

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NATIONAL ASSOCIATION OF WHEAT  
GROWERS; NATIONAL CORN  
GROWERS ASSOCIATION; UNITED  
STATES DURUM GROWERS  
ASSOCIATION; WESTERN PLANT  
HEALTH ASSOCIATION; IOWA  
SOYBEAN ASSOCIATION; SOUTH  
DAKOTA AGRI-BUSINESS  
ASSOCIATION; NORTH DAKOTA  
GRAIN GROWERS ASSOCIATION;  
MISSOURI CHAMBER OF COMMERCE  
AND INDUSTRY; MONSANTO  
COMPANY; ASSOCIATED  
INDUSTRIES OF MISSOURI;  
AGRIBUSINESS ASSOCIATION OF  
IOWA; CROPLIFE AMERICA; AND  
AGRICULTURAL RETAILERS  
ASSOCIATION,

Plaintiffs,

v.

LAUREN ZEISE, IN HER OFFICIAL  
CAPACITY AS DIRECTOR OF THE  
OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT; and  
XAVIER BECERRA, in his  
official capacity as Attorney  
General of the State of  
California,

Defendants.

CIV. NO. 2:17-2401 WBS EFB

ORDER RE: MOTION TO STAY

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Before the court is defendant Xavier Becerra's Motion to Stay Proceedings. (Docket No. 104.) The court held a hearing on the motion on September 4, 2018.


The power to stay proceedings "is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Here, the court, in granting a preliminary injunction, relied on the Ninth Circuit's interpretation of Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 651 (1985), in determining that the required warning label for glyphosate would not be "purely factual and uncontroversial." The primary case the court relied on, CTIA-The Wireless Association v. City of Berkeley, 854 F.3d 1105 (9th Cir. 2017), has since been vacated by the Supreme Court for further proceedings in light of National Institute of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018). Moreover, a more recent decision also interpreting Zauderer's "purely factual and uncontroversial" requirement, American Beverage Association v. City and County of San Francisco, 871 F.3d 884 (9th Cir. 2017), was called en banc and is scheduled for oral argument later this month.

Because CTIA and American Beverage concern the interpretation and application of Zauderer's "purely factual and uncontroversial" requirement, new decisions in those cases would assist the court in deciding any motion for summary judgment filed by the parties in this case. Further, the court has

1 already granted a preliminary injunction blocking enforcement of  
2 the warning requirement as to glyphosate in this case.  
3 Plaintiffs identify no prejudice from a stay other than  
4 uncertainty to their members due to further delay.<sup>1</sup> This  
5 uncertainty is insufficient to outweigh the savings of time and  
6 effort for the court and the parties that may be gained from  
7 staying this case pending further guidance from the Ninth Circuit  
8 in CTIA or American Beverage.

9 IT IS THEREFORE ORDERED that all proceedings in this  
10 case are hereby STAYED pending issuance of opinions by the Ninth  
11 Circuit in American Beverage Association v. City and County of  
12 San Francisco, No. 16-16072, and CTIA-The Wireless Association v.  
13 City of Berkeley, No. 16-15141. When the Ninth Circuit has  
14 issued opinions in both those cases, counsel shall take the  
15 necessary steps to have this matter placed back on the calendar  
16 for further status conference. The briefing schedule and hearing  
17 date of January 22, 2019 on the cross-motions for summary  
18 judgment are vacated.

19  
20 Dated: September 5, 2018

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22 WILLIAM B. SHUBB  
23 UNITED STATES DISTRICT JUDGE  
24  
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27 <sup>1</sup> Notably, counsel for plaintiff explained multiple times  
28 at oral argument that he was not claiming "the sky would fall" if  
a stay was granted.