

High Court Refuses to Reinstate NYC Big-Soda Ban

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ALBANY, N.Y. (AP) — Guzzlers prevailed Thursday as New York'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 approved the 16-ounce cap on sugary beverages.

The court largely ignored the merits of the ban in the 20-page ruling, but 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.

"We are pleased that the lower courts' decisions were upheld," the American Beverage Association said in a statement after the decision was handed down. The restrictions, if reinstated, "would have created an uneven playing field for thousands of small businesses in the city and limited New Yorkers' freedom of choice."

City Health Commission Mary T. Bassett said the administration of current Mayor Bill de Blasio 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."

The city hasn't said whether it plans to try to appeal. But it's unlikely that an appeal to the Supreme Court would be accepted because the case centers on local

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government authority and legislation, not federal issues.

Soda has been under fire for years, with health advocates saying the sugary beverages are unique in their harmfulness 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.

To help curb consumption, lawmakers and health advocates around the country 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. 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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