comm'n of Texas v. Pullman*, 312 U.S. 496 (1941)). Under *Pullman*, abstention is available if: (1) the federal plaintiff's complaint requires resolution of a sensitive question of federal constitutional law; (2) the constitutional question could be mooted or narrowed by a definitive ruling on the state law issues; and (3) the possibly determinative issue of state law is unclear." While *Younger* aims to avoid interference with a state's vital functions, *Pullman* defers to state court interpretations of state law. Noting *Pullman* (unlike *Younger*) is a discretionary doctrine, and that the issue was raised below but not decided, the appeals court remanded the case to the district court to determine whether *Pullman* abstention is warranted. The appeals court commented the parties disagreed over whether Measure E should be read to apply to out-of-state waste, a state law issue of statutory construction, but that *Younger* abstention was still not warranted.

**ANALYSIS** This decision revives the federal court challenge to the constitutionality of Measure E, an important question also pending before an intermediate California appeals court. NSWMA (joined by more than a dozen other organizations) recently filed an amicus brief urging the state appeals court to find that waste import barriers are unconstitutional even when they only target in-state waste, because solid waste is a protected article of interstate commerce. As a result of this federal appeals court decision, the validity of this discriminatory waste import barrier may be litigated on parallel tracks in state and federal court.

The federal appeals court decision also highlights the solid waste industry is entitled to access to the federal courts to protect the constitutional rights of their businesses, and emphasizes the general obligation of federal courts to hear all cases properly before them. Savvy activists may file lawsuits quickly in local courts to secure friendly forums for their claims regarding permitting, environmental reviews, or local ordinances. These issues often implicate the constitutional rights of companies (Commerce Clause, Equal Protection, Due Process and others) and this decision supports the argument that federal courts do not have to defer to first-filed state court lawsuits.

The underlying issue of whether Commerce Clause protections against discriminatory waste barriers extend to exclusively in-state waste is critical for the industry and surfaces regularly as localities seek to skirt federal court decisions that clearly prohibit such discrimination when applied at the state line. As Potrero Hills and NSWMA emphasized in their briefs to the state appeals court, if each California county imposed restrictions similar to Measure E, the aggregate impact on interstate commerce would be substantial, and the many cases striking down waste import barriers should be applied to barriers erected at the county line discriminating against in-state waste. A ruling that intrastate restrictions (including intrastate flow control restrictions) trigger dormant Commerce Clause review would be helpful to waste companies nationwide. With local governments either responding to local political pressure to keep out other jurisdictions' waste materials, or passing flow control laws to create local waste monopolies to help increase revenue, these types of battles are likely to increase in frequency and intensity in the coming years.

"[N]ot only were no important state interests of the kind recognized by *Younger* at stake, but the County - and the State of California - as amicus - expressly asked the federal court to exercise its jurisdiction to resolve this solitary question of federal constitutionality. Under these circumstances, we find *Younger* abstention particularly unwarranted."



For more information about *Potrero Hills Landfill, Inc. v. County of Solano*, No. 10-15229 (9th Cir. Sept. 13, 2011), please contact David Biderman, EIA/NSWMA General Counsel, at 202-364-3743 or [davidb@envasns.org](mailto:davidb@envasns.org).