The Philadelphia Sugar-Sweetened Beverage Tax

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A Promise of Pre-Kindergarten

After 23 years as a Philadelphia city councilman, Jim Kenney announced his candidacy for the city's mayoral race on February 4, 2015. From the first moments of his candidacy, he made his platform clear: universal pre-kindergarten (pre-K) for Philadelphia's kids. "Every child in this city is all of our children. Not someone else's children, not some other neighborhood's children, not their children our children," said Kenney to a crowd of supporters.[1] He stated pre-K as his unequivocal priority when he told the crowd "that's the main reason why I'm running for mayor, the main reason I quit my job, and I'm going forward into the neighborhoods to bring my vision and ideas to our communities." He described his plan to garner support from nonprofits, businesses, and universities to transform struggling public schools into community schools that serve as hubs of social services and to fund high-quality pre-K programs for lower-income 3- and 4-year old children in the city.[1] In 2015, only about 14 000 Philadelphia children were enrolled in publicly funded, quality pre-K programs, leaving 19 000 eligible youth either enrolled in programs that did not meet quality standards or not enrolled at all.[2]

Throughout the mayoral race, however, Kenney remained vague about where the money would actually come from to fund these ambitious programs. Kenney outlined a plan to raise funds for the school district at an early childhood education center on March 4, 2015. He claimed the plan would not require raising property taxes, rather, it would be funded by selling commercial tax liens, raising land values on abated properties, and instituting zero-based budgeting. He stated that his universal pre-K plan would cost $60 million over 3 years, with the city covering $40 million of that bill and again calling on nonprofits, businesses, and universities to cover the remaining $20 million. Kenney justified the investment, telling the crowd that every dollar spent on pre-K programs would yield an economic benefit of $1.79. He did not mention a sugar-sweetened beverage tax.[3,4]

On May 19, 2015, Jim Kenney won the Democratic mayoral primary by a landslide, defeating Anthony Williams by over 30 percentage points—the largest margin since at least 1979.[5] Kenney, considered the unlikely candidate by many, secured a big base of voters worried about public education.[5] Philadelphia's public school system suffers from a complex history of segregation, underfunding, and state takeover that has fueled crumbling infrastructure and poor outcomes.[6] Coupled with concentrated poverty, Philadelphia students have lower rates of reading proficiency and degree attainment.[7] Low-income kids enter kindergarten already further behind.[8] According to a 2015 study conducted by the Washington Center for Equitable Growth, education is considered the most readily modifiable condition that can reduce poverty.[9] The effects of early childhood education on recipients, including higher employment rates, higher earnings, greater self-sufficiency, and lower welfare dependency, were not lost on Philadelphians.

This base of concerned voters carried over to November, and Kenney won the mayoral race over Republican Melissa Murray Bailey in another landslide. The very next day at Andrew Jackson Elementary School in South Philadelphia, Kenney began outlining transition plans for taking office. He introduced a timeline for his pre-K plan, saying he wanted the program in place by the following September. Kenney told the crowd, "You can't starve a system. You can't take resources away from a system, then complain it fails," referring to the need to fund public education and pre-K programs. Now officially mayor, Kenney still had not revealed detailed plans to fund his education programs.[10]

In December, Mayor-elect Kenney announced his appointment of Anne Gemmell to the newly created role of director for pre-K.[11] Gemmell would be responsible for carrying out Kenney's universal pre-K plan, guided by recommendations from the city's Commission for Universal Pre-K. The commission, on which Gemmell sat, had been created through an approved ballot initiative under then-Mayor Michael Nutter. It had been convening monthly since June 2015 to study and determine recommendations for program design and financing.[2] In its draft report, released in February 2016, the commission modeled costs assuming sufficient revenues from the "City," acknowledging "that the Mayor and City Council are in the process of developing a FY17 budget and 5-year financial plan. The source of funding for any pre-K initiative will be included in the Mayor's March budget address."[12]

On March 3, 2016, Mayor Kenney's first budget address finally made the anticipated source of funding for his grand pre-K plans clear: a sugar-sweetened beverage tax.[13] This announcement came as a surprise to many. As a councilman, Kenney opposed 2 soda tax proposals under then-Mayor Nutter, telling the media, "I was not for the soda tax the first time, I will not be for it the second time."[14] Nutter announced his proposed tax on sugar-sweetened beverages at his first budget address in 2010. He proposed a 2-cent-per-ounce tax on retailers based on their annual volume of sugar-sweetened beverages and anticipated collecting $77 million per year. Nutter praised the city's "aggressive" public health policies for menu labeling and banning transfats in cooking and smoking indoors and in public parks. After presenting a list of statistics on obesity and poor health outcomes in Philadelphia, he explicitly linked this tax to the creation of a Healthy Philly Initiative to "promote healthy eating and physical activity."[15] The proposal was immediately controversial and swiftly voted down by the Philadelphia City Council.

Nutter proposed the tax again in 2011. Moving away from a message of combating obesity, this time he pitched the tax as a way to cover budget gaps for Philadelphia's schools.[16] Bill Dermody, a vice president at the American Beverage Association, expressed opposition to the tax in conversations with councilmembers. "We're always trying to make sure that Council knows that it's going to hurt small businesses, that it's going to raise grocery bills, and that it's just a bad idea," he said.[17] The shift in messaging from Nutter came too late, and the soda lobby defeated the proposal a second time.

The soda lobby did not leave after the second proposal was defeated. In 2012, the American Beverage Association spent nearly $240 000 lobbying against the possibility of a soda tax proposal despite Mayor Nutter's insistence that he was not planning on a third proposal.[18] In his 2016 budget address, Kenney admitted that the soda lobby successfully convinced him to oppose Nutter's tax proposals. He told the crowd:

> See, the problem is that Big Soda charges our citizens, small businesses, and distributors much, much more than what it costs for them to make the soda. And then, they use some of those profits to fund lobbyists, who come here and say that a tax on sugary drinks will cost jobs and devastate small businesses. And they're pretty persuasive. So persuasive, they even got me to believe them. And I'll tell you, the line that really got me 4 years ago was the claim that this tax would hurt low-income, minority communities. That's a really concerning claim. But, the truth is that soda companies are the ones actually targeting their advertising at low-income, minority communities.[13]

Kenney's budget address was laden with statistics from studies on the academic and economic benefits of pre-K, community schools, and recreation centers. He carefully refuted arguments against the soda tax, including concerns that the tax would hurt small businesses and lead to job losses. Instead, he argued, it would help small businesses and create jobs. He made economic arguments, never mentioning obesity or health.[13]

Mayor Kenney boldly proposed a 3-cent-per-ounce tax on sugar-sweetened beverages as part of his initial budget proposal.[19] This tax would be 3 times what, at the time, was the only other existing city beverage tax in the country—in Berkeley, California: a city with a reputation for prioritizing health in its policies. Other details of the tax and funding for universal pre-K became clearer with the release of Kenny's budget. Kenney planned to impose the tax on beverage distributors rather than retailers or consumers, an approach that had be used in Berkeley. Predictions estimated that the tax would generate around $400 million over 5 years.[19] This revenue was earmarked to fund 5 key initiatives: $256 million for universal pre-K, $39 million to open 25 community schools, $23 million to create energy-efficient city and school district buildings, $56 million to rebuild parks and recreation centers and $26 million to the city pension system.[19] Initially, the tax applied only to any beverage with added sugar and excluded diet drinks.[19] But for any of this funding to come to fruition, 9 out of 17 councilmembers would need to vote in favor of the tax.[19]

Sugar-Sweetened Beverage Taxes as Public Health Policy

Although the first sugar-sweetened beverage tax in the United States was only introduced at the city level for the first time in 2012, sugary drinks have been the target of taxation in the United States for a century. Congress passed a 10% tax on sodas under the Revenue Act of 1918 to raise revenue during World War I.[20] It was this tax that roused the soda industry to organize a trade association, the American Bottlers of Carbonated Beverages, to lobby for repeal. The association underwent a name change to the American Beverage Association and continues to fund antitax efforts across the country, Philadelphia being no exception. The national tax under the Revenue Act of 1918 was eventually repealed, but some states have used sodas as revenue generators through sales taxes, where a majority of taxing states apply a higher rate to sodas than to other food products in general. Because these taxes function primarily as revenue generators, their rates are low enough not to elicit much opposition from the public and are not intended to reduce purchases.[20]

The conversation on sugar-sweetened beverage taxes changed in 2009 when Dr Kelly Brownell and colleagues published 2 articles in the *New England Journal of Medicine* that reframed soda taxes as a potential public health intervention.[21,22] Rather than taxing the beverages at rates too low to impact purchasing behavior, they proposed taxing sugar-sweetened beverages at rates high enough to actively discourage consumption. They argued that the link between consumption of sugar-sweetened beverages and poor health outcomes such as obesity, heart disease, and diabetes justified treating these beverages as the target of a new "sin tax," similar to how tobacco products are taxed. They proposed implementing a national excise tax of 1 cent per ounce and the investment of revenue generated back into health promotion programs, arguing that the reduction in consumption and investments in health would pay for themselves in weight lost and health care costs saved.

In 2014, the cities of Berkeley and San Francisco, California, arguably two of the most liberal cities in the United States, moved to test Brownell's policy proposal of reducing overall soda consumption in an effort to combat obesity.[20] By November, both cities had sugar-sweetened beverage taxes on their ballots. They were not the first cities to make the proposals; their neighboring cities Richmond and El Monte had put soda taxes on their ballots in 2012, both of which were swiftly defeated by the soda lobby. These defeats provided crucial lessons learned for Berkeley and San Francisco. The taxes in Richmond and El Monte were painted by the soda lobby as regressive and discriminatory against minority communities. To avoid this messaging in Berkeley, the city created a pro-beverage tax coalition, the Berkeley Healthy Child Coalition, which ensured community support from the start. The coalition took a grassroots, community-centered approach to painting the soda industry as a major threat, in the same vein as "Big Tobacco," to the health and well-being of the Berkeley community.[23]

Although it did receive a majority of votes, the measure in the larger, more socioeconomically diverse San Francisco did not obtain the two-thirds plurality required to pass. Berkeley, requiring only a simple majority in a more homogeneous population, surpassed the two-thirds plurality that San Francisco had needed. In all respects, Berkeley was the seemingly perfect environment to pass such a tax. Its liberal environment and health conscious constituency led some to believe that its citywide beverage tax was an anomaly and that it was possibly the only place such a tax would ever pass. "Berkeley was low-hanging fruit" said Roger Salazar, the spokesman for the campaign against the tax in Berkeley. The American Beverage Association felt similarly. Christopher Gindlesperger, a spokesman for the association, warned other cities: "Berkeley is not like mainstream America. If politicians in this country want to stake their reputations on what Berkeley's done, then they do so at their own risk."[24]

If the tax could not pass in San Francisco, how could it pass in a city like Philadelphia? Philadelphia is the 5th largest city in the country; Berkeley is the 225th. With a population of more than 1.5 million, Philadelphia surpasses San Francisco's population by close to 200 000 people and Berkeley's population by more than 1 million people. Philadelphia is also home to far more socioeconomic and racial diversity than both San Francisco and Berkeley.[25] Philadelphia was not considered "low-hanging fruit," and if a city like Philadelphia could pass a sugar-sweetened beverage tax (see **Figure 5.1**), it would open the door for other large cities to follow suit.

Context Matters

Kenney's optimism in his own tax was strong, considering the fact that the tax had failed twice before under his predecessor's tenure. Kenney's confidence was rooted in the belief that he could convince councilmembers to vote for the tax, particularly if they could see the tangible benefits resulting from the revenue. Although Berkeley's tax contributed to a general fund where it, theoretically, could be used for things other than its intended public health purposes,[23] Kenney was deliberately transparent and explicit about how the revenue from the Philadelphia tax would be allocated.[19] Kenney and his team had learned from the successes and failures before them. Like the tax in Berkeley, the proposed tax in Philadelphia would be levied on distributors rather than consumers to avoid being construed as an illegal additional sales tax. Unlike in Berkeley, Kenney only had to convince the city council that the tax was a good idea.[26] The promise of revenue for a city with the largest population in deep poverty and with a multibillion-dollar fund balance would prove to work in Kenney's favor.

Kenney was operating in a more favorable political environment than his predecessor for getting his proposal off the ground. In proposing the tax, Kenney made sure to emphasize that its purpose was not to manage health behaviors of Philadelphians but rather fund a variety of public programs with the intent to give back to the community. Optimistic that the tax would pass, Kenney said, "This will be successful this time. There's more evidence the funds will be used for things that people can clearly identify and councilmembers can clearly identify with. Before, there was no identifiable project or projects tied to it."[19] The majority of the council who would be voting on the measure were new members, not around for the legislative battle and lobbying of Nutter's 2010 and 2011 proposals.[18]

It was also no secret at the time that the council majority leader, Bobby Henon strongly favored a soda tax proposal and considered introducing one on his own. He even drafted a bill and mapped out a strategy, which was quietly killed by the soda lobby in 2015. He declined to "speculate about legislation pre-introduction" but reiterated his position in support of the tax saying, "Far too many Philadelphians suffer from preventable, obesity-related diseases. One-third of our children are overweight or obese, putting them at serious risk of developing high blood pressure, diabetes, heart disease or cancer. It's been proven time and again that sugary drinks such as soda, with no nutritional value, have become ubiquitous in our communities and contributed to this trend. With that in mind, I want to keep an open mind about anything that can help encourage healthier behaviors".[17]

FIGURE 5.1 Philadelphia Sugar Sweetened Beverage tax timeline.

A third, seemingly small but important, detail lay in Kenney's campaign supporters. Unlike Nutter, whose major campaign contributors included soda bottling executive and Philadelphia resident Harold Honickman, Kenney was not beholden to industry interests. Similarly, the Teamsters, the major union involved in the soda tax battle, endorsed Kenney's opponent, state Senator Tony Williams, in the mayoral race.[18] Kenney had more political flexibility and allies from the start.

Coalitions for and against the tax did not take long to assemble in response to the announcement of a sugar-sweetened beverage tax as the source of revenue to fund Kenney's education initiatives. Those opposed to the tax and who had battled the tax twice before under Mayor Nutter formed a new coalition called Philadelphians Against the Grocery Tax. The coalition was funded by the American Beverage Association and was made up of local business owners, community members, and the Teamsters, a union representing truck drivers. The coalition argued that the tax unfairly burdened the poor and that the tax would drive wealthier consumers of sugar-sweetened beverages to surrounding counties to evade the tax. They focused on the impact of the tax on small businesses and spread the message widely that decreased sales from the tax would inevitably lead to job losses in the beverage industry, affecting employees like truck drivers and production workers.[27,28]

The coalition attempted to reframe the tax. Rather than projecting it as a sin tax against "Big Soda" akin to taxes on cigarettes, the coalition rebranded it as a "grocery tax," emphasizing its effect of "rais[ing] the prices of more than 1000 products found in grocery stores" and the impact this would have on the grocery bills of Philadelphians.[27]

But on March 16, Mayor Kenney launched his campaign to tax sugar-sweetened beverages at a North Philadelphia recreation center by introducing a new protax coalition called Philadelphians for a Fair Future. The coalition included civic, labor, and faith organizations from pre-K advocates and the Philadelphia Federation of Teachers to the Philadelphia chapter of the National Association for the Advancement of Colored People (NAACP).[28] The formation of this coalition would prove critical in the soda tax campaign. Kenney used his knowledge from the soda industry lobbying of the 2010 and 2011 proposals to explain the coalition's purpose, "There's going to be an air war, there's going to be a ground war, and there's going to be lobbyists out the wazoo. I don't think I can fail, based on the people who are standing behind me." For Kenney, Philadelphians for a Fair Future was what would give the tax a fighting chance against the soda lobby. His confidence likely stemmed from the fact that unlike the previous soda tax battles, this coalition was poised with the support of wealthy private donors funneling millions toward the protax campaign.[29] Kenney was ready to use some of the soda lobby's own tactics against them.

The American Beverage Association spent \$10.7 million in Philadelphia on campaign efforts against Kenney's sugar-sweetened beverage tax. Philadelphians for a Fair Future raised roughly \$2.5 million, which funded advertisements and 5 consultants who lobbied lawmakers, placed op-eds in newspapers, and commissioned polls.[30] Kenney told the press: "We didn't match it. We didn't come close, [but] I think it's part of what made a difference." The coalition relied on more than just money. Coalition members aggressively met with councilmembers and testified in the city council hearings. They were what Kevin Feeley, spokesman for the coalition, called "our secret weapon."[29]

Passing the Philadelphia Sugar-Sweetened Beverage Tax

Kenney's original proposal of 3-cents-per-ounce, 3 times the amount of the only existing excise tax on sugar-sweetened beverages, was a strategic way to introduce negotiation into the conversation at city council. "Everyone on this side of the table knows that there's not going to be a 3-cents-per-ounce tax," Council President Darrell Clarke told Kenney's finance director Rob Dubow at a hearing on May 25, only 2 weeks before the final committee hearing on the operating budget.[31] He called the 3-cent-per-ounce sugar-sweetened beverage tax the "most divisive" proposal he had seen during his time at council despite the fact that almost every councilmember had publicly supported the initiatives the tax would fund.

Clarke was not the only councilmember with reservations about the tax. Many councilmembers expressed concern that the tax was regressive in that it disproportionately burdened lower income consumers. As of May 19, only 3 members of the council had announced they were against the tax, and Maria Quinones-Sanchez was adamant about her stance. "Regressive is regressive is regressive," she said to explain why she would not support a sugar-sweetened beverage tax at any rate.[32] Quinones-Sanchez also voiced concerns over potential job losses in her district, which was home to a Coca-Cola bottling plant. According to local news reports, Quinones-Sanchez was the second highest recipient of contributions from the beverage industry in 2015.[33] Councilwoman Blondell Reynolds Brown echoed concerns about the regressive nature of the tax and sought a more equitable proposal. On May 19, she introduced a bill that would create a 15-cent tax on beverage containers that held at least 7 ounces of liquid as an alternative to Mayor Kenney's sugar-sweetened beverage tax. "It doesn't just hit the poorest of the poor," she said. "The net will be cast a lot wider. I'm for shared sacrifice, and this bill symbolizes that."[32]

But the council appeared as split on the container tax proposal as it did on the beverage tax. Councilwoman Jannie Blackwell, one of the other 2 members who had publicly stated their opposition to the beverage tax, did not make a statement in support of the container tax alternative.[34] Majority Leader Bobby Henon quickly criticized the proposal, claiming that the container tax "made the myth of the grocery tax a reality" and would not raise as much funding for the mayor's initiatives as a 3-cent-per-ounce beverage tax.[32] Clarke, on the other hand, seemed to be leaning away from the beverage tax and toward the container tax when he told reporters: "I'm happy that the Councilwoman today introduced another measure that has worked, and a measure that makes sense to me in that it collects revenue across the board instead of one very narrowly targeted industry and source."[32]

Negotiations over the 3-cent-per-ounce rate began when Councilman Allan Domb argued in the May 25 hearing that, according to the council's own estimates, the tax would be most effective at a rate of 1.5 cents per ounce. Above this rate, the penny-per-ounce returns diminished. Councilwoman Helen Gym responded by highlighting how this renegotiated rate would impact funding for the initiatives they all wanted: $20 million less and 2300 fewer kids in pre-K.

This loss in revenue required the Philadelphia City Council to find the money through alternative means. Between the hearings on May 25 and June 8, that revenue was found by adding diet beverages, previously excluded from the proposal for not fitting the criteria of containing "caloric sugar-based sweetener," onto the list of taxable items. The inclusion of diet drinks in the proposal brought revenue projections to $91 million annually, falling only $4 million short of the projections under Kenney's 3-cent-per-ounce proposal despite a halved tax rate.[35] The addition of diet drinks was also politically palatable among members of the council because it allowed for a lower tax rate while also minimizing the regressive nature of the tax. Low-income and nonwhite Americans consume more regular soda, while diet soda consumption increases as income rises.[36] For councilmembers who were wavering on the soda tax and leaning toward the container tax as a less regressive option, the inclusion of diet drinks was a compromise they were willing to accept. "We originally wanted $95 million. We'll have to make some cuts, but you don't always get everything you ask for. That's the meaning of compromise," Kenney's spokesperson, Lauren Hitt, told reporters.[37]

Wednesday, June 8 marked a deadline for the city council to agree on a proposal if they wanted to adopt a budget without extending their legislative calendar. Up until the vote, the outcome remained uncertain. Just a day earlier, Councilwoman Cindy Bass sent a memo to councilmembers indicating her intent to introduce a proposal to raise the real estate tax by nearly 7% over the next 5 years. Less than an hour later, she pulled the proposal, indicating that the sugar-sweetened beverage tax had enough votes to pass the council.[38] But on Wednesday, the council's scheduled 2 PM meeting time came and went as new information from the Kenney administration and negotiations between the council, the administration, and lobbyists delayed the vote for 6 hours.

Council President Clarke was working with his allies on the council—Bill Greenlee, Blondell Reynolds Brown, and Cindy Bass—to reduce the tax rate even further to 1.25 cents per ounce.[39] Councilman Domb, knowing his vote was critical to the passing of the tax, advocated for a 1.25-cent-per-ounce tax. Domb was a partner in a high-end restaurant in the city that would be subject to the tax and had a personal interest in a lower rate. To get Domb's vote, the Kenney administration promised Domb the collection of delinquent taxes and reform of the city's property assessment process. These were 2 campaign promises of Domb's that he wanted included in the budget process. With this promise, Domb agreed on a tax at 1.5 cents. "We were having individual conversations. Trying to convince and continue to bolster councilmembers who were on our side, those on the fence. Trying to explain why it was important," Kenney remarked about his negotiations prior to the preliminary vote.[35]

The administration threw a curveball into the day's negotiations when, to the surprise of councilmembers, they announced for the first time that a portion of the revenue raised would go toward the city's dangerously low fund balance. Both the city council and the city's finance director Rob Dubow agreed that diverting part of the revenue to the fund balance should have been mentioned earlier. But rather than being a divisive issue, this new information made the tax proposal more attractive to some members of the council—and made those negotiating for a lower rate willing to support the tax at 1.5 cents per ounce.[37,39] The city's fund balance went from $150 million to $70 million that year, and bond rating agencies had warned the city that its balance should be at least several 100 million.[40] Having the revenue to start filling this gap was undeniably attractive. Darrell Clarke expressed his frustration with receiving this information so late in the negotiations: "And now we're being told the need for additional revenue is to support the fund balance. That should have been talked about early on in the process."[35]

Clarke, who exerted clear and often unopposed power as council president during the Nutter administrations, was unable to exert the same influence over the newly elected council who sought an ally in Kenney. Clarke voted in favor of the tax when he realized it was going to move forward with or without his vote. Councilwoman Blackwell also conceded when she realized the measure would move forward. Blackwell had expressed strong opposition to the tax up until the hearing, even attending an antitax rally with the Philadelphians against the Grocery Tax coalition, and was expected to be a guaranteed vote against the proposal. Blackwell said after the verbal vote: "What changed my mind was that we were there. And when the majority of people were there, you've got to settle it and move on."[35]

Now that the details of the proposal had received consensus from the Council, the sugar-sweetened beverage tax would be moving forward to its final vote as part of the budget only 1 week later. Protax advocates were cautiously optimistic, recalling how Mayor Nutter had once received consensus on his beverage tax before 1 councilmember dropped out, effectively killing the tax. On the morning of June 16, antitax and protax advocates descended on City Hall for their last opportunity to sway the vote. Those against the tax displayed dozens of different beverages in the City Hall courtyard with signs bearing each product's posttax price. Meanwhile, those in favor of the tax paraded preschoolers around the courtyard and used bottles of soda to perform science experiments.[41] After testimony from advocates on both sides, city council passed the tax in a 13-4 vote. Three out of the 4 no votes were from the Republican councilmembers. The final no vote came from Councilwoman Maria Quinones-Sanchez, who stuck to her stance that the tax was regressive.

Navigating New Territory

After a politically contentious, multimillion-dollar battle, proponents of the sugar-sweetened beverage tax celebrated the vote and praised the Council. "Thanks to the tireless advocacy of educators, parents, rec center volunteers and so many others, Philadelphia made a historic investment in our neighborhoods and in our education system today," Kenney said after the vote.[42] This was a major political victory for Kenney. But even after the vote, Kenney stuck to the narrative that he had used to get the tax passed, focusing on the programs it would fund and the change it would create in Philadelphia. "This is the beginning of a process of changing the narrative of poverty in our city," Kenney said. "It's been generations we've been going downhill with our kids in our neighborhoods. And it's going to take some time to get us back, but this is the first step back."[41]

The antitax coalition, Ax the Philadelphia Beverage Tax, immediately responded and issued a statement calling the tax unconstitutional and promised a legal challenge in court. The American Beverage Association, with a number of other businesses, acted on that promise 2 months later when they filed a lawsuit in the Philadelphia County Court of Common Pleas and the Pennsylvania Supreme Court. Whereas Mayor Kenney believed the tax was "on strong legal ground",[41] those filing suit argued that the tax was illegal because it acted as a second sales tax and could affect the state's ability to collect and distribute Supplemental Nutrition Assistance Program (SNAP) funds.[43] The determination of the legality of Philadelphia's sugar-sweetened beverage tax could have implications for whether and how other jurisdictions are able to implement similar policies. The mayor and beverage tax advocates won another victory when a decision from the court came in. In December 2016, less than a month before the tax was supposed to go into effect, Judge Gary S. Glazer dismissed the lawsuit, stating that the sugar-sweetened beverage tax does not duplicate Pennsylvania's sales and use tax, affect the ability to collect and distribute SNAP funds, nor violate the state Constitution's Uniformity Clause.[44] In response to this decision, the American Beverage Association appealed to the Commonwealth Court, which upheld the tax in June 2017. They are expected to appeal this decision to the state's Supreme Court.[45]

Epilogue

Despite the legal challenges, Philadelphia's introduction and passage of a sugar-sweetened beverage tax set the stage for cities and counties across the country to do the same. As a large, diverse, and impoverished city, Philadelphia provides key strategies and lessons learned for jurisdictions that could not be gleaned from the experience in Berkeley. The day the tax passed in June, Kenney gave advice to other cities considering similar policies: "Tie your efforts to tangible initiatives that people care about," he told them. "When it comes up, acknowledge that it is a good thing to drink less sugar-sweetened beverages, but tie it to things that people care about."[46] By November, 4 other cities (Boulder, CO, as well as San Francisco, Oakland, and Albany, CA) and 1 county (Cook County, IL) successfully passed sugar-sweetened beverage taxes of their own. And more jurisdictions are looking to do the same in the near future.[47] There was no single factor that led to the success of the Philadelphia sugar-sweetened beverage tax proposal; its passage was the result of a perfect storm of political and fiscal variables. However, framing of the tax as a strategy to finance programs with high levels of public support rather than a health intervention was critical to the tax's successful passage. This shifted the policy debate away from the "nanny state" and toward economic concerns such as revenue generation, jobs, educational attainment, and poverty alleviation. Using this strategy, Philadelphia passed a policy with the potential for large positive public health impacts and set the stage for cities to follow.