

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BOTTLED WATER
ASSOCIATION et al.,

Plaintiffs,

vs.

DAVID A. PATERSON, in his official capacity as
Governor of the State of New York, et al.,

Defendants.

No.

DECLARATION OF ROBERT F. KENNEDY, JR.

I, Robert F. Kennedy, Jr., hereby declare as follows:

1. I am over the age of 18 years. I am competent to make this declaration and do so of my own volition.

2. I am Chairman and owner of Tear of the Clouds, LLC. Tear of the Clouds, LLC has sold bottled water in New York under the name "Keeper Springs" since 1999. Keeper Springs gives 100% of its profits to environmental groups and supports beneficial environmental and health initiatives, including the goal of 100% recycling of beverage containers.

THE AMENDED BOTTLE BILL HURTS RECYCLING EFFORTS

3. On April 7, 2009, New York amended its Bottle Bill. The amended Bottle Bill, while intended to encourage recycling, could harm the recycling efforts of New York communities and municipalities.

4. The amended Bottle Bill operates outside of both the market-driven scrap recycling system and the comprehensive community recycling systems. If it works as planned, it will remove significant amounts of PET bottles from municipal recycling programs without

providing any replacement funding. As this happens, many communities, large and small, may be prompted to end their recycling programs because they become too expensive, particularly in light of the current economic downturn. However, experience has shown that comprehensive municipal recycling programs are the most successful means of recycling the broadest spectrum of consumer packaging. This Bill will frustrate its own stated pro-environmental purposes, and so does not serve the public interest.

5. The Bottle Bill does not require reinvestment of the revenues it generates to augment recycling efforts or the environment; rather state government will capture 80 percent of the revenues, with deposit initiators receiving 20 percent. This does not aid broad recycling; it harms it by treating beverage packaging selectively as a taxable revenue source to support state government budget shortfalls or pad private sector profits.

6. The Bottle Bill needlessly and expensively complicates the recycling of bottles covered by the law, because retailers are only required to redeem bottles of the same shape, size and brand that those retailers offer for sale. Consumers will be required to know what brands and sizes various retailers sell or which store they purchased each bottle from, or face having to carry the bottles to an alternate location. This places restrictions on redemption for those who are least mobile, is counterproductive to recycling, and is plainly unnecessarily burdensome and wasteful.

7. Finally, the system that this bill envisions—based on limiting redemption recycling options—will thwart the natural and highly desirable expansion of recycling to all kinds of household plastic packaging because redemption is restricted by available retail floor space. The expansion of recycling is a critical factor in achieving a zero-waste society, yet the capacity of return-to-retail redemption is finite.

**THE SUGAR WATER EXCEPTION DISCOURAGES
HEALTHY CHOICES BY CONSUMERS**

8. The amended Bottle Bill encourages consumers to drink sugared beverages instead of bottled water. By excluding beverages identified as “water to which a sugar has been added” from the requirements of the Bottle Bill, but including all other forms of water, the amended Bottle Bill allows sugared water products to be sold at substantially lower costs than ordinary bottled water. This encourages consumers to choose these less expensive sugared drinks, loaded with empty calories, rather than far more healthy options like bottled water. It is irrational for New York through its amended Bottle Bill, to create incentives for consumers to drink sugared beverages instead of bottled water.

9. The urgent public policy to stem the rising tide of obesity and its associated enormous health care costs is contravened by making the distinction between sugared and non-sugared drinks for purposes of bottle deposits – making sugared drinks cheaper. It has no rational basis, in fact, it’s perverse. This affirmatively harms the health of New Yorkers, especially poor New Yorkers.

**THERE ARE BETTER WAYS TO ENCOURAGE
RECYLCING AND ENVIRONMENTAL CONSERVATION**

10. The amended Bottle Bill is not the best option to achieve the broad recycling and environmental conservation goals that the Bottle Bill is intended to address. An effective bottle deposit law can be both pro-consumer and pro-recycling without burdening other recycling programs and threatening public health. For example, California’s bottle law promotes a better, cleaner, cheaper solution as well as promoting comprehensive recycling by giving consumers the option to return containers not just at retailers, but also at recycling centers and curbside bins –

without regard to size, brand or type of beverage – where redemption value helps build and strengthen the local recycling program. As of 2008, California’s program is achieving a 74 percent recycling rate.

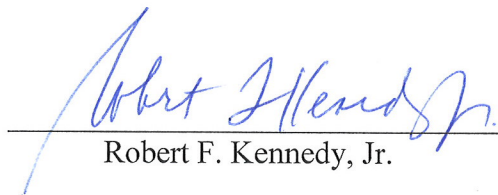
11. Like California, New York should use deposits to operate a fair, flexible and comprehensive recycling system that is convenient to consumers.

SUMMARY

12. As this Affidavit has made clear, we do not believe the Bottle Bill created a well-grounded or wise recycling system. Rather, the Bill is contrary both to sound recycling and public health policy in the short and long run.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: May 17, 2009



Robert F. Kennedy, Jr.