

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,

Plaintiff-Appellee,

v.

STATE OF OHIO,

Defendant-Appellant.

Case No. 12-1616

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District

Court of Appeals
Case No. 97679

MEMORANDUM IN SUPPORT OF JURISDICTION OF
AMICUS CURIAE, TOWING & RECOVERY ASSOCIATION OF OHIO, INC.

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EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST

This cause presents three critical issues affecting towing companies and towing operations in and throughout the State of Ohio: (1) whether towing companies and their corresponding operations are exempt from local regulations affecting price, route or service, pursuant to 49 U.S.C.S. 14501(c)(1); (2) whether towing companies and operations are governed by state statute and regulations, and are, therefore, exempt from local law, pursuant to Ohio Revised Code ("R.C.") Section 4921.25; and (3) whether each municipal corporation, county or township located within the State of Ohio maintains authority to impose and enforce its own set of ordinances, rules or resolutions governing registration and licensing of towing companies and operations.

In this case, the court of appeals decided that the City of Cleveland, a municipal corporation, could enforce its Codified Ordinances Chapter ("C.O.C.") 677A, which requires towing companies and drivers to, among other things, register, pay for, and maintain a city-issued tow truck owner's license. In so holding, the court of appeals subjected towing companies throughout the State of Ohio to a new and independent set of regulations, different from those already implemented and enforced under state statutes and regulations. If upheld, it may result in the enactment of a myriad of other local ordinances and regulations affecting towing companies and the ability of each to provide safe, unhindered, and competitive services to the general public.

In considering the impact on the safety and nature of services to the general public, it is important to note that C.O.C. 677A is not limited to emergency roadside service, such as might be called for by local law enforcement clearing an automobile accident. The situation at hand is

not, therefore, similar to those involving tow rotation lists or city contracts relied upon by a municipality for emergency towing services. Rather, C.O.C. 677A applies to any towing company providing general towing services originating and ending within the city limits of Cleveland, Ohio. In order to operate within the city, a towing company is required to be licensed and comply with those ordinances comprising C.O.C. 677A. Although C.O.C. 677A pertains to the same subject matter as state laws and regulations already governing towing operations and licensing, it imposes additional fees and restrictions on certain towing companies solely for the opportunity to conduct operations within the city. Accordingly C.O.C. 677A serves to restrict competitive towing operations within the City of Cleveland and to create an imbalance in the regulatory structure affecting towing operators in Ohio.

The regulatory imbalance facing Ohio's towing companies is a threat to both the towing operators and general public alike. Among other things, C.O.C. 677A and ordinances like it will give rise to uncertainty among towing companies, the general public, and law enforcement. While the case at hand involves one municipality's ordinance, affirming the underlying decision could give rise to similar ordinances being imposed by other local governments across the state. Towing companies and the general public would be faced with maintaining a thorough knowledge of the geographic boundaries of each municipality, county and township, not to mention whether that particular locale had implemented an ordinance affecting towing. Towing companies and customers would be faced with trying to determine whether a particular tow was originating within the boundaries of the local government or whether the final garage or repair shop was within the boundaries. Law enforcement would be saddled with trying to determine whether a tow truck began its journey inside or outside the city and where it was going. The only way to know for sure would be to stop the tow truck or to follow it from the tow site to the final

destination. Either method of enforcement would create a drain on law enforcement resources, not to mention potential issues involving just cause and improper stops.

The economic strain created by towing ordinances could also impact towing operations and service to the general public. Fees imposed by municipalities across the state would likely create economic barriers to competition and would drive towing prices upward. Although the registration fee in this case is relatively low, there is nothing to suggest that other municipalities could not charge more. Higher fees or the compilation of fees from multiple jurisdictions would create an economic strain on towing companies operating in highly populated areas, tending to have more municipalities in a more confined region. Similarly, all towing companies would be charged with contacting municipalities prior to entering their boundaries to perform towing services, to inquire about fees, licensing, and other regulations. In the event of an after-business-hours request for towing services, the towing company would be unable to determine with certainty whether the towing operations were regulated or unregulated by the local municipality. This could be of significant impact to heavy towing operators called to move semi-tractors and trailers, who often times travel long distances to tow sites due to the uniqueness of their operations and special equipment requirements.

Inconsistencies across municipal regulations could also lead to significant confusion among towing companies and the general public. While one municipality may limit regulations to disabled vehicles, another might govern the towing of all vehicles. The confusion is compounded when one tries to ascertain whether a vehicle is disabled. While some jurisdictions might regulate the transport of construction equipment, others might not. The minimum age of drivers, insurance requirements, and all other aspects of the regulations might vary from city to city. This would create not only uncertainty, but significant burdens on towing companies to

interpret and try to comply with a myriad of different and inconsistent towing regulations. This is a far cry from the uniform regulatory structure already in place under state law.

This Court's consideration and resolution of the issues presented will benefit the parties, towing companies in Ohio, and the general public by addressing the uncertainties and inconsistencies referenced herein, *supra*, and identifying the proper governing body and regulations for towing operations throughout the State of Ohio.

STATEMENT OF THE CASE AND FACTS

Amicus Curiae, Towing & Recovery Association of Ohio, Inc., hereby adopts the Statement of Case and Facts set forth in the Memorandum of the Defendant-Appellant.

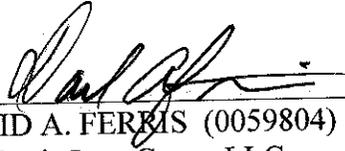
ARGUMENT

In submitting this Memorandum, Amicus Curiae limits its comments to an explanation of why this case is a case of public or great general interest and, therefore, respectfully reserves any argument as to propositions of law for its brief on the merits, should jurisdiction be accepted in these proceedings.

CONCLUSION

For all these reasons, further review of the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District is warranted. This Court should accept jurisdiction and reverse the underlying decision.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Amicus Curiae, Towing & Recovery Association of Ohio, Inc., was served by ordinary U.S. Mail, postage prepaid, this 24th day of September, 2012 upon the following:

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