

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s) 20-16758

Case Name *National Association of Wheat Growers, et al. v. Xavier Becerra, et al.*

Counsel submitting this form Laura J. Zuckerman, Deputy Attorney General
State of California Department of Justice

Represented party/ parties Xavier Becerra, Attorney General of the State of California

Briefly describe the dispute that gave rise to this lawsuit.

In 2015, the International Agency for Research on Cancer (IARC) determined that glyphosate, the active ingredient in numerous pesticides, causes cancer in animals and is a probable human carcinogen. IARC's determination caused the California Office of Environmental Health Hazard Assessment (OEHHA) to include glyphosate on the State's Proposition 65 list of chemicals known to cause cancer, an action that Monsanto challenged unsuccessfully in state court. *Monsanto Company v. Office of Environmental Health Hazard Assessment*, 22 Cal. App. 5th 534 (Cal. Ct. App. 2018).

In 2017, Monsanto Company and agricultural industry groups sued OEHHA and the Attorney General of California, claiming, among other things, that the First Amendment to the U.S. Constitution prohibited the State from enforcing Proposition 65 to require companies to provide a cancer warning for glyphosate exposures attributable to their products. Monsanto Company and the agricultural groups claimed that California could not compel a cancer warning for products containing glyphosate, no matter how high the exposure. In their view, it was misleading to claim that glyphosate causes cancer, when IARC was the only agency to have made such a determination, and many other agencies disagreed.

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Briefly describe the result below and the main issues on appeal.

In 2018, the court granted plaintiffs' motion for a preliminary injunction in part, and enjoined enforcement of the Proposition 65 warning requirement for glyphosate. *National Association of Wheat Growers v. Zeise et al.*, 309 F. Supp. 3d 842 (E.D. Cal. 2018). The court subsequently dismissed OEHHA from the case. On August 11, 2020, the court granted plaintiffs' motion for summary judgment and entered a permanent injunction barring any Proposition 65 warning for glyphosate.

The main issue on appeal is whether there exists any possible warning for glyphosate exposures that would comply with the requirements of Proposition 65 while preserving plaintiffs' rights under the First Amendment. The Attorney General believes the content, and method of delivering, such a warning are both issues susceptible to a mediated resolution.

Describe any proceedings remaining below or any related proceedings in other tribunals.

None.

Signature s/ Laura J. Zuckerman

Date September 17, 2020

(use "s/[typed name]" to sign electronically-filed documents)