

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 Writ of Certiorari
to the Massachusetts Supreme Judicial
Court**

**BRIEF OF AMICI CURIAE NEBRASKA AND
6 OTHER STATES IN SUPPORT OF
PETITIONER**

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STATEMENT OF INTEREST¹

The Commerce Clause exists to remove “prohibitions, restrictions, and exclusions” and establish “uniformity” among the States. *The Federalist No. 22*, at 107 (Alexander Hamilton) (Milton Creek Editorial Servs. ed., 2021). And for good reason. When it comes to certain products in the national market, manufacturers should not have to navigate “50 different labeling regimes prescribing the color, font size, and wording of warnings.” *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 452 (2005). Congress has therefore repeatedly exercised its authority to regulate commerce by implementing schemes that establish nationwide uniformity in labeling. See *Monsanto Co. v. Durnell*, 146 S. Ct. 2001, 2012 (2026).

The Federal Cigarette Labeling and Advertising Act is no different. It creates a “comprehensive federal program to deal with cigarette labeling and advertising.” 15 U.S.C. 1331. That program both informs the public of the “adverse health effects of cigarette[s]” and protects “commerce and the national economy” from “diverse, nonuniform, and confusing cigarette labeling.” *Id.* Congress therefore expressly preempted state law that imposes labeling “requirement[s] or prohibition[s] based on smoking and health” beyond those established by federal law. *Id.* 1334(b). That should have been the end of the matter.

¹ As required by Supreme Court Rule 37.2, counsel of record for all parties received timely notice of amici curiae’s intent to file this brief.

But the decision below demonstrates how easily the plaintiff's bar can evade Congress's express preemption. The Massachusetts Supreme Judicial Court allowed Respondent to pursue common-law claims against Philip Morris using the company's removal of voluntary warning labels as evidence that the company committed fraud. In effect, the decision permits a failure-to-warn claim to escape preemption merely because of how it is pleaded. That approach overlooks this Court's command to look to "the gravamen of the claim." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 81 (2008). And it reduces federal law to nothing more than a pleading game. If left to stand, the decision provides a blueprint for nullifying the uniform labeling system that the Labeling Act creates.

Amici States have a sovereign interest in making sure the Labeling Act operates as Congress intended. States remain free to experiment in areas that are not explicitly preempted. *Monsanto*, 146 S. Ct. at 2008 n.2. But when Congress speaks clearly, as it has here, States cannot undermine the federal scheme by imposing liability on manufacturers through common-law tort claims. Otherwise, nothing would prevent the proliferation of multifarious labeling schemes that undermine the efficiency achieved by a nationwide market. *Bates*, 544 U.S. at 452. Such patchwork regulation would also undermine the Labeling Act's consumer-protection objective by recreating the "diverse, nonuniform, and confusing cigarette labeling" that Congress expressly sought to prevent. 15 U.S.C. 1331(2).

And the consequences of the decision below extend beyond cigarette labeling. Indeed, atextual

interpretations of the Labeling Act's express preemption clause raise questions about the preemptive scope of other federal schemes. See *Monsanto*, 146 S. Ct. at 2012. Such chaos makes it difficult for States (like Amici here) and their citizens to know how to operate.

Ultimately, Congress has determined that “the ability to sell a product throughout the country with a single label can be important to maintaining an efficient nationwide market.” *Ibid.* That determination benefits Amici States, and it cannot be cast aside against the Labeling Act's clear and express preemption.

SUMMARY OF ARGUMENT

I. The Labeling Act comprehensively regulates the labeling of cigarette packages. It also expressly preempts state law that imposes labeling “requirement[s] or prohibition[s] based on smoking and health.” 15 U.S.C. 1334(b). Yet Massachusetts common law now defies that command by allowing the removal of voluntary health warnings to support fraud liability. The Labeling Act's plain text does not permit this. Nor does this Court's decision in *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), say otherwise.

II. The Labeling Act's preemption remains necessary for the comprehensive regulation of cigarette labels. That preemption promotes efficiencies through a nationwide market and protects consumers by preventing confusing and diverse cigarette labels.

If *Altria* permits Respondent's fraud claims, the Court should revisit that decision and overrule it. *Altria* created an unworkable test, and it endorsed a

presumption against preemption that has since been abandoned in other contexts. The resulting confusion forces manufacturers and plaintiffs to repeatedly litigate the scope of preemption, and it imposes systemwide costs on state courts tasked with navigating this Court's convoluted preemption jurisprudence.

ARGUMENT

I. The Labeling Act Expressly Preempts Respondent's Fraud Claim

Respondent's wife smoked Philip Morris cigarettes. After she died, Respondent brought a fraud claim alleging that Philip Morris misled her by creating a false impression about the cigarettes she smoked. To support that claim, Respondent introduced evidence that Philip Morris removed voluntary warning labels from its cigarette packaging. But the Labeling Act does not allow States to require additional statements related to smoking and health, and the Massachusetts courts were wrong to permit this argument to move forward against Congress's express preemption.

A. The Labeling Act comprehensively regulates cigarette labels.

In 1970, federal law required every cigarette package to include a conspicuous label stating, "THE SURGEON GENERAL HAS DETERMINED THAT CIGARETTE SMOKING IS DANGEROUS TO YOUR HEALTH." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 508 (1992). Since then, Congress has only strengthened that labeling regime and made it increasingly comprehensive.

Rather than providing a single warning, the Labeling Act now lists several specific warnings and requires manufacturers to randomly display at least one of them on each cigarette package. 15 U.S.C. 1333(a)(1), (c)(1). And the labeling regime is precise: It regulates the size, placement, and color of these warnings. *Id.* 1333(a)(2).

Compliance is strictly enforced. Manufacturers must submit their labeling plans to the Secretary of Health and Human Services for approval before packages can enter the market. *Id.* 1333(c)(1). And failure to comply with the Act's requirements carries the threat of criminal liability. *Id.* 1338. Moreover, the United States Attorney General may seek an injunction to prevent violations before they even occur. *Id.* 1339.

Although the Labeling Act has undergone several amendments, it remains true to its original purpose of establishing a comprehensive labeling scheme. In this way, the "prescribed federal warnings are both necessary and sufficient to achieve [the Act's] purpose of informing the public of the health consequences of smoking." *Altria*, 555 U.S. at 79.

B. The Labeling Act expressly preempts contrary state law labeling requirements.

Congress expressly placed the Act's labeling requirements beyond the reach of state laws. It establishes that "no statement relating to smoking and health, other than the statement required by [the Act], shall be required on any cigarette package." 15 U.S.C. 1334(a). So States may impose "[n]o requirement or prohibition based on smoking and health" so long as manufacturers comply with the

Act's labeling requirements. *Id.* 1334(b). And unlike other labeling schemes that authorize concurrent jurisdiction, see, e.g., 21 U.S.C. 678, the Act contains no comparable reservation of state jurisdiction over matters within its preemptive scope.

Congress could not have been any clearer. But the Massachusetts Supreme Judicial Court muddled the waters and, in violation of federal law, imposed a labeling requirement beyond what the Act requires. Respondent argued, in effect, that Philip Morris's removal of voluntary warnings could support liability for fraud. As the court saw it, the removal of those voluntary warnings supported the conclusion that Philip Morris violated their duty not to deceive. Pet.App.37 (“[Philip Morris’s] decision to remove certain warning labels ... was relevant to the [Respondent’s] fraud and conspiracy claims because it tended to rebut Philip Morris’s account of its efforts to avoid deceiving its customers.”). By allowing the absence of those voluntary health warnings to support liability, the decision below contravenes this Court’s conclusion that the Act’s requirements are “necessary and sufficient.” *Altria*, 555 U.S. at 79.

To be sure, this Court also said that States retain authority to prohibit “deceptive statements in cigarette advertising.” *Ibid.* So individuals may still maintain tort suits based on a manufacturer’s “more general duty not to make fraudulent statements.” *Id.* at 87. But that is not a green light for *all* tort claims based on fraud. Rather, as *Altria* itself explained, even when a plaintiff raises a claim based on fraudulent misrepresentation, courts must look to the “gravamen of” that claim to determine whether it is preempted.

Id. at 81. When a species-of-fraud claim arises from a “requirement that warnings be included in advertising and promotional materials,” it is preempted. *Cipollone*, 505 U.S. at 527 (plurality opinion). That is precisely what happened here. Again, Respondent’s theory of fraud rests on the idea that Philip Morris withdrew voluntary warnings from its labels.

None of this suggests that States lack significant regulatory power over cigarettes. On the contrary, States retain authority to restrict the sale of cigarettes. See *Iowans for Alternatives to Smoking & Tobacco, Inc. v. Mosiman*, 183 F.4th 1040, 1052 (8th Cir. 2026); 21 U.S.C. 387p(a)(2)(B). They may also impose time, place, and manner restrictions on the advertising or promotion of cigarettes. 15 U.S.C. 1334(c). States could even tax cigarettes and set funds aside to help pay for healthcare expenses associated with widespread smoking. 21 U.S.C. 387p(a)(1); see Neb. Rev. Stat. Ann. 71-7611; L.B. 1124, 109th Leg., 2d Sess. § 1 (Neb. 2026) (proposing to direct increased cigarette-tax revenue to address Medicaid expenses associated with smoking).

But even if States did not retain significant police power over cigarettes, that does not change the fact that Congress expressly prevented States from requiring statements “based on smoking and health ... with respect to the advertising or promotion of any cigarettes.” 15 U.S.C. 1334(b). The Act therefore preempts state labeling requirements.

II. The Labeling Act's Express Preemption Clause Ensures a Uniform Scheme That Protects Amici States' Sovereign Prerogatives

Congress spoke clearly when it preempted state requirements for cigarette labeling. That express preemption makes possible the Labeling Act's objectives in protecting national commerce and educating the public on the health risks associated with smoking.

But if Respondent reads *Altria* correctly, this Court should revisit it. *Altria*—at least as Respondent reads it—injects unnecessary complexity and unworkable rules into an area that should be readily administrable. “The Court should instead provide the lower courts with a clear test that advances Congress’ stated goals by interpreting [the Act] to expressly preempt any claim that ‘imposes an obligation ... because of the effect of smoking on health.’” *Altria*, 555 U.S. at 92 (Thomas, J., dissenting) (quoting *Cipollone*, 505 U.S. at 554 (opinion of Scalia, J.)).

A. The Labeling Act prevents labeling inefficiencies and promotes safety.

Uniform labeling remains vital to nationwide markets. And uniform schemes necessarily preempt common-law tort claims because state “regulation can be as effectively exerted through an award of damages as through some form of preventive relief.” *Cipollone*, 505 U.S. at 521 (plurality opinion) (quoting *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)).

By preempting these common-law tort actions, the Labeling Act prevents “50 different labeling regimes prescribing the color, font size, and wording of warnings.” *Bates*, 544 U.S. at 452. This helps cigarette manufacturers avoid “significant inefficiencies.” *Ibid.* Indeed, without preemption, those same manufacturers would have to redesign their labels and supply chains to market certain labels in some States but not in others.

But the Act’s preemption is about more than just market efficiency—it provides a comprehensive framework for warning consumers about the risks of smoking. Recall the Act’s labeling scheme, which prescribes the exact text of the federally required warnings, as well as their font size, color, and placement on each cigarette package. See pp. 4–5, *supra*. Those requirements reflect deliberate and informed judgments about how health information should be conveyed. *Tobacco Products; Required Warnings for Cigarette Packages and Advertisements*, 85 Fed. Reg. 15638, 15647 (Mar. 18, 2020) (explaining that the statutory requirements for size and placement are “strongly support[ed]” by “the scientific literature”). Interfering with those deliberate choices does not protect consumers. Instead, it risks the “chaos created by a multiplicity of conflicting regulations.” *Vango Media, Inc. v. City of New York*, 34 F.3d 68, 75 (2d Cir. 1994) (quoting S. Rep. No. 91-566, *as reprinted in* 1970 U.S.C.C.A.N. 2652, 2663). And, as this Court has acknowledged, there are limits on tort law and its ability to improve consumer safety. See *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 315 (2008).

Common experience demonstrates that less is more. Anyone who has sat through an overwhelming list of warnings during a pharmaceutical advertisement understands the point. More warnings do not necessarily produce better-informed consumers. Indeed, “all people have limits on the amount of information they can think through and process at one time.” See *Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, and Neutral Manner in Advertisements in Television and Radio Format*, 88 Fed. Reg. 80958, 80965 (Nov. 21, 2023). So federal uniformity does more than just protect markets; it helps ensure that consumers receive clear and consistent warnings.

That does not mean the federal scheme is beyond reproach. Congress and the agencies charged with implementing federal law may revise that scheme when experience and evidence warrant change. But even assuming patchwork regulation could improve consumer safety, that policy judgment would not justify interpreting the Act’s preemption provisions as the Massachusetts Supreme Judicial Court did. After all, “[c]ourts interpret statutes, ... not individual policy preferences.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 403 (2024).

B. Clear preemption rules avoid needless systemwide costs imposed on Amici States.

If Respondent’s reading of *Altria* is correct, then the Court should revisit that decision and overrule it. Amici States highlight two stare decisis factors that

implicate their sovereign interest in clear preemption rules and that counsel against adherence to *Altria*.

Workability. Under *Altria*, preemption turns on whether the predicate duty underlying a common-law damages action constitutes a “requirement or prohibition based on smoking and health ... with respect to ... advertising or promotion.” *Altria*, 555 U.S. at 80 (quoting *Cipollone*, 505 U.S. at 524 (plurality opinion)). But *Altria* never explained at what level of generality courts must view that predicate duty. On one hand, the test permits claims resting on the “general duty not to make fraudulent statements.” *Id.* at 87. On the other, it rejects fraudulent misrepresentation claims—presumably grounded in a duty not to deceive—when they are based on “defendants’ failure to warn.” *Id.* at 81.

The distinction is difficult to administer. A plaintiff can characterize nearly any fraud claim at a high level of generality as enforcing a duty not to deceive. But *Altria* simultaneously requires courts to look past that characterization when the gravamen of the claim reveals a more specific warning-based duty. The different results reached in cases such as this one illustrate the absence of a principled rule for choosing between those levels of generality. That is hardly surprising because the test itself shares little relationship with the Act’s clear text. *Altria*, 555 U.S. at 92 (Thomas, J. dissenting). And with conflicting instructions on how generally to review the legal duty underlying a claim, it is easy to see why lower courts remain frustrated. *Ibid.*

Effect on other areas of law. As this Court noted in *Monsanto*, interpretations of one uniform labeling

scheme necessarily affect the operation of others. 146 S. Ct. at 2012; see, *e.g.*, 15 U.S.C. 1681t (resembling the Labeling Act’s preemption clause). But *Altria*’s impact goes beyond interpreting similarly worded labeling schemes: It confuses basic principles of statutory interpretation.

The predicate-duty test arose from a presumption that—despite Congress’s express preemption provision—Congress did not intend to preempt state regulation. *Altria*, 555 U.S. at 77. As a general matter, Amici States do not oppose this presumption against preemption. Yet it is difficult to know when that principle applies given the Court’s more recent pronouncements that, where a statute “contains an express pre-emption clause,” courts “do not invoke any presumption against pre-emption.” *Commonwealth of Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (first quoting *Chamber of Com. of United States of America v. Whiting*, 563 U.S. 582, 594 (2011)). Such “intervening development[s] of the law” suggest that *Altria* is ripe for reconsideration. *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989). Indeed, as Petitioner highlights, those developments have produced a circuit split over the use of the presumption in express-preemption cases—a division that warrants this Court’s review. *Dialysis Newco v. Cmty. Health Sys. Grp. Health Plan*, 938 F.3d 246, 258–59 (5th Cir. 2019); see Pet. 28.

At bottom, *Altria* injects confusion into an area of law that remains “difficult to apply.” *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 873 (2000). Indeed, *Altria* creates “legal uncertainty” and imposes “systemwide costs (*e.g.*, conflicts, delay, and expense)

as courts [try] sensibly to” unravel its rules. *Id.* at 874. Those costs fall on manufacturers that repeatedly assert preemption defenses, as well as plaintiffs who expend time and resources pursuing claims that federal law might preempt. But the costs also fall directly on States. Indeed, State trial and appellate courts routinely confront federal preemption questions in ordinary tort litigation—a difficult feat in the wake of confusion created by *Altria*.

This Court should not feel “constrained to follow” *Altria* because it is “unworkable.” *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Stare decisis is neither “mechanically” applied nor a total bar on “overruling earlier decisions determining the meaning of statutes.” *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 695 (1978). By returning to the explicit text of the Labeling Act—and clarifying preemption jurisprudence—this Court can eliminate the systemwide costs that Amici States incur in administering these far-reaching, unworkable rules. And, importantly, rejecting *Altria* would ensure that the Act continues to operate as a comprehensive scheme that both protects consumers and the nationwide market.

CONCLUSION

The petition for a writ of certiorari should be granted.

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