

Federal Judge Blocks California From Requiring Warning Labels on Glyphosate-Based Products

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On June 22, 2020, the United States District Court for the Eastern District of California ruled glyphosate, a chemical commonly used in herbicides, is not subject to California's Proposition 65 ("Prop 65") warning requirement. *See National Association of Wheat Growers et al. v. Xavier Becerra*, Case No. 2:17-cv-02401.

Prop 65, which is officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, is a right-to-know statute that requires the state of California to maintain and update a list of chemicals known to cause cancer, birth defects or other reproductive harm. The statute also requires regulated entities to provide "clear and reasonable" warnings to California consumers before knowingly and intentionally causing any significant exposure to the listed chemicals.

Glyphosate is widely used in herbicide products, such as Bayer's Roundup, that kill weeds by blocking enzymes that regulate plant growth. In 2017, California's Office of Environmental Health Hazard Assessment listed glyphosate as a chemical known to the state to cause cancer. Bayer, joined by dozens of agricultural groups ("Plaintiffs"), sued the state seeking to prevent glyphosate from being added to the list of the state's known carcinogens.

In 2018, the Court issued a preliminary injunction in *National Association of Wheat Growers, et al. v. Xavier Becerra*. There, the Court held that requiring a cancer warning on products containing glyphosate would be misleading and a violation of the United States Constitution's First Amendment free speech protection because available research has not conclusively found glyphosate to cause cancer. Last week, the court made its 2018 ruling final, stating that although the International Agency for Research on Cancer found glyphosate to be a "probable carcinogen," all other regulators of which the court is aware found that there is insufficient evidence to show cancer causing capabilities. Thus, compelling companies to place a label that definitively states their glyphosate-containing products contain chemicals "known in the state of California to cause cancer" would be false and misleading. Based on this ruling, the State of California is barred from mandating Prop 65 cancer warnings on glyphosate-based products.

Failure to comply with Prop 65 regulations may result in penalties of up to \$2,500 per day for each failure to provide an adequate warning. Nearly anyone may bring an enforcement action against a regulated entity for failing to comply. For more information regarding the complex Prop 65 warning requirements or help defending an enforcement action brought under this statute, please email Contact@HartmanKingLaw.com.

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