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Monsanto Co. v. Geertson Seed Farms

John Wright

***Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743 (2010).**

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ABSTRACT

Conventional alfalfa farmers brought suit seeking an injunction against the Animal and Plant Health Inspection Service's deregulation of a genetically engineered alfalfa strain resistant to the herbicide Roundup. Monsanto Co., owner of the Roundup Ready Alfalfa, appealed the District Court's injunction barring the deregulation and planting of the alfalfa to the United States Supreme Court, which reversed the permanent injunction. The Court reasoned that the injunction was premature, overly broad, and did not consider alternatives to the blanket ban on planting of the crop. The Court emphasized that the injunctive standard for National Environmental Protection Act claims is no lower than the injunctive standard generally.

I. INTRODUCTION

Monsanto Co. v. Geertson Seed Farms[55] deals a victory for proponents of genetically engineered crops for weed control. The United States Supreme Court decision, authored by Justice Samuel Alito, reviewed three issues of the case: (1) whether the petitioner, Monsanto Co., owner of the genetically altered alfalfa, had the constitutional standing to seek review of the district court's ruling; (2) whether the respondents, conventional alfalfa growers, food safety groups, and environmental groups, had the constitutional standing to seek the injunctive order at issue; and (3) whether the district court abused its discretion when it commanded the Animal and Plant Health Inspection Service (APHIS) to withdraw the deregulation of the genetically engineered alfalfa, and issued an injunction prohibiting further planting of the crop until an environmental impact statement (EIS) had been reviewed. The three issues were decided in the affirmative.[56]

II. FACTUAL BACKGROUND

[55] 130 S. Ct. 2743 (2010).
[56] Justice Breyer did not participate in the 7-1 decision.

In 2004, Monsanto sought to deregulate two of their genetically engineered alfalfa strains.[57] The seeds, known as Roundup Ready Alfalfa (RRA), were engineered to survive the application of glyphosate, the active ingredient in Monsanto's popular Roundup herbicide.[58] Monsanto owns the intellectual property rights to RRA, and Forage Genetics International (co-petitioner in the case) is the exclusive RRA seed developer.[59]

Certain genetically engineered plants are generally considered "plant pests," and therefore subject to the Plant Protection Act (PPA),[60] and regulation by the United States Department of Agriculture's (USDA) APHIS.[61] The regulatory effort attempts to restrict the dissemination of "plant pests" into the environment of the United States.[62] In order to deregulate a plant, APHIS is required to complete an EIS "to the fullest extent possible" pursuant to the National Environmental Protection Act (NEPA).[63] This EIS is limited to the proposed actions, and is not required to consider less imminent actions.[64] If the agency completes an environmental assessment (EA) that finds that the proposed actions will have "no significant impact on the environment," the agency need not complete the longer EIS.[65]

III. PROCEDURAL BACKGROUND

After Monsanto petitioned APHIS to deregulate RRA, the agency produced an EA on the proposed deregulation. After public comment, APHIS decided to deregulate RRA, without condition or an EIS.[66] The respondents met this with swift action by filing a suit claiming that the deregulation of RRA violated NEPA, the PPA, and the Endangered Species Act (ESA).[67] Because no preliminary

[57] *Monsanto*, 130 S. Ct. at 2750.
[58] *Id.*
[59] *Id.*
[60] *Id.* at 2749. The PPA is codified at 7 U.S.C. §§ 7701-7786 (2006).
[61] *Id.*
[62] *Id.*
[63] *Id.* at 2750 (quoting 42 U.S.C. § 4332(2)(C)).
[64] *Id.* (citing *Kleppe v. Sierra Club*, 427 U.S. 390 (1976)).
[65] *Id.* (citing 40 C.F.R. §§ 1508.9(a), 1508.13(2009)).
[66] *Id.*
[67] *Id.* at 2750-2751.

injunctive relief was initially sought in the action, RRA was not regulated and was planted by 3,000 farmers on an estimated 220,000 acres in 48 states.[68]

The district court found that while RRA was not a danger to human or livestock health, APHIS had violated NEPA by failing to complete an EIS. Additionally, the district court found that the EA was deficient in two areas: (1) the extent to which the glyphosate resistant gene would be transmitted to other alfalfa strains; and (2) the extent that the glyphosate gene would be transmitted to other plants, potentially creating Roundup tolerant weeds. Both the ESA and PPA claims were dismissed without prejudice.[69]

The district court allowed Monsanto to intervene in the case after the initial ruling. The court requested that the parties propose remedies to cure the NEPA violation. APHIS' proposal included a completed EIS, continued planting of RRA pending the EIS, strict guidelines for continued use of RRA to minimize the risk of gene contamination, and a mandatory contract between Monsanto and the growers of RRA to ensure compliance with the guidelines.[70]

The district court rejected APHIS' proposal, and instead issued a preliminary injunction against future planting of RRA, pending completion of the EIS. However, in an effort to mitigate individual farmers' potential financial losses, the injunction allowed farmers who had already purchased RRA to be exempted from the ban and plant their seeds until March 30, 2007. The district court then issued a permanent injunction vacating APHIS' deregulation of RRA, and ordering APHIS to prepare an EIS before any review of Monsanto's petition to deregulate RRA.[71] The final injunction also eliminated any planting of RRA from March 30, 2007 until the time that APHIS could complete the EIS, and compelled restrictions on the handling and harvesting of RRA by farmers who were grandfathered in- mimicking APHIS' proposed guidelines.[72]

[68] *Id.* at 2751.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.* at 2751-2752.

Monsanto appealed only the scope of the judgment and did not contest the NEPA violation.[73] The Ninth Circuit Court of Appeals affirmed the decision with a divided panel, and decided that the district court had not abused its discretion in either its findings of fact, or its decision not to take APHIS' expertise on the subject of planting and gene contamination into consideration. Further, the Ninth Circuit rejected the argument that the district court had erred in disallowing an evidentiary hearing prior to issuing the permanent injunction. Monsanto applied for a writ of certiorari, which was granted by the United State Supreme Court.[74]

IV. SUPREME COURT HOLDING AND ANALYSIS

Two threshold issues had to be resolved before the Court could confront the substantial issue of the vacation of the deregulation and the imposition of the permanent injunction. First, the Court determined that the petitioners had standing to challenge the district court's decision under Article III of the U.S. Constitution.[75] The Court found that the petitioners were injured by the prohibition of the sale of their product due to the injunction ordered by the district court; Monsanto had injury traceable to the challenged action.[76]

Second, the Court determined the standing of the respondents to seek the injunctive relief at question. The Court found that respondents, namely the conventional and organic alfalfa farmers, had the potential for injury required for standing to sue for the injunction halting the deregulation of RRA.[77] The Court reasoned that injury to respondent would develop regardless of whether the RRA gene was transferred to the conventional crop due to the increased genetic testing and monitoring of the respondent's own crops.[78]

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[73] *Id.* at 2752 (citing *Geertson Seed Farms v. Johanns*, 570 F.3d 1130 (9th Cir. 2009)).
[74] *Id.*
[75] *Id.* "Standing under Article III of the Constitution requires that an injury be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Horne v. Flores,* 129 S. Ct. 2579 (2009).
[76] *Monsanto*, 130 S. Ct. at 2752.
[77] *Id*. at 2754-2755.
[78] *Id.* at 2756.

The substantial issue was divided into two sub-issues. The Court confronted the district court's permanent injunctions preventing: (1) the deregulation of RRA; and (2) the planting of RRA until an EIS was completed.[79] The Court outlined the traditional four-factor test for granting injunctive relief. The factors for injunctive relief that the plaintiff must satisfy are:

> (1) that it has suffered an irreparable injury;
> (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
> (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
> (4) that the public interest would not be disserved by a permanent injunction.[80]

The Court held that the test applied equally in cases of NEPA violations.[81] Any potential injunction is subject to the four-factor test; with "[n]o such thumb on the scales" as the district court applied in its citation of *Idaho Watersheds Project v. Hahn*,[82] an overruled Ninth Circuit decision.[83]

After the discussion of the standard of injunctive review, the Court looked at the substance of the injunction pertaining to the deregulation of RRA pending the EIS.[84] To determine whether the injunction against APHIS was proper, the Court again looked to the four-factor test applied to NEPA in *Winter v. Natural Resources Defense Council, Inc*.[85] The Court reasoned that since APHIS had not yet utilized its power to partially deregulate RRA, and had failed in its attempt to "stream-line" the partial-deregulation in the district court proceedings, the district court's decision to prohibit the partial deregulation of RRA was "premature."[86] The Court also rejected the respondents' argument that the injunction was a prophylactic measure, citing many other less restrictive, less extreme remedies that could achieve the same measure of protection as an injunction.[87] The Court decided the four-factor test for injunctive relief

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[79] *Id.*
[80] *Id.* (quoting *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006)).
[81] *Id.* (citing *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 380-382 (2008)).
[82] 307 F.3d 815 (9th Cir. 2002). *Idaho Watersheds* was implicitly overruled by the US Supreme Court's decision in *Winter*.
[83] *Monsanto*, 130 S. Ct. at 2757.
[84] *Id.*
[85] *Id.* at 2758.
[86] *Id.*
[87] *Id.* at 2759. These alternative measures included isolation distances between conventional and RRA alfalfa and stringent regulation on harvesting and distributing RRA.

not been satisfied, mostly because the respondents could not show that irreparable harm would be incurred if the partial deregulation had continued.[88]

The Court went further, delineating for the respondents the appropriate remedy for relief from partial deregulation, were it necessary. If APHIS' partial deregulation of RRA did violate NEPA, a new suit could be filed seeking preliminary injunctive relief. The Court found that there was no assurance that the respondents would incur any injury whatsoever. The scenario the Court proposed was that the cultivation of RRA could happen outside of the range of the conventional and organic alfalfa, eliminating the risk of gene contamination and injury. If APHIS then completed a new EA that found there was no significant risk of gene flow contamination with weeds no injury would exist. The Court repeated its point that the imposition of the permanent injunction was premature.[89]

The second substantial sub-issue was whether the district court erred by enjoining the planting of RRA. First, the Court noted that the district court erred in foreclosing the possibility of temporary or partial deregulation in lieu of the injunction. Second, the Court found that the vacatur of APHIS' deregulation decision was sufficient in prohibiting the growth and sale of the RRA, and that the injunction was an unwarranted extreme remedy.[90]

V. CONCLUSION

Injunctive relief is an extreme remedy, and it should not be granted unless all potential lesser remedies have been exhausted. While the importance of protecting the environment from unchecked genetically engineered pest plants cannot be overstated, it is also important to protect America's farmers from the scourge of dry years and water shortages with drought resistant crops, and from the invasion of noxious weeds with herbicide resistant crops. The balance between innovation and regulation is a difficult one to achieve.

[88] *Id.* at 2759-2760.
[89] *Id.* at 2760.
[90] *Id.* at 2761.