



Monsanto v. Geerston Seed Farms: The Supreme Court Alfalfa Decision (video)

By *Cooking Up a Story*

CUPs Food News: A Conversation with Craig Johnston

June 28, 2010; The recent [Supreme Court decision on the Roundup Ready Alfalfa case \(PDF\)](#) has drawn a mixture of reactions from the mainstream media, and from the Blogosphere. To help us better understand this decision, CUPs sat down with [Craig Johnston, professor of environmental law at Lewis & Clark Law School](#), and the lead author (on behalf of the [NRDC](#)) of one of the briefs presented to the Supreme Court in this case.


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Alfalfa is the fourth largest cash crop, and is conventionally grown on over 20 million acres of land throughout the US. A member of the legume family, alfalfa is an important forage crop for livestock, and also for commercial seed production. The concern of some farmers, both conventional and organic alfalfa growers, is that through open pollination (principally from plants grown to produce commercial seed that must be allowed to bloom), the plants would be susceptible to cross contamination from the pollen of



A Field of Alfalfa

nearby genetically engineered (transgenic) alfalfa plants. The potential for gene flow (cross contamination between transgenic and non-transgenic varieties) was considered a possible outcome of the unrestricted regulation of Roundup Ready Alfalfa (RRA), and potentially, a catastrophic environmental threat to non-transgenic alfalfa seed growers. The other environmental concern was the possible transfer of the [Roundup resistance](#) to native populations of weeds, requiring the use of more toxic herbicides for future weed control.

The Monsanto vs Geerston Seed Farms case arose out of the 2005 decision by USDA's [Animal Protection and Health Inspection Service](#) (APHIS), the agency charged with "Protecting American Agriculture", to deregulate Monsanto's RRA seed products. In responding favorably to Monsanto's petition to receive deregulatory status on its RRA varieties, two alfalfa farmers, the [Center For Food Safety](#), and other environmental groups went to court seeking a permanent injunction barring APHIS from deregulating RRA until a final Environmental Impact Statement was performed. As governed under the [Plant](#)

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Protection Act (PPA), APHIS was required by the **National Environmental Policy Act (NEPA)** to conduct an extensive and rigorous scientific analysis, an Environmental Impact Statement (EIS), on any regulated article that poses a risk of significant environmental harm before fully deregulating its use. The **District Court ruled** (PDF) that APHIS violated the law by failing to conduct an EIS prior to deregulation, and ordered that all further sales of RRA cease, and (with certain limited exceptions) no future plantings of RRA seeds were allowed to occur until after a final EIS was conducted. Monsanto appealed the case, and the **Ninth Circuit Court of Appeals subsequently affirmed the decision** (PDF) of the lower court.

In that neither side contested the decision of the District Court that APHIS violated the NEPA requirements, the Supreme Court chose to rule on narrow procedural grounds, for the most part, not weighing in directly upon the environmental issues involved. The lone dissenter, Justice Stevens, wrote in his dissenting opinion, in part:

"The Court does not dispute the District Court's critical findings of fact: First, Roundup Ready Alfalfa (RRA) can contaminate other plants. Second, even planting in a controlled setting had led to contamination in some instances. Third, the Animal and Plant Health Inspection Service (APHIS) has limited ability to monitor or enforce limitations on planting. And fourth, genetic contamination from RRA could decimate farmers' livelihoods and the American alfalfa market for years to come. Instead, the majority faults the District Court for "enjoining [preventing] APHIS from partially deregulating RRA."

Nonetheless, there were some surprises in the Supreme Court's decision, and both sides claimed legitimate victories. For Monsanto, they were able to overturn the lower courts injunction to block deregulation of their RRA seeds until the EIS report was released. The Supreme Court remanded the case back to the Agency (APHIS) to evaluate whether a partial deregulation could be allowed prior to the release of the EIS. APHIS had earlier proposed to the District Court Judge during their remedy phase, a set of limited conditions upon which Monsanto could continue to sell RRA seeds, and farmers to purchase and plant those seeds until a final EIS was issued, but the District Court Judge (Breyer) rejected their proposal. However, should APHIS again decide to seek a partial deregulation for RRA, the Supreme Court made it clear, the case would be brought back to the District Court judge to review again. According to Johnston, it was unlikely APHIS will seek to partially deregulate RRA, until after the final EIS is released, perhaps, in another two to four years.

For the farmers and environmental groups that initiated the lawsuit, there were a number of victories that resulted from this decision. For the first time, the Supreme Court now recognizes economic consequences resulting from environmental impacts as legitimate factors for consideration under NEPA rules. This aspect of the decision may significantly impact the similar **GMO sugar beet case**; already in response to the Supreme Court Decision, the Ninth Circuit Court of Appeals judge has postponed the next scheduled July hearing until mid-August to give both sides time to review the Supreme Court's ruling. Both cross contamination threats, and economic loss, are central issues involved in the sugar beet case. For Johnston, the biggest win in this decision was the Supreme Court's rejection of Monsanto's threshold argument to prevent future court injunctions from being issued in cases where the "likelihood of irreparable harm" (even catastrophic harm) were considered less than a even 50:50 chance of occurring.

In the end, whether it becomes a matter of years, if indeed it ever does occur, before any Roundup Ready Alfalfa seeds reach the marketplace again, or as Monsanto predicts, their seeds will be available for sale under partial deregulation by this Fall—on determining the actual outcome—the jury is still out.

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