### No. 20-16758

# United States Court of Appeals for the Ninth Circuit

NATIONAL ASSOCIATION OF WHEAT GROWERS ET AL., Plaintiffs – Appellees,

v.

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Defendant – Appellant,

AND

Lauren Zeise, in her Official Capacity as Director of the Office of Environmental Health Hazard Assessment, Defendant.

Appeal from the U.S. District Court for the Eastern District of California
The Honorable William B. Shubb (No. 2:17-cv-02401-WBS-EFB)

# AMICUS CURIAE BRIEF OF THE NATIONAL BLACK FARMERS ASSOCIATION IN SUPPORT OF APPELLANT AND REVERSAL

Paul J. Napoli (NY 2513141) Hunter J. Shkolnik (NY 2031458) NS PR LAW SERVICES, LLC 270 Muñoz Rivera, Suite 201 Hato Rey, Puerto Rico 00918 pnapoli@nsprlaw.com

hunter@napolilaw.com Phone: (212) 397-1000 Fax: (312) 610-5680 Thomas C. Goldstein

 $(202)\ 362-0636$ 

Eric F. Citron
Charles Davis
Daniel Woofter
Molly Runkle
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814



Case: 20-16758, 02/19/2021, ID: 12010407, DktEntry: 21, Page 2 of 31

Christopher L. Schnieders (MO 57725) NAPOLI SHKOLNIK, PLLC 6731 W. 121st Street, Suite 201 Overland Park, KS 66209 cschnieders@napolilaw.com Phone: (913) 246-3860

Fax: (312) 610-5680

Benjamin L. Crump FL Bar #72583 TN Bar #038054 Washington D.C. Bar #1552623 BEN CRUMP LAW 122 S. Calhoun St. Tallahassee, FL 32301 850-888-4140 Court@bencrump.com

Counsel for Amicus Curiae



Case: 20-16758, 02/19/2021, ID: 12010407, DktEntry: 21, Page 3 of 31

### CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amicus curiae National Black Farmers Association is a non-profit organization that has not issued shares or debt securities to the public. It has no parent companies, and no publicly held company has any form of ownership interest in it.



# TABLE OF CONTENTS

CORPOR	ATE DISCLOSURE STATEMENT	i
TABLE O	F AUTHORITIES	iii
INTERES	T OF AMICUS CURIAE	1
SUMMAR	RY OF THE ARGUMENT	3
ARGUME	NT	6
I.	NBFA's Members Rely on States Like California to Warn Them About Carcinogenic Pesticides	6
	a. The Scientific Basis for the Proposition 65 Warning	6
	b. Ruling for Appellees Would Exacerbate the Inequalities Experienced by NBFA's Members	12
II.	The Correct Solution Here Is More Speech, Not Less	16
III.	Label Warnings Ask Very Little of Monsanto	19
CONCLU	SION	23



# TABLE OF AUTHORITIES

### Cases

Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)
Johnson v. Monsanto Co., 52 Cal. App. 5th 434 (2020)
Nat'l Ass'n of Wheat Growers v. Becerra, 468 F. Supp. 3d 1247 (E.D. Cal. 2020)
Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018)
Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999)
Other Authorities
About Proposition 65, OEHHA, https://bit.ly/2ZwIuIO (last visited Feb. 13, 2021)
About Us, Nat'l Black Farmers Assoc., https://bit.ly/3d33VZY (last visited Feb. 11, 2021)
Patricia Cohen, \$2 Billion Verdict Against Monsanto Is Third to Find Roundup Caused Cancer, N.Y. Times (May 13, 2019), https://nyti.ms/2NmqApq
Compl., Nat'l Black Farmers Ass'n v. Monsanto Co., No. 4:20-cv-01145-SRC (E.D. Mo. Aug. 26, 2020), ECF 1
Congressional testimony of John W. Boyd, Jr., Founder and President, NBFA, <i>available at</i> https://bit.ly/2ZawuwG1
Baum Hedlund, Where Is Glyphosate Banned?, https://bit.ly/3jEWUji (last visited Jan. 11, 2021)
IARC Monographs Vol. 112: evaluation of five organophosphate insecticides and herbicides, IARC (Mar. 20, 2015), https://bit.ly/3jJvtFk
Sam Levin, Monsanto Found Liable for California Man's Cancer and Ordered to Pay \$80m In Damages, The Guardian (Mar. 27, 2019), https://bit.ly/3d34tiu



# DOCKET

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

# **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

# **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

### **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

