

## Legal Experts React to Ruling Against Bloomberg's Soda Ban

By: Jillian Kay Melchior – March 11, 2013

---

For NATIONAL REVIEW ONLINE, several experts offered their reactions to New York State judge Milton A. Tingling's ruling this afternoon that struck down Mayor Bloomberg's large-sugary-drink ban. Here are their assessments:

“The bottom line is that the courts are kind of tired of the mayor ruling through decree and bypassing City Council, both here and with taxis. But the most important point is that telling the Department of Health that the pursuit of health is an all-or-nothing proposition, where cost and the economy are irrelevant, is a recipe for bad rule-making. So this may not be the best way to limit agency rule-making power.”

— Rick Hills, law professor at NYU Law School

“It's the right opinion. Not only was the ban arbitrary and capricious, but what Bloomberg tried to do is devious in going to the Board of Public Health, which he appoints, rather than the City Council, which he doesn't. He must think that we're really stupid if he thought we'd let him get away with this. This reflects his arrogance and the arrogance of those who think they know best to tell us what to do.”

— Diane Katz, research fellow in regulatory policy at the Heritage Foundation

“It was a sweeping ruling, because the judge said not only was the ban arbitrary and capricious, but it also went beyond the public-health agency's powers under the statute. It meant that, even if Bloomberg went back and got a better factual justification for it, he had no legal right to do it. The agency just plain lacked the power. It means that the powers that public-health agencies claim because of emergency dangers like a raging epidemic — they don't get to rule by dictate about other elements of our life that are not emergencies.”

— Walter Olson, senior fellow at the Cato Institute

“The key thing is that this was an arbitrary and capricious action by the health department, and the court recognized that. It's a victory. In general, I'd like to see the court being more vocal in defending people's rights to make their own choices, but this is definitely a good first step.”

— Baylen J. Linnekin, executive director at Keep Food Legal

“Justice Tingling's decision, whether or not it's upheld on appeal, is a heartening blow to an imperious mayoralty. I am pleased that, for the time being, the main changes to my

life involving a nanny will center on my infant and two-year-old, not my venti frappucino.”

— James R. Copland, director of the Manhattan Institute Center for Legal Policy