

No. 16-0748

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*In the Supreme Court of Texas*

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CITY OF LAREDO, TEXAS,  
*Petitioner,*

v.

LAREDO MERCHANTS ASSOCIATION,  
*Respondent.*

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On Petition for Review from the  
Fourth District Court of Appeals, San Antonio, Texas

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**BRIEF OF TEXAS AS *AMICUS CURIAE*  
IN SUPPORT OF REVIEW**

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# TABLE OF CONTENTS

	Page
Index of Authorities.....	iii
Interest of <i>Amicus Curiae</i> .....	1
Statement of Facts .....	1
Summary of the Argument .....	1
Argument.....	2
I. Managing Municipal Solid Waste Is a Statewide Issue.....	2
II. The Legislature Wants Municipalities to Better <i>Manage</i> Their Solid Waste.....	4
A. Managing Waste Does Not Mean Forcing Citizens and Retailers to Eliminate Waste.....	4
B. Municipalities Cannot Force Citizens and Retailers to Bear the Costs of Managing Waste.....	5
C. Municipal Solid Waste Bans Burden Citizens and Retailers With the Costs of Waste Management.....	7
III. Municipal Bans of Solid Waste Necessarily <i>Manage</i> Solid Waste. ....	7
Prayer .....	9
Certificate of Service .....	11
Certificate of Compliance.....	12

# INDEX OF AUTHORITIES

Page(s)

## Cases

<i>Laredo Merchants Ass’n v. City of Laredo</i> , No. 04-15-00610-CV, 2016 WL 4376627 (Tex. App.—San Antonio Aug. 17, 2016, pet. filed) .....	7–8
---	-----

## Statutes and Rules

Tex. Health & Safety Code § 361.003 .....	7–8
Tex. Health & Safety Code § 361.0961 .....	5–6, 9
Tex. Health & Safety Code § 361.421 .....	5
Tex. Health & Safety Code § 361.422 .....	5
Tex. Health & Safety Code § 363.003 .....	2
1993 Tex. Sess. Law Serv. ch. 1045 (S.B. 963) .....	2, 3, 4–7
30 Tex. Admin. Code §§ 330.53–330.73 (2006) .....	4

## Other Authorities

Jonathan P. Meyers, <i>Confronting the Garbage Crisis: Increased Federal Involvement as a Means of Addressing Municipal Solid Waste Disposal</i> , 79 Geo. L.J. 567, 572 (1991) .....	3
Hearings on Tex. S.B. 963 Before the Senate Nat. Res. Comm., 73rd Leg., R.S. (May 6, 1993) .....	8

**To the Honorable Supreme Court of Texas:**

**INTEREST OF *AMICUS CURIAE***

Texas submits this *amicus curiae* brief because it has an interest in giving full meaning to the Legislature’s directives about the management of solid waste in Texas. No party has paid a fee in connection with this brief.

**STATEMENT OF FACTS**

For purposes of this brief, Texas incorporates by reference the Statement of Facts provided by the Laredo Merchants Association in their Response to the Petition for Review filed December 7, 2016.

**SUMMARY OF THE ARGUMENT**

Texas agrees with Petitioner and Respondent that the guidance of this Court is needed in this important matter. Contrary to the representations of Petitioner, however, little about solid waste management is local in nature.

Petitioner fails to recognize that solid waste management is a statewide issue and that a municipality cannot employ “magic words” in an ordinance to circumvent Texas law. Because landfill space is limited, the law requires municipalities to be prudent managers of the solid waste generated within their boundaries. But when municipalities try to eliminate types of waste altogether, they

effectively shift the burdens and costs of solid waste management onto retailers and consumers.

This case is about not just Laredo, but Texas. As Respondents demonstrate, more than ten different municipalities possess ordinances like the one at issue in this matter. *See* Resp’t’s Resp. to Pet. for Review at 4–5. Because the management of municipal solid waste is not an exclusively municipal issue, municipalities must comply with Texas law. In order to give full meaning to the Legislature’s directive about the management of solid waste in Texas, the intervention of this Court is required.

## **ARGUMENT**

### **I. Managing Municipal Solid Waste Is a Statewide Issue.**

State control and orchestration of solid waste is important. In 1993, the Legislature declared that “the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste.” TEX. HEALTH & SAFETY CODE § 363.003(11); 1993 Tex. Sess. Law Serv. Ch. 1045 (S.B. 963). Thus, the Legislature began a statewide strategic plan to manage municipal solid waste.

At this time, public sentiment regarding “land disposal facilities,” or landfills, was souring. Indeed, NIMBYism (a “not in

my backyard” attitude) oftentimes thwarted new landfill proposals. *See, e.g.,* Jonathan P. Meyers, *Confronting the Garbage Crisis: Increased Federal Involvement as a Means of Addressing Municipal Solid Waste Disposal*, 79 *Geo. L.J.* 567, 572 (1991). Moreover, many states were suffering from the effects of failing to implement a statewide solid waste strategic plan. *See, e.g.,* Meyers, at p. 569 n.10. And other states, like Texas, where an imminent crisis was not yet certain, began making efforts to preserve and utilize the space that remained resourcefully. *See id.* at 574–75. At bottom, more effective means of reducing the streams of solid waste that emerge from municipalities, and end at landfills, was needed.

Recognizing this reality, the Texas Legislature sought, *inter alia*, to devise “an important strategy in state-local waste management policy.” 1993 *Tex. Sess. Law Serv.* ch. 1045 (S.B. 963). This was an important step because, even in Texas, the space available for landfills to be used by municipalities is limited. As of June 30, 2012, Texas had 5,147 active local governments—the second most in the country.<sup>1</sup> Of those 5,147 active local governments, 1,468 are county or municipal governments.<sup>2</sup> And yet, as of April 2016, Texas has only 148 landfills authorized to

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<sup>1</sup> *See* <https://www2.census.gov/govs/cog/2012isd.pdf> and [https://www2.census.gov/govs/cog/2012/2012\\_cog\\_map.pdf](https://www2.census.gov/govs/cog/2012/2012_cog_map.pdf).

<sup>2</sup> *Id.*; *see* [www.tx-municipalities.com](http://www.tx-municipalities.com).

accept municipal solid waste.<sup>3</sup> Of these, 50 are “arid exempt” and limited in how much waste they can accept each year.<sup>4</sup> Thus, even in Texas, there is not unlimited space for municipal solid waste.

Nor is all space or land suitable to be a landfill. Myriad considerations—environmental and otherwise—impact whether land can be employed to store municipal solid waste. Landfills only come into operation via an exhaustive, state-controlled permitting and registration process. *See, e.g.*, 30 Tex. Admin. Code §§ 330.53–330.73 (2006) (Tex. Comm’n on Env’tl. Quality, Permit and Registration Application Procedures). Thus, it is Texas as a whole, and not individual municipalities, that are saddled with the responsibility of overseeing and managing the space available for municipal solid waste.

## **II. The Legislature Wants Municipalities to Better Manage Their Solid Waste.**

### **A. Managing Waste Does Not Mean Forcing Citizens and Retailers to Eliminate Waste.**

Animating the Legislature’s concern in 1993 was what it called “the improper management of solid waste” by both the municipalities themselves and the private waste management

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<sup>3</sup> *See, e.g.*, <https://www.tceq.texas.gov/assets/public/permitting/waste/msw/msw-landfills-active.pdf>.

<sup>4</sup> *Id.*

companies they hired. 1993 Tex. Sess. Law Serv. ch. 1045 (S.B. 963). Managing solid waste means treating different forms of solid waste differently. Generally, some items can be recycled, composted, or disposed of in like way. *See, e.g.*, TEX. HEALTH & SAFETY CODE § 361.421. What remains is known as a “municipal solid waste stream.” 1993 Tex. Sess. Law Serv. ch. 1045 (S.B. 963). The “municipal solid waste stream” is then transported by municipalities to landfills for disposal. *Id.*; TEX. HEALTH & SAFETY CODE § 361.422. Thus, the Legislature wanted to encourage “the reduction of waste [streams] through environmentally and economically sound waste management incentives and the use of source reduction, reuse, recycling, composting, and resource recovery processes . . . .” 1993 Tex. Sess. Law Serv. ch. 1045 (S.B. 963).

**B. Municipalities Cannot Force Citizens and Retailers to Bear the Costs of Managing Waste.**

An important part of the new strategy were the costs associated with managing municipal solid waste. And the Legislature was clear that the costs of this new initiative were *not* to belong to the citizens and retailers. Rather, the Legislature expressly protected consumers, to wit: “A local government or other political subdivision may not adopt an ordinance, rule, or regulation to . . . (3) assess a fee or deposit on the sale or use of a container or



package.” TEX. HEALTH & SAFETY CODE § 361.0961. Moreover, the accessibility of bags to consumers was also not to be eliminated.

Preserving the availability of fee-free bags for consumers is critical to understanding the Legislature’s focus on the managers of solid waste, and not the citizens. It declared that “the actual cost of municipal solid waste disposal should be imposed by municipalities *on those that place municipal solid waste in the solid waste stream* in order to pay for infrastructure development and to encourage waste reduction from landfills.” 1993 Tex. Sess. Law Serv. ch. 1045 (S.B. 963) (emphasis added). Thus, the costs and burdens of reducing the size of municipal solid waste streams were not to be dumped on citizens, but rather borne by the municipalities and their agents—those that determined what did, and did not, get sent to landfills.

From top to bottom, the Legislature obliged solid waste managers to do more than simply send solid waste to landfills. The Legislature required solid waste managers to compost, recycle, and take other innovative and proactive steps to reduce the stress on landfills and better address municipal solid waste. *Id.* And as with any number of legislative prerogatives, waste managers were incentivized to innovate by bearing the costs of the solid waste that they put into the municipal solid waste streams that end at landfills. *Id.* But the Legislature ensured that municipalities could

not meet their challenge by burdening consumers and citizens through the elimination of bags. *Id.*

**C. Municipal Solid Waste Bans Burden Citizens and Retailers With the Costs of Waste Management.**

By enacting various anti-bag and anti-consumer ordinances, Texas municipalities are not only thwarting the clear language of the Legislature, but they are also skirting their responsibilities as waste managers. Instead of improving their *management* of solid waste, these anti-bag, anti-consumer ordinances unfairly shift the responsibilities of municipal governments as solid waste managers to consumers and taxpayers.

And this new and growing trend of banning consumer products that may become or produce waste, possesses no logical end. With ordinance after ordinance, municipalities can continue to shift their responsibilities of waste management to consumers and retailers until waste is hardly generated. Thus, this case presents an opportunity for the Court to uphold the law preventing municipalities from shifting the solid waste management burden to retailers and consumers.

**III. Municipal Bans of Solid Waste Necessarily *Manage* Solid Waste.**

As the Fourth Court made clear, “management,” as defined by the Act, is a broad term. *Laredo Merchants Ass’n v. City of Laredo*,

No. 04-15-00610-CV, 2016 WL 4376627, at \*6 (Tex. App.—San Antonio Aug. 17, 2016, pet. filed) (quoting TEX. HEALTH & SAFETY CODE § 361.003(18), (34)). Indeed, managing solid waste refers to measures designed to prevent the creation of solid waste in the first place. *Id.* And if a municipality seeks to limit the impact of solid waste in some way, it is necessarily managing that solid waste.

As the Legislature considered S.B. 963, some concern was raised over parts of the bill that impacted municipal control over solid waste management. For example, Dr. Ken Kramer, the Chapter Director of the Lone Star Chapter of the Sierra Club, said “[w]e have a major problem with the section of the bill that deals with the preemption of local government responsibilities and authority.”<sup>5</sup> However, Dr. Kramer also acknowledged the propriety of state uniformity regarding solid waste management and conceded that “if it does come to a situation where we’re finding a number of municipalities taking conflicting steps, and that has to be addressed by state law, then that’s fine.”<sup>6</sup>

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<sup>5</sup> Hearings on Tex. S.B. 963 Before the Senate Nat. Res. Comm., 73rd Leg., R.S. (May 6, 1993) (testimony of Dr. Ken Kramer) (audio available from Texas State Library and Archives Comm’n, *available at* <https://www.tsl.texas.gov/ref/sen-ater recordings/73rd-R.S./730908a/index.html> [47:18–47:26]).

<sup>6</sup> Hearings on Tex. S.B. 963 Before the Senate Nat. Res. Comm., 73rd Leg., R.S. (May 6, 1993) (testimony of Dr. Ken Kramer) (audio available from Texas State Library and Archives Comm’n, *available at* <https://www.tsl.texas.gov/ref/sen-ater recordings/73rd-R.S./730908b/index.html> [10:00–10:09]).

Unfortunately, several municipalities have taken steps that conflict with the law. Specifically, these municipalities enacted laws contrary to the provisions of TEX. HEALTH & SAFETY CODE § 361.0961. Review by this Court can make clear the meaning of section 361.0961 and secure the uniformity required by the Legislature regarding this important state-level issue.

### **PRAYER**

The Court should grant the petition for review because this case provides this Court with the opportunity to review and define the parameters of the Legislature's 1993 enactment and discern whether laws enacted by municipalities to reduce the generation or creation of solid waste are permissible.

Respectfully submitted.

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## **CERTIFICATE OF COMPLIANCE**

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), this brief contains 1,771 words as reported by Microsoft Word, excluding the portions of the brief exempted by Rule 9.4(i)(1).

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