

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL FAMILY FARM COALITION, et
al.,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Respondents.

No. 21-1043 (Consolidated
with Nos. 20-1445, 20-1484,
and 20-1441)

PETITIONERS' MOTION TO VOLUNTARILY DISMISS THE PETITION

Pursuant to Federal Rule of Appellate Procedure 42(b), Petitioners National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity, and Pesticide Action Network (NFFC Petitioners) move to voluntarily dismiss their petition for review in the above-captioned case. Federal Respondents do not oppose this Motion, Trade Association Petitioners take no position, and Intervenors declined to take a position until they review the Motion. Pursuant to Federal Rule of Appellate Procedure 39(a) and LR 13(b), NFFC Petitioners will bear their own costs.

NFFC Petitioners challenged the Environmental Protection Agency (EPA)'s October 27, 2020 decision to register pesticide products containing dicamba to spray

over-the-top of cotton and soybean genetically engineered to withstand this application under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by filing a petition for review in the Ninth Circuit on December 21, 2020, which was transferred to this Court and consolidated with two other petitions. *See Am. Soybean Ass'n v. EPA*, No. 20-1441 (D.C. Cir. filed Feb. 2, 2021), ECF No. 1883240 (MDL Panel Consolidation Order). NFFC Petitioners also concurrently filed a complaint in the district court challenging EPA's 2020 registrations due to uncertainty concerning jurisdiction under FIFRA Section 16. 7 U.S.C. § 136n; *Ctr. For Biological Diversity v. EPA*, No. 20-00555 (D. Az. filed Dec. 23, 2020).

In April 2020, the parties in these consolidated cases all filed competing motions for further proceedings in this Court. First, NFFC Petitioners moved to transfer the petitions back to the Ninth Circuit. NFFC Pet'rs' Mot. Transfer, ECF No. 1895679. Alternatively, NFFC Petitioners asked the Court to resolve the jurisdictional issue itself, and then transfer back to the Ninth Circuit. *Id.* EPA moved to dismiss the consolidated cases, arguing that the courts of appeals do not have jurisdiction under FIFRA because EPA did not issue the 2020 registrations following a public hearing. EPA's Mot. Dismiss, ECF No. 1895893 (citing 7 U.S.C. § 136n(b)). Finally, the Trade Association Petitioners filed a Motion to Stay the proceedings in the D.C. Circuit to allow district court cases to proceed, and

Intervenors also filed a provisional Motion to Stay. Trade Associations' Mot. Stay, ECF No. 1895857; Proposed Intervenors' Mot. Stay, ECF No. 1895674. On July 14, 2021, this Court denied the Intervenor and Trade Association Petitioners' Motions for a Stay and denied NFFC Petitioners' Motion to Transfer or to decide the jurisdictional issue, but did not rule on EPA's Motion to Dismiss, instead referred the question of jurisdiction to the merits panel. See Order, ECF No. 1906276.

Following this Court's ruling on July 14, NFFC Petitioners filed a Status Report in the district court, requesting an end to the temporary stay there and a determination on jurisdiction. Status Report, *Ctr. For Biological Diversity*, No. 20-00555 (D. Az. July 22, 2021), ECF No. 53. The district court lifted the stay and ordered NFFC Petitioners (Plaintiffs in district court) to file a Motion to Determine Jurisdiction by today, August 6, 2021. Order, *Ctr. For Biological Diversity*, No. 20-00555 (D. Az. July 28, 2021), ECF No. 56.

In their Motion to Determine Jurisdiction, NFFC Petitioners have affirmatively argued that jurisdiction lies in district court and seek to continue litigating this case in the District of Arizona. Therefore, NFFC Petitioners seek dismissal of the above captioned petition for review. NFFC Petitioners' voluntary dismissal will not prejudice any other parties. The Trade Association Petitioners filed petitions for review in this Court and the Fifth Circuit, resulting in these

consolidated cases, which can proceed without NFFC Petitioners. In addition, any further proceedings in this Court, including filing the administrative record and further briefing, will not occur until after the other parties file a proposal on August 13, 2021, pursuant to this Court's Order. Order, ECF No. 1906276. Accordingly, voluntary dismissal is appropriate without any further terms, other than the parties will bear their own costs.

Respectfully submitted this 6th day of August, 2021.

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CERTIFICATE OF COMPLIANCE

This document certifies that NFFC Petitioners' Motion to Voluntarily Dismiss the Petition complies with the type-volume limit of Rule 27(d)(2) because, excluding the parts of the document exempted by Rules 27(a)(2)(b) and 32(f), this document contains 635 words, as determined by the word-count function of Microsoft Word.

The document also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Goudy Old Style font.

Respectfully submitted this 6th day of August, 2021.

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