Soft Drink Minus the Water

The NY Times reports that a New York trial court has invalidated New York's rule banning giant-sized sugar soft-drinks. The court's decision can be found here. On a quick read, the decision seems to rest on two grounds:

1. ***The rule exceeds the powers of the public health board, despite a provision in the New York city charter giving the board broad jurisdiction to protect the health of the city.*** The court's holding seems to rest on a doctrine created by the New York Court of Appeals (despite its name, the highest state court), which attempts to distinguish legislative from administrative authority. In order to get to this holding, the court had first to construe the broad language of the city charter narrowly. It did so by contending that the board only has jurisdiction over acute health threats, not chronic ones. I have to say that this seems very dubious to me.

2. ***The rule is irrational because it does not cover all high-sugar drinks from all vendors, just soft-drinks from eateries.*** It's a little weird that the plaintiffs, who hated the ban, were complaining that it should have been much broader, but such are the ways of legal argument. The challenge was also under New York rather than federal law, so local legal doctrines may have unusual twists. At least at the federal level, courts have often recognized that legal reforms often happen one step at a time.

The opinion goes out of its way to discuss whether obesity could really be called an epidemic or whether sugared drinks are really part of the problem, although it doesn't draw any conclusions on these points. This may be a signal that the judge was unpersuaded that there's really a public health justification for regulation. The swipe at regulation to prevent chronic conditions certainly indicates a very limited view of what public health involves.

Of course, it's not totally clear that this ban would actually reduce obesity or initiate further reforms that could make in-roads on the problem. If the judge and the soft-drink industry have their way, we'll never get a chance to find out. In the meantime, investors in Coke, Pepsi, and the sugar industry can rest easier. I think I'm going to have to boycott Diet Coke until this litigation is over.