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New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene

Supreme Court, Appellate Division, First Department, New York - July 30, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 05505

Petitioners, a coalition of interest groups, brought hybrid article 78/declaratory judgment proceeding against New York City Department of Health and Mental Hygiene (DOHMH) and New York City Board of Health, challenging the constitutionality of an amendment to the New York City Health Code known as the “Sugary Drinks Portion Cap Rule” or the “Soda Ban,” which prohibited New York City restaurants, movie theaters, and other food service establishments (FSEs) from serving certain sugary drinks in sizes larger than 16 ounces.

The Supreme Court, Appellate Division, held that the Board of Health exceeded the bounds of its lawfully delegated authority as an administrative agency when it promulgated the rule in question.

Although the Board was authorized to regulate matters affecting public health, Board did not act solely with a view toward public health when it adopted rule, which contained exemptions for certain drinks and FSEs not because of health-related concerns, but due to social, economic, political, and regulatory considerations. Board went beyond filling gap in existing regulatory scheme but, instead, wrote on a clean slate, especially absent evidence that soda consumption was a health hazard.

Board acted in area where legislature had tried but failed to act, and Board did not bring any scientific or health expertise to bear in creating rule.