

Rules on GMO crops in Hawaii heads to US appeals court

June 15 2016, by Caleb Jones



In this Sept. 10, 2014 file photo, Monsanto crew members Gerard Manuel, left, and Rommel Angale, right, count corn sprouts in a field of test hybrids in a breeding nursery near Kihei, Hawaii. The fight over regulating genetically engineered crops and pesticides in three Hawaii counties will be back in a federal courtroom Wednesday, June 15, 2016, as some agricultural giants look to protect their research farms from bans against modified food in the islands. (The Maui News, Matthew Thayer via AP, File)

The fight over regulating genetically engineered crops in three Hawaii counties was back in a federal courtroom as some agricultural giants look to protect their farms from bans against modified food.

The 9th U.S. Circuit Court of Appeals heard oral arguments in Honolulu Wednesday on ordinances that seek to regulate or outlaw genetically engineered crops in Hawaii, Kauai and Maui counties.

Agrichemical companies and trade associations sued each county, and federal court rulings sided with the businesses. The counties and interested environmental groups want the 9th Circuit to overturn the decisions.

There is scant scientific evidence to prove that foods grown from engineered seeds are less safe than their conventional counterparts. But in the islands, some are still concerned, especially about the use of pesticides.

Lawyers representing the counties argued that state laws do not specifically address genetically engineered crops relevant to the proposed regulations. The counties, which have policing powers to protect their residents, assert that they have the right and obligation to regulate the industry.

They also argued that the Hawaii Supreme Court should have taken up the issue as there is no written opinion specifically on genetically engineered crops in the state.

"This matter should have been turned over via certified question to the Hawaii Supreme Court because it's an important issue for the entire state of Hawaii," said David Minkin, representing the county of Kauai at the hearing.

The state Department of Agriculture regulates harmful plants in Hawaii, however, and attorneys representing the agrichemical companies said the state could and would specifically regulate genetically engineered plants if they felt it was warranted. The department has not said genetically

engineered crops are harmful.

"The issue in this case isn't whether pesticides or GE plants should be regulated or what those regulations should be. The only question here is who does the regulating. Under current Hawaii law, the answer is clear," said Chris Landau, representing the companies in the Kauai and Big Island cases. "The state has comprehensive schemes in place."

While the state gives counties some power to regulate issues on a local level, those ordinances cannot conflict with state laws.

In Kauai, the county wants to require the companies to report exactly where and what they are growing and seeks to ban the use of pesticides. The companies argue that the reporting process itself is a form of regulation, and the farms would risk both vandalism and espionage if that reporting were required.

Alika Atay, 62, who is a certified natural Hawaiian farmer who has lived on Maui his entire life, said his major concern is the heavy usage of pesticides.

"In a very short period of time these people have come to our island and they have poisoned our island," Atay said.

"They are killing the Hawaiian people... if they kill us—or kill our land, kill our water—where do we have to go? This is our home. We must protect our home," Atay said.

Companies that develop new types crops are drawn to Hawaii's warm weather, which allows them to grow more generations of crops and accelerate their development of new varieties.

Monsanto and Dow Chemical have research farms in Maui County.

U.S. District Chief Judge Susan Oki Mollway ruled last June that federal and state law pre-empts that county's ban on cultivating genetically engineered crops, making it invalid. She stressed then that her order addressed only the question of county authority.

Two years ago, Kauai and Hawaii counties adopted measures regulating GMO crops and pesticides. U.S. Magistrate Judge Barry Kurren struck them down, saying state law superseded them.

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