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 30th (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.