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MUNICIPAL ORDINANCE - TEXAS

City of Laredo v. Laredo Merchants Association

Supreme Court of Texas - June 22, 2018 - S.W.3d - 2018 WL 3078112

Merchants association brought action against home-rule city, seeking a declaratory judgment that an ordinance making it unlawful for commercial establishments to provide single-use plastic or paper checkout bags to customers was unenforceable.

The District Court entered summary judgment in favor of city. Association appealed. The San Antonio Court of Appeals reversed. City petitioned for review.

The Supreme Court of Texas held that:

- The Court had jurisdiction over challenge to the ordinance, and
- The Solid Waste Disposal Act preempted the ordinance.

The Supreme Court had jurisdiction over challenge to home-rule city's ordinance that banned single-use plastic or paper checkout bags and that allegedly conflicted with state law, despite argument that, since the ordinance was penal in nature, it could only be challenged in defense to a criminal prosecution for violating it; civil courts had jurisdiction to enjoin or declare void an unconstitutional penal ordinance when there was the threat of irreparable injury to vested property rights, the ordinance prohibited the complaining vendors from using noncompliant bags, and ordinance imposed a substantial per-violation fine that effectively precluded small local businesses from testing the ban's constitutionality in defense to a criminal prosecution.

Solid Waste Disposal Act, which barred a local government from prohibiting or restricting, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law, preempted home-rule city's ordinance that banned single-use plastic or paper checkout bags, despite argument that the ordinance was not adopted for solid waste management purposes and that the Act did not clearly apply to new bags for point-of-sale purchases; ordinance's stated purposes were to reduce litter and eliminate trash, which, in sum, equated to managing solid waste, and a single-use paper or plastic bag used to hold retail goods and commodities for transportation clearly fell within the ordinary meaning of "container."