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Colorado Supreme Court Interprets TABOR, Holding City's "Waste Reduction Fee" is Not a Tax .

Municipalities wield considerable power over local businesses as a recent Colorado Supreme Court decision demonstrates.On May 21, the Colorado Supreme Court decided the case of *Colorado Union of Taxpayers Foundation v. City of Aspen*. The Court held, in a 4 to 3 ruling, that a City of Aspen ordinance imposing a charge of $0.20 on the right to use a paper bag at a grocery store was not a tax, subject to Colorado's Taxpayer Bill of Rights (TABOR), which was enacted in 1992.

The City of Aspen ordinance was adopted by the City Council in 2012, and prohibits grocery stores in the city from providing disposable plastic bags to customers at check-out, while also imposing a charge of $0.20 on each use of a paper bag, which is known as a "waste reduction fee." The City Council concluded that the use of single-use shopping bags contributed to greenhouse gas emissions, litter, atmospheric acidification and solid waste generation.

TABOR "specifically limited the legislative taxing power of the state and local governments by requiring that a new tax must receive voter approval prior to implementation." However, the Court also notes that TABOR did not define the term "tax." The Court held that this fee is not a tax because it is not a revenue-raising device, but is assessed to defray the city's costs in administering a "specific, regulatory, waste-reduction scheme, and, particularly, to recoup the costs of recycling the bags that the shoppers are still permitted to use under this regulatory scheme."

The dissenters argued that this fee was clearly a tax, indeed a "sin tax," and that the Court , in reaching this decision, failed to follow its precedents in interpreting TABOR.

Additional Source: Court Finds Plastic Bag Ban Constitutional

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