

No. 26-235

IN THE
Supreme Court of the United States

PHILIP MORRIS USA INC.,
Petitioner,

v.

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

**On Petition for a Writ of Certiorari to the
Massachusetts Supreme Judicial Court**

**AMICUS BRIEF OF THE
PRODUCT LIABILITY ADVISORY COUNCIL
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS CURIAE*¹

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit professional association of corporate members representing a broad cross-section of American and international product manufacturers.² These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products and those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product litigation defense attorneys are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed more than 1,200 briefs as *amicus curiae* in both state and federal courts, including this Court, on behalf of its members, while presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

Active in a variety of heavily regulated industries, PLAC's members frequently face situations in which state-law requirements collide with federal requirements. How the competing demands of federal and state law are reconciled is thus of critical importance

¹ PLAC timely notified each party of its intent to file this brief. No counsel for a party authored this brief in whole or in part and no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No one other than PLAC funded preparation of this brief.

² See https://plac.com/PLAC/PLAC/Membership/Corporate_Membership.aspx (identifying PLAC's corporate members).

to PLAC's members. Preemption doctrine, at issue in this case, governs that reconciliation process. Like society at large, PLAC members benefit from the maintenance of uniform national standards that are enforced in a consistent manner. To ensure that they are not subject to a multitude of different—and potentially conflicting—legal requirements, PLAC's members are interested in the supremacy of federal law, which is the very issue at stake in this case.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A presumption against preemption is inconsistent with the Supremacy Clause and should have no place in this Court's jurisprudence.

The question whether federal law displaces state law arises in myriad contexts. It arises under diverse statutes ranging from FIFRA and the FDCA to ERISA and the INA. And it implicates a wide array of subjects, stretching from product liability and employee classification to commercial fishing and electoral procedures.

When determining whether federal law supersedes state law in a particular instance, the lower courts still frequently utilize a presumption against preemption. That presumption is a relatively recent addition to preemption jurisprudence, originating in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947). Although *Rice* was a field-preemption case, the presumption expanded to also encompass express- and conflict-preemption cases. Indeed, this Court reaffirmed the presumption in *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), an express-preemption case involving the very statute at issue here.

Invoking that presumption, courts have adopted unduly restrictive constructions of federal statutes, even when Congress has enacted legislation expressly preempting state laws. Presumptions have no place in statutory construction, which should turn on statutory text alone. Erroneous even in the conflict-preemption context, a presumption against preemption is indefensible in the face of an express-preemption provision. If there is to be a presumption in preemption cases, it should, given the Supremacy Clause, be a presumption *in favor* of preemption.

In *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115, 125 (2016), this Court held that courts should “not invoke any presumption against pre-emption” when the statute in question “contains an express pre-emption clause.” Despite that unambiguous statement, lower courts, as here, still apply such a presumption, ten years after *Franklin* was decided.

Lower courts have evaded *Franklin*’s clear stricture by reading it as limited to its specific statutory context, the Bankruptcy Code. Invoking the doctrine that only this Court may overturn its prior precedents even when intervening decisions have undermined their logic, lower courts have continued to apply a presumption against preemption in cases implicating a broad spectrum of disparate statutes, including FIFRA, ERISA, the ACA, the FDCA, the PREP Act, the ICC Termination Act, the Federal Railway Safety Act, and others. Indeed, just last month the Ninth Circuit applied such a presumption to reject preemption in a case concerning CERCLA.

It is time that Congress and the statutes that it enacts be given their constitutional due. This Court should grant certiorari and definitively renounce the presumption against preemption.

ARGUMENT

I. Preemption arises in a wide variety of statutory and substantive contexts.

The significance of this case extends far beyond the parties' dispute. Although this case happens to involve the regulation of cigarette labeling, preemption is an issue whenever federal and state law purport to govern the same subject matter.

Like the statute at issue here, many federal statutes expressly preempt state law. Such statutes regulate everything from retirement benefits, medical devices, and environmental protection to banking, telecommunications, and transportation. See, *e.g.*, 7 U.S.C. § 136v(b) (Federal Insecticide, Fungicide, and Rodenticide Act); 12 U.S.C. § 25b(b) (National Bank Act); 15 U.S.C. § 1610(a)(1) (Truth in Lending Act); 15 U.S.C. § 1681t (Fair Credit Reporting Act); 15 U.S.C. § 1693q (Electronic Fund Transfer Act); 17 U.S.C. § 301(a) (Copyright Act); 21 U.S.C. § 343-1 (Nutrition Labeling & Education Act); 21 U.S.C. § 360k(a) (Medical Device Amendments to the Food, Drug, & Cosmetic Act); 21 U.S.C. § 467e (Poultry Products Inspection Act); 21 U.S.C. § 678 (Federal Meat Inspection Act); 29 U.S.C. § 1144(a) (Employee Retirement Income Security Act); 42 U.S.C. § 300aa-22 (National Childhood Vaccine Injury Act); 42 U.S.C. § 7543(a) (Clean Air Act); 42 U.S.C. § 9658(a)(1) (Comprehensive Environmental Response, Compensation, & Liability Act); 47 U.S.C. § 253(a) (Telecommunications Act); 49 U.S.C. § 10501(b) (Interstate Commerce Commission Termination Act); 49 U.S.C. § 14501(c)(1) (Federal Aviation Administration Authorization Act); 49 U.S.C. § 20106(a) (Federal Railroad Safety Act); 49 U.S.C. § 30103(b) (National Traffic & Motor Vehicle Safety Act); 49 U.S.C. § 41713(b) (Airline Deregulation Act).

And even when a federal statute does not expressly preempt state law, it will often do so impliedly. Federal statutes impliedly preempt state law in contexts as diverse as immigration, arbitration, probate, pharmaceuticals, foreign policy, automotive design, and unemployment benefits. See, *e.g.*, *Williams v. Reed*, 604 U.S. 168, 176 (2025) (42 U.S.C. § 1983 impliedly preempts state-law exhaustion requirement); *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 (2016) (Federal Power Act impliedly preempts state-imposed wholesale energy price); *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013) (Food, Drug, & Cosmetic Act impliedly preempts state-law design-defect claims implicating generic drugs); *Hillman v. Maretta*, 569 U.S. 483, 497 (2013) (Federal Employees' Group Life Insurance Act impliedly preempts state probate law); *Arizona v. United States*, 567 U.S. 387, 403, 406, 410, (2012) (Immigration Reform & Control Act impliedly preempts state-law immigration statutes); *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 618 (2011) (Food, Drug, & Cosmetic Act impliedly preempts state-law failure-to-warn claims implicating generic drugs); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) (Federal Arbitration Act impliedly preempts state-law unconscionability doctrine); *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 353 (2001) (Food, Drug, & Cosmetic Act impliedly preempts state-law fraud claims); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 388 (2000) (Foreign Operations, Export Financing, & Related Programs Appropriations Act impliedly preempted state-imposed foreign sanctions); *Geier v. American Honda Motor Co.*, 529 U.S. 861, 886 (2000) (National Traffic & Motor Vehicle Safety Act impliedly preempts state-law automotive design requirement).

The point is simple: federal preemption plays a significant role in many important areas of law and life.

II. A presumption against preemption is contrary to the Supremacy Clause.

In *Altria*, this Court said that “[w]hen addressing questions of express or implied pre-emption, we begin our analysis ‘with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’” 555 U.S. at 77 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). That assumption—a presumption against preemption—is wrong.

Indeed, when considering the preemptive scope of the Bankruptcy Code just eight years later, the Court started its analysis by explaining that “because the statute ‘contains an express pre-emption clause,’ we do not invoke any presumption against pre-emption but instead ‘focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.” *Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Com. v. Whiting*, 563 U.S. 582, 594 (2011)).

Franklin’s rejection of a presumption against preemption is consistent with the Court’s approach to statutory construction. “[S]tatutes, no matter how impenetrable, do—in fact, must—have a single, best meaning.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Preemption analysis done right, therefore, is “a narrow” inquiry that properly “turn[s] entirely on the meaning of the state and federal statutes.” *Foster v. Love*, 522 U.S. 67, 71 (1997). In short, “preemption analysis is, or at least should be, a matter

of precise statutory ... construction rather than an exercise in free-form judicial policymaking.” *Geier*, 529 U.S. at 911 (Stevens, J., dissenting) (quoting 1 L. Tribe, *American Constitutional Law* § 6–28, p. 1177 (3d ed. 2000)). But, as an *a priori* assumption regarding congressional intent, a presumption against preemption is “in significant tension with textualism’ insofar as [it] instruct[s] a court to adopt something other than the statute’s most natural meaning.” *Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring) (quoting Amy C. Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 123–124 (2010)).

Although an important corrective to *Altria, Franklin* did not go far enough. A presumption against preemption has no place in either express- or conflict-preemption analysis.

The preemption of state law is the natural consequence of the Supremacy Clause, which declares that “the Laws of the United States ... shall be the supreme Law of the Land ..., any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. A presumption against preemption cannot be reconciled with the Supremacy Clause. If anything, the Supremacy Clause demands the opposite—a presumption in favor of preemption.

A. The Supremacy Clause abrogated the presumption against implied repeals.

“The phrase ‘any [state law] to the Contrary notwithstanding’ is a *non obstante* provision.” *Mensing*, 564 U.S. at 621 (plurality opinion) (citing Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 238–240 (2000)); *accord Kansas v. Garcia*, 589 U.S. 191, 213 (2020) (Thomas, J., concurring).

A creature of eighteenth-century law, a *non obstante* provision “established an important rule of construction: A *non obstante* clause in [a] new statute acknowledged that the statute might contradict prior law and instructed courts not to apply the general presumption against implied repeals.” Nelson, 86 Va. L. Rev. at 241–242; *accord Mensing*, 564 U.S. at 621 (plurality opinion). Thus, when a statute arguably in tension with a previously enacted statute contained a *non obstante* provision, “courts did not have to struggle to harmonize the statute with prior laws; they could give the statute its natural meaning and let it displace whatever law it contradicted.” Nelson, 86 Va. L. Rev. at 232.

Although unnecessary given the Constitution’s declaration that federal law is the “supreme Law of the Land,” there is good reason why the Supremacy Clause contains a *non obstante* provision. The provision addressed two related fears. On the one hand, the Founders were concerned that a by-then well-established canon of construction—the rule that later legislation takes priority over earlier legislation—might result in situations in which “a subsequently enacted state statute could conceivably prevent the application of federal law.” Nelson, 86 Va. L. Rev. at 251. On the other hand, the Founders were concerned that the by-then equally well-established presumption against implied repeals would lead courts to narrowly construe federal statutes, “strain[ing] the federal law’s meaning in order to harmonize it with state law.” *Id.* at 255. The Supremacy Clause obviated both of these concerns. First, it established that federal law takes priority over state law regardless of the order in which they were enacted. Second, through its global *non obstante* provision, it told courts that they “should not strain to find ways to

reconcile federal law with seemingly conflicting state law.” *Mensing*, 564 U.S. at 622 (plurality opinion).

Antithetical to these principles, a presumption against preemption cannot be reconciled with the text or history of the Supremacy Clause. Indeed, a presumption against preemption turns the Supremacy Clause on its head. Rather than acknowledge the primacy of federal law, it assumes the primacy of state law, requiring “clear” evidence to the contrary before allowing federal law to take precedence. *Altria*, 555 U.S. at 77. But “[t]he *non obstante* provision of the Supremacy Clause indicates that a court need look no further than ‘the ordinary meanin[g]’ of federal law, and should not distort federal law to accommodate conflicting state law.” *Mensing*, 564 U.S. at 623 (plurality opinion) (quoting *Wyeth v. Levine*, 555 U.S. 555, 588 (2009) (Thomas, J., concurring in judgment)).

B. The Supremacy Clause does not distinguish between express and implied preemption.

In *Franklin*, this Court explained that it did not apply a presumption against preemption “because the statute” at issue “contain[ed] an express pre-emption clause.” 579 U.S. at 125. The Court was right to not apply such a presumption but wrong to suggest a distinction between statutes that contain express-preemption provisions and those that do not. The presumption is not appropriate in either circumstance.

There is only one Supremacy Clause. It cannot mean one thing in one context and something else in another.

The simple fact is that if a federal statute establishes a rule, and if the Constitution grants Congress the power to establish that rule, then the

rule preempts whatever state law it contradicts. This is so whether the rule is substantive or jurisdictional and whether it is express or implied.

Nelson, 86 Va. L. Rev. at 264.

This Court has recognized the Supremacy Clause’s unitary nature, explaining that although the Court “has sometimes used different labels to describe the different ways in which federal statutes may displace state laws—speaking, for example, of express, field, and conflict preemption,” those “categories ‘are not rigidly distinct.’” *Virginia Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019) (quoting *Crosby*, 530 U. S. at 372 n. 6). Indeed, “all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.” *Murphy v. National Collegiate Athletic Ass’n*, 584 U.S. 453, 477 (2018).

Simply put, there is nothing that logically differentiates express from implied preemption. Although the existence of an express preemption provision often makes conflicts between state and federal law easier to spot, state law that conflicts with a federal statute is preempted whether or not the federal statute contains an express-preemption provision.

The Supremacy Clause is categorical: It treats all federal law and all state law the same; it does not distinguish between types of federal law or types of state law. “There is no sound basis” to assert “that there exists a hierarchy of federal powers so that some statutes pre-empting state law must be interpreted by different rules than others, all depending upon which power

Congress has exercised.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 21 (2013) (Kennedy, J., concurring in part and concurring in the judgment). Thus, contrary to what *Altria* and other cases invoking the presumption against preemption suggest, for preemption purposes it is immaterial that Congress has chosen to legislate in an area previously left to the states’ “historic police powers.” 555 U.S. at 77 (quotation marks omitted). So long as Congress acts within its Article I authority, it is free to legislate in such areas. And if it does so, the statute that it enacts is “the supreme Law of the Land ..., any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

The presumption against preemption and the Supremacy Clause are incompatible and, until the Constitution is amended, it is the presumption that must go.

III. Lower courts still apply a presumption against preemption in express-preemption cases notwithstanding *Franklin*.

In the decade since *Franklin* was decided, the U.S. courts of appeal and state supreme courts have repeatedly invoked a presumption against preemption in the course of rejecting preemption challenges. The cases in which such a presumption has been invoked run the gamut, implicating, for example, topics as diverse as divorce proceedings, subsidized housing, environmental protection, bankruptcy, vaccinations, animal welfare, wage disputes, towing fees, drug pricing, drug labeling, early voting, consumer fraud, and grievance procedures.

A. Courts have continued to apply a presumption against preemption in various statutory contexts.

Notwithstanding *Franklin*, more than a dozen of these opinions, including the decision below, have invoked a presumption against preemption in cases involving express-preemption provisions. See *Fontaine v. Philip Morris USA Inc.*, 277 N.E.3d 585, 608 (Mass. 2026) (Cigarette Labeling & Advertising Act); see also, e.g., *Healthcare Ally Mgmt. of Cal., LLC v. WSP USA, Inc.*, --- F.4th ---, 2026 WL 2319896, at *6 (9th Cir. Aug. 11, 2026) (ERISA); *Council for Responsible Nutrition v. James*, 159 F.4th 155, 171 n. 8 (2d Cir. 2025) (FDCA); *Hardeman v. Monsanto Co.*, 997 F.3d 941, 958 (9th Cir. 2021), abrogated by *Monsanto Co. v. Durnell*, 146 S. Ct. 2001 (2026) (FIFRA); *California Trucking Ass’n v. Bonta*, 996 F.3d 644, 654 (9th Cir. 2021) (FAAAA); *Bedoya v. American Eagle Express Inc.*, 914 F.3d 812, 818 (3d Cir. 2019) (FAAAA); *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 131 (3d Cir. 2018) (FAAAA); *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 771 n. 9 (3d Cir. 2018) (FDCA); *Laborers’ Pension Fund v. Miscevic*, 880 F.3d 927, 933–934 (7th Cir. 2018) (ERISA); *Ass’n des Éleveurs de Canards et d’Oies du Québec v. Becerra*, 870 F.3d 1140, 1146 (9th Cir. 2017) (Poultry Products Inspection Act); *Greenbrier Hotel Corp. v. UNITE HERE HEALTH*, 719 F. App’x 168, 180 (4th Cir. 2018) (ERISA); *Blankenship v. Consolidation Coal Co.*, 850 F.3d 630, 636 (4th Cir. 2017) (CERCLA); *Murphy v. Town of Darien*, 210 A.3d 56, 73 (Conn. 2019) (FRSA); *Modzelewski’s Towing & Recovery, Inc. v. Commissioner of Motor Vehicles*, 139 A.3d 594, 604 (Conn. 2016) (ICCTA); *Happel v. Guilford Cnty. Bd. of Educ.*, 913 S.E.2d 174, 189 (N.C. 2025) (Public Readiness & Emergency Preparedness Act); *Town of Delafield v. Central Transp. Kriewaldt*,

944 N.W.2d 819, 821, 826 (Wis. 2020) (Surface Transport & Assistance Act).

As the Roundup litigation illustrates, continued application of a presumption against preemption leads to erroneous decisions. In that litigation, plaintiffs asserted state-law failure-to-warn claims based on a manufacturer’s failure to warn of its pesticide’s alleged carcinogenicity. Despite FIFRA prohibiting the manufacturer from giving the warning that state-law purportedly required (see 40 C.F.R. §§ 152.44(a), 152.130(a)), and despite FIFRA expressly preempting any state-law labeling requirement “in addition to or different from those required” by federal law (7 U.S.C. § 136v(b)), federal and state appellate courts invoking a presumption against preemption held that FIFRA does not preempt such claims. See *Hardeman*, 997 F.3d at 958; *Durnell v. Monsanto Co.*, 707 S.W.3d 828, 833 (Mo. Ct. App. 2025); *Pilliod v. Monsanto Co.*, 67 Cal. App. 5th 591, 613 (2021); *Caranci v. Monsanto Co.*, 338 A.3d 151, 167–170 (Pa. Super. Ct. 2025). Ultimately, this Court had to intervene, holding in *Durnell* that “FIFRA ... expressly preempts” such claims. 146 S. Ct. at 2017.

B. Lower courts cite this Court’s precedent as justification for continued application of a presumption against preemption.

Lower courts’ continued application of a presumption against preemption in express-preemption cases notwithstanding *Franklin* is attributable to two factors working in conjunction.

The first is the doctrine that “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, [lower courts] should follow the case which directly

controls, leaving to this Court the prerogative of overruling its own decisions.” *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

The second, closely related factor is the Court’s pre-*Franklin* precedent, which invoked a presumption against preemption when analyzing various express-preemption provisions. See, e.g., *Altria*, 555 U.S. at 77 (Federal Cigarette Labeling & Advertising Act); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (FDCA); *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (ERISA); *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (FIFRA); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517–518 (1992) (Federal Cigarette Labeling & Advertising Act).

Together, these factors have caused lower courts to treat *Franklin* as confined to its particular statutory context, *i.e.*, the Bankruptcy Code. The Third Circuit’s decision in *Shuker* exemplifies this restrictive approach:

We disagree with [defendant’s] assertion that “[a]ny presumption against express preemption no longer exists.” [Defendant] relies on a Supreme Court case that addressed whether the federal Bankruptcy Code’s express preemption provision preempts a Puerto Rico statute, see *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, [579] U.S. [115, 125] (2016) (discussing 11 U.S.C. § 903(1)), but that case did not address preemption of claims invoking “historic ... state regulation of matters of health and safety,” such as the products liability claims at issue here, *Lohr*, 518 U.S. at 485. As that case does not “directly control[]” here, we “leav[e] to [the Supreme Court] the prerogative of overruling its own decisions,”

Agostini v. Felton, 521 U.S. 203, 237 (1997), and continue to apply the presumption against preemption to claims, like those in this case, that invoke “the historic police powers of the States,” *Lohr*, 518 U.S. at 485.

885 F.3d at 771 n. 9 (citation modified). Other courts have adopted this view. Finding “the logic of the Third Circuit compelling,” the North Carolina supreme court last year concluded that “*Franklin* did not overrule prior cases applying the presumption to express preemption cases.” *Happel*, 913 S.E.2d at 189 n. 8.

Remarkably, some lower courts continue to apply a presumption against preemption when analyzing the scope of express-preemption provisions without even acknowledging *Franklin*. The decision below is a prime example. Quoting this Court’s decision in *Cipollone*, the Massachusetts Supreme Judicial Court correctly held that “[t]he preemptive scope of the Labeling Act ‘is governed entirely by the express language in [15 U.S.C. § 1334].’” *Fontaine*, 277 N.E.3d at 608 (quoting *Cipollone*, 505 U.S. at 517). But, also quoting this Court’s decision in *Cipollone*, the court then mistakenly held that the statute’s express-preemption provision was “to be read narrowly ‘in light of the presumption against the pre-emption of state police power regulations.’” *Id.* (quoting *Cipollone*, 505 U.S. at 518).

The Massachusetts Supreme Judicial Court is not alone in this error. Again, the Roundup litigation is illustrative. There, a series of lower courts, relying on this Court’s opinions in *Bates* and other cases predating *Franklin*, invoked a presumption against preemption when construing FIFRA’s express-preemption provision. Some courts did so without even hinting that such a presumption stood on shaky ground. See, e.g., *Durnell*, 707 S.W.3d at 832–833; *Pilliod*, 67 Cal.

App. 5th at 613; see also, *e.g.*, *Caranci*, 338 A.3d at 167 (relying on state precedent ultimately citing *Cipollone*). For its part, the Ninth Circuit recognized in *Hardeman* that this Court “decided *Bates* over fifteen years ago” and that “preemption in other contexts has developed considerably in the interim.” 997 F.3d at 958. Nevertheless—tacitly treating every statute as *sui generis* and implicitly relying on the principle that only this Court can overrule its decisions, even when those decisions have been undermined by subsequent decisions of the Court—the Ninth Circuit held that “[f]or FIFRA preemption, however, currently *Bates* controls.” *Id.*

This Court abrogated *Hardeman* when it decided *Durnell*. But *Durnell* neither cited *Franklin* nor clarified that its holding applies to all express-preemption provisions. This case provides the Court with an opportunity to do just that. “If the Court is skeptical of the basic idea of a presumption against pre-emption as a helpful instrument of construction in express pre-emption cases”—as it clearly and correctly is—then “it should say so and apply that skepticism across the board.” *Inter Tribal Council*, 570 U.S. at 21 (Kennedy, J., concurring).

IV. This Court should definitively renounce any presumption against preemption.

The Court should grant certiorari and use this case as a vehicle to conclusively renounce any presumption against preemption as incompatible with the Supremacy Clause in all contexts. At minimum, the Court should overrule *Altria*, *Bates*, *Lohr*, and other precedent insofar as it condones the application of such a presumption in express-preemption cases.

Several lower courts have signaled confusion and disagreement over *Franklin*'s reach. As one court recently explained after contrasting *Franklin* with *Lohr*: “Some judges have noted difficulty in reconciling these approaches, because *Franklin* ... did not mention—much less expressly overrule—the decades of cases where the presumption had ... been applied.” *National Ass’n of Home Builders v. District of Columbia*, 2026 WL 837674, at *11 (D.D.C. 2026) (quotation and citation omitted). “What to make of *Franklin*’s ‘drive-by ruling’ is challenging” for the lower courts given the “tensions in [this Court’s] precedents.” *California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1108 (9th Cir. 2023) (as amended Jan. 2, 2024) (O’Scannlain, J., concurring) (quoting *Whitman v. United States*, 574 U.S. 1003 (2014) (Scalia, J., statement respecting denial of certiorari)); accord, e.g., *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 762 n. 1 (4th Cir. 2018) (Wilkinson, J.) (citing *Franklin*, *Riegel*, *Altria*, and *Lohr* as evidence of this Court’s “somewhat varying pronouncements on presumptions in express preemption cases”).

As Judge O’Scannlain has observed: because “this area of law is troubling and confused, with tensions in [the] Court’s precedents, splits in the circuits, and important practical questions unanswered,” “[g]reater clarity and further guidance from the Court on how to navigate preemption doctrine after *Franklin* would be most welcome.” *California Rest. Ass’n*, 89 F.4th at 1113 (O’Scannlain, J., concurring). This case is an ideal vehicle for providing that guidance.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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