

## Responding To State Packaging Law Uncertainty

By **Stacey Geis, Juge Gregg and Emily Werkmann** (September 15, 2026, 6:48 PM EDT)

Federal courts this year have stayed enforcement of both Oregon's extended producer responsibility, or EPR, program and California's truth-in-labeling program. The preliminary injunctions signal the laws raise constitutional concerns sufficient to pause enforcement while litigation ensues.

And in August, the National Association of Wholesaler-Distributors, or NAW, filed a motion for preliminary injunction seeking to stop enforcement of Colorado's packaging EPR law, in *NAW v. Ryan* in the U.S. District Court for the District of Colorado.

The same month, the NAW filed a similar motion against California's law in the U.S. District Court for the Eastern District of California. That case, *Nebraska v. Heller*, also involves 17 state attorneys general.[1]

Courts are indicating that several constitutional arguments may have merit. These include arguments based on the dormant commerce clause, the First Amendment's commercial speech protections and the 14th Amendment's due process clause.

In the Oregon case, *NAW v. Feldon*, the U.S. District Court for the District of Oregon ultimately upheld Oregon's EPR law in a ruling last month. But how other courts rule is still to be seen. As states adopt new and expanding packaging and labeling programs, companies should be aware of possible deficiencies.

California's EPR program, though currently facing a stay of enforcement, remains in force, with key deadlines coming up. Companies should continue meeting their compliance obligations, engaging in the regulatory process and working proactively to assess both risk and upcoming requirements, even if the law is temporarily enjoined.

### Overview

Recycling and packaging laws across the U.S. face an accelerating wave of legal challenges — not just from industry or environmental groups, but from states.



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In June, the NAW and a multistate coalition of state attorneys general **filed** their sweeping constitutional challenge to California's packaging and plastics EPR law, seeking to stay the entire program. In July, the NAW filed its federal challenge to, and sought a preliminary injunction against, Colorado's similar EPR law.

With preliminary injunctions now blocking enforcement of both laws, it is clear that packaging regulation has entered a new phase of legal scrutiny, with courts willing to halt enforcement of ambitious environmental statutes on constitutional grounds pending full review.

## **The Regulatory Landscape**

Over the past several years, in an effort to reduce waste and address crowded landfills, states have moved aggressively to reshape how packaging and single-use plastics are managed at end of life. Two distinct but related regulatory strategies have emerged: EPR programs and truth-in-labeling laws.

EPR programs shift legal and fiscal responsibility for packaging collection, recycling and disposal from consumers and governments to producers. Producers must join a producer responsibility organization, register covered materials, pay fees, meet source-reduction and recyclability targets, and fulfill reporting obligations.

Seven states have enacted packaging EPR frameworks:

- California;<sup>[2]</sup>
- Colorado;<sup>[3]</sup>
- Maine;<sup>[4]</sup>
- Maryland;<sup>[5]</sup>
- Minnesota;<sup>[6]</sup>
- Oregon;<sup>[7]</sup> and
- Washington.<sup>[8]</sup>

Multiple others are actively considering similar legislation.

Truth-in-labeling recycling laws regulate when a product or package may be labeled "recyclable" or bear recycling-related imagery. California's S.B. 343 is the most comprehensive example, establishing statewide criteria, including a 60/60 rule requiring that material be collected by programs serving at least 60% of the state's population and sorted by facilities handling at least 60% of statewide recycling programs.<sup>[9]</sup>

## **California's Packaging EPR Program**

California's S.B. 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, was enacted in 2022. It establishes a comprehensive EPR framework requiring producers of single-use packaging and plastic foodservice ware to report and pay fees on covered material.

The act also requires producers to engage in source reduction and achieve specified recycling rates, and to ensure that covered material is recyclable or compostable by Jan. 1, 2032.

It imposes extensive requirements on manufacturers, distributors, and packaging and shipping companies. It also extends beyond plastic, to cover aluminum, cardboard, paper, glass and even wood

packaging. Implementing regulations took effect on May 1.[10]

The act further requires producers of covered material, defined broadly to include nearly all single-use packaging, to join a producer responsibility organization — specifically, the Circular Action Alliance. Producers are required to register with the CAA, report covered material data and pay fees to fund the state's recycling and circular economy programs.

On June 22, a coalition of 17 state attorneys general led by Nebraska, together with the NAW, filed their complaint against California's CalRecycle director Zoe Heller and the CAA in federal court in California.[11]

On Aug. 19, the plaintiffs amended their complaint to add an additional constitutional claim and filed a motion for preliminary injunction. The court set the hearing date for Jan. 15, 2027.

The lawsuit alleges U.S. and California constitutional violations, including the following.

### ***Commerce Clause***

The plaintiffs allege the act discriminates against interstate commerce by deterring business relationships with out-of-state manufacturers and recyclers and imposing fees on goods transiting through California.

Further, they claim the \$500 million annual environmental mitigation surcharge and individual assessment fees constitute unfairly apportioned taxes that fail constitutional standards under the commerce clause.[12]

### ***First Amendment***

The plaintiffs challenge the act's prohibition on passing fees to consumers as separate items on receipts or invoices, arguing that this is a content-based restriction on political or commercial speech.[13]

They also allege the act violates the First Amendment's protections against compelled association by effectively requiring all producers to join and fund the CAA.

### ***Unlawful Delegation of Government Authority***

The coalition alleges the act's delegation of regulatory and enforcement powers to the CAA — "an unelected, unaccountable body" empowered to collect up to \$500 million annually from businesses seeking access to California's market — is unconstitutional under the U.S. Constitution's due process clause and California's nondelegation doctrine, lacking adequate legislative standards and procedural safeguards.[14]

### ***Vagueness***

The plaintiffs recently amended their complaint to add a 14th Amendment vagueness challenge.[15]

Separately, environmental groups have brought a suit in San Francisco Superior Court, Natural Resources Defense Council v. Department of Resources Recycling and Recovery, contending that S.B. 54's May regulations improperly grant conflict relief, allowing certain plastics to be classified as "not

covered material."[16]

### **California's Truth-in-Labeling Law**

California's S.B. 343, enacted in 2021 and effective Oct. 4 of this year,[17] establishes statewide criteria for recyclability labeling, including the 60/60 collection and processing threshold. Violations can trigger criminal misdemeanor liability, civil penalties and private suits under California consumer protection and unfair competition statutes.[18]

In March, a coalition of industry trade associations challenged the law on First Amendment commercial speech and 14th Amendment vagueness grounds, in *California League of Food Producers v. Bonta*, in the U.S. District Court for the Southern District of California.[19]

On July 14, the court enjoined enforcement, finding the plaintiffs likely to prevail on both claims.[20] The court emphasized vagueness concerns given potential criminal liability, and found a likelihood of success on the First Amendment commercial speech challenge under the immediate scrutiny test the U.S. Supreme Court laid out in its 1980 ruling in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*. [21]

The court concluded that California would likely fail to demonstrate that S.B. 343 directly and materially advances its asserted interests and is no more burdensome than necessary.

### **Oregon's Packaging EPR Program**

In February, the District of Oregon preliminarily enjoined enforcement of Oregon's Plastic Pollution and Recycling Modernization Act, finding serious constitutional questions under the due process clause and dormant commerce clause.[22] On Aug. 27, following a July merits trial, the court reversed course and fully upheld the law.[23]

On the commerce clause, the court found no evidence of protectionist purpose, facial discrimination or discriminatory effect, noting that the public entity exemption from membership fees validly shifted recycling costs from government to producers, and that public entities were not similarly situated to private producers.

The court rejected the NAW's nondelegation challenge, holding that private delegation under state law does not implicate federal separation-of-powers principles, and that Oregon's Department of Environmental Quality retains ultimate decision-making authority.[24]

The court also rejected the NAW's procedural due process claim, finding CAA membership voluntary and thus not a property deprivation — and that, even assuming one, the law's civil enforcement scheme provides adequate process under the 14th Amendment.

### **Colorado's Packaging EPR Program**

Last month, the NAW challenged Colorado's Producer Responsibility Program for Statewide Recycling Act, and sought a preliminary injunction.[25]

This case follows *Independent Lubricant Manufacturers Association v. Colorado Department of Public Health and Environment*, a challenge to the same state law filed in March in Denver District Court, with

a motion for preliminary injunction pending.[26]

While the NAW complaint alleges constitutional claims similar to ones seen in other cases, it also attacks structural implementation deficiencies, including fee schedules.[27]

## **Key Trends and Observations**

### ***Constitutional challenges are standard and gaining traction.***

Across all five cases, plaintiffs are deploying a consistent set of constitutional theories, including claims based on the dormant commerce clause, the First Amendment, due process under the 14th Amendment, and unlawful delegation.

As to unlawful delegation, the California EPR complaint raises nondelegation and due process challenges to the broad powers assigned to the CAA, including the authority to set fees through a confidential methodology and force binding arbitration of fee disputes.

The Oregon court undertook a comprehensive review of the NAW's nondelegation argument before finding the law constitutional. Nonetheless, courts are showing renewed interest in scrutinizing delegations of quasi-governmental authority to private entities.

### ***Courts are willing to grant early injunctive relief.***

Federal courts in Oregon and California have now issued preliminary injunctions against recycling statutes. And additional injunctions could be forthcoming in Colorado and California.

This is a meaningful development. It signals that federal judges view these constitutional challenges as raising serious and likely meritorious legal questions, sufficient to provide temporary relief given the likelihood of imminent harm.

### ***Compliance burdens are a recurring litigation driver.***

A common thread across the challenged statutes is the scale and complexity of the compliance obligations they impose. EPR programs can impose multipart operational obligations — registration, reporting, fee payments, source reduction plans and recyclability targets — across a broad range of packaging materials.

Truth-in-labeling laws also create compliance burdens, including label assessments, packaging redesigns, dual inventory requirements, third-party due diligence and significant professional fees.

Courts appear receptive to arguments that the combination of vague or contested legal standards and significant enforcement consequences, including criminal penalties, can tip the balance toward injunctive relief.

### ***State attorneys general are playing a national role.***

The involvement of 17 state attorneys general in the fight over the California EPR program demonstrates a coordinated effort to challenge the extraterritorial reach of California's regulatory scheme. This dynamic is likely to intensify as states continue to enact ambitious EPR and product stewardship laws.

We are also seeing state attempts to pass legislation against companies attempting to reduce plastic waste through third-party engagement.

In February, 10 state AGs issued warning letters to 80 companies alleging possible violations of antitrust and consumer protection law, based on the association of these companies with plastics advocacy organizations, and alleged collective actions and coordinated practices to reduce use of certain plastics in consumer goods and packaging.[28]

### **Practical Guidance for Clients**

Companies should consider the following actions.

#### ***Audit current recycling claims.***

While California's truth-in-labeling law is currently enjoined, companies should be prepared to adjust, should the injunction be lifted, or if there is a statutory amendment curing deficiencies.

#### ***Assess applicable EPR program obligations.***

The Oregon EPR program will now be in effect. EPR programs in multiple other states, including California and Colorado, also remain in effect, though that could change in both of those states.

Companies subject to those EPR programs should continue to engage with the CAA as needed to meet near-term deadlines. In California, individual source reduction plans were due on Aug. 3, and the public comment deadline on the CAA's draft producer responsibility plan was Aug. 14.

#### ***Stay abreast of litigation.***

A federal court has now upheld the first EPR challenge. Companies should stay on top of these decisions — not only to understand compliance obligations and risk, but to determine whether challenges may be warranted in other states that also adopt such laws.

#### ***Engage in regulatory comment processes.***

Companies may wish to engage in the regulatory comment processes that are happening in this space — particularly on fee methodology, covered-material definitions and enforcement provisions — as the administrative record can be critical to both compliance defense and future litigation.

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[1] Nat'l Ass'n of Wholesaler-Distribs. v. Ryan, No. 1:26-cv-03460 (D. Colo. July 30, 2026) (motion for preliminary injunction filed on Aug. 5, 2026, and complaint filed previously on July 30, 2026); Nebraska v. Heller, No. 2:26-cv-02214 (E.D. Cal. June 22, 2026) (NAW filed the original complaint on June 22, 2026, and the amended complaint and motion for preliminary injunction were filed on Aug. 19, 2026).

[2] Cal. Pub. Res. Code §§ 42040-42084 (West 2026) (S.B. 54, Plastic Pollution Prevention and Packaging Producer Responsibility Act, Stats. 2022, ch. 75).

[3] Colo. Rev. Stat. §§ 25-17-701 to -731 (2022) (H.B. 22-1355, Producer Responsibility Program for Statewide Recycling Act).

[4] Me. Stat. tit. 38, §§ 2141-2148 (enacted 2021, as amended).

[5] Md. Code Ann., Env't §§ 9-2501 et seq. (West 2023).

[6] Minn. Stat. §§ 115A.1445-115A.1475 (2024).

[7] Or. Rev. Stat. §§ 459A.860-459A.975 (2021) (S.B. 582, Plastic Pollution and Recycling Modernization Act).

[8] Wash. Rev. Code §§ 70A.208.005-70A.208.900 (2021).

[9] Cal. Pub. Res. Code § 42355.51(d)(2) (West 2026); see also Cal. Pub. Res. Code §§ 42355-42358.

[10] Cal. Pub. Res. Code §§ 42040-42084 (West 2026); CalRecycle, SB 54 Final Regulation Text (eff. May 1, 2026).

[11] See Complaint, Nebraska v. Heller, No. 2:26-cv-02214 (E.D. Cal. June 22, 2026).

[12] Id. ¶¶ 170-189.

[13] See id. ¶¶ 215-240.

[14] Id. ¶¶ 4, 268-295.

[15] See id. ¶¶ 311-323.

[16] See Complaint, Nat. Res. Def. Council v. Dep't of Res., No. CPF26519769 (Super. Ct. Cal. June 2, 2026).

[17] Cal. Pub. Res. Code § 42355.51 (West 2026) (S.B. 343, Stats. 2021, ch. 507 (signed Oct. 5, 2021)); see also Cal. Bus. & Prof. Code §§ 17580, 17580.5. S.B. 343 also amended Cal. Pub. Res. Code §§ 18015,

42355 and 42355.5.

[18] Cal. Bus. & Prof. Code §§ 17580.5, 17581 (misdemeanor punishable by up to six months imprisonment or a \$2,500 fine, or both); Cal. Pub. Res. Code § 42358(a) (civil liability of \$500 to \$2,000 per violation); Cal. Bus. & Prof. Code §§ 17200, 17206 (Unfair Competition Law, civil penalties up to \$2,500 per violation enforceable by the attorney general or district attorney); Cal. Bus. & Prof. Code §§ 17203, 17535 (private suits for injunctive relief and restitution); Cal. Civ. Code §§ 1770, 1780 (Consumers Legal Remedies Act, actual and punitive damages).

[19] Complaint, Cal. League of Food Producers v. Bonta, No. 3:26-cv-01675 (S.D. Cal. March 17, 2026).

[20] Order Granting Mot. for Prelim. Injunction, Cal. League of Food Producers v. Bonta, No. 3:26-cv-01675-WQH-JAC (S.D. Cal. July 14, 2026).

[21] Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557, 566 (1980). The four-part Central Hudson test asks: (1) whether the speech concerns lawful activity and is not misleading; (2) whether the asserted governmental interest is substantial; (3) whether the regulation directly advances the governmental interest; and (4) whether the regulation is no more extensive than necessary to serve that interest. *Id.*

[22] Order, Nat'l Ass'n of Wholesaler-Distributors v. Feldon, No. 3:25-cv-01334 (D. Or. Feb. 6, 2026), Dkt. Nos. 87-88.

[23] See Findings of Fact & Conclusions of Law, Nat'l Ass'n of Wholesaler-Distributors v. Feldon, No. 3:25-cv-01334 (D. Or. Aug. 27, 2026), Dkt. No. 205.

[24] *Id.* at 60.

[25] Complaint, Nat'l Ass'n of Wholesaler-Distrib. v. Ryan, No. 1:26-cv-03460 (D. Colo. July 30, 2026); Mot. for Prelim. Injunction, Nat'l Ass'n of Wholesaler-Distrib. v. Ryan, No. 1:26-cv-03460 (D. Colo. Aug. 5, 2026).

[26] Complaint, Indep. Lubricant Mfrs. Ass'n v. Colo. Dep't of Pub. Health & Env't, No. 2026CV30902 (Dist. Ct., Denver March 12, 2026).

[27] *Id.* ¶¶ 155-169.

[28] See Microsoft Word - Plastics\_Company\_Letter Draft 3.docx at <https://www.myfloridalegal.com/sites/default/files/2025-09/costco-sample.pdf> for sample letter.