

No. 26-235

IN THE
Supreme Court of the United States

PHILIP MORRIS USA INC.,
Petitioner,

v.

ARMAND FONTAINE, INDIVIDUALLY AND AS SPECIAL
PERSONAL REPRESENTATIVE OF THE ESTATE OF
BARBARA ELLEN FONTAINE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS

**BRIEF FOR THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA AND THE
AMERICAN TORT REFORM ASSOCIATION AS
AMICI CURIAE SUPPORTING PETITIONER**

JONATHAN D. URICK
KEVIN R. PALMER
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

H. SHERMAN JOYCE
LAUREN SHEETS JARRELL
AMERICAN TORT REFORM
ASSOCIATION
1101 Connecticut Ave. NW
Suite 400
Washington, DC 20036

MARK C. FLEMING
Counsel of Record
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6909
mark.fleming@wilmerhale.com

JULIE A. WELLY
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	6
I. THIS COURT HAS ALREADY REJECTED THE PRESUMPTION AGAINST PREEMPTION IN EXPRESS PREEMPTION CASES, YET LOWER COURTS REMAIN DIVIDED	6
II. THE PRESUMPTION AGAINST PREEMPTION IS INDEFENSIBLE AS A MATTER OF STATUTORY INTERPRETATION, CONSTITUTIONAL STRUCTURE, AND FEDERALISM	11
A. The Presumption Ignores Or Distorts The Best Evidence Of Congress's Own Intent: The Text.....	12
B. The Text And History Of The Supremacy Clause Cut Against Applying The Presumption Against Preemption In Express Preemption Cases	14
C. The Presumption Distorts Both The Separation Of Powers And Principles Of Federalism	18
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>Air Evac EMS, Inc. v. Cheatham</i> , 910 F.3d 751 (4th Cir. 2018)	9
<i>Altria Group, Inc. v. Good</i> , 555 U.S. 70 (2008)	2, 7, 8
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2011)	2
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023)	13
<i>Bruesewitz v. Wyeth LLC</i> , 562 U.S. 223 (2011)	2, 8
<i>C.Y. Wholesale, Inc. v. Holcomb</i> , 965 F.3d 541 (7th Cir. 2020)	11
<i>California Restaurant Association v. City of Berkeley</i> , 65 F.4th 1045 (9th Cir. 2023)	4, 9, 10
<i>Chamber of Commerce v. Whiting</i> , 563 U.S. 582 (2011)	6, 8
<i>Cipollone v. Liggett Group, Inc.</i> , 505 U.S. 504 (1992)	7, 12, 13, 19
<i>Cole v. Pennsylvania Department of Environmental Protection</i> , 329 A.3d 1228 (Pa. 2025)	10
<i>Council for Responsible Nutrition v. James</i> , 159 F.4th 155 (2d Cir. 2025)	11
<i>Coventry Health Care of Missouri, Inc. v. Nevils</i> , 581 U.S. 87 (2017)	2, 9
<i>CSX Transportation, Inc. v. Easterwood</i> , 507 U.S. 658 (1993)	12

TABLE OF AUTHORITIES—Continued

	Page
<i>Cuomo v. Clearing House Association</i> , 557 U.S. 519 (2009)	8
<i>English v. General Electric Company</i> , 496 U.S. 72 (1990)	12
<i>Geier v. American Honda Motor Company</i> , 529 U.S. 861 (2000)	2
<i>Gibbons v. Ogden</i> , 22 U.S. (9 Wheat.) 1 (1824)	16, 17
<i>Gobeille v. Liberty Mutual Insurance Company</i> , 577 U.S. 312 (2016)	9
<i>Happel v. Guilford County Board of Education</i> , 913 S.E.2d 174 (N.C. 2025)	10
<i>Hillsborough County v. Automated Medical Laboratories, Inc.</i> , 471 U.S. 707 (1985)	15
<i>Kaipust v. Echo Global Logistics, Inc.</i> , 271 N.E.3d 1066 (Ill. App. Ct. 2025)	10
<i>Kansas v. Garcia</i> , 589 U.S. 191 (2020)	2
<i>Luna Torres v. Lynch</i> , 578 U.S. 452 (2016)	14
<i>Lupian v. Joseph Cory Holdings LLC</i> , 905 F.3d 127 (3d Cir. 2018)	10
<i>Mallory v. Norfolk Southern Railway Company</i> , 600 U.S. 122 (2023)	6, 10
<i>Martin v. Hunter’s Lessee</i> , 14 U.S. (1 Wheat.) 304 (1816)	17
<i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat) 316 (1819)	17

TABLE OF AUTHORITIES—Continued

	Page
<i>Monsanto Company v. Durnell</i> , 146 S. Ct. 2001 (2026)	9
<i>National Meat Association v. Harris</i> , 565 U.S. 452 (2012)	2
<i>PLIVA, Inc. v. Mensing</i> , 564 U.S. 604 (2011)	8, 15
<i>Puerto Rico v. Franklin California Tax-Free Trust</i> , 579 U.S. 115 (2016)	2, 3, 6, 8, 12
<i>Pulsifer v. United States</i> , 601 U.S. 124 (2024)	14
<i>Rice v. Santa Fe Elevator Corporation</i> , 331 U.S. 218 (1947)	7, 17
<i>Riegel v. Medtronic, Inc.</i> , 552 U.S. 312 (2008).....	8, 13
<i>Sprietsma v. Mercury Marine</i> , 537 U.S. 51 (2002)	12
<i>State v. Norfolk Southern Railway Company</i> , 107 N.E.3d 468 (Ind. 2018)	10
<i>Tarrant Regional Water District v. Herrmann</i> , 569 U.S. 614 (2013)	13
<i>Town of Delafield v. Central Transport Kriewaldt</i> , 944 N.W.2d 819 (Wis. 2020).....	10
<i>United States v. Locke</i> , 529 U.S. 89 (2000).....	2
<i>Ware v. Hylton</i> , 3 U.S. (3 Dall.) 199 (1796)	17
<i>Wyeth v. Levine</i> , 555 U.S. 555 (2009)	2, 6, 15, 16
<i>Williamson v. Mazda Motor of America, Inc.</i> , 562 U.S. 323 (2011)	2

TABLE OF AUTHORITIES—Continued

	Page
CONSTITUTIONS, STATUTES, AND RULES	
U.S. Const. art. VI, cl. 2.....	5, 15
Consumer Product Safety Act, 15 U.S.C. § 2075	11
Copyright Act, 17 U.S.C. § 301	11
Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 343-1	11
§ 360k.....	11
§ 379r	11
§ 379s	11
Poultry Products Inspection Act, 21 U.S.C. § 467e	11
Federal Meat Inspection Act, 21 U.S.C. § 678	11
Egg Products Inspection Act, 21 U.S.C. § 1052	11
Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501	11
Federal Railroad Safety Act, 49 U.S.C. § 20106	11
S. Ct. R. 37	1

OTHER AUTHORITIES

Dinh, Viet D., <i>Reassessing the Law of Preemption</i> , 88 Geo. L.J. 2085 (2000)	18, 19, 20
--	------------

TABLE OF AUTHORITIES—Continued

	Page
Gardbaum, Stephen A., <i>The Nature of Preemption</i> , 79 Cornell L. Rev. 767 (1994)	7, 17
Goldsmith, Jack, <i>Statutory Foreign Affairs Preemption</i> , 2000 Sup. Ct. Rev. 175	16, 18
Nelson, Caleb, <i>Preemption</i> , 86 Va. L. Rev. 225 (2000)	15, 18, 19
Scalia, Antonin, <i>Assorted Canards of Contemporary Legal Analysis</i> , 40 Case W. Res. L. Rev. 581 (1990)	13
Scordato, Marin R., <i>Federal Preemption of State Tort Claims</i> , 35 U.C. Davis L. Rev. 1 (2001)	16
Sloss, David, <i>Constitutional Remedies for Statutory Violations</i> , 89 Iowa L. Rev. 355 (2004)	15, 16
The Federalist No. 15 (Hamilton) (Roy R. Fairfield ed., 2d ed. 1981)	15, 16

IN THE
Supreme Court of the United States

No. 26-235

PHILIP MORRIS USA INC.,
Petitioner,
v.

ARMAND FONTAINE, INDIVIDUALLY AND AS SPECIAL
PERSONAL REPRESENTATIVE OF THE ESTATE OF
BARBARA ELLEN FONTAINE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS

**BRIEF FOR THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA AND THE
AMERICAN TORT REFORM ASSOCIATION AS
AMICI CURIAE SUPPORTING PETITIONER**

INTEREST OF AMICI CURIAE¹

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber

¹ Counsel of record for the parties received timely notice of this brief under Rule 37.2. No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation’s business community.

The Chamber’s members include businesses that are subject to federal regulatory schemes that preempt state and local laws. These members routinely conduct business across multiple States, and they have a strong interest in ensuring that federal preemption is enforced correctly, clearly, and uniformly nationwide. The Chamber is thus well suited to offer a broader perspective on cases involving preemption, including the presumption against preemption. The Chamber has filed amicus briefs in prior preemption cases before this Court, including *Kansas v. Garcia*, 589 U.S. 191 (2020); *Coventry Health Care of Missouri, Inc. v. Nevils*, 581 U.S. 87 (2017); *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115 (2016); *National Meat Association v. Harris*, 565 U.S. 452 (2012); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. 323 (2011); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2011); *Wyeth v. Levine*, 555 U.S. 555 (2009); *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008); *Geier v. American Honda Motor Company*, 529 U.S. 861 (2000); and *United States v. Locke*, 529 U.S. 89 (2000).

The American Tort Reform Association (“ATRA”) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with a goal of ensuring fairness,

balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases involving important liability issues and supported efforts to adhere to traditional tort law principles.

Amici have a particular interest in this case, which concerns the “presumption against preemption” as applied to a statute containing an express preemption clause. Such presumptions make it more difficult for Congress to enact nationwide regulatory schemes and require amici’s members to navigate a patchwork of inconsistent state regulation. Accordingly, although amici take no position on the ultimate merits of this case, they ask the Court to grant the petition for certiorari and hold that the presumption against preemption does not apply to statutes that contain express preemption clauses.

SUMMARY OF ARGUMENT

A decade ago, this Court appeared to settle a recurring question of preemption law. When a federal statute “contains an express pre-emption clause,” this Court explained, courts “do not invoke any presumption against pre-emption” and 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) (citation omitted). That holding was the clear and logical culmination of a long line of decisions in which this Court turned away from past precedent and declined to apply a presumption against preemption in express preemption cases. Accordingly, *Franklin* should have resolved this area of law.

Unfortunately, confusion remains. While *Franklin*’s holding rejecting the presumption against preemption was clear, it was unelaborated and did not explicitly

overturn contrary precedent. Accordingly, as the decision below illustrates, lower courts remain divided over whether *Franklin* means what it says. Some federal courts of appeals and state courts of last resort—including the Supreme Judicial Court of Massachusetts in this case—continue to apply a presumption against preemption to cases involving express preemption clauses. Others have cabined *Franklin* or questioned it as a “drive-by ruling” or “passing remark” that may or may not have disturbed “decades of cases” applying the presumption. See, e.g., *California Rest. Ass’n. v. City of Berkeley*, 65 F.4th 1045, 1056-1057, 1061 (9th Cir. 2023) (O’Scannlain, J., concurring). While some courts have faithfully followed *Franklin* to read express preemption clauses according to their terms, what has resulted is precisely the patchwork this Court’s decisions were meant to prevent: identical federal statutes are at risk of being given broader or narrower preemptive effect depending on the court in which a dispute happens to arise.

That entrenched confusion is itself reason to grant review. This case does not require the Court to break new ground. It asks the Court to confirm what it has already said—clearly, but without expressly reconciling the contrary decisions that lower courts continue to invoke—and to do so in a way that leaves no room for further evasion. Because many federal statutes affecting amici’s members contain express preemption clauses, the uncertainty in this doctrine exposes businesses that operate nationwide to conflicting rules and potentially inconsistent liability for similar conduct.

This Court should grant certiorari and hold, definitively, that no presumption against preemption applies when construing express preemption provisions. Two independent lines of reasoning compel that conclusion.

First, this Court’s precedent already forecloses the presumption in express preemption cases. Whatever role a presumption against preemption once played, the Court has spent the better part of two decades excising it from the express preemption analysis to make way for the ordinary tools of statutory construction. The lower courts’ continued resistance after *Franklin* stems from this Court’s not yet having explicitly reconciled the old precedent with the new.

Second, clarity is especially important here, because applying the presumption against preemption in express preemption cases is not merely foreclosed by precedent—it is inconsistent with every other interpretive tool. The presumption is incompatible with ordinary canons of construction, which direct courts to the best evidence of Congress’ preemptive intent: the text. The presumption is unmoored from the text or history of the Supremacy Clause, whose command that “the Laws of the United States” are “supreme,” “Laws of any State to the Contrary notwithstanding,” U.S. Const. art. VI, cl. 2, *favors* federal preemption of state law. And the presumption offends both the separation of powers and principles of federalism, forcing Congress to either legislate with impossible exactitude or to preempt more sweepingly than intended—all while inviting courts to bend Congress’s express words to preserve the very state laws Congress says it wants to displace.

The best course is also the simplest one: give express preemption clauses a fair reading according to their plain terms. This Court should grant the petition and make clear that *Franklin* forecloses application of the presumption against preemption in every express preemption case.

ARGUMENT

I. THIS COURT HAS ALREADY REJECTED THE PRESUMPTION AGAINST PREEMPTION IN EXPRESS PREEMPTION CASES, YET LOWER COURTS REMAIN DIVIDED

In 2016, this Court confirmed that where a “statute ‘contains an express pre-emption clause,’” courts should “not invoke any presumption against preemption but instead ‘focus on the plain wording of the clause, which necessarily contains the best evidence of Congress’ preemptive 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)). While this Court’s mandate was clear, it followed decades of doctrinal shift away from precisely the opposite instruction and did not reconcile the old precedent with the new. Accordingly, although *Franklin* and other recent decisions should have settled this area of law, lower courts remain confused as to whether express preemption clauses should be read according to their terms, without any additional narrowing presumption, or should be narrowly construed. This Court should take up this case to explicitly acknowledge the changed doctrine, put to bed the old and conflicting law, and confirm that lower courts must “follow the case which directly controls.” *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quotation marks omitted).

A. For nearly two centuries, this Court applied no presumption against preemption in express preemption cases, merely inquiring whether a federal statute, by its clear terms, was inconsistent with state law. *See Wyeth v. Levine*, 555 U.S. 555, 624 n.14 (2009) (Alito, J., dissenting); *infra* § II.B. It was not until the mid-twentieth century that this Court began articulating an “assump[ption]” that Congress does not supersede “the

historic police powers of the States” absent a “clear and manifest” purpose to do so. *See, e.g., Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); Gardbaum, *The Nature of Preemption*, 79 Cornell L. Rev. 767, 805-807 (1994); *infra* § II.B.

This “assumption” that preemption requires a manifested purpose later became occasional articulation of a “presumption” that Congress does not intend to displace state laws, even where Congress has expressly said otherwise in an express preemption clause. For example, in two cases that the state court relied on here (Pet. App. 37-38), *Altria Group* and *Cipollone*, this Court held that even when “a federal law contains an express pre-emption clause, ... courts ordinarily ‘accept the reading that disfavors pre-emption.’” *Altria Group, Inc. v. Good*, 555 U.S. 70, 76-77 (2008); *accord Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992) (although “Congress spoke precisely and narrowly” in statute expressly preempting state law, “we must construe [express preemption] provisions in light of the presumption against the preemption of state police power regulations”).

Altria’s and *Cipollone’s* assertions of a presumption against preemption in express preemption cases were controversial when made. Dissenting Members of this Court explained that applying a presumption against preemption to express preemption clauses “defeats th[e] express congressional purpose” of including such a clause. *Altria*, 555 U.S. at 98-99, 108 (Thomas, J., joined by Roberts, C.J., Scalia & Alito, JJ., dissenting); *see also Cipollone*, 505 U.S. at 545 (Scalia, J., joined by Thomas, J., concurring in the judgment in part and dissenting in part) (the general presumption against pre-emption “dissolves once there is conclusive evidence of intent to pre-empt in the express words of the statute itself”).

Moreover, even when this Court decided *Altria* in 2008, its “reliance on the presumption against pre-emption” was “wan[ing].” 555 U.S. at 98-99 (Thomas, J., dissenting). That same year, the Court did not mention the presumption in holding that the Medical Device Amendments to the Federal Food, Drug, and Cosmetic Act expressly preempted the plaintiff’s state-law claims “by its terms[,]” *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 324-326 (2008)—despite the dissent invoking the presumption, *id.* at 334 (Ginsburg, J.). The following year, this Court found it “unnecessary” to “invoke[] the presumption against pre-emption” when interpreting an express preemption clause in the National Bank Act. *Cuomo v. Clearing House Ass’n*, 557 U.S. 519, 534 (2009). And in 2011, this Court in multiple decisions relied on only “the traditional tools of statutory interpretation” in analyzing express preemption clauses. *Compare Bruesewitz v. Wyeth*, 562 U.S. 233, 243 (2011) *with id.* at 267 n.15 (Sotomayor, J., dissenting) (majority declining to invoke the presumption even though the dissent did so); *Whiting*, 563 U.S. at 594 (relying on only “the plain wording of the [express preemption] clause”); *see also PLIVA, Inc. v. Mensing*, 564 U.S. 604, 623 (2011) (plurality opinion) (rejecting application of the presumption to issue of conflict preemption).

The Court’s most recent decisions have more firmly rejected application of a presumption against preemption in express preemption cases. *Franklin* clearly stated in 2016 that “*we do not invoke any presumption against pre-emption*” when “statute[s] ‘contain[] an express pre-emption clause.’” 579 U.S. at 125 (emphasis added). Also in 2016, this Court in *Gobeille v. Liberty Mutual Insurance Company* rejected application of “[a]ny presumption against pre-emption” to the express preemption clause of the Employee Retirement Income

Security Act (ERISA) and instead used traditional tools of statutory construction in concluding that ERISA preempted certain Vermont health-care reporting requirements. 577 U.S. 312, 325-326 (2016); *see also id.* at 319. In 2017, this Court reversed a state supreme court decision that had applied the presumption against preemption to the express preemption clause of the Federal Employees Health Benefits Act, explaining that the “text, context, and purpose” of the federal act “resolved the dispute.” *Coventry Health Care of Missouri v. Nevils*, 581 U.S. 87, 97 & n.3 (2017). And most recently, the Court this year declined to invoke the presumption against preemption in holding that the Federal Insecticide, Fungicide, and Rodenticide Act expressly preempted a state-law tort claim, *Monsanto Company v. Durnell*, 146 S. Ct. 2001, 2008 (2026), even though the dissent mentioned the presumption, *id.* at 2028 (Jackson, J.).

B. *Franklin*’s clear statement was the logical culmination of these decades of case law, and it should have shut the door on the presumption in express preemption cases. However, lower courts remain confused about the state of the law given that this Court has not formally addressed the doctrinal shift, citing the “somewhat varying pronouncements on presumptions in express preemption cases.” *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 762 n.1 (4th Cir. 2018). One judge recently explained that, while *Franklin* purportedly disclaimed a presumption against preemption in express preemption cases, the Court did not “provide much discussion of its decision not to apply the presumption” or “mention—much less expressly overrule—the decades of cases where the presumption had indeed been applied in like circumstances.” *California Rest. Ass’n v. City of Berkeley*, 65 F.4th 1045, 1056 (9th Cir. 2023) (O’Scannlain, J.,

concurring). This “drive-by ruling,” the judge explained, has created “much confusion over how broadly to read *Franklin*’s passing remark.” *Id.* at 1059, 1061. Last year, the Supreme Court of North Carolina similarly opined that “the scope of ... [*Franklin*] is an open question” because “*Franklin* did not overrule prior cases applying the presumption.” *Happel v. Guilford Cnty. Bd. of Educ.*, 913 S.E.2d 174, 189 n.8 (N.C. 2025). This confusion is understandable because, as Justice Alito recently explained: “Whether or not [previous] restrictive interpretations are correct as an original matter, they are entrenched[,] [u]nless we overrule them.” *Mallory*, 600 U.S. at 158 n.4 (concurring opinion).

Given the gradual change in the law, the lower courts remain split on how to interpret *Franklin*. Multiple state appellate courts, including the Supreme Judicial Court of Massachusetts in this case, Pet. App. 36-38, have continued to apply the presumption against preemption even when a federal statute contains an express preemption clause. *See, e.g., Happel*, 913 S.E.2d at 189 n.8; *Cole v. Pennsylvania Dep’t of Env’t Prot.*, 329 A.3d 1228, 1241, 1250 n.104 (Pa. 2025); *Kaipust v. Echo Glob. Logistics, Inc.*, 271 N.E.3d 1066, 1073 (Ill. App. Ct. 2025); *Town of Delafield v. Central Transp. Kriewaldt*, 944 N.W.2d 819, 881 (Wis. 2020); *State v. Norfolk S. Ry. Co.* 107 N.E.3d 468, 474 (Ind. 2018). And while most federal circuits have correctly applied the doctrine as announced in *Franklin*, several have not. The Third Circuit continues to apply the presumption against preemption to express preemption provisions “involving areas historically regulated by [the] states,” which it says *Franklin* “did not address.” *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 131 n.5 (3d Cir. 2018). The Second Circuit has similarly cabined *Franklin* (and arguably written it out of existence) by applying a

presumption to the presumption, holding that “[w]here the presumptive force of the text is ambiguous ... we resolve that ambiguity against preemption.” *Council for Responsible Nutrition v. James*, 159 F.4th 155, 171 n.8 (2d Cir. 2025). And while the Seventh Circuit has not formally addressed *Franklin*, it has since applied the presumption against preemption in the express preemption context. See *C.Y. Wholesale, Inc. v. Holcomb*, 965 F.3d 541, 546 (7th Cir. 2020).

These decisions illustrate that *Franklin*’s apparently clear language has not yet settled the question whether a presumption against preemption applies when courts interpret express preemption clauses. And the impacts are far-reaching: Express preemption clauses pervade federal regulation of industries in which amici’s members operate, rendering them at risk of improperly cramped readings. See, e.g., Federal Meat Inspection Act, 21 U.S.C. § 678; Egg Products Inspection Act, 21 U.S.C. § 1052(b); Poultry Products Inspection Act, 21 U.S.C. § 467e; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 343-1, 360k(a), 379r(a)(2), 379s(a); Consumer Product Safety Act, 15 U.S.C. § 2075(a); Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c)(1); Federal Railroad Safety Act, 49 U.S.C. § 20106; Copyright Act, 17 U.S.C. § 301(a).

As a result, the Court should take the opportunity presented by this case to erase the remaining uncertainty by confirming that the presumption does not apply when construing express preemption clauses.

II. THE PRESUMPTION AGAINST PREEMPTION IS INDEFENSIBLE AS A MATTER OF STATUTORY INTERPRETATION, CONSTITUTIONAL STRUCTURE, AND FEDERALISM

It is especially important to confirm that no presumption against preemption applies in express

preemption cases because, even if the presumption were not foreclosed by precedent, it fails every other test of merit. The presumption conflicts with ordinary canons of construction, the Constitution's text and history, the separation of powers, and principles of federalism.

A. The Presumption Ignores Or Distorts The Best Evidence Of Congress's Own Intent: The Text

Applying the presumption against preemption to an express preemption provision conflicts with the central interpretive principle that "[p]re-emption fundamentally is a question of congressional intent." *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990). Even where Congress has not made explicit its intent to preempt state law, *see id.*, courts have always searched for "[e]vidence of pre-emptive purpose ... in the text and structure of the statute at issue[.]" *CSX Transp., Inc. v. East-erwood*, 507 U.S. 658, 664 (1993). Congress's language thus determines both whether, and "the extent to which[.]" its "enactments pre-empt state law." *English*, 496 U.S. at 78.

When Congress employs an express preemption clause, Congress makes manifest its intent to preempt. In such a situation, "the courts' task is an easy one." *English*, 496 U.S. at 79. If the statute "contains an express pre-emption clause, [the] task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *Spritsma v. Mercury Marine*, 537 U.S. 51, 62-63 (2002) (quoting *CSX Transp.*, 507 U.S. at 664); *Franklin*, 579 U.S. at 125. "[O]nce there is conclusive evidence of intent to pre-empt in the express words of the statute itself, ... the only remaining question is what the *scope* of that pre-emption is meant to be." *Cipollone*, 505 U.S. at

545 (Scalia, J., concurring in the judgment in part and dissenting in part). That question may be resolved using “ordinary principles of statutory construction.” *Id.* Those principles seek “neither liberally to expand nor strictly to constrict [the statute’s] meaning, but rather to get the meaning precisely right.” Scalia, *Assorted Canards of Contemporary Legal Analysis*, 40 Case W. Res. L. Rev. 581, 582 (1990).

The presumption against preemption works against these clear and consistent principles. It “is rooted in” an “assum[ption] that Congress does not cavalierly preempt state laws[,]” *Tarrant Regional Water District v. Herrmann*, 569 U.S. 614, 631 n.10 (2013) (citation omitted), and seeks to “provide[] assurance that ‘the federal-state balance’ will not be disturbed unintentionally by Congress or unnecessarily by the courts[,]” *Riegel*, 552 U.S. at 334 (Ginsburg, J., dissenting). But such an “assumption” makes little sense in the context of an express preemption clause, in which Congress makes clear that it *deliberately* intends to “disturb” state law. There is, accordingly, “no reason to invoke the presumption” where the “draft[ers]” have made their intent clear. *Herrmann*, 569 U.S. at 631 n.10. Indeed, an instruction that courts should “adopt something other than the statute’s most natural meaning ... pose[s] a lot of trouble for the honest textualist.” *Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring) (citation and quotation marks omitted).

Applying the presumption in the express preemption context creates another problem: it forces Congress to be hyper-explicit when drafting legislation that potentially encroaches on state authority. Under the logic of the presumption, it is not enough that Congress be explicit about its *intent* to preempt; Congress must also foreclose every possible ambiguous reading, lest its

desired preemptive scope be circumscribed by the courts. But requiring Congress to anticipate every area of potential overlap between federal and state regulatory regimes—at risk of having its express intentions cabined by judicial caution—works a great burden on congressional drafters and encourages inconsistent and aberrant interpretations of federal law. As Justice Scalia explained, “the result is extraordinary: [t]he statute that says *anything* about pre-emption must say *everything*; and it must do so with great exactitude, as any ambiguity concerning its scope will be read in favor of preserving state power.” *Cipollone*, 505 U.S. at 548 (opinion concurring in the judgment in part and dissenting in part).

In other contexts, courts “do not demand (or in truth expect) that Congress draft in the most translucent way possible. [Courts] ‘routinely construe[] statutes to have a particular meaning even as we have acknowledged that Congress could have expressed itself more clearly.’” *Pulsifer v. United States*, 601 U.S. 124, 138 (2024) (quoting *Luna Torres v. Lynch*, 578 U.S. 452, 472 (2016)). There is no reason to treat Congress’s drafting differently in the case of express preemption clauses.

Thus, interpretive principle and pragmatism align and call for the same result: forswearing further reliance on a presumption that, in the express preemption context, only unnecessarily distorts congressional intent.

B. The Text And History Of The Supremacy Clause Cut Against Applying The Presumption Against Preemption In Express Preemption Cases

The presumption against preemption also lacks foundation in the source text of preemption doctrine: the Supremacy Clause. The Clause mandates 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. The “notwithstanding” clause “is a *non obstante* provision,” employed “to specify the degree to which a new statute was meant to repeal older, potentially conflicting statutes[.]” *PLIVA*, 564 U.S. at 621-622 (plurality op.) (citing Nelson, *Preemption*, 86 Va. L. Rev. 225, 234, 238-242, 252-253 (2000)). Accordingly, preemption doctrine enforces the “familiar and well-established principle that the Supremacy Clause[] invalidates state laws that interfere with, or are contrary to, federal law.” *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985) (citations and quotation marks omitted).

This blanket instruction not only “plainly contemplates ... pre-emption,” it puts a thumb on the scale *opposite* the presumption: The Supremacy Clause “rejects a general presumption that federal law does not contradict state law.” Nelson, 86 Va. L. Rev. at 293; *accord PLIVA*, 564 U.S. at 622. Thus, to fulfill the mandate of the Supremacy Clause, courts “need look no further than ‘the ordinary meaning’ of federal law, and should not distort federal law to accommodate conflicting state law.” *PLIVA*, 564 U.S. at 623 (quoting *Wyeth v. Levine*, 555 U.S. 555, 588 (2009) (Thomas, J., concurring in the judgment)) (alteration omitted).

This broad constitutional presumption in *favor* of preemption makes sense in historical context. The Supremacy Clause was drafted to “remedy th[e] ‘great and radical vice’” of the Articles of Confederation having failed to “provide any mechanism for securing state compliance with federal law.” Sloss, *Constitutional Remedies for Statutory Violations*, 89 Iowa L. Rev. 355, 401 & n.253 (2004) (quoting The Federalist No. 15, at 32

(Hamilton) (Roy R. Fairfield ed., 2d ed. 1981)). As Hamilton observed, while the Continental Congress enacted “laws” “in theory[,]” “in practice they [were] mere recommendations which the States observe[d] or disregard[ed] at their option.” *Id.* at 401 & n.252 (quoting The Federalist No. 15, at 32 (Hamilton)). Accordingly, the Supremacy Clause’s purpose was “to remedy one of the chief defects in the Articles of Confederation by instructing courts to resolve state-federal conflicts in favor of federal law,” Sloss, 89 Iowa L. Rev. at 402, and “to eliminate any residual presumption” against federal law impliedly repealing state law, Goldsmith, *Statutory Foreign Affairs Preemption*, 2000 Sup. Ct. Rev. 175, 184. It is thus unsurprising that, just as “there is no textual support whatsoever in the Supremacy Clause for any such presumption against federal preemption,” there is also no “support in constitutional history for the conclusion that the framers intended any such presumption to be read into [the Supremacy Clause].” Scordato, *Federal Preemption of State Tort Claims*, 35 U.C. Davis L. Rev. 1, 29-30 (2001). A principle that courts should ignore or bend the express statements of Congress, just to avoid invalidating the state laws Congress said it intended to preempt, runs contrary to this purpose.

In accordance with the Supremacy Clause’s clear command, this Court’s early cases “inquired whether a state law ‘interfer[ed] with,’ was ‘contrary to,’ or ‘c[a]me into collision’ with federal law’ ... without ever invoking a ‘presumption.’” *Wyeth*, 555 U.S. at 624 n.14 (Alito, J., dissenting) (quoting *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-211 (1824)). The earliest Supremacy Clause cases give no indication that any sort of presumption against preemption should govern analysis of the validity of state laws. To the contrary, in *Martin v. Hunter’s Lessee*, this Court explained, in finding a state

law superseded by federal treaty, that “legislatures of the states are ... under the control of congress, and in every case are, under the constitution, bound by the paramount authority of the United States.” 14 U.S. (1 Wheat.) 304, 343-344 (1816). And in *McCulloch v. Maryland*, Chief Justice Marshall explained, in finding Maryland prohibited from taxing a federal bank, that “[i]t is ... the very essence of supremacy, to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence.” 17 U.S. (4 Wheat) 316, 427 (1819). Other early Supremacy Clause cases similarly invoked no presumption against preemption in holding that federal law superseded state law. *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 284-285 (1796) (federal treaty superseded state criminal law); *Gibbons*, 22 U.S. (9 Wheat.) at 210-211 (federal commerce regulation superseded state commerce regulation).

Indeed, it was not until the mid-twentieth century that this Court first explicitly recognized the existence of an “assumption” of nonpreemption of the “historic police powers of the States.” See *Rice*, 331 U.S. at 230; Gardbaum, 79 Cornell L. Rev. at 805-807. Concerned about diminishing state authority to regulate commerce, courts reacted to “[t]he greatly enlarged power granted to Congress by the [New-Deal era] interpretation of the Commerce Clause” by “modifying” preemption doctrine such that “Congress” would be “affirmatively required to manifest an intent to preempt.” *Id.* at 806. But as both Founding-era and modern-day precedent make clear, this brief doctrinal swerve has not stood the test of time.

The presumption against preemption, placed in appropriate historical context, should be rejected as

unsupported—indeed, contradicted—by constitutional text and history.

C. The Presumption Distorts Both The Separation Of Powers And Principles Of Federalism

Left untethered to precedent, traditional canons of construction, or constitutional text and history, the presumption against preemption has one possible remaining source of support: the basic structure of our government. But that structure—the separation of powers and federal-state balance alike—only confirms that the presumption has no place in express preemption cases.

First, the presumption aggravates the separation of powers by putting a great burden on both Congress and the courts: The presumption “makes it difficult for Congress to preempt state law to the extent it wants” by forcing Congress to predict possible conflicts down the line and be hyper-explicit in drafting around them. *See* Nelson, 86 Va. L. Rev. at 292, 300-301. It also requires the judiciary to artificially “counterbalance[] Congress’s own enactments” by putting a thumb on the scale against Congress’s express wishes. *Id.* This burden on both branches of government “disrupt[s] the constitutional division of power between” Congress and the courts and, as courts are forced to find ways to bend Congress’s express statements to avoid the very conflicts Congress intended, “risk[s] ... illegitimate expansion of the judicial function.” Dinh, *Reassessing the Law of Preemption*, 88 Geo. L.J. 2085, 2092 (2000); *accord* Goldsmith, 2000 Sup. Ct. Rev. at 186.

Second, the presumption also disturbs the federal-state balance. In preempting state law, Congress walks a delicate line between advancing important federal interests—including regulating national markets, providing uniformity across complicated business sectors, and

reducing compliance burdens—while still respecting important areas of state regulation. *See* Nelson, 86 Va. L. Rev. at 300. The presumption against preemption disrupts this equilibrium by forcing Congress to choose between two undesirable options. On the one hand, Congress might try to enumerate every kind of law that it wishes to preempt. But this would create the absurd situation Justice Scalia predicted decades ago, in which a “statute that says *anything* about pre-emption must say *everything*; and it must do so with great exactitude, as any ambiguity concerning its scope will be read in favor of preserving state power.” *Cipollone*, 505 U.S. at 548 (opinion concurring in the judgment in part and dissenting in part). Such a patchwork of specific preemption clauses, moreover, would “disrupt the constitutional division of power between federal and state governments” by enabling states to find and exploit loopholes in federal statutory schemes. *See* Dinh, 88 Geo. L.J. at 2092.

Alternatively, Congress could enact sweeping preemptive language creating exclusive federal authority over an entire field, leaving states with no authority to regulate. But that too may frustrate Congress’s objective, which may be limited to preempting regulation only in discrete parts of the broader field while leaving the states to regulate in all other areas. A presumption against preemption makes it more difficult to draw these important and often industry-specific fine lines, limiting Congress’s ability to achieve its aims while respecting traditional areas of state regulation.

Thankfully, the best answer is also the simplest one: interpret Congress’s words as written. The Court can and should avoid all these conflicts by simply disavowing an extra-constitutional presumption against preemption, and instead instructing courts to discern Congress’s intent in express preemption cases through

ordinary tools of statutory construction. “[T]o the extent that other federalism questions remain—the wisdom of national regulation, the balance between regulatory uniformity and policy innovations, etc.—those questions are, by constitutional design, to be answered by Congress.” Dinh, 88 Geo. L.J. at 2092.

CONCLUSION

The petition for writ of certiorari should be granted, and this Court should confirm that no presumption against preemption applies when construing express preemption clauses.

Respectfully submitted.

JONATHAN D. URICK
KEVIN R. PALMER
U.S. CHAMBER
LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

H. SHERMAN JOYCE
LAUREN SHEETS JARRELL
AMERICAN TORT REFORM
ASSOCIATION
1101 Connecticut Ave. NW
Suite 400
Washington, DC 20036

MARK C. FLEMING
Counsel of Record
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6909
mark.fleming@wilmerhale.com

JULIE A. WELLY
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

SEPTEMBER 2026