



This summer, California’s unique-in-the-nation law governing human exposure to toxic chemicals, Proposition 65, has been consistently making Page 1 — but in ways that belie the adage that “all publicity is good publicity.” Most heavily reported, and acutely politically perilous to the law’s supporters, has been a [state trial court ruling](#) that coffee must bear a warning to potential consumers that it contains a cancer-causing chemical (acrylamide). The specific implications of this ruling and its broader regulatory context have been widely misunderstood (as I’ve explained in the [Sacramento Bee](#) and [LA Times](#)), but that does not prevent even legally sophisticated commentators from seizing the opportunity to ridicule California’s law wholesale (see, for example Cass Sunstein mocking coffee warnings [here](#)).

The coffee plot took yet another turn when the state’s expert agency charged with Prop 65 rulemaking, the Office of Environmental Health Hazard Assessment (OEHHA), issued a [proposed regulation](#) to the effect that coffee will *not* require a cancer warning. This apparent policy about-face — suggesting that California is not merely peculiarly risk-intolerant, but also schizophrenic — was sufficiently perplexing to have caught the attention of today’s [New York Times](#).

In fact, OEHHA’s action is legally and scientifically justified and *also* consistent with the state trial court’s ruling, insofar as OEHHA’s regulation holistically addresses the full beverage that is coffee, whereas the judge’s ruling addressed only the risks posed by a single chemical constituent (acrylamide). As [OEHHA explains](#), because coffee is a highly unusual, multi-chemical mixture in which cancer-promoting constituents appear to be more than counter-balanced by cancer-protective ones (such as antioxidants), the International Agency for Research on Cancer has concluded that coffee *as a whole* is health-neutral or even net-positive. That said, the near-Joycean storytelling complexity now required to capture accurately the nuances and divagations of the coffee tale will disserve the law’s proponents in the media and political sphere, where Tweet-length messaging is strongly preferred.

More troubling, drowned out by the extended brew-haha over coffee are other, major Prop 65 developments that could benefit from more thorough reportage, including:

- The frighteningly broad implications of a [federal district court judge's ruling](#), on First Amendment grounds, that OEHHA cannot require a warning that the weed-killing chemical glyphosate causes cancer, because expert agencies hold differing views;
- Courts' increasing willingness to [find "obstacle" preemption](#) when Prop 65 targets foods (like breakfast cereals containing acrylamide) that the Food and Drug Administration believes should be promoted because they also have healthful ingredients (such as whole grains); and
- The advent of greatly improved Prop 65 warnings, designed to address the common complaint that many of California's warnings are simultaneously alarmist and uninformative. These [new warnings](#) are required to be in place by August 30<sup>th</sup> (2018).

I will blog about some of these Prop 65 issues in future, as the law continues to be threatened with dilution in Sacramento, and at risk of wholesale preemption in D.C.