

## CALIFORNIA CHAMBER OF COMMERCE CHALLENGES PROP. 65 WARNING FOR ACRYLAMIDE IN FOOD AND BEVERAGE PRODUCTS

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The California Chamber of Commerce has filed a lawsuit seeking to prevent the state from “enforcing a requirement to provide a false, misleading, and highly controversial cancer warning for food and beverage [] products that contain the chemical acrylamide.” *Cal. Chamber of Commerce v. Becerra*, No. 19-0962 (E.D. Cal., October 7, 2019).

The complaint argues that although “certain governmental and scientific entities” have identified acrylamide as a carcinogen in laboratory animals, “[s]cientific studies in humans, however, have found no reliable evidence that exposure to acrylamide in food products is associated with an increased risk of developing any type of cancer. In fact, epidemiologic evidence suggests that dietary acrylamide—i.e., acrylamide that forms naturally in normal cooking of many food products—does not cause cancer in humans or pose an increased risk of cancer in humans. Indeed, some food products that contain acrylamide (e.g., whole grains and coffee) have been shown to reduce the risk of certain diseases, including cancer.”

The Chamber argues that California’s Office of Environmental Health Hazard Assessment (OEHHA) requires businesses to warn consumers about potential exposure to acrylamide under the state’s Safe Drinking Water and Toxic Enforcement Act (Prop. 65) despite the fact that “neither OEHHA nor any other governmental entity has determined that acrylamide is a known human carcinogen, and in fact OEHHA has acknowledged that the agency does not *know* that acrylamide increases the risk of cancer in humans.” Therefore, the Chamber argues, the acrylamide warning requirement violates the First Amendment “by compelling Plaintiff’s members and other entities that produce, distribute, or sell acrylamide-containing food products to make false, misleading, and highly controversial statements about their products.”

The complaint asserts that “[a]crylamide is not intentionally added to food products,” but is “formed naturally in many types of foods when cooked at high temperatures or otherwise processed with heat,” and that common sources include breakfast cereals, crackers, bread crusts, coffee, grilled or roasted asparagus, French fries, potato chips and other fried and baked snack foods, canned sweet

potatoes, canned black olives, prune juice roasted nuts, and toast. More than 580 Prop. 65 60-day notices have been served alleging exposure without warning to acrylamide.

The Chamber further argues that the Prop. 65 warning requirement for acrylamide “harms both businesses and the public.” Businesses “must either take action to provide false, misleading, and highly controversial warnings to California consumers about the safety of their food products, or face potential costly enforcement actions initiated by Defendant or private enforcers for failing to do so.” Members of the public “will be misled about the risks posed by food products containing acrylamide, potentially frightening them away from a variety of foods – including whole grains, peanuts, almonds, nut butters, olives, and coffee – that are part of a well-balanced diet and may actually *reduce* the risk of cancer.”

The complaint seeks a declaration that the Prop. 65 warning requirement for cancer violates the First Amendment, on its face or as applied to any exposures to acrylamide in food products, and preliminary and permanent injunctions prohibiting the Attorney General and/or private enforcers from enforcing or threatening to enforce the Prop. 65 warning requirement for cancer with respect to acrylamide in human food products.

## RELATED PRACTICE AREAS

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