SEVENTEEN STATES AND TRADE ASSOCIATION CHALLENGE CALIFORNIA'S EXTENDED PRODUCER RESPONSIBILITY STATUTE

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US Policy and Regulatory Alert

By: Maureen O'Dea Brill

On 20 June 2026, 17 states and the National Association of Wholesaler-Distributors filed a complaint in the US District Court for the Eastern District of California challenging California's extended producer responsibility (EPR) statute.[1] The statute establishes a new recycling framework that generally shifts costs of managing covered paper and plastic packaging from local jurisdictions and consumers to producers that utilize those materials.[2] If successful, the litigation could have far-reaching consequences for other state EPR regulations.

The lawsuit comes just three weeks after environmental groups had challenged California's EPR regulations for being too lenient.[3] The two cases approach California's EPR program from opposite directions. The environmental groups contend that the regulations do not fully align with the statute and are too lenient, while the states and trade association argue the statute itself is unconstitutional.

THE COMPLAINT

The complaint includes 11 counts against the director of the California Department of Resources Recycling and Recovery (CalRecycle) and the Circular Action Alliance (CAA), the producer responsibility organization selected to implement the statute. Among other things, the plaintiffs allege the following constitutional deficiencies:

- The statute violates the Commerce Clause by discriminating against out-of-state manufacturers, imposing fees on out-of-state companies with no presence in California, and restricting the free movement of interstate commerce.
- The environmental mitigation surcharge established under the statute constitutes an impermissible tax on out-of-state companies in violation of the Commerce Clause and the Import-Export Clause.
- The statute constitutes improper delegation of regulatory, legislative, and enforcement authority to CAA.
- The statute violates the First Amendment by prohibiting states and companies from including a “separate item on a receipt or invoice” reflecting the fee charged by the CAA.

WHAT IS NEXT

The lawsuit adds another layer of uncertainty to California's EPR program and follows closely on the heels of the environmental groups' regulatory challenge. Although the cases raise different legal issues, both have the potential to shape the future implementation and administration of California's EPR framework.

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The constitutional arguments advanced in the states' lawsuit, including the Commerce Clause, nondelegation, and First Amendment claims, may also influence future challenges to EPR programs in other jurisdictions. However, unless a court grants preliminary relief, California's statutory deadlines and compliance obligations remain in effect. Accordingly, affected companies should continue their compliance planning while closely monitoring litigation developments.

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FOOTNOTES

[1] Complaint for Declaratory and Injunctive Relief at 1–3; State of Nebraska v. Heller, No. 2:26-at-01047 (E.D. Cal. June 20, 2026).
[2] CAL. PUB. RES. CODE § 42040(b)(2)(A).
[3] See Maureen O'Dea Brill & Robert M. Smith, Environmental Groups Challenge California's Extended Producer Responsibility Regulations for Being Too Lenient, K&L GATES HUB (June 16, 2026), https://www.klgates.com/Environmental-Groups-Challenge-Californias-Extended-Producer-Responsibility-Regulations-for-Being-Too-Lenient-6-16-2026.

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