

***Regulatory Oversight* Podcast — From Cell Phones to Tractors: The Right to Repair Movement Drives On**

**Host: Stephen Piepgrass**

**Guests: Brad Weber and Christy Matelis**

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**Stephen Piepgrass:**

Welcome to another episode of *Regulatory Oversight*, a podcast dedicated to delivering expert analysis on the latest developments shaping the regulatory landscape. I'm one of the hosts of the podcast, Stephen Piepgrass, and I lead the firm's Regulatory Investigation Strategy and Enforcement, or RISE practice group.

Our podcast highlights insights from members of our practice group, including its nationally ranked state attorney's general practice, as well as guest commentary from industry leaders, regulatory specialists, and government officials. Our team is committed to bringing you valuable perspectives, in-depth analysis, and practical advice from some of the foremost authorities in the regulatory field today.

Before we begin, I encourage all of our listeners to visit and subscribe to our blog at [RegulatoryOversight.com](https://www.troutmanpepperlocke.com/blog/regulatoryoversight) to stay current on the latest regulatory developments.

Today, I'm joined by my colleagues Brad Weber and Christy Matelis from the Business Litigation Group to discuss the growing focus on the right to repair movement and its related antitrust monopolization concerns. As we delve into pending legislation and lawsuits at both the state and federal levels, we'll analyze the potential broad sweeping implications across various industries, including the agriculture on automotive fields of this new movement.

Brad Weber is co-leader of our firm's antitrust practice. Brad is highly regarded for his work in complex government investigations, antitrust compliance and multi-district litigation, and is currently involved in some of the nation's most closely watched antitrust litigation in the right to repair space. His background is bolstered by having served as a past chair of the antitrust and business litigation section of the State Bar of Texas and as a past president of the Dallas Bar Association.

Christy Matelis brings extensive experience as a former state antitrust enforcer and now advises clients on antitrust and competition matters globally. Christy focuses on merger clearance, government conduct investigations, antitrust compliance, and counseling. During her tenure as an assistant attorney general for the state of Utah, Christy handled merger reviews and enforcement actions across various sectors, including technology and healthcare. Christy is also an active member of the antitrust defense bar and holds a leadership position in the ABA's antitrust section.

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[EPISODE]

**Stephen Piepgrass:**

Brad and Christy, I want to thank you both for joining me today. I've been looking forward to this conversation, so let's go ahead and jump on in.

**Christy Matelis:**

Thanks for having us, Stephen.

**Stephen Piepgrass:**

Absolutely. I thought it probably made sense for our listeners to start by talking just a little bit about the state of right to repair laws across the country right now, which as I understand it is somewhat of a patchwork and very much incomplete. Christy or Brad, what if you want to jump in on that issue?

**Christy Matelis:**

Sure, and let's just talk a little bit about what is the right to repair movement, because I just want to be clear about what it is that we're talking about today. So, there's this growing movement called Right to Repair that's advocating for consumers' ability to repair and modify their own products. This includes cell phones, cars, appliances in their home, and includes just about everything under the sun that you can imagine. There is no national law regarding the right to repair, and what we're seeing now is a lot of states, so far seven states, have enacted right to repair laws, and we've got this patchwork, and each state law is different, of course. We've got some states have passed laws concerning cars, other states have passed laws concerning agricultural equipment, and of course, we've seen some states like Colorado recently passed the law, and that is the broadest of all the state laws so far, and that covers just about everything from your cell phone to tractors.

This expansive patchwork is very difficult for corporations to navigate, and of course, also for consumers to find out, "Oh, wait a minute, if I bought a cell phone in California, what does that mean for me living in Florida or Colorado or wherever you may live," and California has a right to repair law.

**Brad Weber:**

And Steven, if I could jump in, Christy's done a great job highlighting some of the state laws, and as you mentioned, it is a patchwork. There are two federal statutes that arguably cover the right to repair, and they are both under the jurisdiction of the Federal Trade Commission. One is Section 5 of FTC Act, which prohibits unfair methods of competition. And the other is a statute called the Magnuson-Moss Warranty Act, and it bars companies from conditioning consumer product warranties on the use of any article or service that's identified by a brand name unless those are provided for free.

So, in layman's terms, it prevents companies from conditioning a warranty on the use of certain parts or services. The FTC has cited both of those statutes in efforts to bring claims or actions against companies related to the right to repair.

**Stephen Piepgrass:**

That's a great point. I was thinking about the FTC Act or the FTC's jurisdiction here. Can you give us some specific examples of how the FTC has weighed in using those statutes? What sort of issues should our clients start thinking about using those as examples?

**Brad Weber:**

Well, for the Magnus-Moss Warranty Act, it's pretty well documented that the FTC will monitor websites and look at warranty language that companies that produce consumer products are putting into their warranties. There's an example where two companies, a very prominent motorcycle company, and a manufacturer of electric generators were cited for violations of the act and entered into consent decrees. It also was announced that there were eight companies that received warning letters from the FTC, putting them on notice that because of the warranty language that was published on the website, it appeared that they were in violation of the Magnuson-Moss Warranty Act, and those companies were given 30 days to revise the warranties to come into compliance.

**Stephen Piepgrass:**

Thanks, Brad. I'm sure that'll be helpful for our clients as they're thinking through these issues to look at those matters as examples. Christy, you raised an interesting point as you were talking about really describing what the right to repair is. I think a lot of laypeople, as they think about right to repair, think of it as very much a consumer-friendly type of movement. I think, from a business perspective, it can have surprising effects. And one of the cases I'm thinking about is Massachusetts and its right to repair law. I know we've done some writing on this.

In that instance, Massachusetts required auto manufacturers to really provide a great deal of information and detail about their telematics and data use in cars. Ultimately, in order to comply with that, at least one major auto manufacturer ended up deciding that any car sold in Massachusetts would have most of its telematics functionality stripped from the car.

Although this is often couched as a consumer-friendly issue, it can have some significant adverse consequences. As you're thinking about the states across the country, Christy, are there any that are sort of seen as bellwethers in this area that other states may be looking at as models?

**Christy Matelis:**

Well, certainly, I think New York and California. California passed its Right to Repair Act in October of '23, and New York passed its Right to Repair Act in March of '23 as well, 2023, excuse me. These laws have already been enacted. And I think because, one, California and New York are always seen as leaders, especially I'm an antitrust lawyer. These are states

where these state attorneys general are very active in antitrust. They're very active in just about everything that they do. And this is an area where I think states are going to look to see what they're doing and model that. Colorado is interesting, their right to repair act is quite broad, broader than both of those states, and I think Colorado is not someone that we normally think of as being a leadership state in this area, but they certainly are taking a big swing with their act, which I believe goes into effect on January 1st, 2026. So, it's been passed, but it hasn't been taken effect yet.

I think these are some of the states that other states will be looking to, and of course, there are going to be a lot of legal issues coming out of this. We haven't seen courts really react to how to handle these right to repair laws. I mean, there are going to be serious implications, certainly for competition, whether or not, how much do companies have to reveal about their proprietary information? Is that going to be exclusionary conduct if they try and hold information back? Similarly, does handing over information then kind of help a company show that, "Look, we don't have monopoly power because we are giving all of this information over to repair folks who are in this field so that they can help consumers." There are just a lot of legal issues that are going to come from these new laws that we haven't seen courts address, a lot of questions still to be answered.

**Stephen Piepgrass:**

Brad, I want to kick it over to you to talk about an investigation and litigation in particular that has gotten a lot of headlines recently, and that involves John Deere. Could you perhaps fill our audience in on how that litigation arose, where it currently stands, and it's broader ramifications when it comes to the right to repair movement?

**Brad Weber:**

Yes, happy to. Back in early 2022, there were a number of lawsuits filed around the country against John Deere, and the plaintiffs were, for the most part, farmers or people who had bought agricultural equipment, and they were seeking to certify classes of plaintiffs against John Deere, and the basis for the claims arises under the Sherman Act, both section one and section two. Section two deals with monopolization, and so the plaintiffs allege that John Deere monopolizes the market for aftermarket repairs and servicing of John Deere equipment.

They also alleged a Section 1 claim which requires an agreement and the allegation is that John Deere has entered into agreements with its authorized dealers to unreasonably restrain competition for repair services. Those cases were all consolidated or centralized in Rockford, Illinois, the Northern District of Illinois in June of 2022. John Deere later filed a motion to dismiss and one of the arguments in the motion was that the alleged market, which was the market for John Deere repair services, was legally inadequate because there's a line of cases that say you can't have a market that's focused on a single brand.

The plaintiffs and the Department of Justice, which intervened, argued that because these are very expensive pieces of equipment and because owners are really limited to using John Deere parts and services, that this was a proper market for analyzing competitive harm. The court agreed and denied the motion to dismiss, and so the case is still going, the discovery period will

end in May, and then probably experts and class certification. So, it's a very active ongoing class action case in the Northern District of Illinois.

There's a related FTC matter and I'll talk briefly about it. It actually started as an investigation by the Federal Trade Commission in September of 2021. And it was not directed solely at John Deere. It was directed at other manufacturers that may have been restricting competition for repair services and parts. But in June of 2022, several parties including authorized dealers of John Deere received civil investigative demands for information related to their parts and repair services functions. That investigation, I think it's interesting, was originally directed by the Bureau of Consumer Protection within the FTC. It was later switched to the Bureau of Competition, which is the part of the FTC that really focuses on antitrust issues as opposed to consumer protection issues.

That investigation was going on. One thing I mentioned earlier, Section 5 of the FTC Act and the Magnuson-Moss Warranty Act, both of those statutes were cited by the FTC when it started the investigation. The other interesting thing, the resolution was approved five to nothing by the commissioners, which included three Democrats and two Republicans. So, that's the investigation.

Now, I'll jump forward to one final part of the John Deere trilogy, and that is a case that was filed on January 15<sup>th</sup> of this year, less than a week before the change in presidential administrations. That case was brought by the FTC and two states, Minnesota and Illinois, against John Deere. It was filed in the same court, Rockford, Illinois, federal court, same judge, Iain Johnston. That case, the FTC vote to approve it was three to two. The three Democrat commissioners approved the filing of the complaint. The two Republican commissioners who are currently in control of the FTC filed dissents and were very critical about the FTC filing this case so late in the Biden administration.

After the case was filed, in addition to Illinois and Minnesota, three other states have now joined Michigan, Arizona, and Wisconsin. As of now, the case is still pending. It kind of remains to be seen whether the FTC may either dismiss the case or enter into some settlement with John Deere, which has been hinted at by Chair Ferguson. But my view is even if the FTC were to drop the case, there's strong indications that the states would continue to pursue the litigation because of their concerns on how John Deere's practices harm farmers and other owners of agricultural equipment.

### **Stephen Piepgrass:**

Thanks, Brad. And that's really, I think, the perfect segue to the last point of discussion that I wanted to chat with you all about, which is, in a lot of areas, we have watched this early in the Trump administration as federal agencies have pulled back a bit with decreases in funding with terminations of staff and just a lack of resources that has been occurring at the federal level, and we've seen states really jumping in to fill the gap. When it comes to the right to repair, is that something that you all think will be the case as well? And I know I'm asking for a bit of a crystal ball here, but, and Christy, maybe you're the right

one to begin this final piece of the conversation, having come from an AG's office, are they going to be the next wave of enforcement actions coming out of the state AG's office as opposed to the FTC in your view?

**Christy Matelis:**

Yes, I definitely think that state AGs that's going to be where the action happens in the next four years. Certainly, with regards to the right to repair. Right to repair is really important to consumers. Again, like you said at the beginning of our conversation, it's viewed as being very consumer-friendly. This is something that you don't really have to explain right to repair to everyday folks that immediately they know what you're talking about. And what do state AGs love to do? They love to enforce issues with a local impact, issues that touch their constituents, and what touches their constituents more than right to repair.

So, I think this is something that's going to attract a lot of state AGs, state legislatures, and certainly consumers living in their states. Now, one thing I've been thinking about as we've been having this conversation is I think with what's going on now with tariffs, if that is something that takes hold in 90 days or however many days and we don't see those things going away. I think consumers are going to be one holding on to their cars longer, holding on to their cell phones longer. I think that this need for right to repair is only going to grow. While we have seven states currently with right to repair laws enacted, we will see that number change, I think, with regards to what's happening right now with the tariffs and how that impacts consumers. There may be a very quickly evolving landscape.

**Stephen Piepgrass:**

Christy, I agree with you in my observations in the AG space. I do think they are going to be very active here. And the other very interesting development that we've seen over the last five years or so, I would say, is issues that are really nonpartisan in the view of AGs. And I think right to repair fits squarely into that, especially with the more populous tone of the Republican Party today. Right to repair is one of those issues that often resonates with populists. So, I think we will continue to see action in this space by the state AGs and not just the Democratic AGs, but both the Democrats and the Republicans. I agreed with you as well that I think tariffs, depending on the direction that goes, could prompt further action in this area.

Brad, any final thoughts on your behalf before we sign off with our listeners?

**Brad Weber:**

No, other than I just totally agree with Christy. I think the states are going to be more active and will not be retreating, even if the current leadership of the FTC and DOJ views right to repair as a lesser priority than the prior administration. I think it's still going to be very active based on state enforcement.

[OUTRO]

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**Stephen Piepgrass:**

Well, Brad and Christy, thank you again for joining me today. I've very much enjoyed our conversation, and I know our listeners have appreciated your perspectives. I want to thank our audience as well for tuning in. Remember to subscribe to this podcast on whatever platform you use and don't forget to sign up for our blog at [RegulatoryOversight.com](https://www.regulatoryoversight.com) and we look forward to joining you again next time.

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