



**FOR IMMEDIATE RELEASE**

**July 26, 2012**

## **NYC BOARD OF HEALTH URGED TO REJECT PROPOSED BAN ON LARGE SUGARY BEVERAGES**

*Re: Comments on the Proposed Amendment of Article 81 of the New York City Health Code Related to the Maximum Size of Sugary Drinks and Self-service Cups Sold and Offered in Food Service Establishments*

Earlier this week the Washington Legal Foundation (WLF) filed comments with the New York City Department of Health and Mental Hygiene's Board of Health (Board of Health) urging it to vote against the proposed ban on large sugary beverages – those that contain more than 25 calories per 8 fluid ounces and that exceed 16 ounces in size. WLF questioned the legality of such a ban, as well as described potential negative economic and social consequences that will result if the ban is enacted. The comments were submitted just before a hearing on the matter, wherein members of the public were allowed to testify prior to the Board of Health's expected September vote.

In its comments, WLF argued that New York's various separation of powers provisions undermine the Board of Health's authority to enact the ban, which will negatively impact industry and consumers. Not only will the ban adversely affect producers, distributors, and vendors, but it will have a disparate impact on similarly-situated establishments because some establishments will be subject to the ban while others will not. In order to fully understand the impact and implications of the ban, the Board of Health should consider economic and social concerns in addition to health concerns. Therefore, WLF argued that it is New York City's council, and not the Board of Health, that is the appropriate body for enacting legislation of this sort.

In its comments, WLF stated, "Such a ban will clearly have an adverse economic impact on those businesses that rely on the sale of such products, as well as the producers and distributors of such products. Vendors have a right to earn a living from the production and sale of legal products, especially when those products can be legally purchased in smaller sizes."

WLF further questioned whether the ban is a rational way to reduce obesity among New York City citizens. Various studies challenge the link between soda consumption

and obesity, as well as the ability of bans or taxes to decrease consumption. Additionally, loopholes in the proposed ban provide many ways for consumers to obtain the large quantities of sugary beverages that the ban seeks to prevent and not all sugary drinks are included in the ban. While WLF applauded the Board of Health's efforts to address obesity, WLF argued that less intrusive and more appropriate means should be used for doing so.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free market principles, individual rights, and a limited and accountable government. WLF has regularly appeared as an *amicus* in state and federal courts in cases involving the separation of powers concerns and overreaching government regulation.

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For further information, contact WLF General Counsel Lori Jenkins, (202) 588-0302. A copy of WLF's comments is filed on their website, [www.wlf.org](http://www.wlf.org).