



AG Appeals District Court Decision Banning Prop. 65 Glyphosate Warnings

WARNINGS, APPELLATE CASES, LITIGATION, PROPOSITION 65, CHEMICALS OF INTEREST

By ROGER PEARSON, September 14, 2020

The California Attorney General's office **has appealed a lower court decision**¹⁾ blocking California from requiring a Proposition 65 cancer warning on products containing the insecticide glyphosate. The ruling was handed down on June 22 by U.S. District Court Judge William B. Shubb of the Eastern District of California [see **Federal Judge Issues Final Injunction Banning Prop. 65 Warning for Glyphosate**²⁾, June 25, 2020].

Glyphosate is a pesticide active ingredient that is found in several products; most notably Roundup manufactured by Monsanto (now Bayer). Roundup has been the subject of thousands of lawsuits filed by individuals claiming that exposure to it caused their cancer. That claim is based primarily on a determination by the International Agency for Research on Cancer (IARC), which found that glyphosate is a probable human carcinogen. The IARC determination caused California's Office of Environmental Health Hazard Assessment (OEHHA) to list glyphosate as a Proposition 65 carcinogen in 2017. The Prop. 65 listing itself was upheld by California state courts [see **Chamber of Commerce's First Amendment Challenge to Proposition 65 Acrylamide Warnings Dismissed**³⁾, March 23, 2020].

Judge Shubb was ruling on a lawsuit by Monsanto Corp. and an allied group of agricultural interests who argued that the requirement that pesticide manufacturers place a Prop. 65 cancer warning on their products violates their first amendment rights based on a series of U.S. Supreme Court decisions. Judge Shubb's June 22 ruling agrees with the plaintiffs' argument and issues a permanent injunction blocking California from enforcing the Prop. 65 warning requirement.

The appeal by Attorney General Xavier Becerra to the Ninth Circuit Court of Appeals does not at this time require the AG to list all of the grounds on which the appeal will be based. In his press release announcing the appeal, Becerra indicates that the state will argue that the First Amendment does not bar it from "requiring companies to inform Californians before exposing them to a chemical which an authoritative body, such as IARC, has classified as both an animal carcinogen and a probable human carcinogen." Presumably the AG may repeat some of the more specific arguments that were rejected by Judge Shubb. These include arguing that the plaintiffs' claims were not "ripe" for adjudication since they have cited no case where a warning so far has actually been required; that research since the 2015 IARC determination has supported that finding; that the courts should defer to the state court finding upholding the Prop. 65 listing; and that the plaintiffs failed to take advantage of the state's offer to tailor a warning that would inform consumers about the dispute among experts over glyphosate's carcinogenicity.

Resources for this article

1. has appealed a lower court decision

<https://oag.ca.gov/news/press-releases/attorney-general-becerra-defends-prop-65-warnings-cancer-causing-pesticide>

2. Federal Judge Issues Final Injunction Banning Prop. 65 Warning for Glyphosate

<https://prop65clearinghouse.com/articles/14263>

3. Chamber of Commerce's First Amendment Challenge to Proposition 65 Acrylamide Warnings Dismissed

<https://prop65clearinghouse.com/articles/14146>