Docket No.: 97-7919

*To be argued by:* ELIOT B. GERSTEN

IN THE
United States Court of Appeal
FOR THE SECOND CIRCUIT

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SAL TINNERELLO & SONS,
Plaintiff-Appellant

v.

TOWN OF STONINGTON,
Defendants-Appellees

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

HONORABLE ROBERT N. CHATIGNY

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# REPLY BRIEF OF APPELLANT SAL TINNERELLO & SONS

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## INTRODUCTION

> Certain it is that if the possibility of a government usurping the ordinary business of individuals, driving them out of the market . . . had been in the public mind, the Constitution would not have been adopted.

South Carolina v. United States, 199 U.S. 437, 457, 26 S.Ct. 110 (1905). Yet, in California Reduction Company v. Sanitary Works, 199 U.S. 306, 26 S.Ct. 100 (1905) and Gardner v. Michigan, 199 U.S. 325, 26 S.Ct. 106 (1905), the Supreme Court sanctioned the creation of municipal monopolies of garbage collection in response to prevalent "epidemic diseases" caused by an accumulation of uncollected waste in the streets. California Reduction Company, 199 U.S. at 319. The Court held that, under these severe circumstances, individual rights must be subordinated to the general good. Id. at 324; Gardner, 199 U.S. at 332-33.

As recognized by the appellees (collectively "the Town") and the amicus, the Connecticut Conference of Municipalities ("CCM"), the substantive issues raised in this appeal are whether, in the absence of comparable circumstances, a town may constitutionally: (1) usurp a waste collection business without a grace period and thereby immediately and retrospectively abrogate existing contracts; and (2) direct waste to a favored local disposal facility to avoid its duty to provide waste disposal services as a government function. Appellant does not challenge the wisdom of the Town's decision, only its constitutionality.

Because the Supreme Court previously answered both of the substantive questions posed in the negative, the District Court erred in failing to enjoin the Ordinance at issue in this case.

## I. THE CONTRACT CLAUSE PROHIBITS THE RETROSPECTIVE DESTRUCTION OF PRIVATE CONTRACTS IN THE ABSENCE OF EXIGENT CIRCUMSTANCES.

Neither the Town nor the CCM recognize the need to "reconcile the strictures of the Contract Clause with the essential attributes of sovereign power." United States Trust Co. v. New Jersey, 431 U.S. 1, 20, 29-30, 97 S.Ct. 1505 (1977). Both the Town's and CCM's arguments focus almost exclusively on the existence of a legitimate police power. This is, however, only the first step of the Contract Clause analysis. Even in the exercise of its otherwise legitimate police power, a State may only retrospectively impair existing contracts where its action is necessary and reasonable. Id.

The District Court erred as a matter of law in failing to require the defendants to establish that it was necessary to immediately appropriate plaintiff's contracts and commandeer its installed equipment.[1] Moreover, defendants have not, and cannot,

[1] Although defendants claim otherwise (Defendants' Opposition to Appeal, pp.15-16 "Def. Br. p.__"), the municipality must establish the "necessity", regardless of whether the contract involved is private or public. See, United States Trust Co., 431 U.S. at 25-26 ("As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary."); Allied Structural Steel v. Spannaus, 438 U.S. 234, 247, 98 S.Ct. 2716 (1977)(applying United States Trust Co. "necessity" test to private Contract Clause challenge).

establish such a necessity. Defendants also cannot establish that the wholesale illegalization of plaintiff's existing contracts is not a substantial impairment. Finally, the District Court erred as a matter of law in finding the ordinance "reasonable" because the plaintiff had the opportunity to obtain an award of the governmental franchise J.A. 489.

"Whether or not the protection of contract rights comports with current views of wise public policy, the Contract Clause remains part of our written constitution." United States Trust Co., 431 U.S. at 16. The Ordinance, which unnecessarily and retrospectively destroys plaintiff's contracts must be enjoined as violative of the Contract Clause.

A. Immediate, Retrospective Destruction Of Plaintiffs Contracts Was Not Necessary.

The District Court found that, "considering the terms of plaintiff's contracts and the forseeability of the Town's action," J.A. 490, the Town should have given plaintiff "advance notice of a year or two" in order to avoid violating the Contract Clause. J.A. 491. Defendants take the position that advance notice was not required because its actions are: (1) authorized by C.G.S. § 7-148 (Def. Br. pp.16-20); (2) in the public interest (Def. Br. p.21); and (3) based upon legitimate fiscal concerns(Def. Br. p.24). Defendants further argue that their right to control the waste industry is written into plaintiff's contracts as a "paramount right." Def. Br. pp.18-19, citing, Home Bldg. & Loan Ass'n. v. Blaisdell, 290 U.S. 398, 435-36, 54 S.Ct. 231 (1934).

These arguments, however, relate to the existence of defendants' police power, not the "necessity" of its exercise. Blaisdell, 290 U.S. at 426 (*stating*, the constitutional question is whether the power possessed embraces the particular exercise of it in

response to the particular conditions); Id. at 438-40. Both defendants and amicus CCM overlook that the State's power is subordinate to the constitutional limitation against retrospective impairment of existing contracts.[2] It is the Contract Clause, not the plaintiff's contracts, that limit the power of the government.[3]

1. Statutes, Alone, Cannot Authorize Retroactive Impairment of Contracts.

Sturges v. Crowninshield, 4 Wheat. 122 (1819) undermines any claim that the Connecticut legislature, by enacting C.G.S. § 7-148, provides the Town with authority to retrospectively impair plaintiff's contracts. In Sturges, the State unsuccessfully claimed that the power to pass bankruptcy laws encompassed the power to retrospectively discharge debts. The Court responded that the Contract Clause has restrained the state's

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[2] Defendants also conveniently overlook the final phrase in the statement they quote: "Every contract is made in subordination of them [the sovereign power], and must yield to their control . . . **wherever a necessity for their execution shall occur**." Blaisdell, 290 U.S. at 436. (Emphasis added)

[3] Defendants erroneously rely on Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908). See, Def. Br. p.31. In that case, the plaintiff entered a contract to supply water to another state after a statute prohibiting such conduct had been enacted. Consequently, the Court stated "[o]ne whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them." Id. at 357.

exercise of its powers:

> as to prohibit the passage of any law impairing the obligation of contracts. **Although then, the States may . . . pass laws concerning bankrupts; yet they cannot constitutionally introduce into such laws a clause which discharges the obligations the bankrupt has entered into.** It is not admitted that, without this principle, an act cannot be a bankrupt law; and if it were, that admission would not change the constitution, nor exempt such acts from its prohibition.

Sturges, 17 U.S. at 199 (emphasis added). Thus, the state's power to regulate a specific area does not constitute authority to circumvent the constitutional limitation of the Contract Clause. Id.; See also, W.B. Worthen v. Kavanaugh, 295 U.S. 56, 62, 55 S.Ct. 555 (1935) (*holding*, the power to create and amend the procedure for judicial remedies does not encompass the power to retrospectively deny any remedy); W.B. Worthen v. Thomas, 292 U.S. 426 (1934) (same).[4]

The decisions of this Court in USA Recycling, Inc. v. Town of Babylon, 66 F.3d 1273 (2d Cir. 1995), cert. den'd, 1996 U.S. Lexis 2432, 116 S.Ct. 1419 (1996), and Sanitation and Recycling Indust. v. City of New York, 107 F.3d 985 (2d Cir. 1997) do not address the immediate and retrospective destruction of existing contracts. Babylon did not involve the Contract Clause and the law at issue was prospective. Id. at 1279. Sanitation and Recycling Indust. concluded that the law at issue did not substantially impair existing contracts because it continued existing licenses and provided a two year grace period. Id. at 990-91.

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[4] See also, Spannaus, 438 U.S. at 247 (authority to regulate employee retirement plans does not encompass authority to impose regulations retrospectively); *see also*, Condell v. Bress, 983 F.2d 415 (2d Cir. 1993).

Moreover, this court did not simply excuse the respective municipalities by simply referring to the police power as suggested by defendants, but instead scrutinized the factual circumstances that justified the imposition created by law. Id. at 994.[5]

2. Public Necessity Is A Fact Specific Inquiry And Does Not Exist In This Case.

The record in each case must disclose the public necessity that justifies the exercise of police powers in a manner that infringes upon constitutional rights. In Gardner, 199 U.S. 325; California Reduction Co., 199 U.S. 306; Sanitation and Recycling Indust., supra; and State v. Orr, 68 Conn. 101, 35 A. 770 (1896), upon which defendants and amicus CCM rely, the courts relied upon specific factual findings of "necessity" to justify the law at issue.

The facts of those cases highlight the absence of any public necessity to justify the Town of Stonington's ("Town") conduct in this case. For example, in California Reduction Co., supra, the Court upheld government control of waste disposal because refuse disposal "had become so **objectionable and deleterious to the public health that . . . epidemic diseases were prevalent.**" Id., 199 U.S. at 319 (emphasis added). The California Reduction Court emphasized that its holding did not extend where "unoffending property is taken away from an innocent owner." Id. at 324.

[5] See also, Blaisdell, *supra* (police power alone is insufficient to justify retrospective impairment of contracts); Babylon,66 F.3d at 1279 (applying prospective statute).

Similarly, in Gardner, the court held that "**if** . . . the presence of garbage and refuse in the city, on the premises of householders and otherwise, would endanger the public health, by causing the spread of disease, **then** it [the town] could rightfully require such garbage and refuse to be removed and disposed of." Id., 199 U.S. at 332 (emphasis added); *see also*, Sanitation and Recycling Indust., supra; Orr, 68 Conn. at 106 (same).

South Carolina, 199 U.S. 437, decided the same year as Gardner and California Reduction Company, makes clear that the state's authority to regulate must be exercised within the strictures of the Constitution. South Carolina, 199 U.S. at 448-451 (state may not use its power to regulate liquor to avoid constitutional power of federal government to tax industry). Thus, Gardner and California Reduction Company provide no authority that the Town can exercise its authority to impair existing contracts retrospectively in the absence of exigent circumstances. The defendants admit that there was no evidence that either plaintiff, or any other private waste hauler, was in violation of any safety law to justify the Ordinance. J.A. 238.

Moreover, defendants' complaint that the day may never come when it can monopolize the garbage industry because plaintiff's contracts may never expire is constitutionally irrelevant and legally erroneous. *See*, Def. Br. p.14. As this court made clear in Sanitation and Recycling Indust., supra, "gradually phasing out" contracts with evergreen clauses is constitutionally permissible. Id., 107 F.3d at 994.

3. The Economic Interests Of The Town, In The Absence Of Crises, Do Not Justify The Retrospective Destruction Of Plaintiff's Contracts.

Fiscal concerns cannot justify the retrospective impairment of contracts. *See*, Condell, 983 F.2d at 419-20; Association of Surrogates & Supreme Court Reporters v. State of New York, 940 F.2d 766, 774 (2d Cir. 1991), cert. den'd, 1992 U.S. Lexis 504, 112 S.Ct. 936 (1992); Continental Illinois National Bank & Trust Co. of Chicago v. State of Washington, 696 F.2d 692, 701-702 (9th Cir. 1983). Contrary to defendants' and the CCM's claim, these holdings, made in the context of public contracts, are equally applicable to this case. *See*, Allied Structural Steel v. Spannaus, 438 U.S. 234, 247 (1977) (applying United States Trust Co. standard to action based on impairment of private contracts); Surrogates, 940 F.2d at 771 (applying Spannaus standard to action based on impairment of public contracts); Def. Br. pp.15-16; CCM Brief, p.13.

Whether the case involves private or public contracts, only severe economic dislocation, which is neither alleged nor present in this case, can justify the retrospective impairment of contracts. *See*, Spannaus, 438 U.S. at 249 (invalidating economic legislation because crises not sufficiently severe); Kavanaugh, 295 U.S. at 63 (same); Thomas, 292 U.S. at 432 (same); Condell, 983 F.2d at 420 (same); Surrogates, 940 F.2d at 772 (same); cf., Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400, 409, 103 S.Ct. 697 (1983) (upholding statute based on threat of "serious economic dislocation").

The only authority which defendants' rely on in support of their claim, City of El Paso v. Simmons, 379 U.S. 497, 85 S.Ct. 577 (1965), does not apply to this case. Def.

Br. p.24. The U.S. Supreme Court did not hold that the budget concerns of the City of El Paso could justify retrospective impairment of contracts. First, the Court found no substantial impairment because, unlike this case, El Paso provided **a five year statute of repose**. Id. at 508, 514-15. Second, the basis for the legislation was not fiscal, but the "imbroglio over land titles in Texas." Id. at 512-13. The Court upheld the challenged law because it was "quite clearly necessary" to resolve the land title problem. Id. Finally, the Court stated that economic interests may justify interference with contracts with reference to Blaisdell, supra, in which the severe economic dislocation of the depression justified temporary impairment of contracts. El Paso, at 508-509.

Kavanaugh, supra, and Condell, supra, establish the rule for this case, not El Paso, supra. Fiscal concerns may only justify the retroactive impairment of existing contracts under the most extreme circumstances.

4. Defendants May Not Avoid The Burden To Establish Necessity By Recourse To Due Process Jurisprudence.

The "arbitrary and capricious or clearly erroneous" standard for due process challenges to economic legislation advocated by defendants is inapplicable to this case. Def. Br. pp.33-34. To defeat a Contract Clause challenge, the government must establish a "necessity" for retrospective impairment, "[d]espite the customary deference courts give to state laws directed to social and economic problems." Spannaus, 438 U.S. at 244. In contrast to the Contract Clause, which is specifically directed against laws which are ex post facto, "the Due Process Clause of the Fourteenth Amendment generally does not prohibit retrospective civil legislation unless the consequences are particularly "harsh and oppressive." United States Trust Co., 431 U.S. at 17, n.13.

Moreover, there is no basis in the history of the Contract Clause to support heightened deference where the challenged legislation is "economic" in nature. To the contrary, the government enacted the Contract Clause specifically to protect against the "mischief" caused by **"ignoble" State economic legislation**. Blaisdell, 290 U.S. at 427-28. The Contract Clause should thus be given full effect in the context of plaintiff's Contract Clause challenge.

B. As A Matter of Law, Broad Grants of Authority And Dicta Do Not Constitute 'Notice' That Is Read Into Private Contracts.

Defendants' and CCM's characterization of garbage collection in Stonington as a **"**core function of local government" is belied by the fact that plaintiff, a private entity, has been supplying that service, in the absence of any municipal regulation, for the past twenty-eight (28) years. Def. Br. p.21. Under these circumstances, the District Court erred in concluding that plaintiff may be on notice that the Town would suddenly appropriate its business.

1. State Laws Are Implied Into Private Contracts "Only When Those Laws Affect The Validity, Construction, And Enforcement Of Contracts."

Only laws that are (1) **in effect** at the time of contracting and (2) that actually "affect the validity, construction, and enforcement" of the contract will be "read into" the contract. General Motors Corp. V. Romein, 503 U.S. 181, 188-89, 112 S.Ct. 1105 (1992). In General Motors Corp., the plaintiff claimed that the worker's compensation law should be read into its employment contracts so that a change in the law constituted a

retrospective impairment of the contracts. The Court rejected this claim. Id.

Neither the general grant of authority, C.G.S. § 7-148, nor dicta in the decision of Connecticut Carting Co. v. Town of East Lyme, 946 F. Supp. 152 (D.Conn. 1992), upon which defendants rely, "affect[ed] the validity, construction, and enforcement" of plaintiff's contracts when they were entered. Thus, defendants' claim should similarly be disapproved.

Moreover, General Motors Corp., supra, explicitly addressed and rejected the theory that a general statutory statement of authority could be read into a contract so as to defeat a Contract Clause challenge for:

> [i]f, therefore, the legislature should provide, by a law, that all contracts thereafter made should be subject to the entire control of the legislature, as to their obligation, validity, and execution, whatever might be their terms, they would be completely within the legislative power, and might be impaired or extinguished by future laws; thus having a complete ex post facto operation.

Id. at 190-91, citing, 2 J.Story, Commentaries on the Constitution of the United States, § 1383, pp.252-253 (5th Ed. 1891). Indeed, defendants were unable to cite to any authority to support their novel claim. Defendants' reliance on 2 Todor City Place Associates v. 2 Tudor City Tenants Corp., 924 F.2d 1247 (2d Cir.) cert. denied, 502 U.S. 822 (1991), is misplaced: that litigation involved a statute that directly impacted the terms of the contract and was in existence at the time of the contract. Id. at 1254.

In addition, CCM erroneously relies upon Gardner, California Reduction Co., and Orr. These cases did not place plaintiff on notice that its contracts would be retrospectively terminated. As stated in Section I(A)(i), supra, regardless of whether the Town has the authority to provide exclusively for garbage collection and disposal, it may

not constitutionally exercise this authority by retrospectively invalidating plaintiff's existing business.

Continental Illinois National Bank & Trust Co. of Chicago v. State of Washington, 696 F 2d 692, 699-700 (9th Cir. 1983).

However, to the extent that C.G.S. § 7-148 is deemed as "notice" to plaintiff, plaintiff was also "on notice" that "Municipal Collection," means "solid waste collection from all residents thereof by a municipality." C.G.S. § 22a-207(16). Thus, plaintiffs were not on notice that the Town would undertake collection of commercial waste as well. *See*, Buonocore v. Town of Branford, 192 Conn. 399, 401-402, 471 A.2d 961 (1984) (*stating*, municipal authority may only be found in explicit grants).

In addition, plaintiff was "on notice" of C.G.S. § 22a-221(b), which provides that the Towns "shall be obligated to annually appropriate funds or levy taxes to pay its obligations" under its contract with the Connecticut Resource Recovery Authority. This statute **requires** the Town to pay its obligation through taxes. Thus, contrary to the District Court's finding, plaintiff could not be "on notice" that the Town would appropriate its business to avoid the statutory requirement that it utilize taxes to meet its obligation under the CRRA contract. J.A. 488-89.

### 2. "The Framers Of The Constitution Were Not Anticipating That A State Would Attempt To Monopolize Any Business."[6]

The Town's alleged right to seize plaintiff's business in the absence of public necessity is not a reserved sovereign power presumed to be a part of plaintiff's contracts.

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[6] South Carolina, 199 U.S. at 458.

Contra. Def. Br. p.19, citing, Blaisdell, 290 U.S. at 435-36. While Blaisdell indicated that there are some sovereign rights that are so fundamental that every contract is made in subordination to them, the Court did not did not anticipate the takeover of private enterprise as opposed to temporary remedies to solve public emergencies. Blaisdell, 290 U.S. at 425 (consideration of historical setting of contract clause necessary to interpretation).

At the time the Constitution was enacted,

> [a]ll the avenues of trade were open to the individual. The government did not attempt to exclude him from any. **Whatever restraints were put upon him were mere police regulations to control his conduct in the business and not to exclude him therefrom.** The Government was no competitor, nor did it assume to carry on any business which ordinarily is carried on by individuals. Indeed, **every attempt at monopoly was odious in the eyes of common law**, and it mattered not how that monopoly arose, whether from the grant of the sovereign or otherwise. The framers of the Constitution were not anticipating that a State would attempt to monopolize any business heretofore carried on by individuals.

South Carolina, 199 U.S. at 457-58 (emphasis added). Thus, regardless of any previous regulation of plaintiff's business, the complete, immediate and retrospective illegalization of its profession for the purpose of creating a municipal monopoly was not a reserved sovereign power.

Moreover, plaintiff's constitutional rights are not minimized by the fact that its business serves a function which could also be serviced by the municipality. Dartmouth College v. Woodward, 4 Wheat. 518 (1819), 1819 U.S. Lexis 330, rejected such a distinction long ago. In that case, the State claimed that it had the right to transform a private college into a public institution because education was a public function. Dartmouth College, 1819 U.S. Lexis 330, ** 111-112. The court rejected this claim, holding that, regardless of the function performed, where the plaintiff is a private entity, it is protected by the Contract Clause. Id. 17 U.S. at 645.

C. The Opportunity To Transform Plaintiff's Business, Through A Government Contract, "Into A Machine Entirely Subservient To The Will of the Government"[7] Does Not Mitigate The Impairment of Plaintiff's Rights.

The potential of the plaintiff to obtain a government franchise in place of its existing business relationships is irrelevant to a determination of whether the Ordinance is "reasonable." Replacement of private contract rights with a government contract in itself constitutes a substantial impairment of contract rights. Dartmouth College, 17 U.S. at 651-54. Thus, the Ordinance can not be made reasonable simply because defendants conducted a "request for proposals" to operate the municipal monopoly to replace the existing business.[8]

Instead, defendants were required to show that the Ordinance is "specifically tailored" and "a more moderate course" was not feasible. Sanitation and Recycling Indust., 107 F.3d at 993; United States Trust Co., 431 U.S. at 31. Defendants do not attempt, and indeed cannot, justify their failure to provide 1) any grace period, Spannaus,

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[7] Dartmouth College, supra.

[8] Defendants disingenuously imply that the "bid" process anticipated contracts with up to seven haulers. Def. Br. p.30. The contracts for the five residential districts were not subject to a bid. J.A. 269. Rather, defendants thereafter selected five haulers who currently service some portions of the residential districts. Id. Defendants did not provide plaintiff an opportunity to negotiate a contract to retain any of its residential customers.

438 U.S. at 247, and 2) overly broad inclusion of plaintiff's "roll off" work as part of its attempt to pay for the Preston plant. Thus, the District Court's conclusion that the ordinance was reasonable is erroneous.

## II. THE COMMERCE CLAUSE PROHIBITS LOCAL REGULATION OF INTERSTATE COMMERCE.

Municipalities may not enact waste disposal laws where the "object is local economic protectionism." C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383, 390, 114 S.Ct. 1677 (1993). Contrary to defendants' claim, the Town is not exempt from this prohibition. Def. Br. p.37. First, unlike the Town of Babylon, Stonington is not a "market participant" "spending tax dollars for the benefit of its citizens." Def. Br. pp.37-38, citing, Babylon, 66 F.3d at 1288. The Town has refused to utilize tax dollars to subsidize the cost of the privately owned incinerator. J.A. 262-63.

Rather, the Town is utilizing the Ordinance as a financing scheme to direct the revenues from commercial waste customers to the local incinerator and thereby subsidize the privately owned incinerator's above market tipping fees. Thus, this case, unlike Babylon, is analogous to West Lynn Creamery v. Healy, 512 U.S. 186, 114 S.Ct. 2205 (1994). Id., 114 S. Ct. at 2215 (*holding*, government use of power to subsidize and thereby favor local business violates Commerce Clause); Babylon, 66 F.3d at 292 (distinguishing West Lynn Creamery because Babylon utilized tax revenue to purchase services for residents).

Second, the Town's prohibition against disposal of waste at out of state facilities is not "incidental" to its scheme. Def. Br. p.36. The evidence reveals that the sole purpose of the Ordinance is to direct the waste to the favored local facility - Preston. J.A.

400-403; 207; 238; 243-245. Moreover, unlike the Town of Babylon, Stonington has implemented the Ordinance to mandate disposal at the specific Incinerator. J.A. 409-50; Babylon, at 1291-92.

Finally, a finding in plaintiff's favor would not conflict with the Court's holding in California Reduction Co., supra and Gardner, supra. These cases indicate that the right to control waste disposal may be exercised to protect the public health and safety. Carbone makes clear that this authority does not extend to direct waste to favored local incinerators, even where those incinerators are publicly financed. Carbone, 511 U.S. at 386-87. The Ordinance in this case should be enjoined because it was enacted solely to direct waste to Preston.

## III. PLAINTIFF ESTABLISHED IRREPARABLE HARM.

Defendants' circular claim that plaintiff failed to establish irreparable harm because the District Court did not find that plaintiff established irreparable harm is misguided. As in Roso-Lino Beverage Distributors, Inc. v. Coca-Cola Bottling Co., 749 F.2d 124 (2d Cir. 1984) (per curiam), this Court may determine that the illegalization of plaintiff's business in Stonington constitutes irreparable harm as a matter of law. Id., at 15-26. Further, CCM's Statement of Interest reveals, the District Court decision creates a similar situation for the plaintiff's business in at least 71 percent of Connecticut municipalities. Amicus Brief p.4.

## CONCLUSION

For the foregoing reasons, in addition to those set forth in appellant's opening brief, the District Court erred in not granting injunctive relief. Appellant respectfully requests that this Court reverse the decision of the District Court and enjoin the Ordinance on the ground that it violates both the Contract Clause and the Commerce Clause. Alternatively, appellant respectfully requests that this Court reinstate the Temporary Restraining Order and remand the case to the District Court to conduct a hearing, following discovery, on plaintiff's Application for Preliminary Injunction.

Respectfully submitted,

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