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Cities Can't Ban Plastic Bags, Rules Texas Supreme Court

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By Chuck Lindell

Backing businesses over environmentalists, the Texas Supreme Court on Friday said cities like Austin may not ban retailers from providing customers with disposable bags at the checkout counter.

In a unanimous ruling, the state's highest civil court said bag bans run afoul of a state law that prohibits cities from trying to reduce waste by banning "containers" and "packages." Although the terms are not defined in the law, their plain meaning must be read to include bags, the court ruled.

The decision upheld a lower court ruling that struck down a bag ban in Laredo, but Friday's decision also preempts similar bans in about a dozen other Texas cities, including Austin and Sunset Valley, Texas Attorney General Ken Paxton said -- leaving retailers to decide if disposable bags will be made available to customers.

"This ruling sends the unambiguous message to all local jurisdictions in Texas that they do not get to simply ignore laws they don't agree with," said Paxton, whose office worked to strike down the bag bans.

"I hope that Laredo, Austin and any other jurisdictions that have enacted illegal bag bans will take note and voluntarily bring their ordinances into compliance with state law. Should they decline to do so, I expect the ruling will be used to invalidate any other illegal bag bans statewide," Paxton said.

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Lawyers for Austin were reviewing Friday's ruling to determine its impact on the city's bag ordinance, which took effect in 2013, a city spokesman said. That ordinance prohibits most retailers in most cases from offering single-use plastic or paper bags.

Officials with H-E-B, Austin's largest grocery retailer, are aware of the Supreme Court ruling but have made no policy changes as a result, spokeswoman Leslie Sweet said. "We will thoughtfully evaluate the issue to ensure we're making the best decisions for our customers and the communities we serve," she said Friday.

Legislature urged to act

The Laredo case was widely watched for its potential impact on a range of issues.

On one side were environmentalists, wildlife advocates and city officials who argued that bag bans are essential to managing litter -- a goal that protects animals, saves cleanup costs and limits damage to clogged sewers and drains.

They were opposed by retailer groups, Paxton and limited-government advocates who argued that the bans hurt businesses and create a confusing patchwork of rules that vary across the state.

The opposing sides disagreed over whether the Texas Solid Waste Disposal Act -- which prohibits cities from managing trash by banning or restricting containers and packages -- applied to disposable bags, particularly the plastic variety.

Writing for the all-Republican court, Chief Justice Nathan Hecht said that although bag bans are described as anti-litter ordinances, they are an attempt to manage solid waste and therefore fall under the act's restrictions.

"The ordinance's solid waste management cannot avoid preemption merely because it has other purposes," Hecht wrote.

A concurring opinion by Justice Eva Guzman, joined by Justice Debra Lehrmann, urged the Legislature to directly tackle the problems caused by disposable bags.

"Improperly discarded plastics have become a scourge on the environment and an economic drain. And due to their buoyancy and propensity for wind-blown incursion, single-use plastic bags -- the target of the Laredo ordinance -- are a particularly pernicious form of this non-biodegradable menace," Guzman wrote.

The bags kill animals, impede flood control and blight the landscape, she wrote, adding that it is up to lawmakers, not the courts, to balance the negative environmental impact against the economic burdens imposed on store owners and the higher risk of food-borne illness from reusable bags.

"Standing idle in the face of an ongoing assault on our delicate ecosystem will not forestall a day of environmental reckoning -- it will invite one," she said.

To date, however, there has been little sign that the Legislature is ready to step in.

In the 2017 legislative session, state Rep. Gina Hinojosa, D-Austin, introduced a bill stating that grocery bags are not considered containers under state law. It was approved by the House Urban Affairs Committee but did not get a vote on the House floor.

On the other hand, although Gov. Greg Abbott considers bag bans an infringement on personal liberty, a bill by state Sen. Ralph Hall, R-Edgewood, to overturn city prohibitions did not get a committee vote for a second consecutive session.

Austin impact

In Austin, retailers were handing out almost 200 million fewer plastic bags a year under the ordinance, according to a 2015 city report, and Laredo's lawyer told the state Supreme Court that before its bag ban, stores were giving away about 120 million disposable bags each year, costing the city \$340,000 annually to pick them up as litter and remove them from clogged sewer lines.

Lee Leffingwell, who was mayor when the Austin City Council approved its bag ban, said he did not believe Friday's ruling would have a significant impact because residents have grown used to bringing reusable bags to the store.

"Its effect will continue because it has become ingrained in people's shopping patterns, in how they shop," Leffingwell said.

City Council Member Leslie Pool, who said she sees far fewer plastic bags as litter since the ban took effect, said businesses might be reluctant to begin stocking disposable bags again because of the cost. "Austin is a clean community because that's what residents want, not because of an ordinance," she said.

Justice Jimmy Blacklock, who joined the court Jan. 2 after stints in the governor's office and attorney general's office, did not participate in the case.

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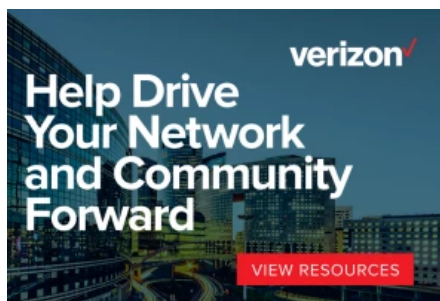
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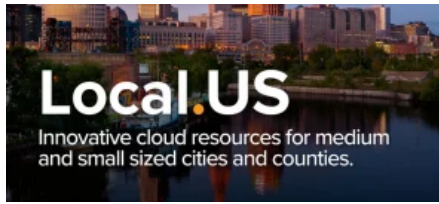
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