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## WLF Asks California Supreme Court to Rein in Controversial Prop 65 Listing Mechanism

*(Monsanto Co. v. Office of Environmental Health Hazard Assessment)*

**“The Prop 65 listing mechanism not only delegates substantial policy-making authority to unaccountable private parties, but fails to provide affected parties with any meaningful opportunity to comment on proposed listings. Due process demands more.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation (WLF) late Friday urged the California Supreme Court to review (and ultimate overturn) lower court decisions that upheld the California Office of Environmental Health Hazards Assessment’s (OEHHA) controversial listing of glyphosate as a potential carcinogen under its Proposition 65 (Prop 65) warning regime. In a **brief** filed in *Monsanto Co. v. OEHHA*, WLF argued that the mechanism used to add glyphosate to the Prop 65 list violated nondelegation principles of the California Constitution as well as the due-process rights of affected manufacturers.

Glyphosate is a popular herbicide used worldwide in the cultivation of crops. California’s Prop 65 law prohibits businesses from exposing Californians to listed chemicals “known to the state to cause cancer” without first providing a warning. The law states that the list must include any substances designated as potential carcinogens by the International Agency for Research on Cancer (IARC), a private, European-based organization. Although numerous reputable organizations (including OEHHA itself) have concluded that glyphosate is not a carcinogen, it was recently added to the Prop 65 list on the basis of a contrary finding by an IARC working group.

WLF’s brief argues that Prop 65’s delegation to IARC of authority to make findings necessitating Prop 65 listings is an improper delegation of rulemaking authority, in violation of the California Constitution. WLF asserts that the delegation of this authority impermissibly surrenders control over a crucial policy determination to an unaccountable foreign body. WLF also argues that the listing mechanism violates manufacturers’ due-process rights by denying them an opportunity to explain (to either IARC or OEHHA) why the listing is scientifically unwarranted. Had they been given that opportunity, they could have demonstrated that IARC’s carcinogen determination is contrary to the great weight of scientific evidence and was a product of extreme bias and conflicts of interest among members of the IARC working group.

*Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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