Christina Martin, Oregon Bar No. 084117
CMartin@pacificlegal.org
Pacific Legal Foundation
4440 PGA Blvd., #307
Palm Beach Gardens, FL 33410
Telephone: (916) 419-7111

Attorney for Amici Curiae

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, Plaintiff, V. LEAH FELDON, DIRECTOR, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, in her official capacity; MATT DONEGAN, KAREN MOYNAHAN, MARK WEBB, AND SILVIA TANNER, In their official capacities as members of the Oregon Environmental Quality Commission, Defendants.	Case No. 3:25-cv-01334-SB **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF PACIFIC LEGAL FOUNDATION AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC.**

Pacific Legal Foundation and National Federation of Independent Business Small Business Legal Center, Inc. respectfully request leave to file an amicus brief in support of National Association of Wholesaler-Distributors in the above-captioned matter.

Interest of Amicus Curiae

Pacific Legal Foundation (PLF) was founded in 1973 and litigates at all levels of the federal and state judiciaries, nationwide. PLF is a nonprofit, nonpartisan public-interest law firm dedicated to defending constitutional structure, economic liberty, and limits on government power. PLF regularly litigates cases involving the Dormant Commerce Clause, federalism, and constitutional constraints on state regulation of interstate markets.

The National Federation of Independent Business Small Business Legal Center, Inc. is a nonprofit, public interest law firm established to provide legal resources and be the be voice for small businesses in the Nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federal of Independent Business (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents the interests of its members in Washington, D.C., and all 50 state capitals. NFIB's members are especially vulnerable to regulatory schemes that impose retrospective, nontransparent obligations tied to nationwide business activity, over which they lack meaningful control or political recourse. Because PLF and NFIB Legal Center represent interests that extend beyond the specific parties to this litigation and have longstanding expertise in the constitutional doctrines implicated here, amici believe that this brief will assist the Court in resolving the important legal questions presented by this case.

CONCLUSION

PLF respectfully requests that the Court grant leave to file an amicus brief; and direct the Clerk of Court accept as filed the amicus brief that PLF has lodged along with this motion.

DATED: January 26, 2026. Respectfully Submitted,

/s/ Christina Martin
Christina Martin
Oregon Bar No. 084117
CMartin@pacificlegal.org
Pacific Legal Foundation
4440 PGA Blvd., #307
Palm Beach Gardens, FL 33410
Telephone: (916) 419-7111

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, I filed a copy of this document with the Court's ECF system, which will cause an electronic notice of such filing to be sent to counsel of record for each party in this case.

/s/ Christina Martin
Christina Martin

Christina Martin, Oregon Bar No. 084117
CMartin@pacificlegal.org
Pacific Legal Foundation
4440 PGA Blvd., #307
Palm Beach Gardens, FL 33410
Telephone: (916) 419-7111

Attorney for Amici Curiae

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, Plaintiff, V. LEAH FELDON, DIRECTOR, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, in her official capacity; MATT DONEGAN, KAREN MOYNAHAN, MARK WEBB, AND SILVIA TANNER, In their official capacities as members of the Oregon Environmental Quality Commission, Defendants.	Case No. 3:25-cv-01334-SB **AMICUS CURIAE BRIEF OF PACIFIC LEGAL FOUNDATION AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC.**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE 2

INTRODUCTION AND SUMMARY OF THE ARGUMENT 4

ARGUMENT 6

I. OREGON'S EPR REGIME IMPLICATES THE CONSTITUTION'S PROHIBITION ON EXTRATERRITORIAL REGULATION 6

A. Constitutional Structure Protects Against Extraterritorial Regulation 6

B. Supreme Court Precedent Distinguishes In-State Harms from Out-of-State Regulation 11

II. EVEN IF OREGON'S EPR REGIME IS TREATED AS A LOCAL REGULATION, IT FAILS UNDER *PIKE* 13

A. Oregon's EPR Regime Imposes Structural Burdens on Interstate Commerce, Not Merely Incidental Compliance Costs 14

B. The Burdens Are Retrospective, Ongoing, and Severe 16

C. Oregon's Asserted Local Benefits Are Attenuated...................... 18

III. OREGON'S DELEGATION OF COERCIVE REGULATORY AUTHORITY TO A PRIVATE ENTITY MAGNIFIES THE NEGATIVE EXTRATERRITORIAL EFFECTS 20

CONCLUSION 23

CERTIFICATE OF SERVICE.. 24

TABLE OF AUTHORITIES

Page(s)

Cases

Alden v. Maine,
527 U.S. 706 (1999) 8

Am. Trucking Ass'ns, Inc. v. Scheiner,
483 U.S. 266 (1987) 16

Baldwin v. G.A.F. Seelig, Inc.,
294 U.S. 511 (1935) 11, 13

Bibb v. Navajo Freight Lines, Inc.,
359 U.S. 520 (1959) 14–15, 18

Bonaparte v. Tax Court,
104 U.S. 592 (1881) 7

Brown v. Fletcher's Est.,
210 U.S. 82 (1908) 8

C & A Carbone, Inc. v. Town of Clarkstown,
511 U.S. 383 (1994) 7, 9, 21

Carter v. Carter Coal Co.,
298 U.S. 238 (1936) 20

Corey v. Rocky Mountain Farmers Union,
573 U.S. 947 (2014) 2

Energy & Env't Legal Inst. v. Epel,
793 F.3d 1169 (10th Cir. 2015),
cert. denied, 577 U.S. 1043 (2015).......... 2

Eubank v. City of Richmond,
226 U.S. 137 (1912) 20

Exxon Corp. v. Governor of Maryland,
437 U.S. 117 (1978) 16

FCC v. Fox Television Stations, Inc.,
567 U.S. 239 (2012) 23

Gonzales v. Raich,
545 U.S. 1 (2005) 2

Healy v. Beer Inst.,
491 U.S. 324 (1989) 9, 13, 21

Hughes v. Fetter,
341 U.S. 609 (1951) 8

Japan Line, Ltd. v. Cnty. of Los Angeles,
441 U.S. 434 (1979) 15

Kassel v. Consol. Freightways Corp.,
450 U.S. 662 (1981) 14, 17–19

Maine v. Taylor,
477 U.S. 131 (1986) 11

Marshall Field & Co. v. Clark,
143 U.S. 649 (1892) 20

Mathews v. Eldridge,
424 U.S. 319 (1976) 23

Minerva Dairy, Inc. v. Harsdorf,
905 F.3d 1047 (7th Cir. 2018),
cert. denied, 139 S. Ct. 2746 (2019) 2

North Dakota v. Heydinger,
15 F. Supp. 3d 891 (D. Minn. 2014),
aff'd, 825 F.3d 912 (8th Cir. 2016) 10

National Pork Producers Council v. Ross,
598 U.S. 356 (2023) 12–13, 21–22

Osborn v. Ozlin,
310 U.S. 53 (1940) 11

Pac. Coast Dairy v. Dep't of Agric.,
318 U.S. 285 (1943) 11

People for Ethical Treatment of Prop. Owners v. U.S. Fish and Wildlife Serv.,
852 F.3d 990 (10th Cir. 2017),
cert. denied, 138 S. Ct. 649 (2018) 2

Pharm. Rsch. and Mfrs. of Am. v. Walsh,
538 U.S. 644 (2003) 2

Pike v. Bruce Church, Inc.,
397 U.S. 137 (1970) .... *passim*

Pollard v. Hagan,
44 U.S. 212 (1845) 8

Raymond Motor Transp., Inc. v. Rice,
434 U.S. 429 (1978) 17, 19

Rocky Mountain Farmers Union v. Corey,
730 F.3d 1070 (9th Cir. 2013) 10

S. Pac. Co. v. Arizona,
325 U.S. 761 (1945) 10, 14–15, 18

S.-Cent. Timber Dev., Inc. v. Wunnicke,
467 U.S. 82 7

Saenz v. Roe,
526 U.S. 489 (1999) 8

Washington ex rel. Seattle Title Tr. Co. v. Roberge,
278 U.S. 116 (1928) 20

Sissel v. U.S. Dep't of Health and Hum. Servs.,
760 F.3d 1 (D.C. Cir. 2014),
cert. denied, 577 U.S. 1113 (2016) 2

Supreme Ct. of N.H. v. Piper,
470 U.S. 274 (1985) 8

Tennessee Wine and Spirits Retailers Ass'n v. Thomas,
139 S. Ct. 2449 (2019) 2

Toomer v. Witsell,
334 U.S. 385 (1948) 8

United Bldg. & Constr. Trades Council v. Camden,
465 U.S. 208 (1984) 8

Whitman v. Am. Trucking Ass'ns,
531 U.S. 457 (2001) 22

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 9

Yakus v. United States,
321 U.S. 414 (1944) 22

Youngstown Sheet & Tube Co. v. Bowers,
358 U.S. 534 (1959) 8

Constitutional Provisions

U.S. Const. art. IV, § 1........ 8

U.S. Const. art. XIV 8

Statutes

Or. Rev. Stat. § 459A.863 ....*passim*

Or. Rev. Stat. § 459A.866 12

Or. Rev. Stat. § 459A.869 .... 4, 20

Or. Rev. Stat. § 459A.875 .... 14, 16, 21–22

Or. Rev. Stat. § 459A.884 21

Regulations

Or. Amin. Code § 340-090-0750 4

Other Authorities

Collins, Richard B., *Economic Union as a Constitutional Value*,
63 N.Y.U. L. Rev. 43 (1988)........ 10

The Federalist No. 11 (A. Hamilton)........ 9

The Federalist No. 22 (A. Hamilton)........ 9

The Federalist No. 45 (J. Madison)........ 8

Florey, Katherine, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*,
84 Notre Dame L. Rev. 1057 (2009)........ 7, 9

Jay, Stewart, *Origins of the Privileges and Immunities of State Citizenship under Article IV*, 45 Loy. U. Chi. L.J. 1 (2013) 8

Kochan, Donald J., *The Meaning of Federalism in a System of Interstate Commerce: Free Trade Among the Several States*, 95 Notre Dame L. Rev. Reflection 166 (2020) 6

Madison, James. Preface to Debates in the Convention of 1787, Records of the Federal Convention of 1787, Vol. 3 (Max Farrand ed., 1911) 9

Pancoast, Abigail B., *A Test Case for Re-Evaluation of the Dormant Commerce Clause: The Maine Rx Program*, 4 U. Pa. J. Const. L. 184 (2001) 7

INTEREST OF AMICI CURIAE[1]

Pacific Legal Foundation (PLF) was founded in 1973 and litigates at all levels of the federal and state judiciaries, nationwide. PLF is a nonprofit, nonpartisan public-interest law firm dedicated to defending constitutional structure, economic liberty, and limits on government power. PLF regularly litigates cases involving the Dormant Commerce Clause, federalism, and constitutional constraints on state regulation of interstate markets. S*ee, e.g.*, *Minerva Dairy, Inc. v. Harsdorf*, 905 F.3d 1047 (7th Cir. 2018), *cert. denied*, 139 S. Ct. 2746 (2019); *People for Ethical Treatment of Prop. Owners v. U.S. Fish and Wildlife Serv.*, 852 F.3d 990 (10th Cir. 2017), *cert. denied*, 138 S. Ct. 649 (2018); *Sissel v. U.S. Dep't of Health and Hum. Servs.*, 760 F.3d 1 (D.C. Cir. 2014), *cert. denied*, 577 U.S. 1113 (2016). And it has filed amicus briefs in several Commerce Clause cases. *See, e.g.*, *Tennessee Wine and Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2019); *Corey v. Rocky Mountain Farmers Union*, 573 U.S. 947 (2014); *Energy & Env't Legal Inst. v. Epel*, 793 F.3d 1169 (10th Cir. 2015), *cert. denied*, 577 U.S. 1043 (2015); *Gonzales v. Raich*, 545 U.S. 1 (2005); *Pharm. Rsch. and Mfrs. of Am. v. Walsh*, 538 U.S. 644 (2003).

The National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the be voice for small businesses in the Nation's

[1] No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federal of Independent Business (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents the interests of its members in Washington, D.C., and all 50 state capitals. NFIB's members are especially vulnerable to regulatory schemes that impose retrospective, nontransparent obligations tied to nationwide business activity, over which they lack meaningful control or political recourse.

PLF and NFIB Legal Center share a strong interest in this case because it presents a recurring regulatory model with significant implications for constitutional structure and interstate markets: a State using in-state sales as leverage to impose regulatory obligations based on out-of-state commercial conduct, enforced through a single private entity exercising coercive authority over market participants nationwide. Such regimes raise fundamental questions about the limits of state regulatory jurisdiction, the protection of horizontal federalism, and the accountability safeguards built into the Constitution. Because PLF and NFIB Legal Center represent interests that extend beyond the specific parties to this litigation and have longstanding expertise in the constitutional doctrines implicated here, amici believe that this brief will assist the Court in resolving the important legal questions presented by this case.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Oregon's Extended Producer Responsibility ("EPR") law does not merely regulate waste disposal within the State. Instead, it restructures how interstate commerce is organized upstream by imposing onerous and arbitrary regulations based on packaging design, material composition, and system-wide sales volumes across national supply chains. *See* Or. Rev. Stat. §§ 459A.863(6), (18), (22); 459A.866. Liability turns not on in-state disposal or local conduct, but on a producer's aggregate distribution of covered materials sold *in or into* Oregon, including primary, secondary, and tertiary packaging used for interstate transport. *See id.* §§ 459A.863(6), 459A.875, 459A.884. Oregon then passes enforcement along to a private entity, forcing producers to join a state-approved Producer Responsibility Organization ("PRO") that sets fee schedules, allocates program-wide costs, establishes compliance requirements, and assesses retrospective charges pursuant to a confidential methodology, subject to only high-level statutory constraints and limited agency oversight. *See id.* §§ 459A.869, 459A.875, 459A.884; OAR 340-090-0750. That combination—upstream regulation keyed to interstate commercial organization and enforced through a private, state-mandated intermediary—places this case at the intersection of two core constitutional limits: the prohibition on extraterritorial regulation rooted in the Constitution's structure and the bar on delegating coercive regulatory power to unaccountable private actors.

First, Oregon's EPR regime raises threshold extraterritoriality concerns because it uses in-state sales as a hook to regulate upstream commercial conduct occurring largely outside the state. Extraterritoriality doctrine examines whether a State has selected a permissible object of regulation—local conduct or in-state harms—or has instead projected its regulatory authority outward. Here, Oregon's statute assigns liability based on upstream packaging and distribution decisions that precede in-state sale or disposal and reflect the organization of interstate supply chains rather than localized conduct within Oregon. That choice places the law outside the State's legitimate regulatory sphere. Oregon's approach conflicts with the Constitution's structural commitment to equal state sovereignty and political accountability. By exporting the costs of its regulatory program to out-of-state producers and distributors—while exempting in-state retailers—Oregon weakens the political safeguards that ordinarily constrain state regulation and interferes with the policy choices of sister states. Restrictions on extraterritorial regulation exist to prevent precisely this form of regulatory externalization and to preserve a national common market governed by uniform federal rules where national regulation is warranted.

Second, even under *Pike v. Bruce Church*, Oregon's EPR program cannot survive. The statute imposes structural and cumulative burdens on interstate commerce by forcing system-wide operational changes, creating ongoing and retrospective compliance obligations, and inviting replication across states that would fragment national supply chains. Those burdens are clearly excessive in relation to the statute's attenuated local benefits, particularly given that the law does not directly regulate in-state disposal practices.

Third, Oregon's delegation of regulatory authority to a private Producer Responsibility Organization magnifies these constitutional defects. The Constitution has long prohibited States from vesting coercive regulatory power in private entities without meaningful standards or accountability. Here, private governance mechanisms amplify the extraterritorial reach of the statute and undermine political accountability.

For these reasons, the Court should hold that Oregon's EPR regime is unlawful. The statute exceeds the limits of state regulatory authority because the Constitution does not permit States to restructure interstate commerce or govern beyond their borders—directly or through private intermediaries.

ARGUMENT

I. OREGON'S EPR REGIME IMPLICATES THE CONSTITUTION'S PROHIBITION ON EXTRATERRITORIAL REGULATION

A. Constitutional Structure Protects Against Extraterritorial Regulation

Despite longstanding constitutional limits on extraterritorial regulation, States increasingly justify regulation of interstate markets by identifying a nominal in-state connection—such as an in-state sale or product presence—and then using that connection to control conduct occurring elsewhere. As one scholar has observed, States are increasingly "finding ways to pretextually advance an 'in-state' hook to control out-of-state behavior that they find inconsistent with their policy, moral, or other preferences." Donald J. Kochan, *The Meaning of Federalism in a System of*

Interstate Commerce: Free Trade Among the Several States, 95 Notre Dame L. Rev. Reflection 166, 168 (2020).

Oregon's EPR regime follows that pattern. Rather than confining itself to regulating harms arising from the in-state use or disposal of packaging, Oregon treats an in-state sale as a jurisdictional hook to regulate upstream commercial conduct across national supply chains—including packaging design, material selection, and cost allocation decisions made overwhelmingly outside the State. Conditioning access to a state's market on compliance with regulatory standards governing out-of-state conduct exceeds a state's authority and intrudes upon matters reserved to other States or to Congress, triggering extraterritorial scrutiny. *See S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 96–98 (1984); Abigail B. Pancoast, *A Test Case for Re-Evaluation of the Dormant Commerce Clause: The Maine Rx Program*, 4 U. Pa. J. Const. L. 184, 197 (2001).

Unlike *Pike*, this extraterritoriality inquiry does not turn on the magnitude of a regulation's economic effects, but on the object and locus of regulation. A State may not "extend [its] police power beyond its jurisdictional bounds" by conditioning market access on compliance with standards governing out-of-state conduct. *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 393 (1994); *Bonaparte v. Tax Court*, 104 U.S. 592 (1881) ("No State can legislate except with reference to its own jurisdiction."). That limitation reflects not a balancing of costs and benefits, but the Constitution's allocation of sovereignty among coequal States—a core principle of horizontal federalism. *See* Katherine Florey, *State Courts, State Territory, State*

Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation, 84 Notre Dame L. Rev. 1057, 1060 (2009).

That structural allocation appears throughout the Constitution. The Full Faith and Credit Clause requires States to respect rights created under the laws of their sister States. *Hughes v. Fetter*, 341 U.S. 609, 611 (1951); U.S. Const. art. IV, § 1. The Privileges and Immunities Clause prohibits discrimination against citizens of other States absent substantial justification. *Toomer v. Witsell*, 334 U.S. 385, 396 (1948); *Supreme Ct. of N.H. v. Piper*, 470 U.S. 274 (1985). The Privileges or Immunities Clause of the Fourteenth Amendment reinforces the same principle. *Saenz v. Roe*, 526 U.S. 489, 502–03 (1999). Other provisions— including the Import-Export Clause and access to federal courts through diversity jurisdiction—likewise reflect a commitment to interstate parity. *See Youngstown Sheet & Tube Co. v. Bowers*, 358 U.S. 534, 551 (1959) (Frankfurter, J., dissenting); *United Bldg. & Constr. Trades Council v. Camden*, 465 U.S. 208, 225 (1984) (Blackmun, J., dissenting).

These guarantees operate against the backdrop of a federal system that "preserves the sovereign status of the States," *Alden v. Maine*, 527 U.S. 706, 714 (1999), reserving to each State "numerous and indefinite" powers while granting the federal government powers that are "few and defined." The Federalist No. 45, at 289 (J. Madison). States stand "upon an equal footing, in all respects whatever." *Pollard v. Hagan*, 44 U.S. 212, 224 (1845); *see also Brown v. Fletcher's Est.*, 210 U.S. 82, 89 (1908). As scholars have explained, these interlocking guarantees reflect the Framers' concern with preventing both centralized and parochial control over interstate trade.

See Stewart Jay, *Origins of the Privileges and Immunities of State Citizenship under Article IV*, 45 Loy. U. Chi. L.J. 1, 17 (2013); Florey, *supra*, at 1060.

When a state regulates beyond its borders, it intrudes upon the sovereignty of its sister states. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). The Constitution is especially concerned "with the maintenance of a national economic union." *Healy v. Beer Inst.*, 491 U.S. 324, 335–36 (1989). A central reason for forming the Union was to prevent the economic rivalry and regulatory overreach that fractured national markets under the Articles of Confederation. *See* The Federalist No. 11 at 85 (A. Hamilton); James Madison, Preface to Debates in the Convention of 1787, in 3 Records of the Federal Convention of 1787 at 547 (Max Farrand ed., 1911); The Federalist No. 22, at 140 (A. Hamilton) (lamenting the "want of concert" and "clashing and dissimilar views" that wreaked havoc on economic unity among the states). The Constitution addressed that problem by vesting authority to regulate interstate commerce in Congress while preventing states from projecting regulatory authority beyond their borders, thereby placing interstate commerce beyond the reach of local interests. *Carbone*, 511 U.S. at 406 (O'Connor, J., concurring). Allowing Oregon's EPR regime to stand would invite precisely the kind of regulatory balkanization the Constitution was designed to prevent. If each state may impose its own upstream packaging mandates, cost-allocation schemes, and compliance frameworks on interstate commerce, firms will face a patchwork of overlapping obligations reflecting the policy preferences of whichever state wields the most market power. That result would undermine the national economic union and erode the equal sovereignty of the states.

Programs like Oregon's EPR regime threaten those structural guarantees and eliminate political accountability. By imposing regulatory requirements based on packaging and distribution decisions made throughout national supply chains—and by exempting in-state retailers while foisting compliance costs on producers, manufacturers, and distributors whose relevant conduct occurs largely outside Oregon—the regime exports regulatory burdens to out-of-state actors who lack meaningful political recourse within the state. When regulatory burdens fall primarily on out-of-state interests, the political process provides insufficient protection against overreach. *See S. Pac. Co. v. Arizona*, 325 U.S. 761, 767 n.2 (1945). And when a state exports the costs of its regulatory preferences, it faces diminished political pressure to calibrate those costs while interfering with the policy choices of other States. *See* Richard B. Collins, *Economic Union as a Constitutional Value*, 63 N.Y.U. L. Rev. 43, 64, 68 (1988).

Courts have long recognized that even well-intentioned regulations violate extraterritorial limits when they project regulatory authority beyond state borders. *See North Dakota v. Heydinger*, 15 F. Supp. 3d 891, 918–19 (D. Minn. 2014), *aff'd*, 825 F.3d 912, 921–22 (8th Cir. 2016). By contrast, laws regulating in-state conduct with only incidental interstate effects have been upheld. *See Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1080–81 (9th Cir. 2013). The distinction turns on regulatory object and locus, not the importance of the policy goal asserted.

Enforcing the Dormant Commerce Clause here would not prevent Oregon from pursuing environmental objectives. States retain ample tools for doing so through regulation of in-state conduct, consumer disclosure, procurement policies, and participation in federal or interstate initiatives. What they may not do is unilaterally impose their regulatory judgments on the nation as a whole.

B. Supreme Court Precedent Distinguishes In-State Harms from Out-of-State Regulation

Supreme Court precedent distinguishes between laws that regulate in-state harms—even if they incidentally affect interstate commerce—and laws that regulate out-of-state conduct itself. *See Pac. Coast Dairy v. Dep't of Agric.*, 318 U.S. 285, 295 (1943); *Maine v. Taylor*, 477 U.S. 131, 138 (1986). A State may impose evenhanded requirements tied to the local use, safety, or disposal of goods sold within its borders. But it may not condition market access on compliance with regulatory standards governing how goods were produced, packaged, or distributed elsewhere when those characteristics bear no necessary relationship to in-state effects. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 524 (1935); *Osborn v. Ozlin*, 310 U.S. 53, 62 (1940).

Oregon's EPR regime falls squarely in the latter category. Although styled as a recycling and waste-management program, the statute does not primarily regulate in-state disposal practices or local harms arising from product use. Instead, it assigns liability based on upstream packaging attributes and prior-year sales volumes that reflect how interstate commerce is organized before products ever reach Oregon—matters that should properly be "none of [the state's] concern." *Id.* at 62. The statute's allocation of regulatory responsibility confirms this extraterritorial focus. Oregon expressly exempts in-state retailers—the actors most directly connected to local sales and waste generation—while imposing compliance obligations on producers, manufacturers, and distributors whose relevant conduct overwhelmingly occurs outside the State. ORS §§ 459A.863(22), 459A.866. That design choice makes clear that the statute's object is not local commerce, but the organization of upstream interstate markets through in-state leverage.

Contrary to the state's argument, *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), does not foreclose extraterritorial analysis. *Pork Producers* rejected an "almost *per se*" Dormant Commerce Clause theory that treated downstream economic effects alone as sufficient to invalidate a state law. *Id.* at 375 (plurality opinion). But the Court did not purport to eliminate the Constitution's structural limits on state regulatory authority. *Pork Producers* thus narrowed one category of extraterritoriality argument—those resting solely on downstream economic effects—without displacing the long-standing general principle that states may not restructure interstate markets. *See id.* at 375, 388–89. The decision left unresolved how courts should analyze statutes that do more than merely influence out-of-state actors, but instead regulate based on upstream commercial organization and integrated supply chains. Oregon's EPR regime fits that unresolved and constitutionally suspect category. The statute does not regulate the conditions of in-state sale or use. It assigns regulatory burdens and costs based on nationwide sales volumes, system-wide packaging decisions, and upstream distribution choices—features that locate the object of regulation outside Oregon's territorial jurisdiction.

Where a statute's design reveals that the state has selected an impermissible regulatory object, the constitutional defect arises before any weighing of burdens and benefits becomes relevant. That understanding aligns with Supreme Court precedents, *see Healy*, 491 U.S. at 336; *Baldwin*, 294 U.S. at 521–24, and supports applying extraterritorial analysis here based on the locus of regulation, not simply the magnitude of economic effects, which *Pork Producers* rejected.

Amici urge the Court to take seriously the Constitution's historic and structural limits on state regulatory authority when evaluating statutes that leverage in-state sales to control upstream conduct throughout national supply chains. Extraterritoriality doctrine reflects foundational concerns about state sovereignty, political accountability, and the preservation of a national economic union. Where a statute's design reveals that its regulatory object lies beyond the state's legitimate territorial jurisdiction, the Constitution requires more than deference to asserted local interests—it requires careful attention to the limits of state power in a federal system. This case presents such a statute, and the Court should evaluate it accordingly.

II. EVEN IF OREGON'S EPR REGIME IS TREATED AS A LOCAL REGULATION, IT FAILS UNDER *PIKE*

Even if the Court concludes that Oregon's EPR regime regulates a legitimate local interest and does not present a threshold extraterritorial defect, the statute still should not survive scrutiny under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). *Pike* supplies the governing rule for nondiscriminatory statutes that nevertheless affect interstate commerce: such laws are invalid when "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* at 142. The Supreme Court's application of *Pike* has consistently focused not only on the magnitude of compliance costs, but on whether the regulatory mechanism forces system-wide operational changes, impedes the free flow of commerce, or creates the kind of multi-state patchwork that undermines the national market. *See S. Pac. Co.*, 325 U.S. at 772–75 (1945); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 529–30 (1959); *Kassel v. Consol. Freightways Corp.*, 450 U.S. 662, 671–76 (1981) (plurality opinion).

A. Oregon's EPR Regime Imposes Structural Burdens on Interstate Commerce, Not Merely Incidental Compliance Costs

The burdens imposed by Oregon's EPR regime are structural because the statute's compliance model is not localized to Oregon-specific transactions or in-state conduct. Instead, the Act operates through upstream obligations—packaging classifications, system-wide cost allocation, reporting requirements, and fee assessments—that attach to national supply chains and integrated interstate operations. *See* ORS §§ 459A.863(6), (18), (22); 459A.866; 459A.875; 459A.884. These are not incidental compliance costs associated with regulating local sales or disposal practices. They are burdens that attach to the organization of interstate commerce itself. Compliance under the Act is not achieved through product labeling, point-of-sale adjustments, or other localized operational changes. Rather, the statute requires producers and distributors to restructure upstream packaging decisions, logistics, and cost-accounting systems across their interstate operations. *See* ORS §§ 459A.875; 459A.884. As a practical matter, regulated entities cannot comply through Oregon-only adjustments. Because liability is assigned based on prior-year sales volumes and packaging characteristics across integrated supply chains, firms must reorganize broader interstate practices to conform to Oregon's framework.

That type of burden is precisely what has concerned the Court under *Pike* and related Dormant Commerce Clause decisions. In *Southern Pacific*, the Court invalidated Arizona's train-length restriction not because it imposed a marginal expense in isolation, but because it forced carriers to restructure operations on a system-wide basis, disrupting the "free flow of commerce" through interstate transportation networks. 325 U.S. at 772–75. Likewise, in *Bibb*, 359 U.S. 520, the Court struck down a nondiscriminatory safety regulation where the burden arose from incompatibility with other States' standards and the resulting disruption to interstate trucking. *Id.* at 529–30. Packaging and distribution systems are integral components of interstate commercial infrastructure, not localized activities confined to a single state. By assigning regulatory liability based on upstream packaging characteristics and system-wide sales volumes, Oregon regulates the architecture of interstate commerce itself. Courts have consistently treated such laws as appropriate candidates for *Pike* scrutiny because their burdens are structural rather than incidental. *See Japan Line, Ltd. v. Cnty. of Los Angeles*, 441 U.S. 434, 453–54 (1979).

The point of these cases is that a nondiscriminatory law may nonetheless be unconstitutional where it functions as an interstate infrastructure mandate rather than a local regulation with incidental spillover effects. Oregon's EPR regime presents that same problem. Its cost-allocation formulas, packaging classifications, and reporting requirements are not meaningfully severable from interstate operations. Regulated entities cannot efficiently comply on an Oregon-only basis without duplicating systems or restructuring national practices. Critically, the statute exempts in-state retailers while placing regulatory and financial responsibility on upstream producers and distributors. *See* ORS §§ 459A.863(22); 459A.866. That allocation is relevant under *Pike* because it confirms that the statute's mechanism operates by restructuring upstream interstate commerce rather than by regulating local disposal practices. The resulting burdens are not incidental to a local regulatory choice; they are the means by which the state seeks to reshape national markets.

B. The Burdens Are Retrospective, Ongoing, and Severe

The structure of Oregon's EPR regime exacerbates interstate burdens in several significant respects. Fee assessments are based on prior-year sales volumes and system-wide methodologies, limiting regulated entities' ability to alter current conduct to avoid liability. That retrospective design increases uncertainty and impairs planning for firms operating in interstate commerce. The Supreme Court has recognized that retrospective and unpredictable regulatory burdens imposed on interstate actors weigh heavily in the *Pike* analysis. *See Am. Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 284–86 (1987) (invalidating flat taxes that imposed disproportionate burdens on interstate carriers); *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127–28 (1978) (distinguishing structural burdens from incidental effects).

Pike does not require courts to assess burdens in the abstract. Rather, the inquiry turns on how a regulation functions in real-world commerce, including whether it forces operational restructuring or imposes compliance uncertainty. *See Kassel*, 450 U.S. at 671–72 (1981) (plurality opinion) (examining whether asserted safety benefits justified substantial operational burdens on interstate trucking); *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 447–48 (1978) (evaluating the magnitude of burdens and questioning whether asserted safety benefits were substantiated). Here, Oregon's compliance framework obliges firms to implement ongoing accounting, reporting, and packaging-classification systems keyed to Oregon's methodology—an especially heavy lift for small and mid-sized producers and distributors operating across state lines. Those burdens are not meaningfully avoidable through localized compliance or market exit. In theory, a firm could withdraw from Oregon's market. In practice, many regulated entities cannot feasibly segment distribution networks, product lines, or packaging decisions on a state-by-state basis, particularly where Oregon's obligations operate through upstream cost allocations and system-wide assessments. The inability to avoid compliance through localized adjustments is excessive under *Pike*, because it shows the regulation is functioning as an interstate operational mandate rather than a local rule with incidental spillover effects.

A decisive feature of Oregon's EPR regime is replication risk: the likelihood that similar schemes, if adopted by multiple States with varying definitions, methodologies, and fee structures, will generate cumulative burdens that no single state internalizes. The Supreme Court has repeatedly recognized that the Dormant Commerce Clause addresses the "patchwork" problem—where interstate actors are forced to navigate conflicting or accumulating state requirements, fragmenting the national market. *See Bibb*, 359 U.S. at 529–30; *S. Pac.*, 325 U.S. at 775; *Kassel*, 450 U.S. at 675–76 (plurality opinion). That concern is not speculative in a statutory scheme like Oregon's. EPR regimes like this one are designed to operate across supply chains that run through all fifty States. If each State imposes distinct packaging classifications, reporting requirements, cost-allocation methodologies, and fee schedules, compliance will become multiplicative and destabilizing. The resulting cumulative burdens would resemble the kind of operational disruption condemned in *Southern Pacific* and the incompatibility concerns highlighted in *Bibb*. *Pike* exists to prevent precisely that form of balkanization where the burdens of multi-state compliance become clearly excessive relative to any one state's local benefit.

C. Oregon's Asserted Local Benefits Are Attenuated

Pike requires courts to compare the burdens imposed on interstate commerce against the statute's "putative local benefits." 397 U.S. at 142. The question is not whether environmental protection is a legitimate governmental objective, but whether Oregon's chosen regulatory mechanism produces Oregon-specific benefits sufficient to justify the structural and cumulative burdens it imposes on interstate commerce. Here, the Act's design weakens Oregon's claim of concrete local benefit in at least two respects.

First, the program does not principally regulate in-state disposal behavior or local waste-management practices—in other words, a local interest. Rather, it imposes mandates on producers and distributors across interstate supply chains, with the expectation that those mandates will indirectly influence downstream outcomes within Oregon. *See* ORS §§ 459A.863(22); 459A.866; 459A.875; 459A.884. That attenuation matters under *Pike*, which examines not only the importance of the asserted local interest, but whether the regulation's structure meaningfully advances that interest and whether the resulting burdens are justified by the degree of advancement achieved. *See Raymond Motor Transp., Inc.*, 434 U.S. at 447–48; *Kassel*, 450 U.S. at 671–72.

Second, the Act's exemption of in-state retailers—the entities most directly connected to local sales and local waste generation—underscores that the regulatory mechanism is not targeted at the local point of disposal. *See* ORS §§ 459A.863(22); 459A.866. Instead, regulatory and financial responsibility is assigned upstream to producers and distributors whose relevant conduct overwhelmingly occurs outside Oregon. A State may not avoid difficult political tradeoffs by shifting regulatory costs onto interstate commerce while claiming localized downstream benefits. Under *Pike*, that mismatch between regulatory mechanism and asserted benefit supports invalidation where, as here, the burdens imposed are structural and clearly excessive in relation to the local benefits asserted.

III. OREGON'S DELEGATION OF COERCIVE REGULATORY AUTHORITY TO A PRIVATE ENTITY MAGNIFIES THE NEGATIVE EXTRATERRITORIAL EFFECTS

The constitutional defects identified above are compounded by Oregon's decision to vest core regulatory authority in a private Producer Responsibility Organization ("PRO"). Although legislatures may delegate implementation authority to public agencies subject to political accountability and judicial review, the Constitution draws a sharp distinction between delegations to public officials and delegations that confer coercive regulatory power on private parties. Where private actors are empowered to impose binding obligations on others—particularly where they possess interests adverse to those they regulate—the Court has treated such arrangements with heightened skepticism. *See Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936); *Eubank v. City of Richmond*, 226 U.S. 137, 143–44 (1912); *Washington ex rel. Seattle Title Tr. Co. v. Roberge*, 278 U.S. 116, 121–22 (1928).

Those cases reflect a substantive principle that goes beyond formal separation of powers. While legislatures may authorize public agencies to fill in the details of a statutory scheme, *Marshall Field & Co. v. Clark*, 143 U.S. 649, 693–94 (1892), they may not empower private entities to make binding regulatory decisions without meaningful standards, oversight, or political accountability. The danger is greatest where private parties exercise authority over competitors or other market participants whose interests they do not share. *Carter Coal*, 298 U.S. at 311.

Oregon's EPR regime falls squarely within that danger zone. The statute requires covered entities to participate in a state-approved PRO, *see* ORS

§ 459A.869(1), and vests that organization with authority to develop and administer the program plan, *see* ORS § 459A.875, establish fee schedules and cost-allocation methodologies, *see* ORS § 459A.884, collect fees, and impose compliance obligations on producers and distributors throughout the supply chain. Those determinations are not ministerial. They shape how costs are distributed across national supply chains and how regulated entities must organize their interstate operations. In substance, the PRO exercises policy-making authority with interstate reach, yet it is neither electorally accountable nor constrained by the procedural safeguards that ordinarily apply to public agencies.

This delegation is constitutionally significant not only as an independent nondelegation concern, but because it amplifies the extraterritoriality problems described above. Unlike a public agency operating within a defined jurisdiction, the PRO's assessments and compliance frameworks are designed to function across integrated interstate markets and cannot realistically be tailored on a state-by-state basis. As a result, Oregon has achieved indirectly—through private governance—what it could not do directly: regulation of the structure of interstate commerce beyond its borders. The Court has repeatedly emphasized that States may not evade constitutional limits through indirection. *See Carbone*, 511 U.S. at 393; *Healy*, 491 U.S. at 336–37. Delegation to a private intermediary does not cure an extraterritorial or structural defect; it compounds it by weakening the political and procedural constraints that ordinarily cabin state regulation of interstate commerce. That point is especially salient in light of *National Pork Producers Council*, 598 U.S. 356. There, the Court rejected an effects-based Dormant Commerce Clause challenge in part because the law regulated in-state sales conditions and remained subject to ordinary political accountability. *See id.* at 369–71 (plurality opinion); *id.* at 392–93 (Sotomayor, J., concurring in part). The plurality emphasized that the case did not involve a statute regulating wholly out-of-state conduct or one that directly controlled commerce occurring wholly outside the boundaries of a State. *Id.* at 371 (plurality opinion).

Here, by contrast, Oregon has combined upstream, interstate-focused regulation with delegation of coercive authority to a private entity insulated from ordinary political oversight. When regulatory burdens are imposed by a private organization rather than by accountable state officials, the political safeguards that *Pork Producers* assumed would discipline state regulation are substantially diminished. *See id.* at 382 (plurality opinion) ("In a functioning democracy, policy choices like these usually belong to the people and their elected representatives."); *id.* at 396 (Roberts, C.J., concurring in part and dissenting in part) (emphasizing continued relevance of structural limits where state regulation affects interstate markets). Relatedly, the statute lacks clear, judicially administrable standards governing the PRO's exercise of authority. Even where delegation is otherwise permissible, the law must be sufficiently definite to permit meaningful judicial review. *See Yakus v. United States*, 321 U.S. 414, 426 (1944); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). Here, fee obligations and compliance requirements are determined through discretionary methodologies that are not publicly disclosed, limiting notice, constraining judicial review, and raising due process concerns. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Finally, Oregon's reliance on private governance reinforces that this is not ordinary regulation of local conduct. The statute exempts in-state retailers—the entities most directly connected to local sales and waste generation—while shifting regulatory responsibility upstream to interstate producers and distributors and vesting enforcement authority in a private organization. *See* ORS §§ 459A.863(22); 459A.866; 459A.869. That structure confirms that the statute's object is not local commerce, but the organization of interstate markets. When combined with the extraterritorial reach and structural burdens discussed above, Oregon's delegation choice underscores why serious constitutional scrutiny is warranted here.

CONCLUSION

For the reasons set forth above, amici urge the Court to grant NAW's Motion for a Preliminary Injunction.

DATED: January 26, 2026.

Respectfully submitted,

/s/ Christina Martin
Christina Martin
Oregon Bar No. 084117
CMartin@pacificlegal.org
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
Telephone: (916) 419-7111
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, I filed a copy of this document with the Court's ECF system, which will cause an electronic notice of such filing to be sent to counsel of record for each party in this case.

/s/ Christina Martin
Christina Martin