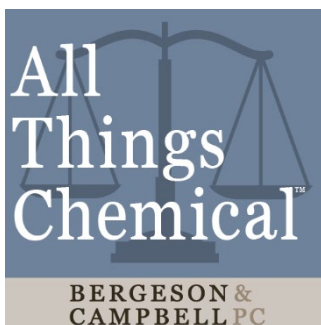




Episode Title: Why Oregon's EPR Law Could Set the Rules for Every State -- A Conversation with Karen R. Harned

Episode Number: 20260910

Publication Date: September 10, 2026

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Lynn L. Bergeson (LLB): Hello, and welcome to *All Things Chemical*, a podcast produced by Bergeson & Campbell (B&C®), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I am Lynn Bergeson.

This week, I had the pleasure of speaking with Karen Harned, Director of Litigation and Legal Policy for the National Association of Wholesaler-Distributors (NAW), to discuss the hot off-the-presses decision in *National Association for Wholesaler-Distributors v. Feldon*, the federal challenge to Oregon's extended producer responsibility (EPR) law. First we discuss NAW's mission, the role of NAW's Legal Policy Center, which Karen, as Director of Litigation and Legal Policy, leads, the reasons NAW sued the state of Oregon, and what federal Judge Michael Simon determined in his much-anticipated ruling of last Thursday. Now, here is my conversation with Karen Harned.

Welcome, Karen, and thank you for joining us here at *All Things Chemical*. I've been so looking forward to this, not only because of the timing of this podcast, but also I've just been all over your legal career. You've served in the position of Director of the NAW Legal Policy Center for just a little bit over two years now. Before that, you served for over two decades as Executive Director of the National Federation of Independent Business's (NFIB) Small Business Legal Center, which you built from the ground up, which is an accomplishment in and of itself. And now you're doing likewise at the Legal Policy Center. I wanted to talk to you just a little bit about your distinguished career, and if you can tell our listeners just a bit about yourself. You are obviously an experienced litigator, a distinguished lawyer, but what motivates you for achieving so much as quickly as you have?

Karen R. Harned (KRH): Thank you. That's very gracious, and I really appreciate the opportunity to be with you all today. This is a great audience for this topic. I mean, your listeners are living exactly in the world where product regulation, packaging, and constitutional law are now colliding through these EPR programs, so I really appreciate the opportunity.

I came to -- the dull cliché -- I came to D.C. to make a difference. I really got the bug with regard to constitutional law, and even just agency authority and agency rulemaking and regulation early in my career. That's just something -- even before I started my career, quite frankly, in college, even before law school. I'm really in my world living my dream, getting to work on these issues and do this kind of work. I started on Capitol Hill as Assistant Press Secretary to my senator from Oklahoma, Don Nickles. I'm a native Oklahoman. In fact, my son is a fifth-generation Sooner, and he's back there.

LLB: Oh, wow! That's wonderful.

KRH: Yes, it's awesome. My family's still there. After law school, I went and practiced law at a D.C. firm doing food and drug work. That actually was interesting, too, because that's -- as you can imagine -- a heavily regulated industry. I saw a lot and learned a lot there. That was a great training ground. But I just really honestly have always liked the more big-picture stuff and found myself even at the law firm wanting to get into, "Okay, I get that's the regulation, but who gave them the authority for that? Where did they get the authority for that?" That's just kind of how I roll, so to speak.

When the opportunity came around to build NFIB's Small Business Legal Center, I was so grateful that they took a chance on me and I was able to do that, because I really think -- and we're all seeing, and this is the same for NAW's Legal Policy Center -- that there are three legs to the advocacy stool. It's Congress, it's the agencies, but it's also the courts. Increasingly, the courts are where a lot of this is happening. Through the way laws have been interpreted and agencies have grown over the last century really, you are seeing -- people with power want more, right? Then we've got a Congress that seems to not really want to pass a lot of laws, or if they do, they're really big laws that are very vague, which again gives agencies a lot of power.

I'm all about right-sizing government and also making sure that our constitutional system prevails, and so much of what I litigated at NFIB and now at NAW really goes to the heart of those issues. I had the privilege of managing *NFIB v. Sebelius*, which was the first challenge to Obamacare. When we took it on, it was a frivolous lawsuit, and by the end, everybody was asking whether the government could require you to eat broccoli. Our frivolous lawsuit ended up having three days of arguments at the Supreme Court. Although we did not get the result we necessarily wanted there, with getting that law overruled, we *did* make a lot of good law. I am aware of that every time I talk to a law student who finds out about my role there and they say, "Oh, we spent a week on that case in our law class."

Then before I left, I managed our challenge -- NFIB's challenge -- to the Department of Labor's OSHA [Occupational Safety and Health Administration] vaccine mandate during COVID. That one we were successful on. When I was approached by NAW about them starting a legal policy center, I said, "First of all, you need one." That is something I think you probably are seeing even -- a lot of your listeners. A lot of associations are finding that they need to have their voice in the courts, and going back to COVID, the supply chain became the star of the show for *all* Americans. That is a story that is not told just generally when you're talking about small business or all sorts of things. We have unique challenges, and those challenges really have presented themselves with these EPR laws. Because of the seat we're sitting in, we are uniquely burdened by these laws in a way that others are not. We really needed to bring a voice to that, we thought.

LLB: Maybe you can tell our listeners a little bit about NAW. It's been around a long time, based on my review of your very well-documented web page, about eight decades. What is its mission and purpose? Whose interests do you serve through the Legal Policy Center? And what are your goals for the NAW Legal Policy Center?

KRH: Right. NAW was founded, as you mentioned, in 1946 and represents the wholesale distribution industry. Those are the people who are taking products from their suppliers to package them for their customers and get them to them. It's all about -- we're the industry of efficiency, really trying to make -- the products we're trying, ultimately, to get to everybody's doorstep get there as efficiently and as cost -- efficiently in time, efficiently in cost -- as possible.

We represent roughly \$8.7 trillion in economic activity, with more than six million workers in our industries, and we're close to a third of the U.S. GDP [gross domestic product]. We are also a federation -- which is unique to NAW, I think, in a lot of business association space -- of national, regional, and state associations, across our member companies, across every distribution sector. We have a federation of associations that are the grocers, are those wholesaler-distributors to electronics equipment, to pool service equipment, to every facet in industry you can imagine, auto care.

Our members matter for this conversation because they sit in the middle of the supply chain. They buy from manufacturers; they sell to hospitals, schools, restaurants, contractors, and other businesses, and we're not the package designers. We do not, in most cases, own the brand -- although some of our members do, but it's not as many -- so we really cannot change what the manufacturer ships our items in. Our margins are very tight -- that goes back to the efficiency point I made earlier -- averaging roughly three to five percent, so there's really little room for our members to absorb a new cost. That means that when these costs move, it means that they ultimately have to be passed on to the consumers for us to be able to survive.

We launched the Legal Policy Center because of the reasons I described at the top. Legal advocacy is a critical part of advocacy these days, and especially in light of Congress's, in many instances, abdication of its role and the agencies coming in and feeling the need to fill in the gaps, if you will. There was an important case that was decided now two years ago, *Loper Bright*, which I'm sure many of the attorneys, if not *all* the attorneys on this podcast, have heard of, which really gives us an opportunity to make sure, prospectively, that agencies are staying in their lane. That's a great opportunity for NAW, too, as we're looking at our litigation goals of the future. We really want to make a durable litigation program that makes precedent on a national level, but does it for our members' interest. There's, again, making sure that the story of the wholesaler-distributor is told, not just in Congress and before agencies, but also in the courtrooms, where they're making decisions on a whole host of issues, even outside of EPR laws, that hit our members' bottom line.

LLB: Absolutely. I'm guessing the pandemic and all of its implications particular to supply chain disruption and the cost imposed ultimately to your members and the consumer, the creation of the center might have had some causal connection. But be that as it may, litigation provides an opportunity for many different voices to join the party. So win, lose, or draw, bringing cases, arguing issues, talking about the merits of any particular new law -- federal or state -- is an essential component of our democracy. So good for you for starting the center and taking on, I think, some of the toughest challenges facing businesses today. In that regard, Karen, maybe you can tell our listeners a little bit about the range of legal issues. I think one of the more prominent cases, obviously, is the *Feldon* case that -- your

organization is named a plaintiff, but you've got a lot going on. How do you prioritize these cases, and how many are you pursuing at any one time?

KRH: On the prioritization, that's really member driven. We are constantly asking our members what are the issues that are keeping them up at night, that are coming across their desks. That really drives that train. We do -- much like NFIB, where I came from -- we represent a whole host of industries. I mean we are the wholesaler-distributor industry, but among that, our members, some are supplying construction equipment, others are supplying food products, and it's just very vast. But labor and employment, those are issues that continue to be very thorny for businesses of all sizes, particularly small and mid-sized businesses. We have done a lot in that space as amicus.

At the Supreme Court, in appellate (appeals) courts, also as plaintiff, we have ongoing challenges to an OSHA walk-around rule that would allow non-employees to accompany OSHA inspectors when they're inspecting a business. We also challenged new overtime rules that were increasing the salary threshold for exempt employees. Those issues continue to be problem issues for us that we look at. Then, "last-mile driven" -- that's been a big one that's been coming up through the courts. The Supreme Court actually just had another case that we weighed in on this last term. And then transportation and logistics, that's another big one for our members, so we've gotten involved as amicus there.

Associational standing, that's a huge one. We're in a fight right now. We've got a coalition of business groups in a lawsuit that is before the Indiana Supreme Court. We filed an amicus brief there because they're looking at paring back associational standing, and that's critical for associations to have so that their members can be represented in court and not have to fear retribution from a government agency for maybe saying their law is not constitutional or their action is not legal. We also care a lot about liability issues -- supply chain liability on the plaintiff's bar is very aggressive. They'll go down the chain when they're looking for potential defendants. Often our members get looped into that. There's a lot that goes on, honestly, in the courts with regard to the different kinds of evidentiary rules and things that impact liability concerns for our members.

And then taxes, we've done some work at the Supreme Court on that. That's a huge issue for our members. We really do have a broad array of issues that we advocate for our members on in the court.

LLB: It's obviously way more than extended producer responsibility. In that regard, let's pivot to the litigation of the hour, because I'm speaking with the litigator of the hour, and that's the *National Association of Wholesaler-Distributors v. Feldon*. Just by way of very, very brief background for the benefit of our listeners, the case considers the constitutionality of certain aspects of Oregon's Recycling Modernization Act, the first EPR packaging program in the United States. If I read all of your papers correctly, and I've been tracking this very carefully, Karen, NAW asserts that Oregon's packaging program is unconstitutional for two primary reasons: violation of the due process clause, particularly as it relates to delegating authority to a producer responsibility organization or so-called pro, which in this case is the Circular Action Alliance. And secondly, violation of the dormant Commerce Clause, given the state's program significant and allegedly adverse implications for out-of-state businesses. I think the question invites an obvious answer, but why did NAW sue, and in your words, what is at stake?

KRH: Right. Your summary was absolutely correct. The reason we sued is, honestly, for our members, it's -- I don't know if it's, I mean, for some, it's probably an existential threat, quite frankly. I mean, what came out at trial, depending on the product, sometimes the product cost of these fees is -- or the fees that our members are being forced to pay into these states -- are larger than their profit margins for going in. We actually already have one member that has -- at least one -- that has stopped selling into Oregon for that very reason. It just didn't make sense, and that's not good for anyone. But, really, we are in the worst possible position for these laws, because we are considered the producer under most of them, and that's the person that really is liable for paying the fees, yet we have the least amount of levers we can pull as an industry for controlling the amount and type of packaging that's used and going into the states. That doesn't even also consider the fact that *all* businesses are dealing with -- which is a lot of these laws, while very similar, have some differences, and so you're having to adjust for those. It just makes it really, really hard, honestly, to do business. It's clear that while well-intentioned, the people who were writing these laws do not understand how the supply chain works and do not understand the ripple effects that these laws have, not just in their state, but across their states' borders, and not even just regionally. Folks in Virginia are having to -- whether they know it or not -- at some point, they're probably paying at least a little bit for the Oregon fees, for example.

LLB: Sure they are, right. I think you made a compelling argument in all your briefing. As you may know, we monitored the five-day trial in July every day. It was riveting. I think you made excellent arguments relating to the impacts of these laws that may or may not have been fairly appreciated, considered, and understood by the people who were making the call as to their constitutionality.

I want to get one thing very clear, Karen. NAW stated multiple times during the five-day trial that it believes in the concept of product stewardship and supports the Oregon Department of Environmental Quality's (DEQ) goals surrounding extended producer responsibility. You are not opposing the *concept* of EPR. I think if I understand your advocacy, you oppose the *implementation* of the law in ways that are disproportionately affecting your members in inviting other adverse ripple effects in supply chain economics and the delivery of goods to the public in a way that is efficient and economical, correct?

KRH: Yes. I would say, we definitely support a sustainable circular economy. That is very clear, and honestly, it's not just lip service. I challenge anybody to go visit one of our members. I mean, that's one of the first things I've noticed about them is they are so cognizant of this. To the extent they *can* do their own recycling, they are. I've seen with my own eyes the commitment that they have to this. The one pushback I would have a little bit is, we really just don't think EPR laws in general -- we've yet to see one that we think works and aligns the interests properly, the incentives properly, where you're going to get the results that you need there. But definitely the ones like Oregon that we're challenging we think are wrong, but maybe there's something out there. We haven't seen it yet. All we can say is for *our* members, this has just been particularly harmful, because going back to the members themselves, we're not collecting all of our gold coins and sitting around. We don't make that much. Our profit margins are very small, and so efficiency, efficiency, efficiency, and these laws just throw huge wrenches into that system that we've worked so hard to create, of efficiency.

LLB: In other issues as well, the due process concerns that I personally share, having to pay a fee that is subject to a calculus or a methodology that is not amenable to review, comment, or change is a hard pill to swallow. That was one of the key arguments in your case. But let's get to the decision that came out just last Thursday, late in the day, which surprised me,

Karen. I would assume there might have been a similar view shared in your shop, but the court ruled in a somewhat lengthy decision by District Judge Michael Simon for the defendant and determined that -- and I quote -- "Oregon's Plastic Pollution and Recycling Modernization Act does not violate either the dormant Commerce Clause or the Due Process Clause of the United States Constitution." Maybe in your own words, you can express what the impact of that decision was in your shop. Do you agree with the decision? I think your press release issued on Friday is no and hell no, right? And talk a little bit about why you *do* disagree, and did it surprise you? Because I know some of the legal commentary in advance of the decision after the trial in July suggested that a different result or a split decision as to the two constitutionality claims.

KRH: Correct, and I *was* surprised, honestly, for the reasons you indicated. The decision just did not reflect the tone and the tenor of what happened those five days in court. I felt like in every respect, the evidence we presented was so strong, supporting both of our claims, and so the court's table setting and the introduction really sets up how the court ultimately came to view the case, which was to let states experiment on the significant environmental problem. Okay, that's fine, but I felt like at the end, all the decision did was try to come up with these alternative holdings to get the court where they wanted to be there. I felt like they didn't really address the law -- the legal arguments we made -- effectively. They definitely looked over some of the evidence, definitely on the due process side. That was interesting, too, because the court even said that "few material facts are truly disputed by the parties" and the issues in the case were really more questions of law, which --

I agree, and I just think that the judge got it wrong. Now, it's hard, and I felt like Judge Simon was very good about listening to both sides and really asking concerned questions. He was definitely -- I just have to think anybody who listened to the trial heard that he was very knowledgeable. This was not somebody who was phoning it in. So I felt -- which was another reason why I was surprised, quite frankly. But we just -- we feel like we made great evidence to support the fact that the costs of the Oregon program alone are being shifted outside of the state, across the country. We had one of our witnesses say that they're charging a fee right now, extra, all across the country for some of the products. That is an issue. The court glossed over this point that really the program is approved. Oregon is really building a new statewide infrastructure on the backs of out-of-state consumers to fund it. It really cuts against the theme of that introduction that Judge Simon had in the federal system that a single state can experiment. Okay, that's great, but I'm pretty sure they're not allowed to do it on the backs of consumers on the other side of the country.

LLB: Right, who have no say in that fee assessment. It's curious to me, just reading the first couple of sentences of the decision, and I quote, "Companies that choose to sell products in various States must normally comply with the laws of those various States," citing *National Pork Producers Council*. Then it goes on to say, "This principle, combined with the wisdom that "[t]o stay experimentation in things social and economic is a grave responsibility," citing *New State Ice Co*. I thought that was very telling, because those are two statements that no one wants to disagree with, right? Of course states have to comply with the law, but those new laws aren't necessarily *per se* legitimate, and when they're challenged, it doesn't mean that the arguments that you presented were without merit. Similarly, I think it's a well-accepted fact that states are very frisky. They are often ahead of the curve on some of these issues, as Oregon clearly was ahead of the curb on EPR. But the fact that they're innovative and state programs are also serve as the incubators of new social and regulatory policy, again, doesn't make it beyond reproach, right? Some of the setting up the case this way seemed to reflect to me a predisposition to getting to the answer that it did. I agree with you, despite the clarity of the decision and the well-documented many citations throughout

the 71-page decision, it still didn't in some instances *to my eye* address many of the *factual* issues that you addressed in the trial.

KRH: Correct. For example, I think we put forward great evidence on the discrimination and local protectionism that this law has in Oregon. But despite that, the court faults us for not presenting even *more* evidence as the exemptions but ignores the fact that DEQ *never* quantified it. The state legislature *never* did any looking into these issues at all. I don't know when enough is enough, when it's good enough analysis. I question whether you can get there for this particular court, so that's unfortunate. Also, he didn't deal with -- on the due process side, he was very dismissive of our arguments and the evidence that we put forward on creating an alternate producer responsibility organization that could compete with the Circular Action Alliance. Oregon's law does allow that. It does allow multiple pros. That's great, except they have some real strong guardrails that he just blew by --

LLB: -- Right. That's exactly right --

KRH: -- not the *least* of which is ten percent market share that the members of this alternate pro have to have. We put on evidence that that's basically impossible to meet that standard, much less the cost of putting it together, pulling all the pieces -- It just is such -- I felt like we were so strong in the evidence that we put forward on -- you can *say* that multiple pros are allowed, but just saying it doesn't mean it can happen. As a practical matter, I think we proved that it could not, and I did not feel like he effectively dealt with that in the opinion.

LLB: I urge all of our listeners to read the opinion and come to their own conclusions. But one of the issues that has really affected our clients adversely and one of the issues that really inspires a lot of conversation is the fee setting. Your press release is really, really good, because it says, among other very valid points, "Oregon's own regulator confirmed under oath that it had never seen the algorithm used to calculate those fees and could not reconstruct the calculations." When the judge concluded that there are sufficient guardrails and oversight by DEQ, it's hard to reconcile that statement that the judge maintains and what I just read from your press release.

Similarly, our clients received fee statements earlier this year that were totally inexplicable, often double or triple what was paid the year before into the program, with no explanation and no opportunity for rebuttal. In my view, the due process clause really was intended to prevent those types of occurrences, and yet there isn't a -- to me -- described discussion of those concerns in the decision. All of that -- let me let you comment on that, and then I'll ask you the \$64,000 question about appeal.

KRH: I agree with everything you just said. This has always, honestly, been the part of this, that law -- and that has upset me the most in these laws -- is this delegation to this private non-profit of such powerful enforcement and taxing authority and the fact that you cannot look behind the curtain. Much was made in this case about this Appendix G, that was always sealed throughout the record. And then ultimately it was like, that's it.

DEQ, to your point, admitted that they can't recreate the formula. They don't know what was used. That is just not fair to have this group that is accountable to no one -- I guess, loosely, to DEQ, but that's our whole issue is "loosely."

LLB: Right, that was the whole argument.

KRH: Yes, I know. This really is a “hide the ball” exercise, and I really think it’s because -- that’s part of the issue that I also have just more fundamentally. Not only is this law unconstitutional, I just don’t think it’s a good idea, because the way it’s structured, if you want to change behavior, you need to incentivize the people who can change the behavior to do it. You need to incentivize consumers to recycle. They’re not -- their prices are going up, as we showed in our evidence, but they don’t know why. Is it because of tariffs? Is it because of inflation? They have no idea that it’s because of this law, so that doesn’t really get you where you want to go with them.

And then again, we’re sitting in the middle of the supply chain with the least levers to pull on the type and amount of packaging that’s going into the state. We’re the ones that are forced to pay, so you’re not -- how are *we* incentivizing anybody to make better packaging? We’re just taking product and sending it in. That is why, in addition to it being illegal, it’s just not, I think, a good idea. But I also just -- going back to the due process part -- this is something that Oregon should be doing itself. And that takes us back to February 6, when we were before Judge Simon the first time. The first question he asked the state was, “Why don’t you just do this?” I still don’t think we’ve had a sufficient answer to that question. In fact, we were even told by one of the state’s witnesses that they *could* have done it. So I don’t know why we are using this middleman, who is [the Wizard of] Oz behind the screen, and we can’t see anything that’s going into the formula.

LLB: As you know well, Karen, there are lots of other states that have implemented EPR laws: California, Colorado, Maine, Maryland, Massachusetts, Minnesota. They’re all similar. There might be changes here and there, but foundationally, they seem to be structured on the same framework that the Oregon law is. If you read the literature and legal writings and commentary up to this point, the Oregon case is thought to be the bellwether. That’s the one that will decide the constitutionality -- or not -- of these very similarly situated programs.

Two questions in that regard. How is NAW preparing its members to do business in a very, very fluid landscape, where one state’s EPR laws may conflict with another, and certainly -- I think, to your point -- in violation of the dormant Commerce Clause, is imposing regulatory restrictions and costs on people who are well outside the jurisdictional confines of the state, but nonetheless wish to sell into that state and therefore have these added logistical packaging option limitations and financial burdens to bear? What are you telling your members to do in that regard? Because this EPR tidal wave is hitting hard, hitting fast, and hitting right now.

KRH: Right. I will say we are, as an advocacy -- I think our biggest contribution, quite frankly, is our advocacy. I mean we are continuing our advocacy against these laws, trying to let legislators in states that have not implemented them, that are considering passing them, why this is a problem, and then continuing our work in our other litigation, challenging these laws. We are in the process of still taking it all in, what Oregon means itself. We can’t provide our members legal advice, but we will definitely be doing what we can to inform them about these laws. That’s one of our main goals on *any* law that impacts our members, so that’s really where we are with that.

LLB: That’s great, and I applaud your efforts. We started a Product Stewardship Blog[™] earlier this year for the express purpose of communicating litigation and policy initiatives that I think sometimes because it’s not always front and center in the businessperson’s mind, but we think EPR is huge. We’ve been tracking its progress in the European Union, because it’s much further along in other countries than it is here, which is why this case is so foundationally relevant and important.

But beyond EPR, there are a lot of other issues that seem to have a collective impact on many businesses far beyond the jurisdictional confines of a particular state. NAW joined 17 attorneys general seeking to block enforcement of SB 54, for example, California's EPR statute. Your advocacy there also seems to our eye -- makes connections between recyclability contemplated under SB 54, which of course is the CalEPA [California Environmental Protection Agency] law. But it also relates to the SB 343 that I'm sure many of our listeners have heard about. It's California's Truth in Recycling law, which essentially bans recycling symbols and iconography on packaging unless certain criteria are met, which largely consist of ensuring that collection and sorting at the state level are scaled appropriately. What that means exactly is unclear, which might have contributed to the state's -- or the judge's -- decision to enjoin enforcement of SB 343 until further notice. But what is your view on the relationship between SB 343 and SB 54, the EPR law, and what concerns do you have with both of those laws?

KRH: Right. I did think that -- SB 343, we obviously had been watching, and I think the real takeaway there -- and you'll see it in our amended complaint -- is that it's hard for anybody to know what the rules of the road are when it comes to complying with SB 54, the EPR law there, *and* SB 343, for that matter. But anyway, that is -- also a huge concern is that these laws are very vague, and people who are regulated need to know what the rules are, because that is something that I think is inherent with these EPR laws, regardless of what state.

Talk to any of our members, at least, and they are just like -- it's like they're walking through the wilderness trying to figure out the best way to -- "What does this mean? How do I do this?" Again, going back to the trial and the great testimony of our members, they're sitting there weighing packaging and spending hours and hours trying to figure out what counts and what doesn't, trying to get information from their suppliers on, "Hey, have you counted this or not?" Not able to get that information in most respects, I would say we proved. I would say just on the California, again, going back to 343 and -- that's a whole other problem is -- these laws are not clearly written, and it's not clear to know who's responsible, what they're responsible for, and that's also a fundamental problem.

LLB: Agree. The lack of coherence and fundamental practicability of some of these laws is bewildering to me. And I'm a lawyer! But before we move off the point, your Legal Policy Center, do you engage in means of notification and education, or outreach and lobbying? Or are you litigation first, last, and all the time? Do you pursue other things, maybe not through your center, but through NAW offices?

KRH: Correct. NAW itself is very much in advocacy. I mean that's its reason for being, in many respects. So we have had, and continue to have, a very strong presence in the halls of Congress, the agencies, and increasingly in the states -- because there's so much going on there with our advocacy -- and that will continue on this issue and others that are important to the industry.

The Legal Policy Center itself, yes, we do litigation, but we also are trying to do education as well on these things. Again, we can't provide legal advice, but for example -- or was it? I'm sorry, my years are blurring. I think it was last year, as soon as the tariffs, for example, were announced, we had an expert who we had come on and do a webinar for our members. We are always looking for those issues where we can bring some of the best and the brightest to them through roundtables and other ways so that they can hear from labor and employment attorneys: what's going on in the different states, what's going on nationally, what are they thinking, and that sort of thing, so that is very much an integral part of the Legal Policy Center's work.

LLB: That's excellent. Those are much needed services, I think, because there are so many regulations that the federal government and the state governments issue, and then there are a whole host of programs, like EPR, and PFAS (per- and polyfluoroalkyl substance) notification and reporting, and labeling requirements, not unlike the constitutional challenge, the New Mexico PFAS labeling requirement. It really takes a concerted effort for all of industry, all of business to collaborate and urge a different result, or at least more engagement and more practical solutions to some of the problems these, in my view, Karen, well-intentioned laws are intended to address, but again, some of the executions involved in the programs and policies of states *and* the federal government are not always deployed in a way that will achieve these results, right?

Litigation helps distill the issues, tee them up for a sharper view. In that regard -- and I know the day is but young since the decision came out just a few short days ago -- are you continuing to review the decision in the *Feldon* case? It's widely expected that you will appeal this to the Ninth Circuit, but I don't want to speculate on something that is not yet a decided course of action on NAW's part.

KRH: Yes, we are still digesting. As you say, the hour is young, and two of those -- It's been what? Three days and a few hours, and two of those days were a weekend, and I'm going to confess that I did not work over this weekend.

LLB: Of course not. There's a lot to consider, and the precedential significance of *Feldon*, of course, on these other state EPR laws is huge. No pressure, Karen, but --

KRH: -- I know, I know. As you can suspect, I'm not going to make news here on this podcast with regard to an appeal. We are evaluating our options for moving forward, but as I mentioned, we do obviously see some clear deficiencies in the decision. For right now, we're going to be briefing our members and all of that, so we're very much in the early stages here. We've got 30 days, so we're going to do this the right way and figure out what next steps make the most sense for the organization and our members.

LLB: You've certainly teed up the issues well, Karen, and thank you for your personal engagement and organizational commitment to address these very, very tough issues. But you began this conversation by talking about the collision course of some of these programs with constitutional protections. That conversation will continue. We look forward to how you decide to pursue these actions. And again -- oh, one more question. Are all of the activities that you've mentioned, I'm sure listeners could go to your website and learn more about your center and other advocacy opportunities that NAW offers, correct?

KRH: Absolutely. NAW.org.

LLB: Great. We covered a lot of territory, Karen, and I want to thank you for joining me, especially so soon after the court rendered a decision that, in my view, could benefit from appeal, but that's my personal view.

KRH: Thank you so much for the opportunity. We really appreciate it.

LLB: My pleasure, Karen. Thank you for joining us.

KRH: Thank you.

LLB: My thanks again to Karen for sharing her timely insights with us on NAW, its Legal Policy Center, and her insights on the decision issued in *NAW v. Feldon* and its implications.

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