

California Federal District Court Grants Preliminary Injunction in Proposition 65 Acrylamide Case

Publications

March 30, 2021
By: Steven Siros

On the heels of a 2020 decision in *National Association of Wheat Growers, et al. v. Becerra* that barred the State of California from requiring Proposition 65 warnings for glyphosate-based pesticides because those warnings violated the First Amendment, another California District Court has thrown up a First Amendment roadblock for Proposition 65 claims relating to acrylamide in food and beverage products. As explained in more detail below, on March 29, 2021, the District Court granted a preliminary injunction in favor of the California Chamber of Commerce (Chamber) barring future State and private party Proposition 65 lawsuits alleging a failure to warn of acrylamide in food and beverage products.

The Chamber filed its lawsuit in October 2019 alleging that because the State did not “know” that eating food with acrylamide causes cancer in people, Proposition 65 violated the First Amendment because it mandated that businesses place warnings on food and beverage products stating that acrylamide is known to the State to cause cancer. The Council for Education and Research on Toxics (CERT)--a nonprofit organization that frequently files private party Proposition 65 lawsuits--intervened in the matter.

The Chamber requested a preliminary injunction to bar the State and any private litigant from filing new lawsuits to enforce Proposition 65 against businesses that do not warn consumers that acrylamide in food is “known to the State of California to cause cancer”. Both the State and CERT opposed the request for a preliminary injunction, arguing that the Chamber had not met its burden. CERT also argued that the preliminary injunction would be an unconstitutional prior restraint on its First Amendment right to bring Proposition 65 enforcement claims.

The Court quickly dismissed CERT’s unconstitutional restraint argument noting that if the Chamber is correct that Proposition 65 lawsuits targeting acrylamide are violative of the First Amendment, then the lawsuit has an illegal objective and therefore can be enjoined without violating the First Amendment. In considering whether the Chamber was likely to succeed on the merits of the complaint, the Court then proceeded to examine the Proposition 65 safe harbor warning which states as follows: “Consuming this product can expose you to [acrylamide], which is ... known to the

State of California to cause cancer.” After examining the scientific evidence presented to the Court, the Court found that the State had not shown that this warning was purely factual and uncontroversial.

Although the Court acknowledged that high exposure animal studies showed an increased incidence of cancer, dozens of epidemiological studies had failed to tie human cancer to a diet of food containing acrylamide. After considering the competing expert testimony, the Court concluded that the “safe harbor warning is controversial because it elevates one side of a legitimately unresolved scientific debate about whether eating goods and drinks containing acrylamide increases risk of cancer.” The Court recognized California’s substantial government interest in protecting the health and safety of consumers but concluded that at this stage of the litigation, the Chamber had shown that the Proposition 65 warning that the State demands does not directly advance that interest and is more extensive than necessary.

Finally, in evaluating whether the Chamber had demonstrated that it would suffer irreparable harm, the Court acknowledged the significant increase in Proposition 65 acrylamide pre-litigation notices and lawsuits over the past several years. As the Court noted, irreparable harm is relatively easy to establish in a First Amendment case like this and this burden was met by the Chamber. As such, the Court granted the Chamber's request for a preliminary injunction.

Again, it is important to note that this is just a preliminary injunction that bars future State and private party Proposition 65 acrylamide lawsuits while the case proceeds on the merits. However, this decision, along with the 2020 *Wheat Growers* decision noted above, may evidence a willingness on the part of California courts to give serious credence to First Amendment challenges to Proposition 65 warning requirements and may represent a light at the end of the Proposition 65 tunnel for entities that sell food and beverage products in California (and this time, it may not be the light from a train).

Related Attorneys



Steven Siros

Partner

ssiros@jenner.com

+1 312 923 2717

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact dataprotection@jenner.com.

Stay Informed