

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - NEW JERSEY

Borough of Longport v. Netflix, Inc.

United States Court of Appeals, Third Circuit - February 29, 2024 - F.4th - 2024 WL 854877

Two New Jersey municipalities brought putative class action, on behalf of all New Jersey municipalities, under the New Jersey Cable Television Act (CTA) against entertainment companies that provided streaming-video services, alleging that companies owed municipalities franchise fees under the CTA.

The United States District Court for the District of New Jersey granted companies' motion to dismiss for failure to state a claim, holding that municipalities had no right of action to enforce the CTA. Municipalities appealed.

The Court of Appeals held that:

- The CTA did not create an implied right of action that would allow municipalities to enforce its franchise-payment requirement, and
- The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading such an implied private right of action into the CTA.

The New Jersey Cable Television Act (CTA) did not create an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the statute expressly vested "all" enforcement authority in the Board of Public Utilities (BPU), making it clear that the legislature did not intend for municipalities to share enforcement power with the BPU, and there were no strong indicia that the legislature intended to include a private right of action for municipalities.

The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading into the New Jersey Cable Television Act (CTA) an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the constitutional provision at issue did not change the plain meaning of the CTA and could not be interpreted to provide municipalities with statutory enforcement authority that would directly conflict with the CTA, which granted all enforcement power to the Board of Public Utilities (BPU).