

No. 25A\_\_

IN THE

*Supreme Court of the United States*

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PHILIP MORRIS USA INC.,

*Applicant,*

*v.*

ARMAND FONTAINE, individually and as personal representative of  
the Estate of Barbara Ellen Fontaine,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS**

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TO THE HONORABLE KETANJI BROWN JACKSON, ASSOCIATE JUSTICE OF  
THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR  
THE FIRST CIRCUIT:

Pursuant to this Court’s Rule 13.5, Philip Morris USA Inc. respectfully requests  
a 30-day extension of time, to and including August 20, 2026, within which to file a  
petition for a writ of certiorari to the Supreme Judicial Court of Massachusetts  
(“Supreme Judicial Court”).\*

On April 22, 2026, the Supreme Judicial Court issued its opinion affirming the  
trial court’s judgment against Philip Morris USA Inc. *See Fontaine v. Philip Morris*

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\* Pursuant to this Court’s Rule 29.6, undersigned counsel state that applicant Philip  
Morris USA Inc. is a wholly owned subsidiary of Altria Group, Inc. Altria Group, Inc.  
(NYSE: MO) is a publicly traded company that has no parent corporation, and no  
publicly held corporation owns 10% or more of its stock.

*USA Inc.*, 277 N.E.3d 585 (Mass. 2026). Unless extended, the time within which to file a petition for a writ of certiorari will expire on July 21, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

A copy of the Supreme Judicial Court’s opinion is included in the appendix.

1. This case raises important and recurring questions concerning express preemption under the Federal Cigarette Labeling and Advertising Act (the “Labeling Act”), 15 U.S.C. §§ 1331-1341.

a. The Labeling Act prohibits States from imposing any “requirement or prohibition based on smoking and health . . . with respect to the advertising or promotion of any cigarettes” labeled in conformity with the Act. 15 U.S.C. § 1334(b). In *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), a plurality of this Court opined that whether a state-law claim imposes a requirement “based on smoking and health” turns on the scope of the claim’s “predicate” “legal duty.” *Id.* at 524. Relying on “the strong presumption against pre-emption,” the plurality concluded that the Labeling Act preempts only failure-to-warn and fraud-based warning-neutralization claims—but not fraud claims based on a “general duty” “not to deceive.” *Id.* at 523, 528-29. The Court later adopted the plurality’s test in *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008). Justice Thomas—joined by the Chief Justice and Justices Scalia and Alito—dissented, criticizing *Cipollone* as “atextual” and “unworkable” and warning that the Court may be forced to “revisit” its decision. *Id.* at 92, 112 (Thomas, J., dissenting).

b. Below, the Supreme Judicial Court applied *Altria* to affirm a fraud verdict against Philip Morris USA based on evidence that the company removed voluntary health warnings from the packages of certain cigarette brands.

i. Following the death of his wife, Respondent Armand Fontaine sued Philip Morris USA in Massachusetts Superior Court alleging, among other things, that Philip Morris USA had committed fraud and participated in a conspiracy to defraud consumers with other tobacco companies. App. 7a. For each of his fraud-based claims, Fontaine sought to impose liability based on Philip Morris USA's decision to stop including the warning that "Smoking is Addictive" on the packages of several cigarette brands that Philip Morris USA acquired from another manufacturer. That voluntary warning was not required by the Labeling Act. Over Philip Morris USA's objections, the trial court permitted Fontaine to introduce evidence and testimony in support of this theory. App. 44a-46a.

The jury returned a verdict against Philip Morris USA and awarded \$8 million in compensatory damages and \$1 billion in punitive damages. Op. 9. The trial court remitted the jury's punitive damages award to \$56 million and denied Philip Morris USA's motion for judgment notwithstanding the verdict. App. 11a & n.10.

ii. On appeal, the Supreme Judicial Court transferred the case from the intermediate appellate court *sua sponte* and affirmed. The Supreme Judicial Court recognized that Fontaine's fraud-based claims relied on "the same conduct" that would have supported a failure-to-warn claim preempted by the Labeling Act. App. 45a. But invoking the "presumption against the pre-emption of state police

power regulations” and citing *Altria*, the court reasoned that the “[s]tate law fraud and conspiracy claims alleging breach of the ‘duty not to deceive’ are not preempted by the Labeling Act,” even if they rest on the same theory and evidence as a preempted failure-to-warn claim. App. 43a, 45a. It thus affirmed the trial court’s judgment.

2. The decision below warrants this Court’s review. The Supreme Judicial Court’s opinion conflicts with this Court’s precedent because, under *Altria*, merely labeling a claim as “fraud” rather than “failure to warn” is insufficient to avoid Labeling Act preemption for a claim premised on the removal of voluntary health warnings. To the extent the Supreme Judicial Court correctly applied *Altria*, *Altria* should be overruled.

a. *Altria* made clear that the Labeling Act’s preemptive scope turns on whether “the gravamen of the claims was the defendants’ failure to warn.” 555 U.S. at 81. Here, Fontaine premised his fraud claims on Philip Morris USA’s decision not to include voluntary health warnings beyond those required by the Labeling Act. App. 44a-45a. Those claims therefore proceeded on a textbook failure-to-warn theory “predicate[d]” on a “legal duty that . . . constitutes a requirement . . . based on smoking and health.” *Altria*, 555 U.S. at 80 (internal quotation marks omitted). The Supreme Judicial Court should have held that Fontaine’s fraud-based claims were preempted under *Altria*.

b. To the extent *Altria*'s "predicate duty" test permits plaintiffs to evade Labeling Act preemption simply by repackaging a failure-to-warn claim as a fraud claim, *Altria* was wrongly decided and should be overruled.

*Altria* attempted to draw a line between preempted and non-preempted state-law claims under the Labeling Act based on the claim's "predicate duty." But that line was untenable from the start. As Justice Thomas explained on behalf of four dissenting Justices, that test cannot be reconciled with the statutory text and depends on applying a "shifting level of generality," *Altria*, 555 U.S. at 106 (Thomas, J., dissenting)—inexplicably treating fraud claims as based on the "general duty not to make fraudulent statements," while treating failure-to-warn claims as based on "smoking and health," *id.* at 87 (majority opinion). Both sets of claims impose requirements or prohibitions "based on smoking and health," given that they attempt to impose liability *because of* a manufacturer's allegedly deceptive statements or omissions about the effect of smoking upon health. Both the *Cipollone* plurality and the *Altria* majority recognized that the test lacked "theoretical elegance" for this very reason. *Id.* at 84 (quoting *Cipollone*, 505 U.S. at 529-30 n.27). Properly understood, the Labeling Act preempts Fontaine's fraud claims because they sought "to *require* [Philip Morris USA] to provide additional warnings" and were actionable "*only* because of the effect that smoking [Philip Morris USA's] cigarettes had on [Ms. Fontaine's] health." *Id.* at 109-10 (Thomas, J., dissenting).

Subsequent decisions of this Court have undermined *Altria*'s and *Cipollone*'s reliance on the presumption against preemption. In *Puerto Rico v. Franklin*

*California Tax-Free Trust*, 579 U.S. 115 (2016), this Court made clear that where, as here, a statute “contains an express pre-emption clause,” courts should “not invoke any presumption against pre-emption.” *Id.* at 125.

*Altria* has also proven unworkable and caused confusion in the lower courts. In dissent, Justice Thomas highlighted in *Altria* that the lower courts had repeatedly lamented the “impossibility” of applying the *Cipollone* framework. 555 U.S. at 97 (Thomas, J., dissenting) (collecting cases). The chorus of confusion has only grown louder since *Altria*. *E.g., Poosh v. Philip Morris USA, Inc.*, 2014 WL 6789886, at \*16 (N.D. Cal. Dec. 2, 2014) (“It is generally agreed that the *Cipollone* plurality’s opinion regarding Labeling Act preemption is difficult to apply.”). “[I]n practice,” as this case well illustrates, *Altria*’s “thin” and “formalistic” distinction between preempted failure-to-warn and non-preempted fraud claims invites evasion. *Jacobson v. R.J. Reynolds Tobacco Co.*, 2013 WL 12094893, at \*3 (S.D. Fla. Sep. 12, 2013).

3. Good cause exists to grant the extension. The undersigned counsel of record was retained following the Supreme Judicial Court’s decision in this case and did not participate in the trial or appellate proceedings. Additional time is therefore necessary for the undersigned counsel to complete a review of the record, to research and address the issues appropriate for certiorari, and to present a petition that would be helpful to the Court. Undersigned counsel also currently faces a press of other matters, including briefs in *Central American Bank for Economic Integration v. Mossi*, Nos. 25-7162, 25-7178 (D.C. Cir., (due July 1); *Jones v. SEC*, No. 25-60703 (5th Cir., due July 27); and *Black v. SEC*, No. 25-1718 (4th Cir., due July 29).

Philip Morris USA is not aware of any prejudice that would result from a 30-day extension.

### CONCLUSION

For the foregoing reasons, Philip Morris USA respectfully requests that the time within which to file a petition for a writ of certiorari be extended by 30 days, to and including August 20, 2026.

Respectfully submitted.

/s/ Amir C. Tayrani

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