Case: 20-16758, 02/19/2021, ID: 12010574, DktEntry: 22, Page 1 of 49

No. 20-16758

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, ET AL.,

Defendants-Appellants,

v.

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

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

AMICUS BRIEF OF NATURAL RESOURCES DEFENSE COUNCIL,
UNITED STEELWORKERS, ALLIANCE OF NURSES FOR HEALTHY
ENVIRONMENTS, AS YOU SOW, CALIFORNIANS FOR PESTICIDE REFORM,
CENTER FOR FOOD SAFETY, CLEAN WATER ACTION, ENVIRONMENTAL LAW
FOUNDATION, PESTICIDE ACTION NETWORK NORTH AMERICA, AND
SAN FRANCISCO BAY PHYSICIANS FOR SOCIAL RESPONSIBILITY
URGING REVERSAL IN SUPPORT OF DEFENDANTS-APPELLANTS

VIVIAN H.W. WANG AVINASH KAR (SBN 240190) Natural Resources Defense Council 40 W. 20th St. New York, NY 10011 (212) 727-4477 vwang@nrdc.org akar@nrdc.org

Counsel for Amici



Case: 20-16758, 02/19/2021, ID: 12010574, DktEntry: 22, Page 2 of 49

CORPORATE DISCLOSURE STATEMENT

Amici Natural Resources Defense Council, United Steelworkers,
Alliance of Nurses for Healthy Environments, As You Sow, Californians
for Pesticide Reform, Center for Food Safety, Clean Water Action,
Environmental Law Foundation, Pesticide Action Network North
America, and San Francisco Bay Physicians for Social Responsibility
are nonprofit corporations with no parent corporation and no
outstanding stock shares or other securities in the hands of the public.
Amici do not have any parent, subsidiary, or affiliate that has issued
stock shares or other securities to the public. No publicly held
corporation owns any stock in amici.



TABLE OF CONTENTS

INTI	RODU	JCTION	1
AMI	CI CU	JRIAE'S IDENTITY AND INTEREST IN THE CASE	3
BAC	KGR	OUND	7
A.	Regu	ulation in the context of evolving scientific knowledge	7
В.	Proposition 65 and glyphosate		
C.	Dist	rict court proceedings	15
ARG	UME	NT	18
I.	of ag	rts should be wary of constitutionalizing questions at the gencies' scientific expertise, or deciding such questions ecessarily	
	Α.	Scientific knowledge is constantly evolving and thus subject to "controversy"	19
	В.	Judicial review of the soundness of an agency's scientific judgment does not fit well within a First Amendment framework	21
II.		rst Amendment "controversy" standard creates erse incentives to manufacture scientific doubt	27
III.	The district court erred in discounting IARC's conclusion as an outlier opinion		
	A.	Understanding risk assessment	31
	В.	EPA's findings on glyphosate do not conflict with IARC's	32
CON	ICLU	SION	38



TABLE OF AUTHORITIES

CASES

Amoco Oil Co. v. EPA,	
501 F.2d 722 (D.C. Cir. 1974)	3
ASARCO, Inc. v. Occupational Safety & Health Admin., 746 F.2d 483 (9th Cir. 1984)	8
Banzhaf v. FCC, 405 F.2d 1082 (D.C. Cir. 1968)	8
Cal. Chamber of Commerce v. Brown, 126 Cal. Rptr. 3d. 214 (Ct. App. 2011)	9
Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980)1	7
CTIA-The Wireless Ass'n v. City of Berkeley, 928 F.3d 832 (9th Cir. 2019)	6
Ethyl Corp. v. EPA, 541 F.2d 1 (D.C. Cir. 1976)	7
Grocery Mfrs. Ass'n v. Sorrell, 102 F. Supp. 3d 583 (D. Vt. 2015)	9
In re Prempro Prods. Liab. Litig., 586 F.3d 547 (8th Cir. 2009)2'	7
In re: Roundup Prods. Liab. Litig., No. 16-md-02741-VC (N.D. Cal. filed Mar. 14, 2017)29	9
Lead Indus. Ass'n v. EPA, 647 F.2d 1130 (D.C. Cir. 1980)	9



League of Wilderness Defs. Blue Mountains Biodiversity	
Project v. Allen, 615 F.3d 1122 (9th Cir. 2010)	23
Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996)	10
Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983)	22
N. Am. Bldg. Trades Unions v. OSHA, 878 F.3d 271 (D.C. Cir. 2017) (per curiam)	20, 22
Nat'l Elec. Mfrs. Ass'n v. Sorrell, 272 F.3d 104 (2d Cir. 2001)	22
Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018)	16
NRDC v. EPA, No. 20-70787 (9th Cir. filed Mar. 20, 2020)	34
NRDC v. Pritzker, 828 F.3d 1125 (9th Cir. 2016)	8
N.Y. State Rest. Ass'n v. N.Y.C. Bd. of Health, 556 F.3d 114 (2d Cir. 2009)	9
People ex rel. Lungren v. Superior Court, 926 P.2d 1042 (Cal. 1996)	4
Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294 (1st Cir. 2005)	26
Pub. Citizen Health Rsch. Grp. v. Tyson, 796 F 2d 1479 (D.C. Cir. 1986)	23



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.

