

## Litigator of the Week: James Brandt of Latham & Watkins

By Jan Wolfe  
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New York City's proposed ban on big, sugary beverages has generated plenty of media buzz and breathless debate. So you might expect to find a camera-loving attorney with an outsized personality spearheading opposition to the ban. Instead, the law's opponents enlisted James Brandt, a relatively publicity-shy Latham & Watkins partner more used to quietly resolving complex financial disputes.

Much to Mayor Michael Bloomberg's chagrin, the choice worked out just fine. On Monday, the day before the ban was slated to go into effect, New York Supreme Court Justice Milton Tingling emphatically overturned it, siding with a coalition of industry groups, labor unions, and nonprofits led by Brandt's client, the American Beverage Association. Tingling ruled that the ban was arbitrary because it didn't apply to all sugary drinks and retailers equally. He also ruled that the agency that adopted the ban, the New York City Department of Health, overstepped constitutional limits on its authority.

Brandt specializes in securities litigation and corporate restructuring, so opposing a government regulation on constitutional grounds was a nice change of pace, he said. "This has been a very fun case to work on," Brandt told us Thursday. "I obviously knew about the separation of powers doctrine, for example, but it's not what I normally deal with."

Brandt got involved in the case because the American Beverage Association is a longtime client of Richard Bress and William Rawson, partners in Latham's Washington office. The Latham trio worked on the case jointly, but

Brandt served as lead counsel and handled the oral arguments. Other groups, including the National Restaurant Association and the NAACP, joined in the fight and had their own legal firepower, as we explained Monday.

Brandt's victory was far from assured, especially because determinations by New York agencies are entitled to considerable deference. Just last week, for example, a judge refused to overturn the New York State Insurance Department's decision to approve MBIA Inc.'s \$5 billion restructuring, even though the agency acknowledged that it didn't fact-check MBIA's restructuring application.

At oral argument, Brandt focused on awkward aspects of the city's proposed law, like that it wouldn't apply to state-regulated convenience stores. To drive home that point, he showed a photo of a Sabrett hot dog vender outside a Duane Reade pharmacy, and pointed out that while the working-class vendor wouldn't be allowed to sell 20 ounce soda bottles, the big retailer a few feet away would. He also used a diagram that illustrated how certain calorie-laden beverages, like smoothies and milkshakes, wouldn't be affected by the ban. "The city's line-drawing was unintelligible," Brandt told us.

Those arguments clearly registered with Tingling, who ruled that the ban is "fraught with arbitrary and capricious consequences." The ruling, which the city is contesting, is the talk of the town. But Brandt says he hasn't followed the raging public debate too closely. "Lawyers must say this all the time, but I chose to focus on our legal arguments," he said.