

Find articles containing: SEARCH | Advanced Search

Welcome, Danielle Lueking | Logout | My Account | Help

Home : Government : State Homeland News

New York: Public Health Implications of the 'Soda Ban' Ruling

ARTICLE COMMENTS

by ANDREW GELTMAN

Wed, August 20, 2014



For more than 200 years, the New York City Board of Health has held the responsibility of [protecting public health](#). The board has tackled a wide range of issues – from sanitation to quarantine and isolation. The board derives its authority from the [State of New York Health Code](#), which grants it the authority to “add to and alter, amend or repeal any part of the health code.” Thereby, similar to many other administrative agencies, the board has broad authority to pass regulations that have the effect of law.

"The court based its ruling on the structure of New York government and the state's uniquely strong nondelegation doctrine....As a result, when an administrative agency is acting, it cannot overstep its legislatively granted authority and 'create law'."

Personal vs. Public Health

In recent years, the board has increasingly focused on regulating the personal consumption habits of residents. For example, the board has passed comprehensive [smoking bans](#) that include the barring of smoking in public places. In an attempt to curb the [obesity epidemic](#), at the behest of then-Mayor Michael Bloomberg in 2012, the New York City’s Board of Health enacted the “Sugary Drinks Portion Cap Rule,” more popularly known as the “soda ban.”

intrusion into the personal consumption habits of citizens. On 26 June 2014, the New York Court of Appeals agreed and [struck down](#) the soda ban. Although that ruling may curb innovative forms of regulation in New York, it is unlikely to have a major effect on the core public health powers of the board.

Despite ever-increasing [food portions](#) and [drink sizes](#), as well as increasingly sedentary lifestyles, the court struck down the soda ban. In a press conference on 11 March 2013, Bloomberg [described the ban](#) as a moderate disincentive to consumers for excessive consumption of sugary drinks and an important public health tool to fight obesity. The court’s decision is significant not only because it overturned a widely unpopular regulation, according to a [2012 New York Times poll](#), but because of the following [legal reasoning](#) behind the decision:

- The board acted “beyond its regulatory authority” and intruded upon the legislative powers of the City Council of New York; and
- The Portion Cap Rule represents “value judgments [that] entailed difficult and complex choices between broad policy goals – choices reserved to the legislative branch.”

The court does not say that New York City cannot create these types of “[nanny state](#)” regulations but, if it wants to do so, it must be done through the legislative process.

Legal Doctrine & the Future of Innovation

In [Jacobson v. Massachusetts](#), the U.S. Supreme Court ruled that states have broad public health powers. However, the New York Court of Appeals took the interesting step of limiting this authority under the state’s concepts of the separation of powers. The court based its ruling on the structure of New York government and the state’s uniquely strong [nondelegation doctrine](#) – the legal concept that the legislature is the only branch that has the authority to create laws. As a result, when an administrative agency is acting, it cannot overstep

MORE IN STATE HOMELAND NEWS

- New York: Public Health Implications of the 'Soda Ban' Ruling
- Georgia: Technologies & Disasters
- Maryland - A State of Good Repair
- Illinois - Lessons From a Radiological Incident Exercise
- Alaska - Building a Firm Foundation on Shaky Ground
- California - A Growing Response to Persistent Drought
- Virginia - Using Social Media the Right Way
- New Mexico - 'Defensive' About Agriculture & Food
- Rapid Dispatching Reduces Call-Processing Times
- A Network of Interoperability



Subscribe to the DomPrep Journal Feed



Subscribe to the DomPrep Podcast



Like us on Facebook



Follow us on Twitter

its legislatively granted authority and “create law.”

Under this concept, the court stated that the New York Legislature and the City Council never properly delegated the authority to regulate the portion sizes of cups to the board. Thereby, the board acted without authority and intruded on both the separation of powers and the domain of the legislative branch.

However, the nondelegation doctrine carries little weight in other jurisdictions. The unique legal reasoning behind the opinion makes it unlikely that other courts in other states will make the same decisions as the New York Court of Appeals. As a result, the ruling probably will not affect the strength of public health authorities in other states.

Even though the legal reasoning behind the decision is unlikely to gain favor in other jurisdictions and to weaken public health authorities nationwide, the decision may negatively influence the nation’s public health. New York City’s public health efforts often have been [innovative](#). As [Richard Briffault](#), a law professor at Columbia University, articulated in a *New York Times* article on 26 June 2014, the court’s decision could stymie “the ability of administrative agencies to engage in innovative forms of regulation.” The court limits innovative forms of regulation by restricting the board’s authority to what it perceives as traditional public health functions – for example, the control of infectious diseases and sanitation. The loss in innovative regulations may cause the nation to lose an important public policy laboratory.

Although this ruling may hinder innovation, it does not eviscerate the board’s primary purpose in disease control. The narrow interpretation still maintains the board’s essential functions as a guardian of public health because it still has broad discretionary authority over “the reporting and control of chronic and communicable diseases.” The court acknowledges that the board has broad discretionary authority in dealing with the control of traditional threats to public health. As a result, the court maintains the board’s authority to act in the event of a public health crisis caused by novel influenza, bioterrorism, or other diseases.

Andrew Geltman is a third-year law student at the University of Maryland School of Law and a research assistant for the University of Maryland School of Law Center for Health and Homeland Security (CHHS). He also serves as an associate editor for the Law School’s Journal of Health Care Law & Policy. At CHHS, he has worked on a variety of projects ranging in topics from campus security and lone-wolf terrorism to issues concerning the National Capital Region.

Share This: 

[Home](#) | [First Responder](#) | [Medical Response](#) | [Government](#) | [Industry](#) | [Infrastructure](#) | [Commentary](#) | [Training](#)
[DomPrep Journal](#) | [About Us](#) | [DomPrep40](#) | [Advertise](#) | [Webinars](#) | [Reports](#) | [Grants](#) | [Resilience](#) | [Calendar of Events](#)

All content copyright ©2014 DomesticPreparedness.com. Privacy Policy and Disclaimer. Problems with your account?