

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATURAL RESOURCES DEFENSE
COUNCIL; PESTICIDE ACTION
NETWORK NORTH AMERICA,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,
Respondent,

NATIONAL ASSOCIATION OF WHEAT
GROWERS; NATIONAL COTTON
COUNCIL OF AMERICA; AMERICAN
FARM BUREAU FEDERATION;
NATIONAL CORN GROWERS
ASSOCIATION; AMERICAN SOYBEAN
ASSOCIATION; NATIONAL SORGHUM
PRODUCERS; AGRICULTURAL
RETAILERS ASSOCIATION; NATIONAL
ASSOCIATION OF LANDSCAPE
PROFESSIONALS; MONSANTO
COMPANY; GOLF COURSE
SUPERINTENDENTS ASSOCIATION OF
AMERICA; AMERICAN SUGARBEET
GROWERS ASSOCIATION,
Intervenors.

No. 20-70787

EPA No.
EPA-HQ-OPP-
2009-0361

RURAL COALITION; ORGANIZACION EN CALIFORNIA DE LÍDERES CAMPESINAS; FARMWORKER ASSOCIATION OF FLORIDA; BEYOND PESTICIDES; CENTER FOR FOOD SAFETY,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY; MICHAEL REGAN, in his official capacity as Administrator,
Respondents,

NATIONAL ASSOCIATION OF WHEAT GROWERS; NATIONAL CORN GROWERS ASSOCIATION; NATIONAL COTTON COUNCIL; AMERICAN SOYBEAN ASSOCIATION; AMERICAN SUGARBEET GROWERS ASSOCIATION; NATIONAL SORGHUM PRODUCERS; AMERICAN FARM BUREAU FEDERATION; AGRICULTURAL RETAILERS ASSOCIATION; NATIONAL ASSOCIATION OF LANDSCAPE PROFESSIONALS; GOLF COURSE SUPERINTENDENTS ASSOCIATION OF AMERICA; MONSANTO COMPANY,
Intervenors.

No. 20-70801

EPA No.
EPA-HQ-OPP-
2009-0361

OPINION

On Petition for Review of an Order of the
Environmental Protection Agency

Argued and Submitted January 10, 2022
Pasadena, California

Filed June 17, 2022

Before: J. Clifford Wallace, Danny J. Boggs,* and
Michelle T. Friedland, Circuit Judges.

Opinion by Judge Friedland

* The Honorable Danny J. Boggs, United States Circuit Judge for
the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

SUMMARY**

Pesticides

The panel (1) granted in part and denied in part a petition for review challenging the U.S Environmental Protection Agency’s decision determining that glyphosate, the active ingredient in the weedkiller Roundup, does not pose “any unreasonable risk to man or the environment”; and (2) remanded to the agency for further consideration.

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) requires the U.S Environmental Protection Agency (“EPA”) to regulate pesticides, which are defined to include herbicides. A pesticide product may not be distributed or sold in the United States until EPA has issued a registration pursuant to FIFRA. A registration functions as a license setting forth the conditions under which the pesticide may be sold, distributed, and used. The EPA may not issue a registration for a pesticide that causes “unreasonable adverse effects on the environment.” In 2007, Congress added a new process called “registration review” to the FIFRA scheme governing pesticides, instructing EPA to periodically review pesticide registrations every fifteen years. For pesticides registered before 2007, such as glyphosate, EPA must complete the first registration review by October 1, 2022.

EPA began its registration review of glyphosate in 2009 and completed a preliminary ecological risk assessment of the pesticide in 2015. That assessment concluded that

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glyphosate may pose certain risks to mammals and birds and may adversely affect terrestrial and aquatic plants, primarily from spray drift. The EPA also released a draft human-health risk assessment and a paper about glyphosate's carcinogenic potential, entitled the Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential ("Cancer Paper"), which concluded that glyphosate posed no serious human-health risks and should be classified as "not likely to be carcinogenic to humans."

In January 2020, EPA issued an Interim Registration Review Decision for glyphosate ("Interim Decision"), which: (1) announced that its earlier draft human-health and ecological risk assessments were final; (2) contained a brief cost-benefit analysis concluding that the benefits outweighed the potential ecological risks when glyphosate is used according to label directions; and (3) laid out various mitigation measures, in the form of label changes for glyphosate products, to reduce the potential ecological risks. According to the Interim Decision, EPA still planned, among other things, to complete an assessment of glyphosate's effect on endangered and threatened species, pursuant to the Endangered Species Act ("ESA").

Two groups of petitioners filed petitions for review of the Interim Decision: one led by Rural Coalition and the other led by Natural Resources Defense Council ("NRDC"). Rural Coalition's petition made two attacks on the Interim Decision. It challenged EPA's conclusions on human health and insisted that EPA should have followed the ESA's procedural requirements before issuing the Interim Decision. NRDC's petition primarily challenges EPA's ecological risk assessment, cost-benefit analysis, and risk-mitigation requirements.

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