Bloomberg's Food-Stamp Soda Ban: Illegal, Immoral, Fattening?

By Neil deMause, Thu., Oct. 7 2010

If you've been remotely awake today (or at least clicking on your morning Runnin' Scared links), you're no doubt aware that Mayor Bloomberg has asked the U.S. Department of Agriculture to allow New York City to bar its 1.7 million citizens with food-stamp cards from using them to buy soda. "This initiative will give New York families more money to spend on foods and drinks that provide real nourishment," declared the mayor, while Governor Paterson — who actually co-sponsored the measure, but is getting ignored in the media because nobody remembers that he's still governor — added that allowing food stamps to be used to purchase soft drinks "subsidizes a serious public health epidemic."

The mayor's latest anti-sugar putsch drew predictable responses from New Yorkers, ahem, fed up with a mayor who seems never to tire of lecturing his citizens on their eating habits even while putting salt on his own pizza. (Typical Facebook comment: "Yes, yes, we know that soda is bad for you -- but Michael 'It's for your own good' Bloomberg has no right to force his own personal agenda.") But according to Joel Berg, director of the New York City Coalition Against Hunger and a former USDA official, there's an even bigger problem with banning soda purchases with food stamps: It's against the law.

"It's illegal for USDA to unilaterally do this," says Berg. He notes that in 2004, Minnesota asked for a similar waiver for not just soda but candy, too, and was shot down — exactly because, he says, the agency isn't allowed to ban purchases of certain items without Congressional approval. "This isn't a contested gray area. It's absolutely clear. I do think it's a bit of grandstanding. If their lawyers have even given this a cursory look, they've got to know there's no way USDA can do this." (Officials at the state Office of
Temporary and Disability Assistance, which submitted the actual waiver request, weren't immediately available for comment.

(Update, 5:54 pm: OTDA spokesperson Anthony Farmer insists that Berg is wrong: "The law does allow USDA to permit demonstration projects, which is what we have proposed." Told of this, Berg replies, "Yeah, they're wrong," and says only other programs such as school lunches and WIC are allowed — as specifically outlined by Congress — to limit recipients to certain food items. More on this after everyone has gone to their respective corners and read through all the relevant legislation.)

And even if it were legal, argues Berg, it would be terrible policy. Banning foods outright, he says, is a sure way to get people to fall off the wagon as soon as they're allowed to buy them again, a lesson that weight-loss companies learned when their off-limits food lists resulted in people ballooning back up once they left the program. Berg says he personally has found success with what might be termed a harm-reduction approach to sugar: "I'll have my Coke one time with dim sum, and then I'll go five days eating better."

It's a conclusion the USDA itself has drawn as well, albeit with fewer direct references to har gao. In a 2007 article, four USDA researchers concluded that "disallowing an 'unhealthful' food item ... may have limited effectiveness," and might only succeed in encouraging low-income shoppers to use their own meager funds to buy what they can't with food stamps. Of Minnesota's foiled candy ban, they wrote:

Consumers who love candy might choose the natural sweetness of fruit. Or they might switch to cakes, cookies, chocolate-coated granola bars, or any of a number of items that might have only minimal nutritional differences from banned items. In denying Minnesota's request for authority to ban certain candies, USDA noted that the request would prohibit the purchase of Hershey chocolate bars but allowed Kit-Kat and Twix candies (because they contain flour).

More effective, they conclude, would be giving people additional dollars on top of their food stamps to use for healthy foods — something that Mayor Bloomberg, to his credit, has pioneered with his Health Bucks program that provides $2 in bonus cash for every $5 in food stamps spent at many city farmer's markets.

Berg says his own experience with the annual Food Stamp Challenge, where participants try to live for a week on an average food stamp budget — recounted in his book All You Can Eat — points out to what extent poor nutrition among the poor is the result of lousy options more than lousy taste. "In 2007, I could afford an apple, but not an organic apple," he says. "This year I couldn't afford a single piece of fruit. People just don't seem to understand the connection between hunger and obesity."