PARKS & RECREATION COMMITTEE

OF THE

SUFFOLK COUNTY LEGISLATURE

MINUTES

A meeting of the Parks & Recreation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislature Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on March 13, 2013.

MEMBERS PRESENT:
Leg. Lynne C. Nowick, Chairwoman
Leg. Lou D'Amaro, Vice Chair
Leg. Kara Hahn
Leg. Wayne R. Horsley
Leg. Steven H. Stern

ALSO IN ATTENDANCE:
Presiding Officer William J. Lindsay, 8th Legislative District
George M. Nolan, Counsel to the Legislature
Sarah Simpson, Assistant Counsel to the Legislature
Robert Doering, Budget Review Office
Renee Ortiz, Chief Deputy Clerk of the Legislature
Greg Dawson, Commissioner/Parks Department
Lance Reinheimer, Director/Vanderbilt Museum
Greg Moran, Aide to Leg. Nowick
Deborah Harris, Aide to Leg. Stern
Justin Littell, Aide to Leg. D'Amaro
Deborah Tinnirello, Aide to Leg. Hahn
Lora Gellerstein, Aide to Leg. Spencer
Michael Pitcher, Aide to Presiding Officer
Thomas Vaughn, County Executive Assistant III
Marie Berkoski, Aide to County Executive
Paul Perillie, Aide to Leg. Gregory
Ali Nazir, Aide to Leg. Kennedy
Lori Benincasa, Department of Health Services
John Palasek, South Yaphank Civic Association
Miriam Guggenheim, American Beverage Association
John White, American Beverage Association
Jim Coughlin, American Beverage Association
Patricia Bishop-Kelly
Pamela Mizzi, Quality Consortium
Rick Brand, Newsday
And all other interested parties

MINUTES TAKEN BY:
Diana Flesher, Court Stenographer

MINUTES TRANSCRIBED BY:
Denise Weaver, Legislative Aide

(THE MEETING WAS CALLED TO ORDER AT 1:16 PM)

CHAIRPERSON NOWICK:
Welcome to the Parks Committee. Please stand for the Pledge to the Flag led by Counsel, George Nolan.

SALUTATION

Good afternoon and welcome to the Parks and Recreation Committee. We do have a few cards from the public starting with Lance.

MR. REINHEIMER:
Thank you very much. Lance Reinheimer, Director of the Vanderbilt Museum. I'm here to speak on IR 1178, which is a capital appropriating resolution appropriating $100,000 for waterproofing, water intrusion. This is part of our greater plan that ties into next year's Capital Program. This will be used for immediate concerns for the mansion. We have a lot of leaks, a lot of water intrusion, gutters and leaders need to be replaced and fixed. And while this contractor would be working on the roof this year, they would be assessing what is needed for next year's Capital Program.

We have a lot of problems with water intrusion. We're requesting $700,000 next year to do the work that they'll discover needs to be done on the mansion this year. We also have the power house, which is where the administrative offices are. Those roofs are leaking -- or that roof is leaking. The garages and sheds, those roofs are leaking. Even though those are called storage, they're still historic buildings and some of them are approaching 100 years old. So, I ask that you support this as part of our plan to protect the museum from additional damage.

However, I was talking to representatives from the County Executive's Office and I'd like this tabled for one cycle. The County Executive's Office is exploring other funding alternatives. So possibly we won't be using capital funds for this, but I'd like to table this for one cycle. That doesn't impact the overall timing. Public Works would be working on this early -- late spring or early summer. So to table for one cycle doesn't impact the appropriation.

On a related note, as many of you know, we all know the Planetarium is opening this Friday. And we expect -- we expect the public -- we expect overflow crowds. First show is Friday night at 8 PM followed by one at 9. We also have a private reception for friends and supporters, which is Thursday. And the response to that is overwhelming. We expect somewhere over 250 people there on Thursday night.

So I hope to see some of you there and thank you for your support for the planetarium renovations. This is a Capital Project that Suffolk County can be proud of. This is a Capital Project in these times with budget constraints and problems, I appreciate that Suffolk County values the education of our youth. We had 60,000 children going through here. The museum is one of the bigger educational institutions in this County and we do see the school children; so it's money well spent for the future of our children and to instill some excitement and the sense of exploring and understanding space and the sky that's all around us.

So I thank you for your help in making this really a spectacular Capital Program that we can all be proud of.

CHAIRPERSON NOWICK:
Lance, don't go anywhere. Legislator D'Amaro, did you have a question?

LEG. D'AMARO:
I did, thank you. Is this a new trend as far as alternate funding sources? This is in the Capital

Budget 100,000 for the roofs. So why not --

MR. REINHEIMER:
I'm not sure.

LEG. D'AMARO:
Yeah.

MR. REINHEIMER:
I think what they're looking for is -- well, Tom.

MR. VAUGHN:
If you don't mind, sir.

MR. REINHEIMER:
Sure. Tom can better explain it than I can.

LEG. D'AMARO:
Okay.

MR. VAUGHN:
Good afternoon, Legislator D'Amaro. We -- as you know, we are on kind of a short cycle. When we saw this bill come forward, we were having a meeting. There has been discussion about whether or not FEMA funding would be appropriate for hardening facilities. We just would like -- we would just like one cycle to explore whether or not that is a possibility; and if it is a possibility, we'd like to see it. If we can't figure it out within the next cycle then we were -- we're more than supportive of this Capital Project.

LEG. D'AMARO:
All right, thank you. Thanks.

CHAIRPERSON NOWICK:
Thank you, Lance.

MR. REINHEIMER:
Thank you.

CHAIRPERSON NOWICK:
Lori -- Lori Benilasa -- Benincasa. Sorry. Hello again, Lori.

MS. BENINCASA:
Hello. Good afternoon. I'm the Director of Health Education for the Department of Health Services. And I was before the Legislature last week to speak in favor of IR 180 -- 1086 and 1085. 1086 prohibits the distribution of stimulant drinks in County parks. I spoke in favor of the resolution and then representatives from the American Beverage Association got up one by one to speak. I've been a health educator with the Department for 34 years.

Last week's hearing was very reminiscent of the old tobacco control hearings we used to have when we were trying to pass tobacco control measures. The tobacco industry bombarded Legislators with questionable science that they said proved their products weren't harmful. They even told members of Congress that nicotine was not addictive and that tobacco use did not cause cancers.

My point is, you can find a study or twist a fact and make any statement that benefits your cause. The truth is stimulant drinks are very popular. They're largely unregulated. They cause irregular

and rapid heartbeats, dehydration, irritability, headaches and on and on. And they are mainly used by those in age groups between 11 and 35 years old. That comes from the Mayo Clinic.

At best the safety of these products is very questionable. At worst they could -- they have been responsible for more than 20,000 ER visits in 2011 and they have been blamed at least in part for the deaths of young people.

The sale of stimulant drinks on County property implies endorsement of the product by the County. At this time that seems imprudent. These products have no nutritional value. Those that contain sugar only add to the already high calorie diets of our youth. The job of public health professionals is to educate the public about the dangers of products that are harmful to their health. I believe that this measure will send a message to young people that stimulant drinks carry significant health risks.

CHAIRPERSON NOWICK:
Thank you for coming, Lori. I appreciate your input.

MS. BENINCASA:
My pleasure.

CHAIRPERSON NOWICK:
Does anybody have any questions? Okay.

MS. BENINCASA:
Thank you.

CHAIRPERSON NOWICK:
All right. John Palasek.

MR. PALASEK:
Hi, members of the Committee. My name's John Palasek. I represent South Yaphank -- South Yaphank Civic Association. I need to talk about the Trap and Skeet Range. We -- as you should know, the range was -- your licensee was found guilty of violating the Brookhaven Town noise law last December. We -- my neighborhood has sent easily hundreds of e-mails to Legislators and other people and have not heard back from anyone at all. Oddly enough, we did hear back from the Governor's Office so we overshot Long Island, but.

Our concern is the fact that this is still continuing even though you've been found -- he's been found guilty. You're allowing him to continue operations and my neighborhood is basically fed up. We've been dealing with this for over six years since reopening of this range.

Now, a lot of the people are going to say that -- a lot of people have said he has a right to appeal a conviction, which is what he's doing. From a law point of view, that's true; but from an ideological point of view I think that's ridiculous. Because everybody who is associated with the reopening of this range knew for three years prior to voting to reopen it that it was going to violate the law.

Steve Levy asked for and was denied an exemption to the Brookhaven Town noise law. Your own licensee acknowledged the noise law as being an issue. He wrote in his RFP statement, see if I can remember it almost verbatim, *while we would hope that the County of Suffolk can wield its influence to convince the Town of Brookhaven to exempt the range from its noise control codes, we're prepared to move ahead in any case*. To me that says three things: Number one, you're acknowledging a law. And number two, you're hoping for an exemption. And if the law is of no issue, then why would you need one? And, thirdly, and most insidiously, it suggests that regardless of what happens, you're prepared to break the law, which is what you ended up doing.

We told everyone about this for years before this was going -- your own County attorney stood in this very room on several occasions, Paul Sabatino, and told the Legislature in no uncertain terms that anybody who would operate this facility would have to comply with Brookhaven law. And yet you went and reopened it any way. So now after five and-a-half years of being held up in the judicial system by a lawsuit brought by your licensee challenging that law, the law he knew about and the law everyone else knew about, it finally got to the point where it was allowed to be adjudicated in criminal court. And one of the 150 or 175 violations was allowed to continue through and was -- he was determined to have been violating the law; and now, of course, he's appealing it.

What we can't understand is why you're allowing that to occur. You have it in your power, in your purview, to simply close this range, which it should be closed. But, if you don't want to close it, what we would hope you could do is at least cease operations at this facility until such time as all of the legal issues are adjudicated and all of the decisions that need to be made are made. This is what should have occurred before the range was reopened. All of this should have been taken care of prior to reopening the range, but it wasn't because everybody was in a rush to reopen it.

What would it hurt to cease operations at this point? It would level the playing field. Your licensee has been jamming up the system for five and-a-half years with pointless motions and adjournments because he wants to drag this out. What we need is a level playing field. And the way to do it is to tell him that he can't operate and still play the system, that he has to have a reason to go to court. And the only way to make him go to court is to tell him that you can't operate your facility unless you go to court. And why is it that we have to suffer with this after five years of it being closed, after it being a controversy before it was reopened --

CHAIRPERSON NOWICK:
Mr. Palasek, could you wrap it up please, your three minutes is up.

MR. PALASEK:
-- and now it's even more of a controversy after it reopened? It's simply wrong and something needs to be done with it. It's time to stop playing games with this. You need to make a decision on this. Thank you.

CHAIRPERSON NOWICK:
Thank you. Does anybody have any questions?

LEG. HAHN:
Can the Commissioner speak to that?

CHAIRPERSON NOWICK:
After Public Portion.

Miriam Guggenheim.

MS. GUGGENHEIM:
Hello, again. I'm Miriam Guggenheim, here to speak about resolution 1086 on behalf of the American Beverage Association. I'm a partner in the law firm of Covington and Burling in Washington here to speak with you about the federal regulatory system that governs the safety and labeling of energy drinks. I won't -- I'll try not to repeat what I said last week. I'll try to just focus on areas that may have been unresolved.

So first, as I discussed last week, just to recap, FDA fully regulates energy drinks, their ingredients and labeling. The agency has been carefully reviewing the safety of energy drinks for more than four years. Though its review is ongoing, FDA stated recently in a letter to Senator Durbin, and I quote, "the available studies do not indicate any new, previously unknown risks associated with

caffeine consumption." FDA also commissioned an in-depth analysis of caffeine consumption by teens and adults, which 2010 data showed that energy drinks contribute only a small portion of the caffeine consumed, even for teens.

Like this Legislature -- and, I'm sorry, I forgot to pass around my testimony. Like this Legislature, Senator Durbin had questions for FDA about the potential interactions and cumulative effects of other ingredients in energy drinks. FDA said that it had searched the scientific literature and has not found any information that calls into question the safety of ingredients such as taurine or guarana as currently used in beverages. Specifically regarding combinations of ingredients, FDA responded quote, "FDA has yet to identify any safety studies that call into question the safety of combinations of various ingredients added to energy drinks under intended conditions of use." Closed quote. FDA committed that if it determines that any such combinations are of concern, it will consider regulatory action as well as other options, such as conducting any needed scientific studies. Thus, FDA, the agency with the jurisdiction over and great expertise in food safety, has specifically examined the issues of concern to this Legislature, and has concluded that the scientific literature reveals no evidence for concern.

FDA also expressly debunked the myth that the American Academy of Pediatrics, or AAP, recommends a caffeine limit for children and adolescents of 100 milligrams per day. In its November 2012 letter to Senator Durbin, the agency states quote, "FDA contacted the AAP and reviewed its website and was unable to verify an AAP policy statement for the cited value of 100 milligrams caffeine per day as the upper limit of caffeine consumption for adolescents." Closed quote.

The reason for this myth is that the authors of an article published in the journal, *Pediatrics,* made the recommendation of this limit, but this is not a AAP recommendation. Rather, it is a recommendation in an article whose lead author is not even a doctor and has only an undergraduate degree. That 100 milligram statement has no scientific basis but was simply chosen by the author, as explained in detail in the response of Monster Beverage Corporation to Senator Durbin, which I understand you've all received. Notably, the key scientific articles in that submission are government studies by the NIH, the Institute of Medicine, the OECD, and the European Food Safety Authority. These are not industry-sponsored studies.

Finally, I wish to reiterate that a key reason that energy drinks are labeled as not recommended for children is in light of FDA's labeling for OTC caffeine drugs. Those directions state, quote, "Adults and children 12 years of age and over: Oral dosage is 100 to 200 milligrams not more often than every three to four hours." Closed quote. Thus, FDA concluded that persons age 12 and older can safely consume up to 200 milligrams of caffeine acutely, and may do so safely multiple times per day. That is not to say that such amounts are recommended, but that they are safe.

CHAIRPERSON NOWICK:
Thank you, Ms. Guggenheim. Just a few things I wanted to mention, but first and foremost you wish to reiterate that a key reason that energy drinks are labeled as not recommended for children is in light of FDA's labeling for OTC caffeine drugs. The reason -- I have to disagree. Because the reason that labeling is on the can, if my colleagues don't mind hearing it again, is that two years ago we had legislation -- I had legislation here, that was intended to ban the sale to minors. Those labels were not on the drinks two years ago. Those labels, as you well know, are on the drinks because I worked with the American Beverage Association, particularly, to label the drinks. That's when those drinks were labeled. I don't believe it had anything to do with the FDA, the OTC, the GFA, any of the A's.

MS. GUGGENHEIM:
So Monster Energy drink has had that label since it first marketed the Monster Energy drink in 2002 --

CHAIRPERSON NOWICK:
Monster was not --

MS. GUGGENHEIM:
-- but they also appreciate that you extended that to the entire industry because it should be on every product.

CHAIRPERSON NOWICK:
But it's not on every one. It is -- American Beverage Association worked with us.

MS. GUGGENHEIM:
Yes.

CHAIRPERSON NOWICK:
And to their credit, and I've checked every can that I find, to their credit they actually did label those cans.

MS. GUGGENHEIM:
And they should be.

CHAIRPERSON NOWICK:
But they don't label them overseas, I notice. And maybe that has nothing to do with the American Beverage Association. I noticed in other countries when I've seen the cans, they're not labeled.

MS. GUGGENHEIM:
I just don't know.

CHAIRPERSON NOWICK:
Be that as it may. I wanted to ask you another question. When you say that the FDA regulates, do you mean that the FDA regulates the can itself with the different ingredients or do they regulate, for example, they've regulated caffeine, taurine. Do they regulate it -- do -- after it goes to the manufacturer and does it -- is the response to the regulation because there have been reported overdoses or are they regulating an entire can of, let's just for -- let's say an entire can of Monster, are they coming out and saying *this can is regulated by the FDA, this concoction, this cocktail is* -- is that how they do it?

MS. GUGGENHEIM:
So FDA regulates energy drinks in the exact same way they regulate Coke, that they regulate any bottled coffee, that they regulate breakfast cereal, that they regulate any food. FDA regulates the safety of all ingredients. There is an FDA mandated safety standard that is both statutory and regulatory.

CHAIRPERSON NOWICK:
But do they regulate it individually? Taurine is regulated? Guarana is regulated? Caffeine is regulated?

MS. GUGGENHEIM:
All ingredients in any product including in energy drinks have to be --

CHAIRPERSON NOWICK:
Okay, but that's not what I'm asking you.

MS. GUGGENHEIM:
I think you're asking is there a preapproval system.

CHAIRPERSON NOWICK:
No, that's not what I'm asking. What I'm asking is, and I think this is what -- Dr. Spencer brought this up.

MS. GUGGENHEIM:
Yeah, this -- both the finished product as well as the individual ingredients must be safe.

CHAIRPERSON NOWICK:
So the product -- all of these ingredients together into this one drink --

MS. GUGGENHEIM:
Must be safe.

CHAIRPERSON NOWICK:
-- has been regulated by the FDA.

MS. GUGGENHEIM:
Yes, it all must be safe. The individual ingredients must be safe, the finished product must be safe.

CHAIRPERSON NOWICK:
Okay.

MS. GUGGENHEIM:
And the finished product also must be labeled in accordance with FDA regulations.

CHAIRPERSON NOWICK:
Does the finished product say regulated by FDA or FDA approved?

MS. GUGGENHEIM:
Like all food, it, in fact, cannot say that.

CHAIRPERSON NOWICK:
It cannot.

MS. GUGGENHEIM:
No.

CHAIRPERSON NOWICK:
Oh, I didn't realize that. Why is that?

MS. GUGGENHEIM:
Because FDA doesn't go and bless any individual standalone product.

CHAIRPERSON NOWICK:
So the FDA has not blessed --

MS. GUGGENHEIM:
It's not like a drug --

CHAIRPERSON NOWICK:
Okay.

MS. GUGGENHEIM:
-- where you have FDA approved drugs. No foods. I mean, I would certainly counsel all of my

clients never to say for any food product whatsoever that it is FDA approved.

CHAIRPERSON NOWICK:
So then when --

MS. GUGGENHEIM:
It is certainly regulated.

CHAIRPERSON NOWICK:
-- then the bottle or the can of Monster is not FDA approved, but different --

MS. GUGGENHEIM:
Just like a can of Coke is not FDA approved.

CHAIRPERSON NOWICK:
Okay. No, no, but we're not talking about Coke.

MS. GUGGENHEIM:
Yeah, right.

CHAIRPERSON NOWICK:
We're just talking about Monster. So it's not FDA approved then.

MS. GUGGENHEIM:
It is the same as every other beverage.

CHAIRPERSON NOWICK:
Okay, but that wasn't the question. It's not FDA approved. I think -- and the point I'm getting to is I think that's where the confusion comes in because one minute I'm thinking FDA approved, the next minute I'm thinking it's not FDA approved.

MS. GUGGENHEIM:
I think the confusion is, is in trying to figure out if these are treated differently. What I'm trying to explain is that energy drinks are treated the same as all other beverages on the market.

CHAIRPERSON NOWICK:
Right, but the beverage we're talking about is the energy drink so that's why I'm separating it.

The other thing is -- no, actually I'm good. Does anybody else have any other questions? Legislator Lindsay.

P.O. LINDSAY:
Yeah, Miss Guggenheim, and I'm sure it's an oversight that you're not familiar with our local laws. You're speaking before us, I guess, for the second time now. And we do have lobbying legislation in this County. You really should register as a lobbyist.

MS. GUGGENHEIM:
We had that evaluated again after our meeting yesterday and again the conclusion was -- so the American Beverage Association has registered. Its government affairs personnel have registered. But upon another, again, review of the law, it was concluded that experts who testify in response to a call for public comments are not lobbyists and are not required to register. And the fact that we have been paid apparently is not material based on our reading of the law. So we have looked at that again. If you can continue to disagree -- I'm happy to do it, it's not that I'm adverse.

P.O. LINDSAY:
I'll check with our attorneys, I mean, but I don't know what fine line you's are splitting here, that you're not lobbying.

MS. GUGGENHEIM:
All I know is that that statute was evaluated and the conclusion was --

P.O. LINDSAY:
Yeah, 'cause you look like a lobbyist, you sound like a lobbyist. **(Laughter)** Okay.

MS. GUGGENHEIM:
Everyone here has their agenda. But I hope that I'm just explaining the facts.

CHAIRPERSON NOWICK:
One of you wanted to -- Legislator D'Amaro.

LEG. D'AMARO:
Thank you. And, Ms. Guggenheim, welcome back, nice to see you.

MS. GUGGENHEIM:
Thanks.

LEG. D'AMARO:
I appreciate you being here. You know, the FDA treats the energy drinks the same as all other beverages it has jurisdiction over. It doesn't necessarily mean it's safe, it just means they treat them the same.

I wanted to just -- I'm looking at your written testimony. I know we had an at length hearing on this the other day. I don't want to go into all of that again, but I do appreciate you coming back.

The first point that I wanted to make, you quoted a portion of a letter to Senator Durbin that says "the available studies do not indicate any new previously unknown risks associated with caffeine consumption." Why are you quoting that?

MS. GUGGENHEIM:
I'm quoting it to show two things: One, that FDA's actively involved in the oversight of energy drinks because it has undertaken this review over at least four years. As part of that review, its survey, all recent caffeine literature, recently published studies. And that was its conclusion after that survey of recent literature. There's a concern that there's maybe some new risk or some different risk than my agency had previously understood and they confirmed that there was not such new or different risk.

LEG. D'AMARO:
There are concerns about the additives. But with respect to caffeine itself, the way I read that quote is that there are known risks to caffeine consumption.

MS. GUGGENHEIM:
There are certain known risks of caffeine consumption --

LEG. D'AMARO:
Right.

MS. GUGGENHEIM:
-- for certain populations, yes.

LEG. D'AMARO:
Correct. So quoting it here, I mean, it's fine that the FDA did not uncover any new previously unknown risks associated with caffeine, but there are many known risks with caffeine.

MS. GUGGENHEIM:
So remembering that FDA regulates and products must be safe based on their intended use, the agency's conclusion was that there are no risks that make this product under its intended conditions of use unsafe. Now, what it did say is that it is conducting further study and it's actually commissioned the -- the IOM --

LEG. D'AMARO:
Well, let me -- right.

MS. GUGGENHEIM:
-- to have an advisory committee to evaluate whether there are sensitivities to particular subpopulations.

LEG. D'AMARO:
Let me get to my second point and I appreciate how you worded that very carefully because frankly there are risks associated with caffeine consumption. In the next paragraph you again quote the same letter, "FDA has yet to identify any safety studies that call into question the safety of combinations of various ingredients added to energy -- energy drinks," and I'll emphasize this, "under intended -- under intended conditions of use."

MS. GUGGENHEIM:
Correct.

LEG. D'AMARO:
Well, sure, if you drink one cup of coffee a day with caffeine as it's intended to be used, I would doubt there's an associated or a high risk.

MS. GUGGENHEIM:
So with foods different --

LEG. D'AMARO:
Let me finish, please.

MS. GUGGENHEIM:
Sure.

LEG. D'AMARO:
So my point is that you have known risks to caffeine. The concern is marketing. This bill concerns -- well, the bill here actually is about selling in parks, availability in parks. But my concern is not so much when it's used as intended, but when it's abused. Now, that couples into the fact of the whole concept of marketing. Coffee is not marketed. Iced-tea is not marketed as a energy -- a source of energy for people, almost like enhancing performance. So the problem is that the way this product is labeled as an energy drink, the way it's known in the general marketplace, the way it's then marketed opens it up to much more abuse. So it's not about the intended use; it's the abuse of the product.

MS. GUGGENHEIM:
Well, actually all of those factors that you just indicated are intended conditions of use.

LEG. D'AMARO:
Now, wait, let me just finish, let me just finish. But let me finish, all right, and then I promise you, I'll give you all the time you need.

MS. GUGGENHEIM:
Okay, sure.

LEG. D'AMARO:
So -- so what are we talking about here? We're talking about a substance that has known risks that could be substantial risks if it's abused, the product's abused. And you're marketing it in a way that encourages -- almost encourages in my mind, abuse. Because it's saying *drink this product, you'll feel great, you'll perform better, you'll have more energy.*

See, that's the problem here. That's where you need to really think about why you would oppose a bill that would prohibit that marketing to minors. Because what you're doing is you're training them at an early age that this stuff is great, this stuff gives you energy, there's no problem with drinking this and that's going to lead to the abuse.

MS. GUGGENHEIM:
So all of those factors factor in to intended conditions of use. This isn't like a drug product where you have, you know, directions from your doctor as to how to take it. When one evaluates the safety of a food product, one must consider how people actually use it, not how they're told to use it, but how they actually use it. And you consider the 50th percentile consumer and you consider the 90th percentile consumer and it's got to be safe for both. So all of those aspects of how it's marketed and how people are probably likely to use it do have to factor into that safety conclusion.

LEG. D'AMARO:
Okay, I understand that point, but I don't really see it that way and let me tell you why. In my opinion, the FDA regulates Coke and Pepsi the way we regulate energy drinks, in my opinion, okay, the use of soda under intended conditions of use, even if it's assuming an abuse of that, is leading to all kinds of health problems across our entire nation if not the entire globe. So because the FDA is making this conclusion, they're not endorsing the product as safe. They're just saying if you use it as intended, there are associated risks with this, but maybe not rising to a level in the short-term of a catastrophic event, but over the long haul you're going -- these higher risks are going to affect kids. For example, you keep going back to soda, soda, soda. I have to tell you, soda, is, you know, I'm not going to debate Mayor Bloomberg's proposal that got struck down, I think, unrightfully, but the bottom line is this stuff is -- is leading to a healthcare epidemic and crises in this nation.

So you can quote the FDA and, you know, we can talk about that all day. But the FDA, if they're regulating soda, then they've lost all credibility with me. Because as far as I'm concerned soda should have the same level of concern that we're showing for your energy drink.

MS. GUGGENHEIM:
Well, I think actually our conversation would be much different if your bill was treating soda equally, which it doesn't.

LEG. D'AMARO:
Okay. That's fair.

MS. GUGGENHEIM:
But in terms of evaluating how people are using and abusing potentially energy drinks, FDA specifically looked at just that. They commissioned a study as to how and who are actually consuming energy drinks. And what they found was that caffeine content across the population has

remained the same over the past 30 years. That caffeine content is still primarily from tea, coffee and soda even for teenagers; that teenagers were getting only a small proportion of their caffeine intake from energy drinks, that it was vastly overshadowed by their intake from coffee, as well as from other sources.

They did say our data don't necessarily count for every aberrational use of the products. And that is one of the questions that they are having IOM look into. I think you'll hear from -- from many folks that the answer to abuse of any substance is not necessarily a ban. We know there are many things that are banned or banned for certain ages and that isn't necessarily getting at the abuse problem. And how we tend to get at that with other issues of public health concern is through education.

LEG. D'AMARO:
I agree. I think the public needs to be educated whether it's sugar or, you know, caffeine, whatever it is. But again, in making the comparison and talking about the FDA and the dry statistics and all of that, at the end of the day you're putting these cans next to the Coke, and next to the Snapple iced teas and kids are reaching for your can because it is marketed specifically to be attractive to them. And what's happening is coffee, soda, it's not necessarily marketed the same way and inherently your marketing fails because you're known as an energy drink. You're telling these kids that this is the answer, this is going to give you the stamina that you need to get through things. And that's where your caffeine delivery device is different than every other caffeine and sugar delivery device out there. It's what it's labeled and how it's marketed. And I agree with you --

MS. GUGGENHEIM:
But the data are showing that marketing perhaps isn't successful as you're saying because kids are still consuming way more coffee, tea and soda.

LEG. D'AMARO:
Right, but you're out to change all that. Right. So let's -- I'd like to keep it that way, okay.

MS. GUGGENHEIM:
If I could actually just take this opportunity to go back to a question that we haven't raised recently but it goes to that, these products, at least some of them, were originally marketed as dietary supplements because they were intended to convey that these are for a specific purpose and not for ad libitum consumption like soda. Frankly, they're priced way higher than soda. And that in and of itself -- you know, I'm not going to deny a profit motive there, but it was also to -- these are -- you know, these are for limited consumption. They're a different type of product and they are not intended to be just generally for refreshment or to have it like you would drink other beverages. They got a lot of criticism for that and that's why, you know, companies who used to market that way have shifted to the conventional beverage category. But they're like, *hey look, you know, we're sort of dammed if we do, dammed if we don't. We thought that this was the right thing to do, you think it's something different, fine, we'll change it.*

LEG. D'AMARO:
Okay. All right. Let me ask my last question and then I'll yield. The -- there's a lot of stories out there, literature, about the fact that emergency room visits with caffeine related conditions has doubled. The number I see most often is 10,000 visits to 20,000 visits in that ballpark. That's particularly true with younger patients ages 18 to 25. And what I've been reading is that the energy drinks are contributing to that increase. Any -- any comment on that?

MS. GUGGENHEIM:
Yes, I believe you're referring to the DAWN Report by the Substance Abuse and Mental Health Administration.

LEG. D'AMARO:
Correct.

MS. GUGGENHEIM:
So, it is difficult to glean anything from that report because all they simply reported was that somebody had come in and they -- among all of the things that they had taken in lately, they're asked about certain things. It's a drug abuse warning system. So they're asked about drugs and recently they started being asked about energy drinks. They don't ask about any other source of caffeine consumption. The author of that report was asked, well, wouldn't caffeine have -- wouldn't coffee have the same effect? And he said "it probably would, but we don't look for that." And he said "and we also don't ask about dosages."

So, unfortunately that doesn't give us much insight at all about this ten to 20,000 out of a 136 million emergency room visits. FDA has asked for the underlying data so that they can see whether there really is a basis for any causality. But based on what they -- based on what the data were collected, there's very little that anyone can glean from that. As I think you know, 42% of those visits were associated with alcohol or with drugs by the patient's own admission -- query whether others may have been as well. We just don't have adequate data.

LEG. D'AMARO:
Let me ask you one last question. So, as I'm getting into advanced age, sometimes you have more problem sleeping than other nights. Some nights are better than others.

MS. GUGGENHEIM:
And yet caffeine is good for Alzheimer's.

LEG. D'AMARO:
Well, I want to ask you this. **(Laughter)**. I'll take that under the advice of my physician. But, anyway, I want to ask you this. So in one of these nights where you don't sleep too well, for whatever reason you get up and you know how you feel tired and it's gonna just be more difficult to get through the day, right? Should I reach for a Monster Energy drink or any other energy drink? Is that the answer?

MS. GUGGENHEIM:
I think the choice is yours. I'm not going to tell you what to -- what to drink.

LEG. D'AMARO:
Would you recommend it?

MS. GUGGENHEIM:
I'm a coffee drinker myself.

LEG. D'AMARO:
Ah-ha. Okay.

MS. GUGGENHEIM:
(Laughter). Half-caff.

LEG. D'AMARO:
All right. Thank you, again. I appreciate your -- your testimony.

CHAIRPERSON NOWICK:
Legislator Stern.

LEG. STERN:
Thank you, Madam Chair and Miss Guggenheim, welcome back. I know that you wanted to move off of some of the things that were previously discussed last time.

MS. GUGGENHEIM:
No, I'm happy to -- I just didn't want to bore you.

LEG. STERN:
But, let's bore everybody again.

MS. GUGGENHEIM:
Sure.

LEG. STERN:
I wanted to go back to -- to some of the things that you had raised last time and tried to go through some of the regulatory framework --

MS. GUGGENHEIM:
Thank you, sure.

LEG. STERN:
-- that is really what your -- where your area of specialization lies.

MS. GUGGENHEIM:
Yes, yes.

LEG. STERN:
Take me through again the -- the framework FDA specifically as it relates to the product that we're talking about. And there was some confusion -- you were having a conversation after your testimony as to right now whether it's regulated by FDA as a food product or as a supplement product. Can you take me through how it's currently regulated and the differences between the two categories.

MS. GUGGENHEIM:
Sure. I'll talk you through the difference. Let me just jump to the final answer, which is that I think all of the energy drinks other than the shot products, the 2 ounce shot products, are now being marketed as conventional beverages, conventional foods. And if they're not on the shelf like that already, they will be within the next few months.

So the statutory definitions in the Federal Food Drug and Cosmetic Act for everything, for food, supplements, drugs, medical devices, cosmetics, all turn on the intended use of a substance. Food is defined, not helpfully, as articles used for food and drink and -- by man or other animals. Dietary supplements are food. They are a subset of food and they are specifically defined as articles intended to supplement the diet with one or more dietary ingredients. And then the statute goes onto give the categories of what would constitute a dietary ingredient and then there's more detail as to what can and can't be a dietary supplement.

So going back to what I was alluding to earlier, dietary supplements tend to be specifically intended to deliver certain ingredients whereas foods are -- the case law definition is actually, substances primarily consumed for taste, aroma or nutritive value whereas dietary supplements are consumed for particular ingredients.
The regulatory system, there are -- there are commonalities and differences and I'll spend as much or as little time as you want on this, again, recognizing that ultimately now that they're all foods, there's no FDA approval process for either -- either category. And every ingredient in a -- in a food

product has to be either an FDA approved food additive or a substance that's generally recognized as safe. That schematic does not apply to dietary supplements. There's a different way that you evaluate the safety of the dietary ingredients in a dietary supplement. The dietary ingredients are those -- the nutrients or the ingredients that if you were to be in the drug world you might call "the actives." We don't use that term in dietary supplement regulation. And then things like fillers or water or juice based, they're going to still be subject to that same food additive grass substance regulation.

So for the dietary ingredients, the world is bisected based on the date of the Dietary Supplement Health and Education Act, which amended the Food Drug and Cosmetic Act and that was October 15th, 1994. Dietary ingredients that were marketed in dietary supplements in the US prior to that date are called old dietary ingredients or grandfather dietary ingredients. Congress made a finding that those were safe and those can continue to come on the market without any exchange with FDA. If they are post October 15th, 1994 ingredients, they are new dietary ingredients. New dietary ingredients need to be the subject of a new dietary ingredient notification to FDA, which it's supposed to identify based on science that the ingredient and the ingredient used in a finished product will meet the safety standard. There is an exemption from that notification requirement for things that are new dietary ingredients, but had been in the food supply consumed as food. So, for example, if you discover that a constituent in pomegranate has health benefits and you extract that and you market that alone, if it's the same thing, if it's not chemically altered, it is a new dietary ingredient, but it's not one that needs notification to FDA.

LEG. STERN:
So just from your explanation, it would sound to me then if the -- if the ingredients that are under consideration as part of the dietary supplement if there's a -- a requirement that they go through analysis to determine how they might be used for a specific purpose, would you say that -- that there's a higher standard that goes along with that classification?

MS. GUGGENHEIM:
So a lot of people do say that and they say as a counter to this notion that dietary supplements are less regulated. In many respects they are indeed more regulated and that is one of them. I will say that the ingredients in the energy drinks with which I am familiar are all old dietary ingredients.

LEG. STERN:
Can you repeat that?

MS. GUGGENHEIM:
Oh, sure. All the ingredients in the -- in the energy drink products that I'm familiar with, which are pretty much the core American Beverage Association member products all -- even if marketed as dietary supplements, those were all old dietary ingredients.

LEG. STERN:
Those are all pre 1994, 1995 ingredients.

MS. GUGGENHEIM:
Right, right. I believe so.

LEG. STERN:
What would be an example of a -- of a newer ingredient that would have come after and subject to the new framework?

MS. GUGGENHEIM:
I'm trying to think through -- through some -- some of, like, the novel dietary ingredients that are in some of the sport supplements are -- are post '94 dietary ingredients. There have been

notifications for things like zeaxanthin, which frankly, I'm not sure why that was actually notified cause it would seem to me to meet the definition of one that doesn't need notifications extracted from red type plant so you can get it out of peppers, you can also get it -- it's mostly from marigold. That's one that was the subject of a -- a new dietary ingredient notification.

LEG. STERN:
So, let me ask you this: When -- when you say and when we've read in articles that there are members of congress, senators and congressmen, I think you had alluded to, that were asking questions about the safety of the product, and then there are these calls for greater regulation --

MS. GUGGENHEIM:
Yeah.

LEG. STERN:
-- what directions specifically do they -- do they wish to see happen? Is it a change of classification from one side to the other side or is it more analysis or a combination of the two? What are they calling for?

MS. GUGGENHEIM:
I think it depends on who's calling and it can be any or all of the above. So, Senator Durbin has never been satisfied since 1994 with the regulatory scheme for dietary supplements. So part of his concern with respect to energy drinks was those that were marketed as dietary supplements, but that doesn't seem to be the limit of his concern because he raised concerns about the ones that had always been conventional beverages; and the fact that most have shifted over hasn't changed his view. Others just want to make sure that FDA is doing its job in general.

LEG. STERN:
We did spend some time all of us together last time, our last session, talking about the difference between energy and a stimulant and where our sources of stimulant or energy came from. The bill before us today, the definition is a stimulant drink. And I know that you had an issue with that. I was wondering if you can go through that -- that specific issue again.

MS. GUGGENHEIM:
I will, but I think also Dr. Coughlin will probably address that as well. So I -- I'll take the easy piece of that first.

LEG. STERN:
By the way, just so you know, I'm more interested in the -- the regulatory --

MS. GUGGENHEIM:
The regulatory, right.

LEG. STERN:
-- statutory issue rather than the --

MS. GUGGENHEIM:
Okay, perfect.

LEG. STERN:
-- the scientific question, I think, we -- we spent a great deal of time on that last time, but go ahead.

MS. GUGGENHEIM:
Perfect. So I will address that. So -- so the products are labeled as energy drinks so I had raised

the question just administratively wasn't it going to be difficult to enforce something that's a -- a limit on stimulant drinks when someone picks up a product and it's not labeled as a stimulant drink, it's labeled as an energy drink, how is that person supposed to know this is subject to this particular resolution?

But what I was talking to in terms of the regulatory scheme is FDA's common or usual name rules, which state that the name of an ingredient or the statement of identity of a finished product has to appropriately characterize what the product is. It has to name similar types of things similarly and distinguish among different types of things. And the conclusion is among the industry that energy drink is the appropriate common or usual name for this product category and obviously has been adopted across the product category as a common or usual name should -- should be if people are doing what they're supposed to be doing because the products are demonstrated to deliver energy and not just stimulation. While caffeine is a stimulant, at least for the mainstream product, and again, I'm just not familiar with some of the -- the fringe ones and, frankly, I think American Beverage Association would not -- let me not speak for them, let me speak for myself personally, I don't think anybody would mind if you went after the aberrational bad actors, I think, it would be doing everybody else a favor.

But with respect to the mainstream companies, caffeine is the only stimulant ingredient, but caffeine also delivers energy and there are many other of the ingredients that do deliver energy and we talked briefly about that. Here I am veering into the science and I'll tell you what I know with the caveat that I am a lawyer, but I have been educated about this. So taurine delivers energy and it has been shown in certain studies to -- to deliver that energy performance.

There was a study conducted on the Monster Energy drink. It's referred to in the submission that we circulated to you; is actually in press at the time, it had been published online but it just came out in print yesterday that documents the energy performance benefit of that finished product. So, again, just ratifying that it is not just the caffeine in there, but that the product does indeed deliver energy and we talked last time about the way L-Carnitine emulsifies energy at the cellular level and other ingredients have that function as well.

So, again, the conclusion is that energy drink is an appropriate characterization of the products and stimulant drink is not.

LEG. STERN:
Thank you.

CHAIRPERSON NOWICK:
You're the attorney for the American Beverage Association?

MS. GUGGENHEIM:
Yes.

CHAIRPERSON NOWICK:
Okay.

MS. GUGGENHEIM:
Well, I'm here -- they have other attorneys as well, yeah.

CHAIRPERSON NOWICK:
All right. Thank you.

MS. GUGGENHEIM:
Sure.

CHAIRPERSON NOWICK:
John White. John White is not here? Jim Coughlin?

MR. COUGHLIN:
Good afternoon. I want to thank you for the opportunity to present some scientific issues and facts with you today. My name is Dr. James R. Coughlin. I'm an independent consultant in food chemistry and food toxicology. And over the past 40 years food safety has been -- food safety and food toxicology has been --

CHAIRPERSON NOWICK:
Lift that up and lean in a little.

MR. COUGHLIN:
Sure. Yes, okay. And lean in a little? And food toxicology. These are my major areas of expertise. I received my Masters and PhD degrees at the University of California Davis in the '70s and did extensive extra training also at University of California in toxicology.

To let you know that I'm not just a crazy Californian appearing before you, I was born and raised in your State capital, spent 22 years there. The Army took me to California and Korea during some very difficult Vietnam War days and -- and then I returned. I spent from 1981 to 1991 at General Foods headquarters in White Plains. And when I arrived there in '81, they told me "you're going to spend half your life on coffee and health and caffeine and health and, you know, Maxwell House and Sanka." And I was also in charge of health and safety issues related to your beloved Entenmann's and we can still get Entenmann's products in southern California; Freihofer's as well, but Entenmann's I'm sure, you know, you all know it very well.

I spent -- in this entire process I've spent over 30 years then in coffee, caffeine and health issues that are related. And also still serving on the Board of the Paris Based Professional Scientific Society for Coffee Scientists. So I live and breathe this everyday.

What I'd like to -- to quickly summarize, I know that time is short, but the health outcomes of caffeine -- this is my major conclusion -- they've been thoroughly studied even before I started into it back in 1981. It's been decades and decades. And the best available scientific and clinical evidence that we've amassed thousands and thousands of studies that I've reviewed and read and evaluated, I even helped to design some of the research while I was at General Foods shows that -- that there's no health and safety issue related to caffeine consumption. My comments will just be related to -- to caffeine. It's been well established, it's safe.

The content of caffeine that we have in energy drinks, there's a range depending upon the energy drink but it's about equal to, if you look at eight ounces of energy drink, eight ounces of coffee, it's about equal to what's in homebrewed coffee. But when you compare it to Starbucks and the other coffeehouses, it's probably half the level of caffeine per ounce compared to stronger brewed coffees.

So you heard from Miriam also that the main sources of caffeine, even for -- for children and adults and late teens is across the range. It's more from, you know, experimenting with coffee, having tea, having cola beverages. And we've now had a recent, you know, surge in energy drink consumption so that's adding to the mix at this point.

Let me jump to some health outcomes. I mentioned that there -- I've been at this for over 30 years, thousands of studies, some of what you see, some of the things I've seen referenced in your -- in your resolution is anecdotal information on one or two of these things, sometimes get published one or two patients that show up someplace or they get reported in the literature, but we've amassed over the past 30 years studies on millions and millions of people across the globe and there really hasn't been -- we can -- I can safely say today, because I've been living and

breathing this, that there's no adverse health effects from moderate caffeine consumption in any populations in the world. And, in fact, I know this is not the purpose of today, there are so many health benefits of consuming caffeine containing beverages like coffee, but that -- that might be for another day.

One of the examples, we talk about blood pressure and hypertension and people think that -- that caffeine is raising blood pressure. That -- that issue was -- was completed by 1985. Dave Robertson then at Vanderbilt University did a major study. It was funded by the government and showed that blood pressure was not only -- was not -- there was no increase in blood pressure among caffeine consumers including those people who were already hypertensive. So that's -- we thought we put that to rest back in -- in 1985 and there's been no change.

Looking at more recent studies, massive epidemiology --

CHAIRPERSON NOWICK:
I have to warn you that -- if you could just wrap up.

MR. COUGHLIN:
Yeah, sure. I'd like to conclude by just giving you my advice, my scientific and clinical advice, that a sales ban on the prohibition of energy drinks for any kind, I don't think that can be supported by the current scientific evidence. Caffeine has been widely consumed for millennia in all countries and most people. I heard a question earlier, most people, actually we call it, titrating their level. I'm sure all of you know how much caffeine in your -- in your diet in your day is too much and your -- you just kind of self-regulate or titrate -- titrate to that level because of the -- the stimulant effect of caffeine, the equivalency between what's -- how many milligrams of caffeine that are in a beverage, an energy drink versus homebrewed coffee and less than regular coffee.

And finally just massive evidence by medical and clinical studies all over the world showing that caffeine consumption at moderate intakes has not been shown to be a risk to children, to teens or adults. Thank you.

CHAIRPERSON NOWICK:
Thank you. Don't go away.

MR. COUGHLIN:
Okay.

CHAIRPERSON NOWICK:
To be fair, I felt that energy drinks should not be sold to children under a certain age. I think their systems are not fully developed, their brains aren't fully developed and I think they could be overused. But be that as it may, your association agrees that this is not recommended for children, pregnant women or nursing mothers. Is that correct?

MR. COUGHLIN:
That's correct, that's the voluntary labeling guidelines that companies are agreed to.

CHAIRPERSON NOWICK:
Well, yes, so to speak, voluntary. How -- if such a legislation as we have today is not approved, but yet the American Beverage Association feels that these drinks are not recommended for children, pregnant mothers, pregnant women or nursing mothers, how would you then feel if we just had signage to let mostly moms and dads know that this is not recommended?

MR. COUGHLIN:
I don't think that's a scientific question necessarily. It's more of a marketing and advertising and -- it's not even a regulatory question, but -- the caffeine content of the cans is clearly shown on energy drinks. It's not shown on coffee and -- and soft drinks in terms of milligrams. So this, you know, they are voluntarily putting the caffeine content on the energy drink products.

CHAIRPERSON NOWICK:
Do you put that, not recommended for children on the can, because you feel it -- this drink is not healthwise good for children?

MR. COUGHLIN:
No, it -- that is not on there because there's been studies showing that it's -- that it's risky for children or, you know, it has caused adverse health effects. It's more of a societal and parental reason, I think, and I can't -- I can't talk to the marketing and labeling aspects; I'm a scientist. But it's certainly on there to inform pregnant women specifically, that has been an issue since I started back in 1981 when I started studying caffeine issues and authorities around the world, including FDA, European Food Safety Authority, Health Canada; 300 milligrams of caffeine, which is, you know, three small cups of coffee, is -- if a pregnant woman wants to drink that, we've got massive studies showing that she doesn't have to worry about it, but most across take the advice of their doctor and, you know, they eliminate their wine and they eliminate their -- their, you know, caffeine consumption usually during pregnancy just to be cautious.

CHAIRPERSON NOWICK:
Thank you. Anybody else have a question?

LEG. D'AMARO:
Just very quickly.

CHAIRPERSON NOWICK:
Legislator D'Amaro.

LEG. D'AMARO:
Thank you. I'm sorry, are you a doctor, did you say?

MR. COUGHLIN:
A PhD, toxicologist, not an MD.

LEG. D'AMARO:
Toxicologist, okay.

MR. COUGHLIN:
Right.

LEG. D'AMARO:
Is -- so caffeine is delivered -- one of the ways it's delivered is through an energy drink. Is caffeine addictive?

MR. COUGHLIN:
Absolutely not. And that issue started -- probably first came to the floor back in 1987 and '88. It's been thoroughly studied. There's publications about it and the -- the DSM, the American Psychiatric Association's DSM manual that describes all the -- the mental disorders -- has not labeled or called caffeine addictive. It is -- we don't believe it's an addictive substance.

LEG. D'AMARO:
That's interesting. Is caffeine a stimulant?

MR. COUGHLIN:
Caffeine is a stimulant. Caffeine is a central nervous system stimulant. The first thing it does and the only thing it does is reacts with adenosine receptors in the brain. And we would not exist if we didn't have our adenosine receptors in the brain. So it is known certainly throughout the chemical -- the scientific and medical literature as a -- a central nervous system stimulant, yes.

LEG. D'AMARO:
Is it a stimulant that provides the body with energy?

MR. COUGHLIN:
It does provide the body with energy. That it's -- the main thing it does it restores fatigue or restores tiredness. I take mine and many people take theirs first thing in the morning to give yourself the wake up.

LEG. D'AMARO:
Well, is that -- is that because of energy or is that -- and I'm not a scientist -- or is that because it's, you know, it's in a sense fooling the body to believing it has energy?

MR. COUGHLIN:
No, it's a -- it's a stimulant wakefulness and awareness that you get from consuming caffeine containing beverages.

LEG. D'AMARO:
Right. But does it mean that you can run longer?

MR. COUGHLIN:
There have been hundreds of studies on caffeine and endurance sports. Absolutely, yes. And it is not banned -- it is not banned by the World Anti-Doping Agency.

LEG. D'AMARO:
Right. But, again, I think -- I think, and correct me if I'm wrong, I think it's because it fools the body into believing that it can do so as opposed to, let's say, if you consume sugar, that provides energy.

MR. COUGHLIN:
Sugar's energy comes from --

LEG. D'AMARO:
Carbohydrates provide energy.

MR. COUGHLIN:
Sure. That comes from --

LEG. D'AMARO:
Natural fruits would provide energy. But caffeine doesn't provide the same type of energy as, let's say, those others food substances. Is that true?

MR. COUGHLIN:
It's not the same type of energy. That's kilocalorie energy.

LEG. D'AMARO:
Right.

MR. COUGHLIN:
Calories, yeah.

LEG. D'AMARO:
Which is really what the muscles feed off of and --

MR. COUGHLIN:
Which is fuel -- fuel for the body, you know, that's what calories are.

LEG. D'AMARO:
Right, but caffeine doesn't provide that type of energy where carbohydrates are metabolized into starches and sugars and provide real energy to the body.

MR. COUGHLIN:
You said you didn't know any science, but you do.

LEG. D'AMARO:
Well, but, you know, this -- it's, I think, it's a legitimate question because how can it be a stimulant? A stimulant to me is an artificial type of delivery of making you believe you have the energy. I mean, like if you only get five hours sleep and you drink caffeine, you may feel like you got nine hours sleep, but you didn't.

MR. COUGHLIN:
I don't think you feel like you get nine hours, but you're ready to, you know, jump on a plane and come to testify.

LEG. D'AMARO:
Well, I think you do. I think that's the whole point. Energy -- it's not energy. It's really just fooling the body into believing, but I just wanted to -- to get your opinion. Last question. Can overuse of caffeine lead to detrimental health effects?

MR. COUGHLIN:
Absolutely. There have been studies done in the literature reports, clinical reports of -- of caffeine abuse.

LEG. D'AMARO:
Right.

MR. COUGHLIN:
One of the major places that caffeine has been studied is actually in psychiatric wards where in the old days they use to provide coffee to all psychiatric patients and they would do 20 and 30 cups a day and, you know, that -- that practice has stopped in most hospitals in America and around the world. But there could be abuse there.

LEG. D'AMARO:
Right. Do you think that -- do you think that caffeine abuse -- it could result from labeling a product with caffeine as an energy drink? Could caffeine abuse be encouraged or enhanced by how you market the caffeine?

MR. COUGHLIN:
I don't believe it could be.

LEG. D'AMARO:
Really? Do you really believe that?

MR. COUGHLIN:
Because -- absolutely because of the self, I think you -- I think you know yourself when you --

LEG. D'AMARO:
Do you think to, like, a 14 year-old, how you market to a 14 year-old, you don't think it could really affect how much they might consume?

MR. COUGHLIN:
I think they would self-regulate their use and go for the can or go for the Coke or go to Starbucks --

LEG. D'AMARO:
All right.

MR. COUGHLIN:
-- and then not have the second, third and fourth. Truly.

LEG. D'AMARO:
Thank you. Thank you, Madam Chair.

CHAIRPERSON NOWICK:
Legislator Stern.

LEG. STERN:
Yeah, thank you, Madam Chair. If it was a matter of caffeine, and we were talking about dosage, if we were talking about ounces to milligrams, I think it would be an easier discussion for many of us.

My question -- the issue raised was not just the -- the caffeine content, but the interplay between the caffeine and the other ingredients that are -- are in these drinks. The guarine and the taurine, etcetera.

The contention here is that the other ingredients have some type of an impact, many are claiming it has a profound impact on the -- the delivery of the caffeine, that it is exponential because of the other ingredients in these drinks. I was wondering if you can speak to that.

MR. COUGHLIN:
I believe that's never been shown. Absolutely not true. The European Food Safety Authority, which does a bang-up job of -- of -- from the 25 countries with all their university experts who sit on their panel has reviewed that in 2009 and still to this date there's no interaction. These are separate ingredients. And taurine does not energize caffeine to do something more. There's no synergistic effect. It's -- it would be the additive effects of the energy from calories. And how taurine is an amino acid, a natural amino acid. In all of our bodies we have probably 70 times more taurine in our bodies just from the diet than we get in the milligrams of an energy drink beverage.

So there's absolutely no scientific showing of interaction of any of the separate ingredients and no -- and no synergistic effect.

LEG. STERN:
Then over and above perhaps the marketing impact of having those other ingredients, what would be the effect? Why have them in there?

MR. COUGHLIN:
B vitamins are in there. And I certainly take a supplement everyday. I hope everybody's taking a supplement of their, you know -- multi-vitamins, B vitamin. There are -- B vitamins are cofactors, absolutely essential for every biological process that's going on in our bodies so they're doing their biochemical role. Taurine is an amino acid. It helps with muscle contractions. Caffeine, a stimulant, reacts at the adenosine receptors. Sugar is calories, it's -- that's energy, kilocalories. So they're separate and not even equal. They're separate absolute biological functions that come from each of those separate ingredients.

LEG. STERN:
Given the amounts of those other ingredients that you named that are in these drinks, in your opinion, is there enough to provide any kind of -- any kind of a perceived benefit, any kind of a real appreciable difference? Does it rise to that level of having enough of -- enough of each of these ingredients to -- to make any difference?

MR. COUGHLIN:
I believe it does. I mean, I think each person knows what caffeine helps them do no matter what their -- what their source is. Taurine, it's in there usually at about one gram, a natural amino acid that's found in seafood and other places. They -- in terms of -- are you asking why don't we have two and three and five times the quantity of each? I don't think you're asking that.

LEG. STERN:
I'm certainly not asking that.

MR. COUGHLIN:
No, no.

LEG. STERN:
I'm asking you based on the -- the amount of these other ingredients that are traditionally in the drinks that we're talking about today, do they make any difference? And, if not, why have them in there?

MR. COUGHLIN:
They have separate biological and physiological roles, been studied extensively for a very long time. Something like guarana is another plant just like caffeine. The number one source of coffee beans in the world, that's certainly Brazil, that's where most of the guarana is. It's got a small amount of caffeine, nothing like the guarana base that are in -- the coffee bean, the roasted coffee bean. So they're in there as separate. And some people don't use individual substances like guarana in those products. Some do; some don't. But there's -- there's no synergistic effect. They each have a separate physiological function and, I believe, a physiological benefit. I mean, we're all dragging around in a very busy world, society, even among teens and young adults.

LEG. STERN:
Thank you.

CHAIRPERSON NOWICK:
Legislator Horsley, did you have a question?

D.P.O. HORSLEY:
I'm good.

CHAIRPERSON NOWICK:
You're good, okay. Thank you.

MR. COUGHLIN:
Thank you.

CHAIRPERSON NOWICK:
Okay. Patricia Bishop-Kelly.

MS. BISHOP-KELLY:
Good afternoon. My name is Patricia Bishop-Kelly. I'm a resident of Suffolk County and I'm recently retired from the Suffolk County Department of Health Services Division of Preventative Medicine.

I'm not a lobbyist, but the discussion here today reminds me, very vividly, of the discussions that we had in years past, as Lori Benincasa said, with the tobacco industry and our -- our efforts to protect children from predatory advertising by the tobacco industry.

I'm here today to support two modest proposals: One Legislative proposal 1086 and 1085 that protects minors from direct mail stimulate drink advertising and to prohibit the distribution of stimulant drinks in County parks. Again, two very modest proposals to protect children.

By now you've become aware of the fact that the so-called energy drinks so popular with our young adults and adolescent populations are in reality strong stimulants to the cardiovascular and neurological systems. Marketed and sold for their promise of increased physical ability, endurance and mental alertness, these products are consumed regularly often multiple times during the course of one day to maintain a certain level of alertness and physical stamina. Since none of the combinations of these stimulant preparations are regulated or controlled by the FDA, little information about specific dosages and some of the core ingredients is disclosed or even known. Caffeine, megadoses of vitamin B12, vitamin B6 in proprietary energy blends, as you've heard today containing guarana, ginseng and some amino acids are all contained in these stimulant preparations. Some dosages are disclosed, others are not. Some of these stimulant ingredients can be safe when taken in small amounts by themselves knowing what you are taking and provided you are aware of what you are taking and able to make that decision.

The megadoses provided in these drinks in preparations overload the body with substances that must be metabolized all at once; a daunting task for the liver at any time. And as I mentioned before, there was still serious questions surrounding these types of food supplements claiming to produce energy. As of November 2012 the number of deaths has been suspected to be linked to these drinks and numerous hospitalizations. While no definitive link has yet been made, we are still connecting the dots and investigations are continuing.

I'd like to remind you all about a piece of legislation that this Legislature passed several years ago banning the powerful herb supplement Ephedra after the tragic death of a young County resident and now Ephedra is banned throughout the United States. Once again, your vision and courage to act placed Suffolk County on the cutting edge of health policies that provides protection to all of our residents. So much is yet unknown, yet more research needs to be done, more public education must take place. Slick questionable advertising, the glamorization and normalization of these products, *everybody's doing it*, make it all the more difficult for children to resist the allure and pressure of these products. They take them just to belong. As our children's protectors and their role model, it is up to us to keep them safe from predatory marketing and advertising that glamorizes these products and puts them easily within their grasp.

By supporting these modest restrictions and an education program outlined in the proposed legislation, the most vulnerable among us will become familiar with the true nature of these products. We now have an opportunity to make a choice between corporate profits and our children's health, why on earth would we be willing to take any chances when it comes to children's

health? When we fail to act, we will all wind up paying the price. We must not make the wrong choice. Thank you.

CHAIRPERSON NOWICK:
Thank you. Any questions?

Pamela Mizzi. Hi, Pam.

MS. MIZZI:
Good afternoon. Pleased to be here this afternoon. I come to you as a -- an addictions and prevention professional with over 30 years in the field from an association called the Quality Consortium, which is made up of 20 addiction, prevention and recovery agencies with a constituency of over 70,000 people that live here in Suffolk County. And I am not as erudite as the scientists who have come before me and I'm here just to make several very quick points.

We know how vulnerable the adolescent brain is as it is not fully developed. I guess it's been brought up in previous meetings. It's very vulnerable to concentrated substances. And the professor here made the point about self-titration. And I think young adults are particularly immune to self-titration and they are not going to be the ones to self-regulate their consumption of these energy drinks.

Secondly, marketing clearly targets youth with the bright colors and fruit flavors, and it is an adversarial process, which grooms them for a quick fix to feel good at the risk of their health. And I think that this legislation, this resolution, 1086, makes good sense to provide this protection to our youth and young adults using County property. And in the end, it's -- it's just County property and it makes a lot of sense to afford the people that use our parks this protection. Thank you.

CHAIRPERSON NOWICK:
Thank you. One quick question because I know you are very active in this field. Do you feel there's any correlation between a young person using, perhaps, an energy drink to give that -- give him or her the energy and change who they are? Any correlation between that and maybe going to the next step, which might be an illegal drug? To also change who they are and give them different energy and change their -- as a drug would do?

MS. MIZZI:
Yes, I do. I do feel strongly that it's a setup. That the -- the concentrated caffeine and other substances produces the surge of energy, which as we know in the drug field that every high has an associated attendant low. You don't return to your baseline normal tension level unless you redose. You sink below that normal tension level. So that that brain process of drinking a -- an energy drink to feel empowered for a very short time, it's a short -- short-term benefit with a long-term price. And I think that it does lead to -- it makes people more likely to go the next step. And there are -- there are a couple of steps before you get to the illegal drugs including cigarettes, alcohol and prescription drugs. As you know, we have a big problem with prescription drugs in this County.

CHAIRPERSON NOWICK:
Thank you. I appreciate your testimony. Legislator D'Amaro.

LEG. D'AMARO:
Yes, but what you're describing is an addiction process. Is that an addiction process where you ingest something and it gives you a certain feeling or high and then you need to constantly increase dosage or perhaps go to a stronger type of drug or whatever it is you're taking to -- to replicate the high? I mean, that's -- that's an addictive cycle. Isn't it?

MS. MIZZI:
Yeah, yes. What you're talking about is addiction, but we know addiction is a process; sometimes quite prolonged from first use to abuse to addiction.

LEG. D'AMARO:
Right.

MS. MIZZI:
Sometimes foreshortened as in the case of youngsters, people with less developed brains under the age of 25 using both legal and illegal substances. So in the -- my feeling is as an addictions professional that using the 5-hour or the energy drinks to be generic --

LEG. D'AMARO:
Right.

MS. MIZZI:
-- is a setup in the brain for that process to -- to happen in an individual and to continue as they need more and more.

LEG. D'AMARO:
I just want to really understand that point because that's quite a statement that you're making. No one, I don't even think, of course, anyone from even this industry wants to set kids up for future addictions. But why would that -- would it be different for teenagers drinking coffee or even natural sugar from fruits and vegetables, I mean, how is it different? Why does this set them up for that path more than other devices that -- other consumable items that have caffeine, for instance?

MS. MIZZI:
I think because of the surge and the -- the enhanced energy in the brain. What's the effect on the brain and --

LEG. D'AMARO:
Right.

MS. MIZZI:
-- and it's -- and that's what is characteristic of addiction, that surge and the changes that occur in the brain.

LEG. D'AMARO:
So it's mimicking --

MS. MIZZI:
What happens in the case of addiction.

LEG. D'AMARO:
-- the same type of cycle or feeling. That's very interesting.

MS. MIZZI:
It's -- I think it's a setup. It's a -- it's a precursor.

LEG. D'AMARO:
Right. You're not saying it's happening,

MS. MIZZI:
I'm not saying that you're going to turn into a heroin addict, you know, if you use -- if you use

energy drinks.

LEG. D'AMARO:
Right, right.

MS. MIZZI:
But it -- but we know that addiction is a progression and that progression can be short or long. We know it's shorter in more vulnerable populations. We know it takes a little bit longer to become an alcoholic and you know you have to work on it. Opiates, the brain is very sensitive to. And the brain becomes addicted very, very quickly in using that chemical category of substances. The energy drinks are -- do the same -- make the same surge of endorphins and all the rest of the ingredients we've been talking about today --

LEG. D'AMARO:
Right.

MS. MIZZI:
-- causes this brainwave. It's been likened in the literature to a pharmacological Molotov cocktail but I can't claim that one.

LEG. D'AMARO:
Right. Okay, thank you.

MS. MIZZI:
Thank you.

LEG. D'AMARO:
Thank you. I appreciate it.

CHAIRPERSON NOWICK:
Thank you. Thank you so much for coming. We do not have any more cards. Commissioner, do you want to address the committee in any way?

COMMISSIONER DAWSON:
No, I'll wait till we get to the agenda.

CHAIRPERSON NOWICK:
You want to come on up? Is there anybody else that wants to address the Committee? Okay. We're going to Tabled Resolutions.

TABLED RESOLUTIONS

2228 - Authorizing Montauk Chapter of the Boy Scouts to enter into a License Agreement. (Schneiderman)

LEG. D'AMARO:
Motion to table.

CHAIRPERSON NOWICK:
Motion to table by Legislator D'Amaro, second by myself.

LEG. D'AMARO:
Yeah, I believe that's at the request of the sponsor.

CHAIRPERSON NOWICK:
Okay. All in favor? Opposed? **2228 is approved (sic). (2228 TABLED. VOTE: 6-0-0-0 - P.O. Lindsay included in the vote)**

1086 - Adopting Local Law No. -2013, A Local Law to prohibit distribution of stimulant drinks in County parks. (Spencer)

LEG. D'AMARO:
Motion to approve.

P.O. LINDSAY:
I'll second.

CHAIRPERSON NOWICK:
Motion to approve by Legislator D'Amaro, second by Legislator Lindsay. All in favor?

LEG. STERN:
Opposed.

LEG. HAHN:
I'll recuse.

CHAIRPERSON NOWICK:
Opposed? **1086 is approved. (VOTE: 4-1-0-0-1 - P.O. Lindsay included in the vote - Opposed: Legislator Stern - Recused: Legislator Hahn)**

INTRODUCTORY RESOLUTIONS

Introductory resolution 1150 - Authorizing use of Indian Island County Park by Birthright of Peconic, Inc., for a fundraising walkathon. (Krupski) Counsel, the fees are appropriate? I'll make a motion, second by Legislator Hahn. All in favor? Opposed?

LEG. HAHN:
I'm going to abstain.

CHAIRPERSON NOWICK:
You're going to abstain.

LEG. D'AMARO:
I'll second.

CHAIRPERSON NOWICK:
Second by Legislator by D'Amaro. All in favor? Opposed? **1150 is approved. (VOTE: 5-0-1-0 - P.O. Lindsay included in the vote - Abstain: Legislator Hahn)**

1152 - Authorizing use of Smith Point County Park property by Mastic Beach Fire Department, Inc. for public safety services fund drive. (Browning) Same thing, Counsel? Same motion, same second. All in favor? Opposed? **1152 is approved. (VOTE: 6-0-0-0 - P.O. Lindsay included in the vote)**

1172 - Adopting Local Law No. -2013, A Charter Law to ensure a fully functional Board of Park Trustees. (Pres. Off.) Is that all ready to go?

LEG. D'AMARO:
Public hearing.

CHAIRPERSON NOWICK:
Still public hearing? We have to table that for public hearing. I'll make the motion.
LEG. STERN:
Second.

CHAIRPERSON NOWICK:
Second by Legislator Stern. All in favor? Opposed? 1172 is approved -- excuse me -- tabled.
TABLED for PUBLIC HEARING (VOTE: 6-0-0-0 - P.O. Lindsay included in the vote)

1178 - Appropriating funds in connection with Waterproofing, Roof and Drainage at Suffolk County Vanderbilt Museum (CP 7439). (Spencer) I will make a motion to table, second by Legislator Horsley. All in favor? Opposed? **1178 is tabled. (VOTE: 6-0-0-0 - P.O. Lindsay included in the vote)**

LEG. D'AMARO:
Oh, wait.

CHAIRPERSON NOWICK:
They requested it. Vanderbilt requested it.

LEG. D'AMARO:
That's right. Yep.

CHAIRPERSON NOWICK:
1204 - Authorizing use of Blydenburgh County Park by New York Blood Center for a hike for Life Hike. (Kennedy).

LEG. D'AMARO:
Motion.

CHAIRPERSON NOWICK:
I'll make the motion, second by Legislator Hahn. Are you okay with that?

LEG. HAHN:
Yes.

CHAIRPERSON NOWICK:
All in favor? Opposed? **1204 is approved. (VOTE: 6-0-0-0 - P.O. Lindsay included in the vote)** And we will adjourn.

THE MEETING CONCLUDED AT 2:39 PM
{ } DENOTES SPELLED PHONETICALLY