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SUPREME COURT OF TEXAS
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NO. 16-0748

IN THE SUPREME COURT OF TEXAS

CITY OF LAREDO, TEXAS,
Petitioner,

v.

LAREDO MERCHANTS ASSOCIATION,
Respondent.

On Review from the
Fourth Court of Appeals at San Antonio, Texas
No. 04–15–00610–CV

BRIEF OF AMICI CURIAE TEXAS COTTON GINNERS' ASSOCIATION BILLY JOE EASTER

IN SUPPORT OF THE CITY OF LAREDO, TEXAS

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IDENTITY AND INTEREST OF AMICI CURIAE

Texas Cotton Ginners' Association (TCGA) is a non-profit association serving the interests of cotton farmers, cotton ginners and the allied cotton industries of Texas. TCGA was founded in 1897 and chartered in 1929 as a non-profit organization, making it one of the oldest cotton organizations in the United States and representing gin membership that processes the majority of the state's cotton crop each year. TCGA has a strong interest in seeing the Solid Waste Disposal Act, Tex. Health & Safety Code § 361.0961 (SWDA, Act), properly interpreted to not preempt local bag ordinances because cotton harvests are increasingly contaminated by plastic carryout bag[1] litter and TCGA's membership would suffer financially from lower cotton prices due to increasingly contaminated bales if municipalities are not able to regulate plastic bags locally.

Billy Joe Easter (Mr. Easter) is a cattle rancher with two miles of highway frontage on Highway 281, nine miles south of Wichita Falls. Mr. Easter's ranch encompasses 200 head of cattle on 1,400 acres. Mr. Easter is also the owner and operator of Wichita Livestock Sales, where he auctions approximately 1,100 head of cattle per week. Mr. Easter has an interest in seeing the SWDA properly interpreted to not preempt local bag ordinances because he is frustrated by plastic

[1] All references to plastic bags herein are to plastic carryout bags provided to customers at checkout, unless otherwise specified.

bag litter entering his property by blowing off the highway and believes that at least one of his cattle have suffered from impaction from eating plastic bag litter, which led to excruciating sickness and death.[2] Mr. Easter believes that the ability of local municipalities to address plastic bag litter is important to the health and welfare of his livestock as well as his business.

TCGA and Mr. Easter support the position of the City of Laredo (City) that the Checkout Bag Reduction Ordinance, Ordinance 2014-O-064 (Ordinance), is not, as a matter of law, preempted by the SWDA.

No fee was paid in connection with the preparation of this brief.

SUMMARY OF THE ARGUMENT[3]

The Ordinance is a valid exercise of the City's authority and is not preempted by Section 361.0961(a)(1) of the SWDA. The Merchants failed to show with "unmistakable clarity" that Section 361.0961(a)(1) preempts the Ordinance. Guidance from this Court is needed because many cities throughout Texas have adopted[4] or are considering adopting similar local ordinances targeted to address

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[2] Jesse Canales, *SB 103 being debated as plastic bag litter endangers cattle*, NEWS CHANNEL 6 NOW, Mar. 18, 2017, http://www.newschannel6now.com/story/34942619/sb-103-being-debated-as-plastic-bag-litter-endangers-cattle (last visited July 16, 2017)

[3] *Amici* adopt, and incorporate by reference, the statement of facts in the City's Petition for Review.

[4] *See* Austin, Tex., Code of Ordinances ch. 15-6, Art. vii, §15-6-122 (2012); Brownsville, Tex., Code of Ordinances ch. 46, Art. ii, §46–47, 46–48 (2010); Corpus Christi, Tex., Code of Ordinances ch. 22, §§22-1, 22-10 (2014); Eagle Pass, Tex., Code of Ordinances ch. 16, Art. ii,

important and legitimate local concerns regarding litter and other harms caused by plastic bags. Local governments traditionally regulate solid waste and should have the authority to regulate plastic bags in an effort to protect the health and safety of their citizenry.

ARGUMENT

I. Local Bag Ordinances Allow Municipalities to Protect Local Citizens and Businesses From the Harms of Litter.

This case is about not just Laredo. This case is about something that many Texans hold dear: local control. Here, local control means the ability of cities to have the tools to regulate a burdensome contaminant: plastic bags. Texas state law grants local governments the authority to enact ordinances to protect its water supply, control its sewer system, and prohibit the pollution of its streams and tributaries.[5]

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§16-85 (2016); Ft. Stockton, Tex., Code of Ordinances ch. 12, Art. I, §§12-1, 12-9 (2010); Freer, Tex., Ordinance No. 2012-05 §1-01(2012); Kermit, Tex., Code of Ordinances Ch. 98, §§98.01–98.10 (2013); Laguna Vista, Tex., Ordinance No. 2012-23 (Sept. 11, 2012); Laredo, Tex., Code of Ordinances Ch. 33, Art. vi, §33-504 (1993); Port Aransas, Tex., Ordinance No. 2014-15, §§10-26–10-30 (Dec. 20, 2014); S. Padre Island, Tex., Code of Ordinances ch. 12, §§12-30.0–12-30.3 (2011); Sunset Valley, Tex., Code of Ordinances Ch. 93, §93-61 (2013).

[5] A non-exhaustive list of such authority includes, *inter alia*: A city "may provide for the protection of and may police any watersheds." Tex. Loc. Gov't Code § 551.002(b); A city is authorized to "regulate" sewer and water systems "in a manner that protects the interests of a municipality." Tex. Loc. Gov't Code §§ 552.001(b); A city may establish a water pollution control and abatement program for the city, including "the development and execution of reasonable and realistic plans for controlling and abating pollution." Tex. Water Code § 26.177(b)(5).

Texas has a strong history of concern for litter reduction, including the long-running state Department of Transportation's *Don't Mess With Texas*® campaign. Despite the campaign being successful at mitigating the act of littering to some extent, litter counts are still rising in some areas due in part to the impact of high wind gusts on how litter accumulates.[6] Localities frustrated with litter took it upon themselves to start to regulate the most prevalent form of windblown litter: single-use plastic bags (or "the urban tumble weed").[7] Finding preemption here would dismantle these local laws and take away true local control.

A. Preemption Would Burden Local Texas Governments and Citizens.

The Laredo Merchants Association (Merchants) and Texas argue that preemption would unfairly shift the burden of costs to retailers and consumers,[8] but quite the opposite is true. Local governments are meant to work on behalf of their people, maintaining general welfare for people like the farmers and ranchers to make a living. Finding for preemption would unfairly strip a proven and valuable policy tool from local governments regarding how to go about managing waste.

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[6] Don't Mess With Texas, *2013 Texas Litter Survey*, Sherry Matthews Advocacy Mktg., 29, Aug. 23, 2013, http://www.dontmesswithtexas.org/docs/DMWT_2013_Litter_Survey.pdf (last visited Aug 29, 2017).

[7] Houston Chronicle Editorial Board, *Plastic bag bans: State government should leave cities free to do what's best for the local communities*, HOUSTON CHRONICLE, Jun. 23, 2017, *available at* http://www.houstonchronicle.com/opinion/editorials/article/Plastic-bag-bans-11243618.php (last visited Aug 29, 2017).

[8] Brief of Texas as Amici Curiae in Support of Affirmance at 22 (filed June 15, 2017).

The burden of increased plastic bag litter would then fall on farmers and ranchers because their local government would no longer be able to adopt a policy to effectively combat plastic bag litter. Here, the stated purpose of the Ordinance includes maintenance of the storm-water sewer system, protection of life and property from flooding exacerbated by bags that clog sewers and drains, and reduction in costs from litter control. To take away the authority to enact such protections would burden not only the local government seeking to enact those laws but also the citizens that would no longer benefit from the quality of life resulting from those protections.

To quote Texas's brief, the trend in banning consumer products "possesses no logical end." Brief of Texas as Amici Curiae in Support of Review at p. 7 (filed Dec.14, 2016). Following the same logic, if a municipality is unable to perform basic duties – like abating a common nuisance – that process could also possess no logical end. The nuisance being abated here is plastic bag litter but this opens the door to stripping away even more local authority, e.g. the authority to restrict the dumping of corrosive chemicals into a city sewer or abating noise pollution near a senior living center. Local Texas governments need these tools available to protect their citizens' quality of life.

B. Preemption Would Burden Texas Agricultural Businesses.

According to the Texas Department of Agriculture, Texas has the most farms and ranches in the country, with 248,800 farms and ranches covering 130.2 million acres.[9] The top two commodities in terms of cash receipts as of 2012 were Cattle ($10.5 billion) and Cotton ($2.2 billion), with the overall food and fiber sector totaling more than $100 billion annually.[10] Cotton and cattle are two examples from the agricultural sector that showcase specific harms caused by plastic bag litter that some Texas municipalities have chosen to address by adopting plastic bags. Erroneously finding preemption here would prohibit municipalities from doing so.

1. Plastic Bag Litter Is Detrimental to Texas' Cotton Industry.

Plastic bag litter poses a distinct threat to the cotton industry in Texas because cotton crops are particularly susceptible to snagging and harboring plastic bag litter. Unlike most other windblown roadside litter that tends to accumulate at the base of stalks in cotton fields, errant plastic bags blowing in the wind frequently get snagged towards the top of cotton stalks in the vicinity of the bolls (the fiber and the barbed spindles that entwine the fiber). Making matters worse, plastic bags are often the same color as cotton bolls when bolls are ready for

[9] Texas Department of Agriculture website, About > Texas Ag Stats, http://texasagriculture.gov/About/TexasAgStats (last visited Jun, 25, 2017).

[10] *Id.*

harvest: white. Plastic bag litter blends in easily with cotton fiber and does not let go. Cotton farmers are encouraged to walk the edges of their fields before the harvest to remove any potential contaminants,[11] but in practice very few farmers can spare the time or resources to meticulously walk each field[12] and the bag litter is pervasive throughout the crop, not just at the edges.

Plastic bag litter disguised in the cotton is of particular concern to the cotton ginning process and is very difficult to remove. First, some plastic bag material separates from the fiber during the first step of the process, when the fiber is dried and pneumatically cleaned. Next, the lint and remaining contaminants are pulled through closely spaced ribs that remove any entrapped seeds. However, some amount of shredded plastic bags inevitably remains.

After the ginning process is complete, the cotton lint is compressed into 500-pound bales that are graded by the U.S. Department of Agriculture (USDA) and sold to a textile mill. Samples are taken from each bale and classified according to fiber strength, length, length uniformity, color, and lack or trash and other

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[11] National Cotton Council of America, *Contamination-Free Cotton: U.S. Cotton's Goal to Enhance Our Global Reputation*, http://cotton.okstate.edu/harvesting-and-ginning/cotton-contamination-brochure.4Web.pdf (last visited June 29, 2017) (Includes watchlist for foreign materials, shopping bags is first example given).

[12] The thick-gauge, yellow plastic film used to bale compressed cotton lint is also sometimes found in cotton fields.However, because that plastic is thicker it does not pose the same windblown litter-related problems as thin plastic carryout bags. Also, because the baling film is bright yellow, rather than white, baling plastic is much easier to identify among mature bolls.

extraneous matter.[13] The amount of trash in a bale directly influences the cotton's value. Cotton lint that is contaminated with plastic bag film and other contaminants does not "dye out" well, and farmers therefore cannot earn the premium grade price for contaminated crops. Complicating the matter is the reality that some contamination may not be easily identifiable until after dying or knitting; contamination gets very expensive for textile mills at that point and that contamination can be traced back to the individual cotton farmer. [14] As contamination by plastic bags increases, the quality of Texas cotton is continuing to deteriorate.

2. Plastic Bag Litter Is Detrimental to Texas' Cattle Ranching Industry.

Cattle ranchers with open grazing pasture frontage along highways that serve as waste hauling routes, like Mr. Easter's ranch, are particularly susceptible to plastic bags flying from passing waste hauling trucks and becoming windblown litter. There is a lot of open space in open grazing pastures and ranchers do not continually monitor cattle at pasture. If a plastic bag blows into open grazing pasture and a cow ingests the bag, it is very unlikely that a rancher will witness the

[13] Cotton Incorporated, *Classification of Cotton*, http://www.cottoninc.com/fiber/quality/Classification-Of-Cotton/ (last visited July 9, 2017).

[14] Tony Williams, Executive Director, Texas Cotton Ginners' Association, Transcript of Hearing before the Texas House of Representatives Agriculture & Livestock Committee on the impacts of windblown trash impacts on agriculture and ranching at 1:50, May 23, 2016. (Appendix A).

event.[15] A much more likely scenario is that the rancher would not know that a cow has ingested a plastic bag until the cow has a distressed look in its eye and is no longer able to eat. The number of internet message board postings devoted to questions similar to "My cow ate a plastic bag" attest to the worries about plastic bag ingestion by cattle ranchers as a pervasive issue that doesn't have a straightforward answer.[16]

The anatomy of cattle lends to a particular vulnerability to serious consequences from plastic bag ingestion. Cattle are ruminant animals, meaning

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[15] In contrast, plastic hay bale strings are also well known to ranchers to be deadly if ingested; but are easier to control because hay bale strings are not as susceptible to wind. Also, hay bale strings are a known quantity and most ranchers meticulously collect their hay bale strings to prevent unwanted ingestion.

[16] A Google search of the phrase "My cow ate a plastic bag" yielded 5,330,000 results. Most of the top hits were message boards. One such post on the *Keeping A Family Cow* message board entitled "help- My cow ate a small plastic bag" including the following comment posted on Feb 5, 2011 at 11:22am by Janene in Texas:

> When we lived in TX, it was next to a highway--lots of people just throw the trash out of their cars to blow hilly-nilly wherever with the wind. >:(
> One of my steers at that time ate one of these bags in front of me--I wasn't fast enough to pull it out of his mouth. All was fine with him, he passed it about 24 hours later.
> But yes, I waited and watched and put him in a small area alone to inspect his manure.
>
> Years ago one of the gals here had a cow go "off" and it died a week or so later. The vet (or anyone) couldn't figure out what was wrong. After some time, she found it was a plastic bag.....who could of known at the time? (She was poking around the remains a few months later--its how she discovered it.) :'(
>
> I always hope for the best, but prepare for the worst.....
> Janene
>
> PS When its really windy here, I get "plastic trash" that blows into my pasture (from who knows where). So I'm always on the lookout!

http://familycow.proboards.com/thread/39830 (last visited July 9, 2017).

that they have four-compartment stomachs. The first and largest compartment is the rumen, which acts like a large fermentation vat, followed by the reticulum. Microorganisms in the rumen digest the rumen's contents and create natural gases which, if passage is not blocked, will be belched or passed along the way. Often times, cattle are able to digest a small amount of plastic film or other foreign material with minimal discomfort. However, when an accumulation of foreign bodies occurs in the rumen and reticulum and those objects may interfere with flow of ingesta liquids and lead to the distention of rumen. Distention of the rumen is often visible as a bloated stomach, because liquids can no longer circulate freely.

Plastic bags and other plastic films are particularly harmful to the rumen because they're capable of blocking all liquid and sealing off the compartment. If the rumen is completely blocked and the blockage is not able to be removed at some point the cattle will develop septicemia (a systemic disease commonly known as blood poisoning) or suffer suffocation due to extreme bloat compressing the lungs and may quickly die.[17] Septicemia is excruciatingly painful for the animal and renders the cattle's corpse valueless to the rancher.

[17] Peter D. Constable, Kenneth W Hinchcliff, Stanley H. Done, Walter Gruenberg, *Veterinary Medicine: A textbook of the diseases of cattle, horses, sheep, pigs and goats*, 459 (2016) ("Ingestion of nonmetallic foreign bodies is addressed in this section, and if extensive or located in the reticulum, such ingestion can result in decreased food intake, weight loss, and electrolyte and acid-base abnormalities. . . . The foreign bodies were predominately located in the rumen and consisted of plastic bags, cloth, rope, and leather; consequently, increased use of paper bags is recommended whenever possible.")

Calves are more susceptible than adult cattle to ingestion and rumen blockages caused by plastic bag ingestion because their digestive systems are not yet mature and their gut is smaller. This is also because calves are generally more inquisitive of their surroundings in the pasture and are looking for new things to mouth or chew on. Plastics have a variety of tastes and they often move in the wind, further attracting the attention of calves.

If a cattle rancher has reason to know that a cattle ingested a plastic bag the rancher has three options: send the animal to slaughter earlier than planned to salvage some value from the animal, call a vet for examination and possible surgery, or wait to see what happens and maybe administer a mineral oil laxative treatment. The economics of cattle ranching go against paying a veterinarian to examine and possibly perform surgery to remove plastic bags thought to be ingested by cattle. In Texas, calves are generally valued at approximately $750 for 7-8 month-old calves (500 pounds at $1.50/pound) and adult cows are generally valued at approximately $1,800 (1,200 pounds at $1.50/pound). A standard veterinary examination costs around $150 and any kind of surgery generally costs at least $400-500.[18] Spending $500 or more on surgery that may or may not be needed is rarely a viable option for animals that aren't worth much more than the veterinary bill. Most ranchers adopt the "wait and see" method, monitoring cattle

[18] Estimates were provided by Billy Joe Easter based upon his experience as owner and operator of Wichita Livestock Auction in Wichita Falls, TX.

that they suspect have eaten plastic bags for signs of discomfort and bloating. Considering that over one-third of the value of a head of cattle will be sunk into possible medical expenses due to plastic bag litter, the issue of single-use plastic bags and their regulation is very important for local cattle ranchers. Therefore, it is important that local governments to protect the interests of their local ranchers as well.

C. Plastic Bag Laws Are Proven to Effectively Reduce Litter.

Laredo adopted the Ordinance, banning plastic bags under 4.0 mils thick, in part to address the harms of plastic bag litter. Thin plastic bag have been banned my many cities because thin plastic bags are a particularly problematic form of litter. Thin plastic bags are uniquely aerodynamic, meaning that even if properly disposed of plastic bags have a tendency to get caught up in windblown litter and end up in places where they are not supposed to be, like as litter and clogging storm drains. Laredo cites specific examples and costs, both public and private, associated with plastic bag litter within that jurisdiction. Petitioner City of Laredo Petition for Review at p. 4 (filed Nov.7, 2016).

Plastic bag laws work to reduce litter because the number of plastic bags available in a jurisdiction is reduced and there tends to be a corresponding

reduction in plastic bag litter.[19] Austin, TX's ban on plastic bags under 4.0 mils led to a dramatic reduction in plastic bag litter as pictured in Austin's official report.[20] The headline of the City of Laredo's Environmental Services Department *Summer 2015 Newsletter* announces "No more plastic bags!" and features various educational and reusable bag giveaway events. The second page of the newsletter features photos of two locations in Laredo before and after the Ordinance went into effect. In each set of photographs the first photo is before the Ordinance and features significantly more plastic bag litter than the second photo.[21] On a practical level, once this product is reduced in the litter stream, it is much less of a threat to the cotton ginners, cattle ranchers, and communities that stand to be impacted by this ubiquitous form of litter.

II. By Adopting the SWDA, the Texas Legislature Did Not Intend to Preempt Local Plastic Carryout Bag Reduction Laws.

The Legislature enacted the SWDA in 1993 out of concern that landfill capacity in Texas was becoming scarce. The SWDA had dual goals of 1)

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[19] An analysis of litter clean-up data from Potomac River Watershed Cleanups before and after Washington DC's plastic carryout bag law went into effect showed "a measurable reduction in the number of littered plastic bags found at cleanups in the District, it saw a 72% reduction based on what volunteers remove at cleanups" Alice Ferguson Foundation, *Bag Fees at Work: An Analysis of Reductions in Plastic Bags from Potomac River Watershed Cleanups 2007-2014*, May 11, 2015, available at: http://fergusonfoundation.org/wp-content/uploads/2015/05/DC_Plastic-Bag-reduction_OnePager_5-11-15-Final.pdf

[20] Austin Resource Recovery, *Environmental Effects of the Single Use Bag Ordinance in Austin, Texas*, 11, Jun. 10, 2015, https://www.austintexas.gov/edims/document.cfm?id=232679

[21] City of Laredo, Environmental Services Department, *Summer 2015 Newsletter*. (Appendix B).

efficiently using the land designated as landfill space and 2) requiring local governments to reduce the amount of waste sent to landfills through recycling, composting, and other methods. Much of the impetus for the SWDA was that "building new landfills is expensive and unpopular," and thus created a statewide permitting system ensured much-needed capacity by requiring that "local government could not prohibit the processing of solid waste by a solid waste facility permitted by the state." HOUSE RESEARCH ORG., BILL ANALYSIS S.B. 963 at 2 (Tex. 1993), *available at* http://www.lrl.state.tx.us/scanned/hroBillAnalyses/73-0/SB963.pdf

A. The Legislature Did Not State With "Unmistakable Clarity" That Section 361.0961 Preempts Regulations Regarding Plastic Carryout Bags, as Required for Preemption of Local Government Action in Home Rule Cities.

The City of Laredo is a home rule city. Home-rule cities "possess the power of self-government and look to the Legislature not for grants of authority, but only for limitations on their authority." Tex. Loc. Gov't Code § 51.072(a); *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d 1, 7 (2016) (citing *Dallas Merch.'s & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490–91 (Tex. 1993)). Absent "clear and unmistakable language," courts presume that the Legislature did not intend to "withdraw a particular subject from a home rule city's domain." *Tyra v. City of Houston*, 822 S.W.2d 626, 628 (Tex. 1991). To determine whether the Legislature intended to remove bag laws from local domain the Court

must conduct a statutory construction analysis. *See BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d at 8.

1. The Definition of "Containers" Wasn't Intended to Include Plastic Carryout Bags.

In construing a statute, the Court's primary objective is to give effect to the legislature's intent and the "plain meaning" of a statute controls "unless [1] the Legislature has supplied a different meaning by definition, [2] a different meaning is apparent from the context, or [3] applying the plain meaning would lead to absurd results." *BCCA Appeal Group, Inc. v. City of Houston*, 496 S.W.3d at 8 (quoting *Abutahoun v. Dow Chem. Co.*, 463 S.W.3d 42, 46 (Tex.2015) (citing *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010))). The court must start with the plain language of the statute and view the statute as a whole as opposed to viewing isolated provisions. *Id*., at 12; *see also Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). Neither section 361.0961 nor the Act define the terms "container" or "package." The Merchants argue that the Court must apply an ordinary meaning to the terms. *See PlainsCapital Bank v. Martin*, 459 S.W.3d at 550, 556 (Tex. 2015). The Court of Appeal agreed with the Merchants and simply relied upon Webster's Third New International Dictionary definition of "bag" as a type of "container made of paper, cloth, mesh, metal foil, plastic, or other flexible material." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 162 (2002). However, the court must conduct

a statutory analysis to determine the intent of the legislation, because here to stop at the plain meaning ignores a different meaning that is apparent from context and would lead to absurd results.

a. Section 361.0961 Falls Under Subchapter C Of the SWDA, Which Covers Permits.

A court's construction of a statutory provision should be consistent with the statute's organizational structure. *See TIC Energy & Chem., Inc. v. Martin*, 498 S.W.3d 68, 75 (Tex. 2016) (noting "the structure of the subchapter in which sections . . . reside is instructive").

Here, Section 361.0961 is contained within Subchapter C of the SWDA. Subchapter C is entitled Permits and it covers permits relating to the construction of solid waste facilities[22] and hazardous waste facilities as well as the hearings and notices associated with obtaining those permits.[23] In fact, the section at issue is essentially sandwiched between permit exemption applications and condition on issuance of permits for hazardous waste management facilities.[24] The Ordinance

[22] Sec. 361.06. Permits; Solid Waste Facility.

[23] *See, e.g.,* § 361.0665. Notice Of Intent To Obtain Municipal Solid Waste Permit; § 361.067. Review Of Permit Application By Other Governmental Entities; § 361.080. Hearing Concerning Permit Application for Hazardous Industrial Solid Waste Facility.

[24] *See, e.g.,* § 361.095. Applicant For Hazardous Waste Management Facility Permit Exempt From Local Permit; § 361.097. Condition on Issuance Of Permit For Hazardous Waste Management Facility.

can be read in harmony with the general scope and the purpose of the SWDA because preemption only applies to solid waste containers.

b. "Container" Within the Same Subchapter Relates Only to Solid Waste Containers That Store or Transport Waste.

"Container" is not defined within Section 361.0961 but use of the word container elsewhere in the same subchapter supplies context. Section 361.091[25] is also within Subchapter C and it relates to certain municipal solid waste sites not being able to accept solid waste "that is in a completely enclosed container or enclosed vehicle" unless certain conditions apply. The use of the word "container" there lends further context to what the remainder of Subchapter C already illustrates: the premise is that permitting of solid waste is a top-down approach at the state level and references to containers refer to solid waste containers used to haul waste to landfill or other solid waste facility, including hazardous waste. Because the legislature consistently used the term "container" in subchapter C to refer to solid waste containers used for storing, transporting, processing, or disposing of solid waste, the word "container" in section 361.0961 may reasonably be construed to have the same meaning.

[25] § 361.091. Enclosed Containers Or Vehicles; Permits; Inspections. "(a) A municipal solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless . . .."

c. Carryout Bag Reduction Laws Would Fall Within Subchapters § 361.022(a)&(b) of SWDA, Which Relate to Municipal Solid Waste Source Reduction.

The SWDA declares it the public policy of the state to "protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible." SWDA § 361.022(a). This section lists the preferred methods specific for eliminating the generation of municipal solid waste in order of preference, the first tier being source reduction and waste minimization and the second tier being reuse or recycling. SWDA § 361.022(b). Laredo's Ordinance falls squarely within this subchapter. However, in Texas' amici curiae brief, Texas claims that "[n]o matter the authority—federal, state, or administrative—source reduction is never defined or understood in terms of bans or absolutist measures." Brief of Texas as Amici Curiae in Support of Affirmance at 13-14 (filed June 15, 2017). Texas's argument is erroneous for two reasons.

First, the term "source reduction" has long been used by the EPA and other federal agencies to include bans on plastic bags, including during the time period immediately before the SWDA was adopted. The phrase "source reduction" has consistently been used by the EPA synonymously with "waste prevention" and "pollution prevention." A 1992 memorandum from F. Henry Habicht, then Deputy

Administrator, explained the EPA's understanding and approach to pollution prevention. Memorandum from F. Henry Habicht II, Deputy Administrator, EPA, to all EPA Personnel, May 28, 1992 (available at https://www.epa.gov/sites/production/files/2014-09/documents/pollprev.pdf). The memo states that "[p]ollution prevention means 'source reduction,' as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants." *Id.* at 2.

A recent EPA news release announced a summit hosted by the agency "to address ways to reduce waste and boost recycling and composting in the Caribbean." Brenda Reyes, *EPA Hosts Caribbean Recycling Summit in San Juan, Puerto Rico*, United States Environmental Protection Agency, Dec. 01, 2016, https://www.epa.gov/newsreleases/epa-hosts-caribbean-recycling-summit-san-juan-puerto-rico. Carmen Guerrero Pérez, the Director of the EPA's Caribbean Environmental Protection Division, highlighted "new plastic bag bans in Puerto Rico and the U.S. Virgin Islands" and noted that the summit could build on the momentum those jurisdictions have created in finding "ways to expand source reduction." *Id.*

Other federal agencies have also explicitly defined plastic bag bans as source reduction. In 1991, the Bureau of Land Management drafted an environmental impact statement for a landfill project. Bureau of Land Mgmt,

United States Dep't of the Interior, Draft Environmental Impact Statement: Environmental Impact Report for the Eagle Mountain Landfill Project (1991). The report considered alternatives including "waste diversion programs." *Id*. at 105. One of these programs considered was "source reduction," including a "measure . . . to ban nonbiodegradable plastic bags and wrapping materials." *Id.* at 108. The report explained that "by definition these measures would reduce the overall demand for waste management facilities." *Id.* Given these example, some of which predate the SWDA's adoption, source reduction has long been used by the EPA and other federal agencies to include bans on plastic bags.

Second, Texas's argument that "[b]anning sources of waste, rather than reducing them, is not source reduction"[26] erroneously assumes that plastic bags themselves should be considered the relevant "substance, pollutant, or contaminant" rather than the plastic material from which the bags are produced. Brief of Texas as Amici Curiae in Supp. of Affirmance at 14. Texas attempts to justify this assumption by shoehorning the phrase "product or service" into the Texas Commission on Environmental Quality ("TCEQ") definition. *Id.* at 12; 30 Tex. Admin. Code § 335.471. This phrase is nowhere to be found in the definitions of source reduction. If one instead focuses, as the TCEQ definition instructs, on the relevant "substance, pollutant, or contaminant," plastic, it is clear that a ban on

[26] Brief of Texas as Amici Curiae in Support of Affirmance at 14 (filed June 15, 2017).

plastic bags would reduce the *overall* amount of plastic film material entering the waste stream. *See* 30 Tex. Admin. Code § 335.471(B).

Contrary to Texas' faulty and convoluted reasoning, the term plastic bag "ban" here is not a separate category from other source reduction regulations. A plastic bag "ban" is simply shorthand for a type of regulation that places a minimum thickness requirement (4.0 mils) on the film from which plastic bags may be manufactured. This thickness requirement is carefully crafted to address the aerodynamic nature of thin plastic bags by eliminating only those most likely to become windblown litter.

2. The Ordinance Wasn't Adopted for "Solid Waste Management" Purposes Because Plastic Carryout Bags Are Provided at the Point of Sale, Before They Could Possibly Be Labeled as Litter.

Preemption only applies to bans of containers that are adopted for solid waste management purposes. Even if plastic bags are found to be containers, preemption would not apply because the Ordinance was not adopted for "solid waste management" purposes. Laredo's Ordinance was adopted to reduce litter through source reduction, which falls within the Texas Litter Abatement Act (Tex. Health & Safety Code § 365.001), not for solid waste management purposes in accordance with Health and Safety Code Section 361.0961(a).

The Merchants propose a definition of solid waste management as "control of activities that result in plastic and other trash in the environment," essentially

claiming that anything that could later be litter would be subject to subject to preemption. As the City aptly points out, if a container is anything that can be littered the preemption potentially stretches to regulation of countless other consumer products including a student's school backpack and a motor vehicle used to transport goods. Petitioner City Of Laredo's Brief on The Merits (filed Apr. 4, 2017).

B. Legislative Interpretation Goes Against Preemption Because the Texas Legislature Persistently Continues to Introduce Carryout Bag Preemption Legislation.

A fundamental principle of legislative interpretation is that "a statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it." *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). Well after passage of the SWDA in 1993, bills have repeatedly been introduced the Texas Legislature seeking to preempt local plastic bags laws. In fact, for nearly a decade such bills have consistently been introduced,[27] including a bill introduced in the 2017 legislative session that sought to specifically address the right of a business to provide a bag to a customer by amending Health and Safety Code Section 361.0961(a) and (c) to add "including a

[27] List of Texas state legislature bills seeking to preempt local carryout bag laws introduced in every legislative session for almost a decade: See, e.g., Tex. S.B. 338, 81st Leg., R.S. (2009); Tex. H.B. 3427, 81st Leg., R.S. (2009); Tex. H.B. 1361, 81st Leg., R.S. (2009); Tex. S.B. 908, 82nd Leg., R.S. (2011);Tex. H.B. 3236, 82nd Leg., R.S. (2011); Tex. H.B. 1877, 82nd Leg., R.S. (2011); Tex. H.B. 2416, 83rd Leg., R.S. (2013); Tex. S.B. 1550, 84th Leg., R.S. (2015); Tex. S.B. 1806, 84th Leg. R.S. (2015); Tex. S.B. 103 (2017).

bag provided by a business to a customer" to the existing language of the section.[28] That the Legislature in its most recent session felt the need to again attempt to clarify this language to include bags goes against any argument that the Legislature was unmistakably clear in its alleged intent to preempt local bag laws when it adopted SWDA over two decades ago.

[28] Tex. S.B. 103 (2017):
SECTION 2. Sections 361.0961(a) and (c), Health and Safety Code, are amended to read as follows:

> (a) A local government or other political subdivision may not adopt *or enforce* an ordinance, rule, or regulation to:
>
> (1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package, *including a bag provided by a business to a customer,* in a manner not authorized by state law;
>
> (2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or
>
> (3) assess a fee or deposit on the sale or use of a container or package, *including a bag provided by a business to a customer.*
>
> . . . .
>
> (c) This section does not limit the authority of a local government to enact zoning ordinances *other than a zoning ordinance that prohibits, restricts, or assesses a fee or deposit on the use or provision by a business of a bag to a customer at the point of sale.*

CONCLUSION AND PRAYER

TCGA and Mr. Easter respectfully request that the Court reverse the judgment of the court of appeals.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains 10,367 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I have relied on the word count provided by the software used to prepare the document.

/s/ Bruce R. Bodson

APPENDIX

Tab A	Transcript of Hearing before the Texas House of Representatives Agriculture & Livestock Committee on the impacts of windblown trash impacts on agriculture and ranching at 1:50, May 23, 2016
Tab B	City of Laredo, Environmental Services Department, *Summer 2015 Newsletter*

TAB A

Ag & Livestock Committee Interim Hearing on Interim charge on windblown trash impacts on agriculture
May 23, 2016 1:38
http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=11980

Tony Williams ED Texas Cotton Ginners 1:50

Challenges and problems we face from plastics not just from litter, but also from plastics the industry uses. Overall #1 contamination source is plastic. Challenge from litter is a tough one. When we get litter out in the fields and it gets harvested inside that cotton we do not currently have any systems in place in the industry that allow us to identify those contaminants in stream and remove those. The industry is in the process of trying to develop those and they're looking at other industries that process on a very high speed basis to see if they can come up with something that can help us eliminate some of these contaminants…if plastic materials gets in through the ginning process there's a very good chance they will make it through the system and in the end they will get in that bale of cotton.

One of the things that's unique about the cotton industry is that every bale of cotton has its own identification…so when a textile mill in China opens up a bale of cotton from Texas, they can trace that all the way back to that cotton gin in Texas…and there have been claims from mills on bales of cotton in the past where they had a problem and the worst thing for mills is to get that product in a finished good and then discover they have a problem.

Plastic bags are one of our big challenges out there... Most people just don't know that these things get out on the road or blow out from the back of a truck. I was in Corpus Christi over the weekend and talked to a farmer who farms out west of Corpus where they have a couple of their landfills and they farm next to some of the Farm to Market roads that the trucks take to go to the landfill and he said that anytime they get ready to harvest you can walk out the first dozen rows out into that field and you can find a lot of trash. So unless they take the time and money and resources to remove it just before the harvest, that trash will get into the cotton.

If it gets into the yarn, it won't dye…so it will show up as a contaminant. If it gets into a finished products it gets very expensive for the textile mills at that point

Springer: Styrofoam containers next to plastic water bottles. Does that get caught up in the gins?

Tony Williams: Haven't heard of that being an issue at the cotton gins.

T. King: Ever seen thorny brush at the edge to catch the trash.

Tony Williams: Never heard of that. Most cotton farmers

T King: Talked about any other solutions that plastic bag bans?

Tony Williams: Research at other industries to take out during processing

TAB B

Environmental Services Department

Summer 2015 Newsletter

Have a ❤, Do Ur Part ❤ Ur Reusable Bag!

619 Reynolds St.
Laredo, TX 78040
Tel: (956) 794-1650
Fax: (956) 727-7944

No More Plastic Bags!

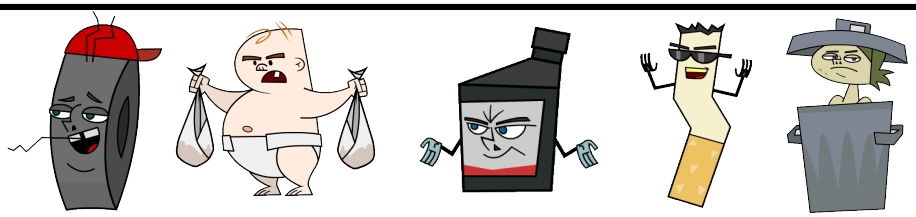
The City Council adopted a Checkout Bag Reduction Ordinance 2014-O-064 on June 2, 2014 in order to promote the beautification of the City of Laredo through prevention of litter generated from discarded plastic/paper checkout bags.

City of Laredo Environmental Services Department Program Coordinator, Tracey King (right) with City of Laredo Solid Waste Services Recycling Coordinator, Sylvia Garza (left) hosted an informational booth promoting the Checkout Bag Reduction Ordinance and gave away free reusable bags at the Newman Elementary Family Fun Fest Picnic.

Inside this issue:

No More Plastic Bags!	*1*
Education/Community Events	*1*
Education/Community Events	*2*
Illegal Dumping	*3*
Stormdrain Maintenance	*3*
Household Hazardous Waste Collection Events	*4*
Keep Laredo Beautiful	*4*

Be the Solution, Reduce Pollution!



Before and after images of effectiveness of the Checkout Bag Reduction Ordinance.

CONGRATS!!!

Congratulations to the Environmental Services Department- 3rd place at the Fajita Cook Off for the Super Summer Blast Off Event hosted by Councilman Esteban Rangel at the Sophie Christen McKendrick, Francisco Ochoa, and Fernando A. Salinas Branch Library.

Illegal Dumping

The Environmental Services Department provides all manpower necessary to manage the illegal dumping program, which assures proper waste disposal by individuals and business within Laredo. The team consists of two code enforcement officers, who are certified by the Texas Department of Health. During the 2014 reporting period, the City has inspected 1,490 complaints, and has issued 146 citations and 176 warnings for environmental violations. Additionally, the Code Enforcement division has issued 183 citations and 12,724 warnings for nuisances.

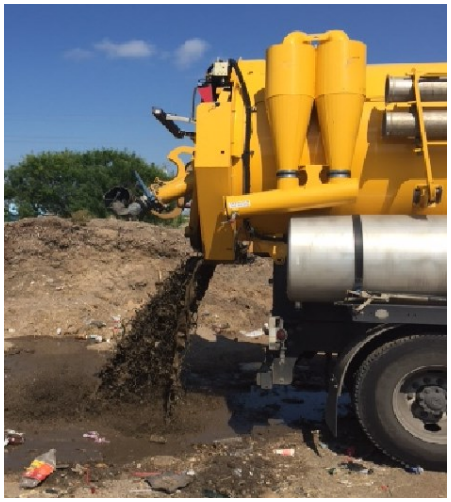
MS4 Maintenance

Storm drain manhole before maintenance.

Storm drain manhole **after** maintenance.

The Environmental Services Department has a full time vacuum truck maintenance crew to handle the cleaning of the inlets and the MS4 comprised of 2 Heavy Equipment Operators for the two vacuum trucks and each a laborer. The crew performs multiple cleanings on heavy use areas such as the downtown area, which is cleaned every Friday.

Properly disposing of mixed waste at the City of Laredo Landfill (right). Vacuum truck during daily operations (left).



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LIKE US ON FACEBOOK!

KEEP LAREDO BEAUTIFUL

Lynne S. Nava,
Executive Director

619 Reynolds St.
Laredo, TX 78040

Contact-
(956)-794-1655
keeplaredobeautiful
@gmail.com

Household Hazardous Waste Collection Events

Environmental Services Department has two events per year in which Household Hazardous Waste (HHW) is collected. The City has collected a total of 27, 207 pounds of Household Hazardous Waste from December 2014 to May 2015. The City hosted a HHW Event Saturday May 2, 2015 where 15, 271 lbs of household hazardous waste was collected and an addition of 11, 936 lbs of waste was collected at our permanent household hazardous waste facility, located at the City Landfill.

Items accepted:

Cleaning Products
Automotive Products
Paints, Solvents, and Stains
Pool Chemicals
Pesticides, Insecticides, Herbicides
Batteries

Items NOT accepted:

Commercial Waste
Radioactive Waste, Medical Waste
Ammunition and Explosives

Community Tool Shed! Need a tool, Borrow a tool, Return the tool, Keep Laredo Beautiful!

NeighborWorks Celebrating Community/Celebrando Communidad! Planting at Tomas Flores Municipal Housing! Great job Keeping Laredo Beautiful! NeighborWorks Laredo!

To view KLB Facebook, click logo below.