

Court won't reinstate New York City's big-soda ban (Update)

June 26 2014, by David Klepper



In this May 31, 2012 file photo, a man leaves a 7-Eleven store with a Double Gulp drink, in New York. The New York Court of Appeals ruled Thursday, June 26, 2014 that the city's health department overstepped its bounds when it restricted the size of sodas. The court is siding with a lower court that overturned the 2012 ban. (AP Photo/Richard Drew, File)

New York state's highest court refused to reinstate New York City's ban

on the sale of big sodas, ruling that the city's health department overstepped its bounds when it approved a cap on sugary beverages.

The unprecedented ban was championed by former Mayor Michael Bloomberg and his successor Mayor Bill de Blasio, who vowed to fight a lower court's decision to overturn it while campaigning last year.

The court largely ignored the merits of the ban on the sale of sugary drinks larger than 16 ounces (453 grams). In a 20-page ruling it determined the city's Board of Health engaged in policy-making, and not simply health regulations, when it imposed the restrictions on restaurants, delis, movie theaters, stadiums and street cart vendors.

"The Board of Health engaged in law-making beyond its regulatory authority," the opinion reads. "... It is clear that the Board of Health wrote the Portion Cap Rule without benefit of legislative guidance."

The city had hoped Thursday's ruling would overturn a lower court's decision that blocked the restrictions after restaurants, theater owners, beverage companies and small stores sued.

Soda has been under fire for years, with health advocates saying the sugary beverages are especially harmful because people don't realize how much high-fructose corn syrup they're guzzling. The bad publicity has helped lead to a steady decline in U.S. soda sales for nearly a decade. But other sugary drinks such as sports drinks and energy drinks have been growing.



In this March 12, 2013 file photo, New York City Mayor Michael Bloomberg, right, looks at a 64oz cup, as Lucky's Cafe owner Greg Anagnostopoulos stands behind him, during a news conference at the cafe in New York. The New York Court of Appeals ruled Thursday, June 26, 2014 that the city's health department overstepped its bounds when it restricted the size of sodas. The court is siding with a lower court that overturned the 2012 ban. (AP Photo/Seth Wenig, File)

Bloomberg had called it a reasonable way to fight an obesity problem that takes a toll on many New Yorkers' health and city hospitals' budgets.

City Health Commission Mary T. Bassett said the city administration continues to look for ways "to limit the pernicious effects of aggressive and predatory marketing of sugary drinks and unhealthy foods."

"Today's ruling does not change the fact that sugary drink consumption is a key driver of the obesity epidemic, and we will continue to look for ways to stem the twin epidemics of obesity and type 2 diabetes," Bassett said.

The case was decided 4-2, with the majority opinion written by Judge Eugene Piggott Jr. Piggott wrote that city health regulators appeared to carefully weigh the economic, social and health implications of the ban—a policy function that Piggott wrote was not the health board's to exercise. The two dissenting judges wrote that they believe the Board of Health was within its rights to impose the ban, and that the judiciary shouldn't "step into the middle of a debate over public health policy."



This May 31, 2012 file photo shows a display of various size cups and sugar cubes at a news conference at New York's City Hall. The New York Court of Appeals ruled Thursday, June 26, 2014 that the city's health department overstepped its bounds when it restricted the size of sodas. The court is siding with a lower court that overturned the 2012 ban. (AP Photo/Richard Drew, File)

The city hasn't said whether it plans to try to appeal. But it's unlikely that an appeal to the U.S. Supreme Court would be accepted because the case centers on local government authority and legislation, not federal issues.

To help curb soda consumption, lawmakers and health advocates around the U.S. have proposed soda taxes in recent years. None have succeeded, however, in part because of heavy campaigning and lobbying from the beverage industry. In California, a measure that would have slapped a warning label on sodas was recently defeated.

In the meantime, Coke and Pepsi have also been rolling out smaller cans and bottles, some as small as 7.5 ounces (212 grams). The idea is that people would be more willing to drink soda if they could control the portion sizes. The smaller sizes are also more profitable for companies.

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