EPR in the Courts

Oregon, California and Colorado

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Status as of October 25, 2026



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The Litigation Landscape at a Glance

Case	Court	Challenge
NAW v. Feldon	Federal District Court in Oregon; on appeal to the Ninth Circuit Court of Appeals	Oregon EPR statute
Proposed class action v. Feldon (non-NAW member producers)	Federal District Court in Oregon	Oregon EPR statute
Nebraska v. Heller	Federal District Court in California	California EPR statute
Environmental groups v. CalRecycle	California State Court (San Francisco)	California EPR regulations
NAW v. CDPHE	Federal District Court in Colorado	Colorado EPR statute
Industry v. CDPHE	Colorado State Court (Denver)	Colorado EPR statute

Common Constitutional Theories

Dormant Commerce Clause

Plaintiffs allege the laws discriminate against or unduly burden interstate commerce, including national distribution networks.

Due Process / Private Delegation

Plaintiffs allege the laws delegate regulatory and fee-setting authority to a private PRO (CAA) without adequate standards, oversight or procedures.

First Amendment

Plaintiffs challenge limits on itemizing EPR costs on receipts or invoices, and allege compelled association with and funding of the PRO.

Other Claims

Unconstitutional conditions (Colorado federal case); vagueness and Import-Export Clause (California federal case); state-law ultra vires and nondelegation (Colorado state case).



NAW v. Feldon: Federal District Court in Oregon

Procedural History

Jul. 30, 2025: NAW sues, challenging Oregon's Recycling Modernization Act (RMA)

Feb. 6, 2026: Preliminary injunction granted for NAW members; Oregon's motion to dismiss granted in part

Apr. 6, 2026: Injunction clarified to cover entities that were NAW members as of Feb. 6, 2026

Jul. 13–17, 2026: Five-day bench trial

Aug. 28, 2026: Judgment for Oregon; preliminary injunction dissolved

What the Court Held

Dormant Commerce Clause: No discriminatory purpose or effect, and no undue burden on interstate commerce

Due Process: No improper delegation to CAA; adequate procedural safeguards for fee challenges

Threshold issue: Court assumed without deciding that NAW showed a protected property interest, calling it a "close call"

NAW v. Feldon: Ninth Circuit Court of Appeals

On Appeal

NAW appealed the Aug. 28, 2026 judgment to the Ninth Circuit Court of Appeals

Notice of appeal. NAW filed its notice of appeal Sept. 24, 2026. The Ninth Circuit Court of Appeals docketed the case Sept. 30, 2026.

Briefing schedule. NAW's opening brief is due Dec. 17, 2026; Oregon's answering brief is due Jan. 18, 2027.

Stay motion (filed in the Federal District Court in Oregon). On Oct. 16, 2026, NAW asked the court to reinstate the February 2026 injunction pending appeal, citing CAA invoices to members expected in January 2027.

Industry v. Feldon: Federal District Court in Oregon

Proposed class action on behalf of producers not covered by the NAW injunction

Filed Jun. 25, 2026: A Texas-based food serviceware producer challenged Oregon's EPR statute and regulations under the Dormant Commerce Clause and the Due Process Clause.

Proposed class: Producers above Oregon's de minimis thresholds that are not protected by the NAW preliminary injunction. NAW members as of Feb. 6, 2026 are excluded.

Relief sought: Declaratory judgment and preliminary and permanent injunctions; no monetary damages.

Status: The court twice deferred the case pending the NAW case. The parties jointly moved to stay it pending the Ninth Circuit appeal, with status reports every six months beginning April 16, 2027; the stay was granted on Oct. 13, 2026.

Nebraska v. Heller: Federal District Court in California

The Case

Filed Jun. 22, 2026 by 17 state attorneys general (led by Nebraska) and NAW against the CalRecycle Director and CAA

Aug. 19, 2026: First Amended Complaint (adds vagueness claim) and motion to preliminarily enjoin implementation and enforcement of SB 54

Oct. 23, 2026: Defendants argue the plaintiff States lack standing and that the claims fail on the merits; CAA also argues it is not a state actor

Claims: Commerce Clause (including the $500 million annual “environmental mitigation surcharge”), First Amendment, due process / private delegation

Anticipated Schedule

Oct. 23, 2026: CalRecycle Director and CAA each filed a PI opposition and a motion to dismiss

Dec. 1, 2026: Plaintiffs’ replies and oppositions to any motion to dismiss

Dec. 21, 2026: Defendants’ replies

Jan. 15, 2027: PI motion and motions to dismiss to be heard together.

Environmental Groups v. CalRecycle: California State Court

Environmental groups challenge California's EPR regulations

- **The case.** Three different environmental groups filed a petition (accepted for filing Jun. 25, 2026; amended Jul. 23) challenging CalRecycle's SB 54 regulations, effective May 1, 2026.

- **The claims.** Petitioners allege key provisions are inconsistent with SB 54 and arbitrary, including the hazardous-waste test for plastic recycling technologies and the federal-law exclusion process.

- **Status.** the court allowed two industry trade associations to intervene but denied their cross-complaint.

NAW v. CDPHE: Federal District Court in Colorado

NAW asserts five constitutional claims against Colorado's EPR statute



Briefing to Date

Jul. 30, 2026: Complaint filed

Aug. 5: NAW moves for preliminary injunction

Sept. 16: State opposes; Sept. 28: NAW replies

Oct. 13: State moves to dismiss the two due process claims, citing the Oregon Feldon decision

Sept. 28: A nonprofit recycler moves to file amicus brief opposing the PI

Oct. 15: Independent automotive industry association moves to intervene as a plaintiff (hearing set **Nov. 6**)

Oct. 21: Scheduling conference and order

Apr. 21, 2027: Summary judgment motions due

Industry v. CDPHE: Colorado State Court

The Case

Filed Mar. 12, 2026 by a lubricants trade association against the Colorado Department of Public Health and Environment

Background: CO has a separate individual program plan for automotive lubricant packaging in addition to CAA

Claims: ultra vires and unlawful fees, due process, nondelegation and a First Amendment challenge to the bar on communicating compliance costs at the point of sale

Status

Apr. 29, 2026: State moves to dismiss all claims

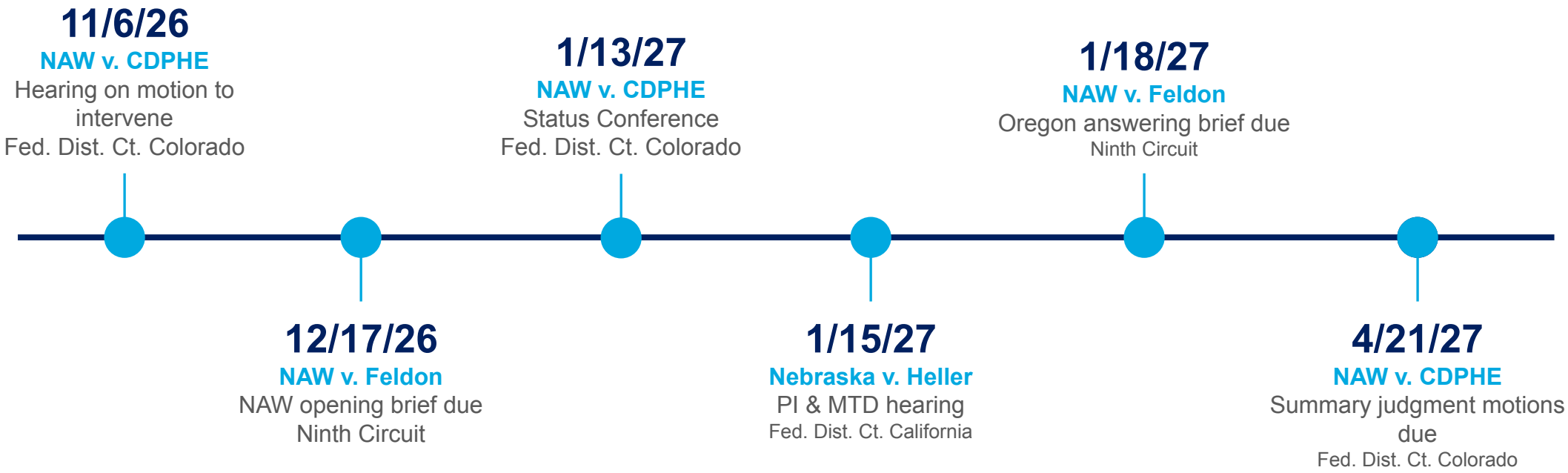
Aug. 18, 2026: association moves for preliminary injunction; State opposes Sept. 29

Oct. 12, 2026: a nonprofit recycler seeks leave to file amicus brief; no ruling on the docket as of Oct. 19, 2026

Key Dates Ahead

Upcoming deadlines and hearings

Set by court order, stipulation or notice and subject to change.



Takeaways for Local Programs



EPR programs proceed unless and until enjoined

Oregon's injunction dissolved with the Aug. 28 judgment; NAW now seeks reinstatement pending appeal. NAW's stay motion states Oregon's program "proceeded unaffected" during the injunction. No preliminary injunction has been issued in California or Colorado. In June 2025, the Supreme Court held that federal district courts generally lack authority to issue universal injunctions. Courts have since interpreted that decision to mean that preliminary injunctions issued by district courts ordinarily bar enforcement only as to the plaintiffs before the court, rather than on a nationwide basis.

Local benefits

Colorado expects its program will provide recycling to 700,000 additional households and more than double the state's recycling rate. Municipalities are approving budgets, signing contracts and planning programs in reliance on the state programs.