

Name: _____ Class: _____

Court Rejects New York City's Portion Cap for Sugary Drinks

By Dr. Lisa Firestone
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In 2014, Michael Bloomberg, the former mayor of New York, designed a proposal known as "the soda ban" that would put limits on the size of sugary drinks that people could buy. The proposal was favored among health advocates, including the Board of Health, who argued that sugary drinks were linked to rising obesity rates and healthcare costs. In this opinion piece, Dr. Lisa Firestone, Director of Research and Education at The Glendon Association, explains why she believes the New York State Court of Appeals ultimately made the wrong decision in blocking Bloomberg's "soda ban." As you read, take notes on how people on both sides of the argument support their positions.

- [1] New York City lost its final appeal to limit the sale of sugary drinks larger than 16 ounces.

In a 20-page report, the New York State Court of Appeals issued its final decision on the Portion Cap Ruling. Justice Pigott wrote:

"We hold that the New York City Board of Health, in adopting the 'Sugary Drinks Portion Cap Rule,' exceeded the scope of its regulatory authority.¹ By choosing among competing policy goals, without any legislative delegation² or guidance, the Board engaged in law-making and thus infringed³ upon the legislative jurisdiction of the City Council of New York."



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The Portion Cap Ruling, commonly known as the soda ban, was to restrict the sale of sugary drinks larger than 16 ounces in restaurants, movie theaters, sports arenas and delis. The decision is disappointing and a defeat to public health advocates urging the government to curb the sale of oversize sugary drinks thought to be a major contributor to America's obesity crisis.

- [5] Dr. Mary Bassett, the commissioner of health for the city, issued the following statement:

"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 by seeking to limit the pernicious⁴ effects of aggressive and predatory marketing of sugary drinks and unhealthy foods."

1. Regulatory authority is a law or rule-making power.
2. **Delegate (verb):** to assign a task or responsibility to another person
3. **Infringe (verb):** to actively break the rules or terms of (something)
4. **Pernicious (adjective):** causing harm or having a harmful effect

Mayor Bill De Blasio also expressed his disappointment in the court's decision. As written in *Capital New York*:

"We are extremely disappointed by today's Court decision that prevents the city from implementing a sugary drink portion cap policy," de Blasio said in a press release. "The negative effects of sugary drink over-consumption on New Yorkers' health, particularly among low-income communities, are irrefutable."

As a nutritionist and portion size advocate, I too was disappointed with the court's decision.

- [10] Portion sizes have grown exponentially over the years and rates of obesity have skyrocketed. In the 1950s, a soda at McDonald's was 7 ounces; today, the company sells a quart-size soda nearly five times larger than its original size. KFC sells a half-gallon size with nearly 800 calories.

As I told *Food Navigator USA*:

"From a consumer perspective, this was not about banning soda. This was about how much is reasonable for one person. There are a lot of factors that contribute to obesity. One very major one is the fact that what used to be a normal size is now called 'mini.'"

Indeed, we need to change our food environment if we want to reduce obesity rates and encourage consumers to select healthier food choices. That means selling smaller size portions of foods and drinks that provide no nutritional value. In my opinion, curbing the sizes of sugary drinks was certainly a good place to start.

I applaud the health department's efforts and hope that we can all work together to promote a healthier food environment for our children to grow up in.

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Text-Dependent Questions

Directions: For the following questions, choose the best answer or respond in complete sentences.

1. Which of the following best states the purpose of the proposed Sugary Drinks Portion Cap Rule?
 - A. To ban the sale of sugary drinks like soda and juice in restaurants
 - B. To ban the sale of sugary drinks like soda and juice in grocery stores and private homes
 - C. To limit the portion sizes of sugary drinks like soda and juice in restaurants and other places
 - D. To impose a steep tax on consumers who buy more than 16 ounces of a sugary drink like soda or juice

2. PART A: Which of the following best explains why the New York State Court of Appeals rejected the Sugary Drinks Portion Cap Rule?
 - A. Because there was not significant scientific evidence linking sugary drinks larger than 16 ounces to increased risk of obesity
 - B. Because the New York Board of Health does not have the authority to ban sugary drinks
 - C. Because the proposed cap was unfavorable among businesses and citizens in New York City
 - D. Because the proposed ban on sugary drinks larger than 16 ounces would have cost the New York City too much money to put in place

3. PART B: Which phrase from the text best supports the answer to Part A?
 - A. "exceeded the scope of its regulatory authority" (Paragraph 3)
 - B. "choosing among competing policy goals, without any legislative delegation or guidance" (Paragraph 3)
 - C. "The decision is disappointing and a defeat to public health advocates" (Paragraph 4)
 - D. "major contributor to America's obesity crisis" (Paragraph 4)

4. PART A: What does the word "pernicious" most closely mean as it is used in paragraph 6?
 - A. Harmful
 - B. Disappointing
 - C. Cruel
 - D. Unstable

5. PART B: Which detail from the text best supports the answer to Part A?
 - A. "sugary drink consumption is a key driver of the obesity epidemic" (Paragraph 6)
 - B. "aggressive and predatory marketing" (Paragraph 6)
 - C. "sugary drinks and unhealthy foods" (Paragraph 6)
 - D. "KFC sells a half-gallon size with nearly 800 calories" (Paragraph 10)

6. According to the text, how have people's expectations for food and drink portions changed over the last 50 or 60 years? Cite evidence from the text in your response.

Discussion Questions

Directions: Brainstorm your answers to the following questions in the space provided. Be prepared to share your original ideas in a class discussion.

1. Re-read the New York State Court of Appeals ruling. The ruling states that the Board of Health “exceeded its regulatory authority.” What does this mean? And do you agree or disagree with this assertion?
2. Is this a balanced article? Why or why not?
3. Imagine that you are the CEO of Coca-Cola asked to testify in front of the New York State Court of Appeals. Outline the key points of your argument.
4. Opponents of the soda ban claim that people do not need someone to tell them how much they can and can’t drink—that people should self-regulate. Advocates of the soda ban claim that self-regulation is nearly impossible in an environment where 44 oz. sodas is the norm. What do you think? Do we need a government to help “protect us from ourselves”?