New York City’s Ban on Soda Size Is Imperfect but Needed

Jonny Bowden

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Government regulation often is unhelpful, and it frequently limits personal liberty. But many people do not mind regulation when it limits something considered bad or harmful. Sugar has fueled a health crisis in America, and it is time to get serious about regulating it. While a particular regulation—like the New York City plan to regulate soda size—may be imperfect, it is nonetheless a start in the right direction.

On Tuesday, March 12 [2012], on the day before it was scheduled to go into effect, a state judge struck down New York City Mayor Michael Bloomberg’s proposed ban on jumbo-sized sodas, triggering a paroxysm of editorials about the nanny state and the future of civilization.

OK, everybody, let’s take a deep breath.

I hate the nanny state as much as you do, but that dislike comes with an asterisk.

See, it’s not the idea of regulation per se, that I dislike. It’s the fact that the government is a bumbling mess, gets few things right and tends to eventually screw up the few things they do get right—like Medicare and the VA [Veterans Administration]. So the last thing I want is a bunch of government bureaucrats telling me what I can eat, who I can sleep with, what I can smoke, who I can marry, what my female friends can do with their bodies, or any of a dozen other things they have no business telling me to do (or not do).

But I—like many fellow nanny-state-haters on both sides of the aisle—sing a very different tune about government when a Hurricane Katrina appears or a bumbling terrorist tries to light his underwear on fire on a 747. We’re perfectly happy that there are rules and regulations that prevent our neighbors from erecting a 10-foot monument to the KKK on the town square, or a local factory from pumping mercury into the air, or a strip club from opening next door to St. John’s Cathedral. We want government oversight and regulation when it protects us from what we want to be protected from. When it “protects” us from what we don’t want to be protected from, we’d prefer it to leave us the heck alone, thank you very much.

And we like government least of all when it interferes with our personal liberty.

Which brings us to the heart of the soda problem.

Poisoned by Sugar

Look, I get the whole “personal liberty” argument. Really, I do. I listen to Adam Carolla and Dennis Prager. I love Jon Stewart. There are times when, if I squint, even Ron Paul seems to make sense for a minute, particularly when he gets started on the idiocy of the government preventing me from consuming raw milk. I even understand the sentiment behind the slippery-slope argument (today our soda, tomorrow our guns!). Believe me, I get it.

So in a perfect world, we’d have as little government interference as possible.

But this is very far from that perfect world. And in the world we actually live in, we’re being poisoned by sugar.
Despite the massive protests and multi-million dollar campaigns by the sugar industry, the Corn Refiners Association and others to convince us that sugar is a perfectly harmless substance that can be incorporated "in moderation" in a healthy diet, the truth is very different. Sugar is an addictive substance that we consume to the tune of 150 pounds per capita per year, and it's destroying our health and destroying our children.

And we have two basic choices. We can fail to act, citing the sanctity of personal freedom and the encroachment of the dreaded nanny-state... or we can do something.

This isn't the place to go over the massive evidence that sugar is the culprit in the American diet. For those who didn't get the memo, I recommend the terrific new book, Salt Sugar Fat: How the Food Giants Hooked Us, Dr. Robert Lustig's brilliant Fat Chance: Beating the Odds Against Sugar, Processed Food, Obesity and Disease (or his lecture, "Sugar: The Bitter Truth" on YouTube), or—if you just want to get your feet wet—Mark Bittman's wonderful and pithy "Regulating Our Sugar Habit" in the New York Times a few weeks ago. Even a superficial look at the literature will convince all but the most entrenched supporters of Big Food that sugar—and its nearly identical twin, high-fructose corn syrup—are not innocent bystanders in the skyrocketing rates of obesity, diabetes and heart disease. We're not fat, sick, tired and depressed because they took phys-ed out of the school system or because everyone watches too much television. Sure, those things matter, but they pale in comparison to the effect of mainlining a deadly white substance that literally creates hormonal havoc and appetite dysregulation, all the while promoting metabolic syndrome, diabetes, obesity and heart disease.

What to do, what to do?

Protecting Children from Sugar

Well, desperate times call for desperate measures, and when it comes to sugar, these are desperate times indeed.

The defenders of personal freedom who are applauding the struckdown of the Bloomberg initiative would be appalled at the suggestion that heroin dealers be allowed to peddle their wares in schoolyards. Yet these same folks bristle at the mere suggestion of regulations which would make it even marginally more difficult for sugar pushers to do the same thing. These champions of "personal liberty" tell us that regulations don't take the place of parenting—that keeping kids out of McDonald's should be the job of parents, not the government. (I often wonder if the people making this argument actually have kids, and if they do, I wonder if they live in the real world. But I digress.) None of these good folks would ever agree to having crack cocaine sold in their kids' school cafeteria because to ban it would be an affront to personal liberty, and because "it should be the goal of good parenting" to keep kids from buying this stuff in the first place.

We're up against a serious enemy here folks, and its name is sugar.

Look, back in the late '90s, I worked for Coca-Cola for a year, during the time they introduced Dasani water. I sat on the advisory board for Dasani, wrote articles about the benefits of purified water, and worked closely with a lot of execs from Coke. They were nice people. Really. But as a corporation, they're selling death. Seriously. And they're selling it to children, and they've sold it to us, and there's no getting around the fact that the stuff they—and other soda manufacturers are selling—is a wildly destructive substance with no redeeming qualities that is destroying the health of America and any other nation in which they can get a foothold.

A Good Place to Start

Are the soda makers the only culprits? Hell, no. (And they'll be the first to tell you so!) But they're a damn good place to start.
Did the Bloomberg proposal have faults? You bet. Did it have loopholes? Sure. Would it present an enforcement nightmare? Probably, although not nearly as bad as critics have suggested.

But that does that mean we sit back and do nothing?

No. We're up against a serious enemy here folks, and its name is sugar. In all its forms, including the kind that's marketed as healthy (agave nectar syrup, anyone?). Including the stuff that turns into sugar in a heartbeat, also marketed as healthy. (Breakfast candy? I mean, cereal?)

Because there is no perfect intervention, does that mean we don't intervene at all?

Sure, making it illegal to sell obscenely sized vats of sugar and chemicals is a logistical nightmare, fraught with problems and far from ideal.

But it's a start.

I have huge qualms about giving our government more power than it already has over what we can put into our bodies—particularly when that government has demonstrated jaw-dropping stupidity when it comes to nutrition in general. But whenever I think that the "solution" is worse than the problem, I remember how bad sugar really is and what it's doing to our health, our well-being and ultimately, even our national security.

And then I remember something that's served me well to remember in a lot of endeavors, something that is a great antidote to my—and others'—natural tendency toward inaction in the face of what seems like an insurmountable problem:

"The greatest enemy of a good plan is the search for a perfect one."

Is the Bloomberg initiative a perfect plan? Far from it.

But right now it's all we've got, and it's better than nothing. And man, we better start somewhere.

Why not here?

New York City’s Ban on Soda Size Will Be Ineffective

Jacob Sullum

Jacob Sullum is a senior editor at Reason magazine and Reason.com and a nationally syndicated columnist.

New York City’s plan to limit the size of sodas to sixteen ounces has one flaw: It will not work. The plan assumes that soda is causing Americans to gain weight with little proof. Furthermore, many beverages—such as high-calorie fruit juices—are exempted from the ban. The bigger problem, however, is that any governmental ban would limit personal freedom.

Defending his proposal to fight obesity by restricting soft drink sizes, New York Mayor Michael Bloomberg says, “I think that’s what the public wants the mayor to do.” If the public wanted it, of course, there would be no need for the government to require it. Bloomberg’s plan makes sense only to the extent that it changes consumers’ decisions by limiting their options—specifically, by decreeing that restaurants, food carts, movie theaters, and concession stands at sports arenas may not sell more than 16 ounces of most sugar-sweetened beverages in one cup or bottle. Yet The New York Times reports that Bloomberg cast doubt on the rationale for this rule right out of the gate:

The mayor, who said he occasionally drank a diet soda “on a hot day,” contested the idea that the plan would limit consumers’ choices, saying the option to buy more soda would always be available.

"Your argument, I guess, could be that it’s a little less convenient to have to carry two 16-ounce drinks to your seat in the movie theater rather than one 32 ounce," Mr. Bloomberg said in a sarcastic tone. "I don’t think you can make the case that we’re taking things away."

If so, what’s the point? If the added inconvenience of carrying two containers does not deter people from drinking as much soda as they otherwise would, how can Bloomberg possibly claim his restrictions will make people thinner?

**Are Sodas the Problem?**

The answer is that Bloomberg and his health commissioner, Thomas Farley, say whatever pops into their heads, without regard to logic or evidence. Consider:

In New York City, where more than half of adults are obese or overweight, Dr. Thomas Farley, the health commissioner, blames sweetened drinks for up to half of the increase in city obesity rates over the last 30 years. About a third of New Yorkers drink one or more sugary drinks a day, according to the city. Dr. Farley said the city had seen higher obesity rates in neighborhoods where soda consumption was more common.

Correlation = causation. QED. If that is the quality of Farley’s science, perhaps we should not ask how he came up with the estimate that sweetened drinks account for “up to half” of the increase in obesity rates since the early 1980s. That statement, after all, is consistent with the possibility that sweetened drinks account for none of the increase.

Even if we accept Farley’s claims about soda’s role in rising obesity rates, it does not follow that Bloomberg’s plan will have a measurable impact on New Yorkers’ waistlines. There are reasons to doubt that it will, starting with the mayor’s observation that extra-thirsty customers can always buy another 16-ounce drink (which might actually result in the consumption of more calories, assuming their usual serving is between 16 and 32 ounces). Nor will undercover health inspectors monitor the city’s fast food restaurants to prevent diners from availing themselves of free refills; the regulations graciously let them drink as much soda as they want, as long as they do it 16 ounces at a time. The size rule does not apply at all to convenience stores, supermarkets, or vending machines, so Big Gulps, giant Slurpees, and large bottles of soda will still be readily available. Bloomberg also plans to exempt fruit juices, which typically have more calories per ounce than sugar-sweetened soda, and milk-based drinks. So while New Yorkers won’t be allowed to order 20 ounces of Coke (240 calories), they will still be able to get a 20-ounce Starbucks whole-milk latte (290 calories) or even a 24-ounce Double Chocolaty Frappuccino (520 calories), not to mention a 20-ounce milkshake (about 800 calories).

**Limiting Personal Choice**

In other words, Bloomberg is right when he says there will still be lots of opportunities for New Yorkers to consume large quantities of high-calorie drinks, which means he does not even have a sound paternalistic justification for his meddling. He is screwing with people not to protect them from their own foolish choices but just to create the appearance of doing so. Or maybe just because he can.

The *Times* notes that Bloomberg “has made public health one of the top priorities of his lengthy tenure” with “a series of aggressive regulations,” including “bans on smoking in restaurants and parks” and “a prohibition against artificial trans fat in restaurant food.” It adds that “the measures have led to occasional derision of the mayor as Nanny Bloomberg, by those who view the restrictions as infringements on personal freedom.” Is there any other reasonable way to view such restrictions? It is one thing to argue (as Bloomberg presumably would) that the restrictions are justified by the government’s
supposed duty to minimize morbidity and mortality by preventing people from taking risks (its “highest duty,” according to Bloomberg). But it is patently absurd for Bloomberg to claim he is not limiting freedom when he uses force to stop people from doing something that violates no one’s rights, whether it’s selling donuts fried in trans fat, lighting up in a bar whose owner has chosen to allow smoking on his own property, or ordering a 20-ounce soda in a deli. When, as in this case, his arrogant, healthier-than-thou interference has, by his own admission, zero chance of achieving its stated goal, that fact hardly makes his arbitrary use of government power less objectionable.

Regulations Do Change Eating Behavior

Marion Nestle

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Despite complaints about the government regulation of food, one fact remains: it works. Since attempts to limit advertising have been protected as free speech, city governments have searched for new methods of creating healthier eating options for consumers. Banning items, research shows, allows easier access to healthy choices. In time, perhaps, even the federal government will adapt similar regulations.

My monthly, first Sunday column in the San Francisco Chronicle:

Q: I still don’t get it. Why would a city government think that a food regulation would promote health when any one of them is so easy to evade?

A: Quick answer: because they work.

As I explained in my July discussion of Richmond’s proposed soda tax, regulations make it easier for people to eat

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