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Applicability of Nevada State-Action Immunity to Private Parties.

On January 7, 2019, in [Green Sols. Recycling, LLC v. Reno Disposal Co.](#), No. 3:16-cv-00334--MD-CBC, 2019 BL 4611 (D. Nev. Jan. 07, 2019), the District Court for the District of Nevada granted summary judgment on plaintiff's antitrust claim in favor of defendants Reno Disposal Company, Inc. ("Reno Disposal"), and Waste Management of Nevada, Inc. ("WMON"), on the basis of the doctrine of state-action immunity. The litigation arose out of the City of Reno's entry into an exclusive franchise agreement with Reno Disposal, which provided Reno Disposal with the exclusive right to collect and dispose of waste and certain recyclable materials. The plaintiff challenged the City of Reno's authority to grant a monopoly for the collection and disposal of garbage and recyclable materials as an unlawful restraint of trade in violation of Section 1 of the Sherman Act. The defendants argued that they were entitled to summary judgment under the doctrine of state-action immunity.

The doctrine of state-action immunity derives from *Parker v. Brown*. In *Parker*, the Supreme Court held that "because 'nothing in the language of the Sherman Act . . . or in its history' suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies, the Act should not be read to bar States from imposing market restraints 'as an act of government.'" *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 224, (2013) (quoting *Parker v. Brown*, 317 U.S. 341, 352 (1943)). Following *Parker*, the Court recognized that "under certain circumstances, immunity from the federal antitrust laws may [likewise] extend to nonstate actors carrying out the State's regulatory program." *Id.* at 225. Given our "fundamental national values of free enterprise and economic competition," however, state-action immunity is the exception rather than the rule, and the inquiry is even more exacting when a non-state actor invokes the protection of *Parker* immunity. *See id.*

In *Midcal*, the Supreme Court set forth a two-part test for determining whether the anticompetitive acts of private parties are entitled to state-action immunity. *Id.* (citing *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980)). First, "the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy.'" *Midcal*, 445 U.S. at 105. Second, the policy "must be 'actively supervised' by the State." *Id.*

Applying these principles, the District of Nevada found that this case presented one of those rare circumstances where private parties are entitled to state-action immunity. The court first concluded that the clear-articulation prong of the *Midcal* test was met, because the statute at issue expressly authorized anti-competitive conduct by allowing municipalities to displace or limit competition in collection and disposal of waste. Moreover, the court found it foreseeable that the statute would result in a monopoly over the collection and disposal of materials that arguably qualified as waste.

With respect to the second prong, the court emphasized that the active supervision requirement did not apply "when the 'challenged activity is within a traditional municipal function,'" or "when 'the actor is a municipality rather than a private party.'" *Green Sols. Recycling, LLC*, 2019 BL 4611, at *9 (citations omitted). The court reasoned that the "traditional municipal function" exception applied,

because waste disposal is “both typically and traditionally a local government function.” *Id.* (citations omitted). The court likewise concluded that the second exception applied, because the true actor was the City of Reno, rather than Reno Disposal or WMON. The court explained that it was the City of Reno that was engaged in municipal regulation, and that Reno Disposal and WMON “have no authority to set pricing or in any way regulate the collection and disposal of garbage and other waste.” *Id.* The court held that both exceptions applied and that, accordingly, the defendants did not need to establish active supervision.

While the court’s decision thus makes clear that non-state actors are entitled to state-action immunity only in narrow circumstances, it also illustrates the vitality of this doctrine.

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January 18, 2019

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