



# Court Watch



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To: TCJL Board of Directors

From: George Christian

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Re: *City of Laredo, Texas v. Laredo Merchants Association* (No. 16-0748; decided June 22, 2018)

In this closely watched case, a unanimous Texas Supreme Court has struck down a number of city ordinances that prohibit merchants from providing single-use plastic and paper bags to customers for point-of-sale purchases. Noting that this case is part of a larger public policy debate over the balance of power between the state and local governments, Chief Justice Nathan Hecht reiterated the Court's duty to apply the law as written and let the policymakers sort it out. "The wisdom or expediency of the law is the Legislature's prerogative, not ours," declared the Chief Justice, citing a 1968 decision of the Court in *Smith v. Davis*. "We must take statutes as they are written, and the one before is written quite clearly."

The Court's decision turns on the interpretation of Section 361.0961, Tex. Health & Safety Code, which prohibits a local government from prohibiting or restricting "the sale or use of a container or package . . . for solid waste management purposes" in a "manner . . . not authorized by state law." The City of Laredo adopted an ordinance barring retailers from providing certain paper or plastic "checkout" bags to customers for the purposes of promoting, among other things, beautification, litter prevention, and flood protection. Following adoption of the ordinance, the Laredo Merchants Association filed suit for declaratory and injunctive relief. The trial court granted the city's motion for summary judgment. The San Antonio Court of Appeals reversed and rendered for the merchants, over a dissenting opinion by Justice Chapa.

Though it could have simply let the 4<sup>th</sup> Court's opinion stand and leave it at that, SCOTX granted the city's petition for review, as Chief Justice Hecht put it, "in part because similar ordinances have been enacted by other municipalities." Those cities include Eagle Pass, Corpus Christi, Kermit, Sunset Valley, Austin Freer, Laguna Vista, South Padre Island, Brownsville, and Ft. Stockton. The Court thus determined that rather than hearing piecemeal challenges of ordinances outside of the 4<sup>th</sup> District Court of Appeals, it would take them all at once, despite differences in detail between them. This move augured for a broad application of the pre-emption provision of §361.0961, and that is exactly what happened.

Premising its decision on the constitutional division of power between the Legislature and home-rule cities, the Court followed a long line of precedent supporting the Legislature's general power to preempt, limit, or otherwise control the exercise of a city's home-rule authority. "The question is not whether the Legislature *can* preempt a local regulation like the [Laredo] Ordinance," Chief Justice Hecht notes, "but whether it *has*." Proceeding to an interpretation of the statute, the Court finds that the Legislature has indeed preempted local regulation for the following reasons: (1) the Ordinance was adopted for solid waste management purposes, although it may have other purposes as well; (2)

the statutory term "container or package" includes a single-use bag provided at the point of sale; and (3) the Legislature has given no express grant of authority to cities to regulate single-use bags in the manner prescribed by the Ordinance. The Court affirmed the Court of Appeals decision, giving that ruling statewide effect.

In our reading, the Court's decision strikes down all local ordinances prohibiting or restricting the provision of single-use paper and plastic bags. By holding that the Legislature has preempted the field of "regulating the sale or use of a container or package for solid waste management purposes in a manner not authorized by the Legislature," the Court effectively invites the cities to take up the issue with the Legislature next spring. Whether they will do so remains to be seen, but one thing seems clear: the battle lines between the state and local governments have never been so strongly demarcated and bitterly contested. We can expect this struggle to continue into next session and beyond.

