Legal Backgrounder

Washington Legal Foundation
Keeping Free Enterprise Free

Vol. 41 No. 13 September 15, 2026

Oregon Extended Producer Responsibility Law for Plastics and Packaging Survives Initial Legal Challenge

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On August 27, 2026, the U.S. District Court for the District of Oregon issued a decision in *National Association of Wholesaler-Distributors v. Feldon*, Case No. 3:25-cv-1334-SI—the first judicial challenge to a state Extended Producer Responsibility (EPR) program. The case concerns Oregon's Recycling Modernization Act (RMA) (codified at ORS §§ 459A.860–975), which establishes an EPR framework for plastics and packaging. The National Association of Wholesaler-Distributors (NAW) filed its complaint in the federal district court on July 30, 2025, alleging numerous constitutional infirmities in the law.

Key Takeaways

- In *National Association of Wholesaler-Distributors v. Feldon*, the court rejected all constitutional challenges to the state's EPR law governing plastics and packaging, marking an early loss for opponents of the law.
- Despite the breadth of the ruling, several aspects of the court's reasoning—particularly regarding fee reserves and the practical viability of alternative producer responsibility organizations (PROs)—invite scrutiny on appeal.
- An appeal is anticipated. The decision may also influence pending EPR challenges in California and Colorado.

Introduction and Overview

The RMA was enacted in 2021, with the stated goal of shifting "end-of-life" recycling costs of packaging, paper, and other covered products from state and local municipalities (and, thereby taxpayers) onto the producers of the regulated materials (the identity of which may differ based on the transaction structure).[1] As with other EPR programs, the RMA requires all "producers," to register with and become a member of a PRO, which is an organization created by producers that works with Oregon's Department of Environmental Quality (DEQ) to levy individualized fees that are intended to be proportional to the annual cost of the waste that each producer places into Oregon's recycling system. As a member, a producer is obligated to report to the PRO the volume of covered products it brings into Oregon and to pay membership fees based on those volumes. "Small" producers with gross revenues

[1] Critics of EPR have argued that, despite the stated goal of these laws, in practice, producers are likely to offset their liabilities by raising costs, which, in fact, would ultimately cause consumers to bear the financial burden.

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under $5 million are exempt. DEQ may issue civil penalties up to $25,000 per day for violations of the RMA.

The case represented a strategic effort by industry: the breadth of the constitutional claims asserted was designed, in part, to establish precedent that could facilitate subsequent legal challenges to EPR programs in other jurisdictions. Initial developments appeared promising for the regulated community: on February 6, 2026, the court granted a preliminary injunction against enforcement of the RMA in favor of NAW and its members on their dormant Commerce Clause and Due Process Clause claims, finding "serious questions" going to the merits, a likelihood of irreparable injury, and a balance of hardships tipping sharply in favor of NAW and its members.

Following a five-day bench trial held from July 13 through July 17, 2026, U.S. District Judge Michael Simon issued a comprehensive 71-page opinion formally titled *Findings of Fact and Conclusions of Law* under Fed. R. Civ. P. 52(a), rejecting NAW's claims in their entirety. The decision constitutes a setback for industry, though an appeal has been widely anticipated regardless of the outcome at the district court level.

Analysis of the Opinion

The Court's Framing of EPR. Before addressing the merits of NAW's claims, the opinion devotes considerable attention to contextualizing EPR within Oregon's regulatory history. The court emphasizes the state's longstanding commitment to recycling policy, noting that Oregon enacted the nation's first beverage-container deposit law (the "Bottle Bill") in 1971 under ORS § 459A.700 et seq. By situating the RMA within this lineage, the opinion signals that the court views the EPR framework as an extension of established state interests rather than a novel regulatory imposition.

The opinion further invokes Justice Louis Brandeis's celebrated theory of "laboratories of democracy," as articulated in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). According to this framework, the federal system functions optimally when a "single courageous State" is permitted to "serve as a laboratory and try novel social and economic experiments without risk to the rest of the country." (One might reasonably dispute the notion of "without risk" in the context of EPR programs that impose compliance obligations on interstate producers, stand to alter the product pricing practices of nationwide manufacturers, distributors, brand-owners, and retailers, and thus have effects extending well beyond the enacting state's borders.)

Dormant Commerce Clause. One of NAW's principal constitutional challenges rested on the dormant Commerce Clause. The court analyzed discrimination under three sub-theories—purpose, facial discrimination, and discriminatory effects—and rejected all three before turning to user fees and the balancing framework from *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). NAW argued that the Oregon EPR law has impermissible extraterritorial effects by imposing fees on out-of-state businesses and would produce a chilling effect on interstate commerce. Central to NAW's theory was an effort to distinguish the EPR regulatory framework from the one at issue in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), in which the Supreme Court upheld a California animal welfare regulation against a dormant Commerce Clause challenge.

The court then proceeded to the separate user-fee and *Pike*-balancing theories. It addressed NAW's extraterritorial-effects argument under *Pike* rather than as a standalone discrimination theory, explaining that "[i]n our interconnected national marketplace," "many (maybe most) state laws have the 'practical effect' of controlling extraterritorial behavior," as the Supreme Court recognized in *National Pork Producers Council v. Ross*. Applying the framework from *Pike*—in which a regulation will be upheld unless the burden on commerce is excessive compared to the putative local benefits—the court first concluded that NAW had not made the threshold showing of a "substantial or significant burden on interstate commerce" required before *Pike* balancing applies. The court further held that, even if that threshold were met, the burden would not be "clearly excessive in relation to the putative local benefits." This evidentiary holding may prove significant on appeal, as it suggests that future challengers must develop robust economic evidence to sustain a dormant Commerce Clause claim against EPR legislation.

User Fees. As part of its dormant Commerce Clause challenge, NAW argued that fees collected by the Circular Action Alliance (CAA)—the PRO authorized to facilitate implementation of the RMA—operated as unreasonable user fees for a public facility. Applying the three-part test from *Northwest Airlines, Inc. v. County of Kent*, 510 U.S. 355 (1994), the court considered whether the fees were (1) based on a fair approximation of use, (2) not excessive in relation to the benefits conferred, and (3) nondiscriminatory. Because the court had rejected NAW's discrimination theories, the dispute centered on the first two prongs. NAW argued that the fees were excessive, citing CAA's 2025 Annual Report, which disclosed $145.5 million in fees collected but only $56.5 million expended, yielding an apparent surplus of approximately $90 million.

The court rejected the user-fee challenge, holding that NAW had not quantified the effect of the RMA's exemptions on Oregon's recycling system and therefore had not shown that obligated producers paid more than their fair share. As to excessiveness, the court reasoned that new programs may need to accumulate reserves during initial implementation and that CAA's surplus funds could reduce Oregon's 2026 and 2027 producer fees. Although the court's conclusion may be defensible as a general proposition, the opinion does not persuasively demonstrate why a reserve of this magnitude—representing approximately 62% of total collections—is per se reasonable, particularly in light of the obligations that the fees are ostensibly designed to fund. This analytical gap may present an avenue for further development on appeal.

Private Delegation Under Due Process. NAW also argued under the Fourteenth Amendment Due Process Clause that Oregon unconstitutionally delegated governmental authority for implementing the RMA to a "self-interested" private entity—namely, CAA. The court held that NAW first had to identify a protected liberty or property interest before invoking private nondelegation protections. On the merits, applying *Sunshine Anthracite Coal Co. v. Adkins* and *FCC v. Consumers' Research*, the court held that CAA functions subordinately to DEQ, which retains standards, oversight, and ultimate decision-making authority. The court also emphasized that the RMA does not require producers to participate in CAA; rather, producers may form a competing PRO or avail themselves of the RMA's private recycling rule (ORS § 459A.869(13)). The court noted that DEQ had never denied a PRO application, including one from any of NAW's members.

Although the court acknowledged the practical barriers to establishing an alternative PRO under the RMA framework, it held that the statutory alternatives were sufficient to defeat the private-delegation challenge. The gap between theoretical and practical alternatives remains a potential issue on appeal:

- **Coordination Requirements**. The RMA's coordination clause and inter-PRO agreement provisions prohibit an alternative PRO from acting independently. Any new PRO must align its operations with CAA and engage in equitable sharing of state infrastructure costs, substantially diminishing the practical independence of any competitor.
- **Scaling Costs**. A new PRO must demonstrate that it possesses sufficient financial reserves to fund local government upgrades, recycling collection vehicles, and sorting

facility improvements—a capital-intensive undertaking that presents a formidable barrier to entry.

- **Regulatory Approval**. A putative alternative PRO must pay a $150,000 DEQ plan-review fee and obtain approval of its program plan through a process that may take years. If approved, it must also pay millions of dollars in annual operating fees to DEQ. A producer leaving CAA to join another PRO would temporarily be out of compliance with the RMA and subject to regulatory penalties.

The court nevertheless held that these practical barriers did not eliminate the statutory alternatives. It concluded that, because a PRO plays an advisory role, the RMA sets criteria for the PRO's decision-making, and DEQ retains ultimate decision-making authority, the arrangement does not violate the private nondelegation doctrine under the Due Process Clause.

Due Process: Fee Assessments and Enforcement. NAW alleged multiple violations of due process in connection with CAA's fee-setting and enforcement processes, each of which the court rejected. The court held that membership in CAA was "voluntary" in the constitutional sense because producers could form their own PRO, privately recycle all covered products for which they were responsible, or exit the market:

- CAA's use of a confidential methodology for setting program fees does not constitute a due process violation because CAA membership is voluntary in the constitutional sense and DEQ retains ultimate authority over the fee-setting methodology.
- NAW's challenge to the mandatory arbitration clause in the CAA master agreement that regulated businesses must execute did not establish a due process violation. The court noted that arbitration before a neutral decisionmaker can provide sufficient due process, but it did not reach whether arbitration itself constituted sufficient process because the requirement derives from CAA's contract, not the RMA.
- The RMA's enforcement process does not violate due process because the statute provides for notice and cure, administrative law judge hearings, and judicial appeals.

The court's reasoning on the first two points rests heavily on the availability of alternatives and the distinction between the RMA and CAA's contracts. Although the practical obstacles to establishing an alternative PRO remain significant, the court treated CAA membership as voluntary in the constitutional sense and found the RMA's notice-and-cure procedures, administrative law judge hearings, and judicial appeals sufficient to satisfy due process.

Implications and Next Steps

The decision represents a setback for the regulated community and may have consequences for pending and contemplated legal challenges to EPR programs in other jurisdictions. The opinion situates Oregon's law within a broader trend: more than 146 state-level EPR laws now operate in 35 States across more than a dozen product categories, and seven States, including Oregon, have enacted EPR laws for plastic packaging waste since 2021. Relevant pending and contemplated challenges with respect to plastics and packaging-related EPR laws include actions involving the following state programs:

- **California**. A challenge to SB 54 (California's EPR statute) is backed by 17 Republican state attorneys general. The Oregon decision's rejection of dormant Commerce Clause arguments may complicate that litigation, although the California statute differs in material respects from the RMA.

- **Colorado**. NAW has a motion for a preliminary injunction pending in its challenge to Colorado's EPR program, which is also the subject of a separate lawsuit brought by the Lubricant Manufacturers Association.

With respect to Oregon, the court's opinion does not expressly dissolve the preliminary injunction in a separate order. Because the court entered final Findings of Fact and Conclusions of Law rejecting NAW's two remaining constitutional claims, however, that merits ruling effectively supersedes the preliminary injunction and opens the door for Oregon to enforce the RMA against non-compliant parties.

An appeal to the Ninth Circuit is anticipated and was expected regardless of the outcome at the district court level. On appeal, NAW may benefit from the opportunity to develop the evidentiary record on interstate commerce burden—the principal deficiency the court identified—and to press arguments regarding the practical infeasibility of alternative PROs.

The opinion itself acknowledges the possibility of federal intervention, noting that Congress, through the Constitution's Supremacy Clause (U.S. Const. art. VI, cl. 2) and the power of federal preemption, could provide a backstop if national uniformity is found to be the preferred approach. While preemption represents one potential avenue for resolution, it is not the only mechanism available to the federal government. To the extent it exists, implementing seldom used authority under existing federal environmental statutes that address recycling may be another approach. Were the executive branch disposed to intervene, the U.S. Department of Justice would more likely participate at the appellate stage, potentially as amicus curiae.