

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
SUPREME JUDICIAL COURT OF MASSACHUSETTS

**BRIEF OF LIGGETT GROUP LLC
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), should be revisited and overruled.

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INTEREST OF AMICUS CURIAE¹

Liggett Group LLC (“Liggett”) is the Nation’s oldest continuously operating cigarette manufacturer and a direct participant in the federal regulatory system governing cigarette labeling, advertising, and promotion. Liggett has a concrete interest in a uniform and workable construction of the Federal Cigarette Labeling and Advertising Act (“FCLAA”). The decision below exposes every manufacturer to potentially massive state-law liability based on a jury’s conclusion that federally compliant labeling and promotional practices should have included different or additional health-related information. That result defeats the national uniformity Congress intended when it enacted Section 1334(b).

Liggett’s interest is practical as well as doctrinal. Smoking-and-health plaintiffs routinely invoke generally-worded fraud, concealment, warranty, comparative-fault, and consumer-expectations theories to place the supposed inadequacy of the federally prescribed warnings before juries. In particular, the overwhelming majority of cases naming Liggett as a defendant only include claims against Liggett that are based on the underlying alleged “fraud.” In these cases, plaintiffs have never smoked or purchased a Liggett product. Those cases expose Liggett to liability and punishment for failing to provide health information

1. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties, including counsel for Respondent, received timely notice of amicus’s intent to file this brief on September 11, 2026. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than amicus, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

beyond the federal standard even when plaintiffs disclaim a failure-to-warn claim. Liggett therefore has a direct interest in a rule that turns on the obligation actually required by virtue of plaintiffs' claim and not the label they assign to their cause of action.

Liggett submits this brief to explain why *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), should be overruled. *Altria's* "predicate duty" test is incompatible with the enacted text, has been undermined by this Court's subsequent express-preemption decisions, and has proved incapable of preventing artful pleading from defeating Congress's intended uniform national rule.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The FCLAA says that "[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion" of federally labeled cigarettes. 15 U.S.C. § 1334(b). That language asks what obligation state law would impose on a cigarette manufacturer as a result of the claims plaintiffs bring in a lawsuit. If liability turns on a finding that a manufacturer undermined the warnings or should have included an additional or different health-related message in cigarette advertising or promotion, the resulting requirement is "based on smoking and health" regardless of whether the complaint bears the caption "fraud," "concealment," or "failure to warn."

Altria displaced that straightforward inquiry with an atextual one. It directed courts to discern the alleged duty at a high level of generality and held that a generally-

applicable duty “not to deceive” is not based on smoking and health even if the underlying allegations concerned the content and adequacy of such information and warnings. 555 U.S. at 82–84. That standard makes preemption turn on a plaintiff’s artful pleading, rather than the actual legal obligation (the *requirement*) a verdict would impose. A plaintiff may not evade an express preemption clause by hiding a requirement or prohibition inside an artfully pleaded cause of action. This Court has recognized as much under other express-preemption statutes, where general duties of good faith, consumer protection, and reasonable care were found preempted as applied.

Altria’s doctrinal foundation has also collapsed since it was decided. Following the *Cipollone* plurality, the decision relied on a presumption against preemption to give Section 1334(b) a “narrow” reading. 555 U.S. at 93 (Thomas, J., dissenting). But an express preemption clause is Congress’s own declaration that some state law must yield. *Puerto Rico v. Franklin California Tax-Free Trust* held that courts do not invoke any presumption against pre-emption when construing an express pre-emption clause and instead focus on the plain wording. 579 U.S. 115, 125 (2016). The Massachusetts Supreme Judicial Court nevertheless expressly narrowed Section 1334(b) “in light of” that rejected presumption. In light of that lingering lower-court confusion, this Court should make clear that an express preemption clause receives its ordinary meaning—neither broadened nor narrowed by a judicial thumb on the scale.

Experience confirms the defect in *Altria*’s holding. Lower courts are left to deal with an unnecessary level of abstraction in divining the “predicate duty” underlying

a plaintiff's claim, and plaintiffs are able to transform preempted warning claims into nonpreempted fraud claims without regard to the alleged conduct or obligation at issue. The *Fontaine* judgment proves the point: the same alleged omission—removing voluntary addiction warnings—would concededly be preempted brought under a failure to warn theory, yet it supported liability when repackaged as concealment or fraud. Congress did not intend for federal supremacy to turn on a plaintiff's ability to cleverly label their claim.

Stare decisis factors do not require preserving this regime. *Altria* was wrong when it was decided; its central interpretive premise has since been repudiated, its test is unworkable, it distorts adjacent preemption doctrine, and it has generated no legitimate reliance interest among the parties or the courts. Consumers have no vested right in an erroneous federal-preemption rule, and manufacturers do not structure their conduct in reliance on unpredictable state-court verdicts. Although precedents involving statutory interpretation receive heightened respect, this Court has overruled decisions that are badly reasoned, unworkable, or doctrinally obsolete. *Altria* satisfies every one of those conditions. The Court should grant the petition and overrule *Altria*.

ARGUMENT

I. **ALTRIA CANNOT BE RECONCILED WITH THE TEXT AND STRUCTURE OF THE FCLAA**

A. **Section 1334(b) Directs Courts To Examine The State-Law Obligation Imposed In The Case**

Statutory interpretation begins with the words Congress enacted. Section 1334(b) preempts any “requirement or prohibition” that (1) is “based on smoking and health,” (2) is “imposed under State law,” and (3) operates “with respect to the advertising or promotion” of properly labeled cigarettes. Each phrase points to the concrete legal consequence of the state-law claim alleged. A common-law damages action is a state-law requirement because it compels the defendant to conform future conduct to the rule enforced by the verdict. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521–22 (1992) (plurality opinion) (explaining “it is the essence of the common law to enforce duties that are either affirmative *requirements* or negative *prohibitions*”) (emphasis in original). Further, this Court recently reiterated that “state tort duties constitute state labeling requirements.” *Monsanto v. Durnell*, 146 S. Ct. 2001, 2010 (2026) (cleaned up); *see also Riegel v. Medtronic, Inc.*, 552 U.S. 312, 323–25 (2008).

The question, then, is what conduct the State would require or prohibit as a condition of avoiding liability. When a plaintiff obtains judgment because a cigarette manufacturer omitted an addiction warning, removed a voluntary warning, conveyed, or undermined a health-related message through advertising, the obligation is

based on smoking and health. The source of that obligation is state law, and its object is cigarette advertising or promotion. Section 1334(b) applies by its terms.

Altria instead characterized the statute at issue as allowing claims based on a general “duty not to deceive.” 555 U.S. at 82. But every application of a generally worded law produces a more specific legal command. A general negligence rule becomes a requirement to use a particular warning or design when a verdict rests on the absence of that warning or design. A general rule prohibiting fraud or concealment becomes a requirement to provide particular information when nondisclosure allegedly supplies the deception. As a result, Congress’s express protection can always be defeated by enforcing tobacco-specific obligations through laws, or complaints, written to allege duties at a high level of generality. This Court has rejected this type of high generality argument in the preemption context. *See e.g., Monsanto v. Durnell*, 146 S. Ct. 2001, 2013 (2026).

This Court’s decisions outside *Altria* follow an “as-applied” approach. *Northwest v. Ginsberg* held the common-law *duty* of good faith as a preempted state-imposed obligation. 572 U.S. 273, 281-284 (2014). *Riegel v. Medtronic, Inc.* held common-law duties preempted as applied to a federally regulated medical device. 552 U.S. 312 (2008). And *American Airlines, Inc. v. Wolens* held that a generally applicable consumer-fraud law could impose a preempted state requirement relating to airline rates and services as applied in that case. 513 U.S. 219, 227-28 (1995). Those cases examine the practical impacts of a state court judgment, not the generic and general duty-based labels placed on the cause of action.

The Court in *Altria* considered *Riegel* and *Wolens* to be unpersuasive in demonstrating *Cipollone*'s plurality opinion's inconsistency with its other decisions. 555 U.S. at 85. But what the Court did not address is that those cases considered the conduct and practical implications of allowing state claims to proceed, *not* the duties underlying plaintiffs' claims. *See* 513 U.S. at 227-28; 552 U.S. at 324-25. *See also* 513 U.S. at 235-36 (Stevens, J. concurring in part and dissenting in part) (disagreeing with the majority's preemption of the consumer fraud claims because the Act generally prohibited airlines from defrauding their customers, demonstrating that the majority did not consider the underlying duty of the consumer fraud claims when holding they were preempted).

The reasoning applied in those cases applies here in full force. The trial evidence and closing argument invited jurors to condemn Philip Morris for removing Liggett's voluntary statement that smoking is addictive. The verdict thus permitted liability and punishment because the manufacturer did not continue a health warning beyond the federally required script. Dressing up that theory as "fraud," rather than a failure to warn, does not change requirement imposed on the tobacco company. The legal command is to retain or supply additional health information on cigarette packages or in associated promotion or face liability (and punishment)—the very subject Congress reserved to federal law.

B. *Altria*'s Predicate-Duty Test Rewrites "Based On Smoking And Health"

Altria's test asks whether the "predicate" legal duty, described abstractly, is itself based on smoking and health.

555 U.S. at 80, 91. The statute contains no reference to predicate duties, causes of action, or categorical labels. It asks whether a requirement or prohibition is “based on smoking and health.” A requirement can be based on smoking and health even when derived from a law that governs other products and conduct as well.

The phrase “based on” identifies the ground of the state-law obligation. If the alleged obligation exists in the case because cigarette advertising allegedly misstated, minimized, or omitted a health consequence, that obligation is “based on” smoking and health. *Altria* instead treated “based on” as though it modified the duties underlying claims and statutes. This severed the required preemption analysis from the impact of the claim and makes the result depend on how artfully a plaintiff describes the duty, and thus their claim. In effect, *Altria* left § 1334(b) a shell of what it was clearly written to be; it preempts a failure to warn claim, but not a fraud claim based on the same conduct, the same statements or omissions, and the same alleged harm.

Lorillard Tobacco Co. v. Reilly exposes the inconsistency. 533 U.S. 525 (2001). There, Massachusetts regulations adopted under a general unfair trade practices statute restricted tobacco advertising to address youth smoking. The Court held the regulations were preempted because their operative prohibitions were based on smoking and health. *Id.* at 547-48. The general source of authority did not immunize the specific tobacco-related command. *Altria* never supplied a principled explanation for treating an award of damages differently.

The distinction between alleged affirmative misstatements, fraudulent concealment, and omitted warnings likewise cannot sustain the test set forth in *Altria*. A representation may be misleading because qualifying health information is absent. A jury finding that such omission or concealment constitutes fraud can impose the same practical obligation as a verdict based on a failure-to-warn. Section 1334(b) preempts “requirements” and “prohibitions,” not doctrinal categories or specific legal claims. Two claims that compel the same label, or the same advertising or promotional disclosure, or punish the absence thereof, must receive the same preemption treatment.

The *Fontaine* proceedings illustrate *Altria*’s unworkable test. The state court acknowledged that a failure-to-warn claim based on federally compliant labels would be preempted, yet allowed the jury to consider the removal of Liggett’s voluntary addiction warning as evidence of fraud and concealment. The practical rule is identical: a manufacturer incurs liability unless it carries health warnings beyond those that federal law requires. Federal preemption does not permit a State to impose indirectly what Congress forbade it to impose directly.

And *Fontaine* is not an isolated evidentiary ruling. It extends the rule in *Laramie v. Philip Morris USA Inc.*, 488 Mass. 399 (2021). There, the court allowed evidence that consumers did not notice or read the federally mandated warnings because the pleaded claim sounded in warranty rather than failure to warn. *Id.* at 415. Here, the court carried the same claim-label approach into fraud, conspiracy, and punitive damages, expressly reasoning that preemption turns on “the nature of the

claim asserted, not . . . the evidence needed to prove the claim.” *Fontaine v. Philip Morris USA Inc.*, 497 Mass. 436, 461 (2026). That is a rule of decision about the scope of federal preemption, and it permits the same warning-based obligation to survive under multiple state law claims based purely on the labels a plaintiff affixes to them.

C. The Act’s Structure Confirms Congress’s Demand For National Uniformity

The FCLAA balanced various interests among interested parties. Congress required uniform warnings to inform the public and simultaneously protected commerce from “diverse, nonuniform, and confusing” state labeling and advertising requirements. 15 U.S.C. § 1331. Section 1334(a) bars additional package statements relating to smoking and health; Section 1334(b) bars state requirements or prohibitions concerning advertising and promotion; and Section 1334(c) permits only specified state time, place, and manner restrictions. The provisions work together to standardize and centralize the content of cigarette health messaging.

Altria frustrates that design. A verdict based on allegedly misleadingly incomplete representations tells manufacturers what additional health information must accompany advertising or promotion in that State. Another jury may demand different language or conduct. The result is precisely the state-by-state patchwork Congress sought to prevent, enforced through piecemeal and potentially inconsistent verdicts rather than uniform regulation; and the effect is the same.

Uniformity matters especially for national packaging and promotion. Cigarettes move through interstate distribution networks, and advertising crosses state lines. A manufacturer cannot feasibly tailor every package or national communication to inconsistent jury-created disclosure duties.

None of this creates a license for companies to deceive consumers. Federal law preserves substantial enforcement authority, and state claims remain available when they do not impose requirements based on smoking and health with respect to cigarette advertising or promotion. Contractual commitments voluntarily undertaken, manufacturing defects unrelated to promotional health messages, and other obligations outside the clause remain governed by their own terms. Giving Section 1334(b) its full textual scope respects the line Congress drew; *Altria* erased it.

II. ALTRIA’S RULE HAS PROVED UNWORKABLE

A. The Presumption Against Preemption Cannot Control An Express Clause

Altria began from a “presumption against preemption” and instructed courts to adopt a plausible reading that disfavors preemption. 555 U.S. at 77. That premise did decisive work: it carried forward *Cipollone*’s “fair but narrow” construction and displaced the ordinary meaning of the words Congress enacted. *Id.* at 77, 84. But the Supremacy Clause does not authorize courts to discount a federal statute merely because it displaces state law. Once Congress has spoken expressly, the judicial task is interpretation, not resistance.

Subsequent precedent also rejects *Altria's* methodology. *Puerto Rico v. Franklin California Tax-Free Trust* held that because a statute contained an express preemption clause, courts “do not invoke any presumption against pre-emption but instead focus on the plain wording of the clause.” 579 U.S. 115, 125 (2016). The point is structural and decisive: the clause itself is the best evidence of Congress’s preemptive intent. Its language must receive its ordinary meaning, without reference to a canon that silently rewrites the boundary Congress chose.

Nor is the presumption against preemption a genuine evidentiary presumption. It does not assign the burden to overcome the presumption and supplies no measure of what evidence rebuts it. Invocations of “historic State police powers” can be framed at any level of generality to trigger the presumption against preemption, all the while not providing a point at which the “clear and manifest purpose” standard would overcome the presumption. The doctrine therefore operates not as a presumption that yields to proof, but as an instruction to give enacted federal text less than its best reading.

This case demonstrates why an express holding is necessary. The Massachusetts Supreme Judicial Court said that Section 1334’s express language governed the inquiry yet still construed it narrowly “in light of the presumption against the pre-emption of state police power regulations.” That approach cannot be reconciled with *Franklin*.

B. *Altria* Produces Arbitrary Results And Invites Artful Pleading

A workable preemption rule should permit courts, litigants, and regulated parties to predict whether federal law displaces a proposed state obligation. *Altria* does not. Its outcome depends on the plaintiff’s artful pleading and the level of generality at which a judge interprets the predicate duty underlying the plaintiff’s claim. Nothing in *Altria* explains where and when a line is crossed that imposes liability on the manufacturer for failing to provide more information about smoking and health.

That indeterminacy rewards artful pleading. A plaintiff can avoid the words “failure to warn,” invoke fraud or consumer protection, and seek to prove that an advertisement was deceptive because it lacked a particular health disclosure. The requested verdict still imposes the disclosure requirement. Preemption becomes a drafting contest rather than a supremacy rule.

The problem is recurring and nationwide. Trial courts have permitted plaintiffs to attack federal warnings as “rebuttal” after a manufacturer allegedly opened the door (*Bessent-Dixon v. R.J. Reynolds Tobacco Co.*, No. 2015-CA-002554 (Fla. 13th Cir. Ct. Apr. 2, 2024); *Johns v. R.J. Reynolds Tobacco Co.*, No. 17-CA-007972 (Fla. 13th Cir. Ct.)); as evidence of consumer expectations (*Laramie v. Philip Morris USA Inc.*, 488 Mass. 399, 414–16 (2021); *Manious v. R.J. Reynolds Tobacco Co.*, No. 3CCV-22-0000072 (Haw. Cir. Ct. Dec. 31, 2024)); as concealment by omission (*Deschamps v. R.J. Reynolds Tobacco Co.*, No. 2010-044753-CA-01 (Fla. 11th Cir. Ct. Mar. 25, 2025)); as relevant to comparative fault (*Perez v. R.J.*

Reynolds Tobacco Co., No. D-101-CV-2019-02017 (N.M. 1st Jud. Dist. Ct. Oct. 21, 2025)); as relevant to notice or corporate state of mind (*Fuller v. R.J. Reynolds Tobacco Co.*, No. 1672CV00154 (Mass. Super. Ct. Sept. 10, 2021)); and as proof that advertising “neutralized” the warnings (*Irimi v. R.J. Reynolds Tobacco Co.*, No. 08-026337(12) (Fla. 17th Cir. Ct. May 16, 2024); *Neff v. R.J. Reynolds Tobacco Co.*, No. 07-036745(08) (Fla. 17th Cir. Ct.)). Each characterization shifts attention from the operative legal requirement to the evidentiary purpose assigned by counsel. But if the jury may impose liability or punishment because the manufacturer did not add, strengthen, or preserve a smoking-and-health warning, the State has imposed the very requirement Section 1334(b) forbids.

Recent trials illustrate the stakes. In *Deschamps v. R.J. Reynolds Tobacco Co.*, No. 2010-044753-CA-01 (Fla. 11th Cir. Ct. Mar. 25, 2025), counsel argued that an advertisement bearing the federal warning still concealed the truth because it did not say “how dangerous” smoking was. In *Johns v. R.J. Reynolds Tobacco Co.*, No. 17-CA-007972 (Fla. 13th Cir. Ct.), counsel disclaimed any demand to change the warnings but argued in closing that “[t]he warnings were ineffective.” And in *Manious v. R.J. Reynolds Tobacco Co.*, No. 3CCV-22-0000072 (Haw. Cir. Ct. Dec. 31, 2024), counsel invoked consumer expectations while stressing diseases absent from the label; the jury awarded \$86 million. These examples do not ask the Court to review case-specific evidentiary rulings. They demonstrate that *Altria*’s unworkable rule repeatedly allows warning-based duties to reach juries through non-warning claims.

The decision below is the predicted endpoint. The jury heard that Philip Morris removed Liggett's voluntary addiction warning and could treat that conduct as fraud, even though a failure-to-warn claim based on the identical omission would be preempted. That result creates a particularly perverse incentive: voluntary candor today becomes evidence of fraud tomorrow if a later owner returns to the federally prescribed warning. A preemption rule should not discourage regulated entities from providing additional information that federal law permits but does not require.

Overruling *Altria* would replace that uncertainty with a practical textual inquiry: identify the specific state-law obligation enforced by the claim, determine whether it is based on smoking and health, and ask whether it operates with respect to cigarette advertising or promotion. The elements, theory, evidence, and practical command of the requested judgment all inform that inquiry; the caption of the cause of action does not. That test tracks Section 1334(b), treats functionally identical obligations alike, and restores the predictability Congress sought.

C. The Federal Regulatory Regime Eliminates *Altria's* Policy Concerns

Altria suggested that preempting state fraud claims might allow cigarette manufacturers to engage in fraudulent advertising without accountability. 555 U.S. at 81 n.7. That policy concern was overstated even then because federal law preserved the Federal Trade Commission's authority to guard consumers against potential fraud by cigarette manufacturers. *Id.* at 107 (Thomas, J., dissenting). Now, the concern is baseless.

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act and made the Food and Drug Administration “the primary Federal regulatory authority with respect to the manufacture, marketing, and distribution of tobacco products.” Pub. L. No. 111-31, § 3(1), 123 Stat. 1776, 1781. The federal regime regulates modified-risk claims, labeling changes, marketing authorizations, and promotional practices, backed by inspection and enforcement powers. Congress also amended Section 1334 to coordinate the FCLAA with FDA authority and to define the limited state regulations that remain permissible.

Those developments matter in two ways. First, they eliminate any perceived enforcement vacuum. Overruling *Altria* would leave federal regulators fully capable of policing deception and health-related marketing claims under nationally uniform standards. Second, they confirm Congress’s continuing choice of centralized content regulation. Congress expanded federal oversight rather than invite fifty States to establish their own cigarette health messages through damages actions.

Courts are not free to narrow an express clause to advance a policy concern Congress addressed through a comprehensive federal regulator. The judicial role is to enforce the statutory allocation of authority. If additional state remedies are desirable, Congress may authorize them expressly, as it did for certain time, place, and manner restrictions in Section 1334(c). *Altria*’s policy exception has no textual foundation.

III. *STARE DECISIS* DOES NOT SAVE *ALTRIA*

A. *Altria* Is Profoundly Wrong And Doctrinally Isolated

Stare decisis promotes stability, but it is not an “inexorable command.” *Payne v. Tennessee*, 501 U.S. 808, 828 (1991). The Court considers the “quality” of a precedent’s “reasoning,” its “workability,” “consistency with related decisions,” the “disruptive effect on other areas of the law,” subsequent legal developments, and reliance interests. *Janus v. Am. Fed’n of State, Cnty. & Mun. Emps.*, 585 U.S. 878, 917 (2018); *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 268 (2022). Each factor weighs against *Altria*.

Altria’s reasoning is exceptionally weak. *Altria* added a predicate-duty determination not found in the statute, selected a high level of generality that defeats the clause’s operation, and relied on a presumption that this Court later rejected when dealing with express-preemption provisions. Its reading also conflicts with *Reilly*, *Wolens*, *Ginsberg*, and *Riegel*, all of which examine the specific state-law obligation as applied. *Altria* is an inconsistent and unworkable outlier, not a display of well-reasoned, coherent doctrine.

The more sound construction was identified when the problem first arose. Justice Scalia explained in *Cipollone* that preemption should turn on the obligation imposed in the particular case, not the general source of law invoked. 505 U.S. at 553–55 (opinion concurring in the judgment in part and dissenting in part) (“[A]sk, that is, whether,

whatever the source of the duty, it imposes an obligation in this case because of the effect of smoking upon health”). Justice Thomas made the same point in *Altria* and predicted “inevitable disagreement in the lower courts” under the majority’s approach. 555 U.S. at 112 (Thomas, J., dissenting). *Fontaine, Laramie*, and the recurring trial-level end runs confirm both the textual objection and the prediction. Adopting that as-applied approach would not create a new rule; it would restore the rule Congress enacted.

The fact that *Altria* dealt with statutory interpretation calls for care, not paralysis. The Court has overruled statutory interpretation precedents when they were badly reasoned, based on poor legal foundations, or unworkable. See e.g., *State Oil Co. v. Khan*, 522 U.S. 3, 20-22 (1997); *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 899-904 (2007). The enhanced force of *stare decisis* in decisions interpreting statutes described in *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 456 (2015), does not require preserving a rule whose premises have collapsed and whose application frustrates a statute’s central objective. *Stare decisis* especially does not carry the day when the rule is one that did not arise from the text of the statute that Congress enacted, but from a divided Court based on a presumption that has since been dismissed in this context.

Nor does congressional silence ratify *Altria*. Silence is a hazardous basis for inferring approval, particularly where the Court’s rule was framed as an application of a judge-made presumption rather than a definitive textual construction. Congress’s 2009 amendments focused on creating the FDA tobacco regime and specifying limited

state authority. They do not establish that Congress considered and endorsed the predicate-duty test, much less the artful-pleading consequences now demonstrated by *Fontaine*.

B. *Altria* Is Unworkable And Disruptive

Altria has generated the precise confusion its dissent predicted. Courts disagree about the level of generality at which to describe a duty, whether a fraud theory is really warning neutralization, and whether the presumption against preemption survives in express-clause cases.

That uncertainty imposes substantial costs. Manufacturers cannot know whether uniform, federally compliant conduct will trigger liability under a State's general consumer-protection law. Plaintiffs and defendants must litigate characterization questions claim by claim, often after extensive discovery and trial. Juries may impose large compensatory and punitive awards that effectively establish state-specific health-message requirements. The resulting pressure is national even when the verdict is formally local.

The disruption reaches other federal labeling statutes. Congress repeatedly uses express preemption to protect nationwide markets from inconsistent label requirements. A rule that permits general state causes of action to evade those clauses threatens the same end run in food, drug, pesticide, medical-device, and transportation cases. The Court should not preserve an anomalous tobacco rule that destabilizes the broader law.

A text-based rule is readily administrable. Courts should ask: What state-law obligation must be established to obtain relief? Is that obligation grounded in smoking and health? Does it regulate cigarette advertising or promotion? If so, Section 1334(b) preempts it. That inquiry focuses on elements, theory, evidence, requested relief, and the practical legal command—not the name of the cause of action alone.

C. No Legitimate Reliance Interest Supports *Altria*

Altria has not produced the kind of concrete reliance that can justify retaining an erroneous statutory rule. This is not a property or contract precedent around which parties structured settled transactions. Consumers did not choose cigarettes in reliance on the availability of a particular preemption doctrine. Plaintiffs may have selected pleading theories based on *Altria*, but reliance on a litigation rule does not create a vested substantive entitlement to future judgments.

Manufacturers likewise have not relied on *Altria* in arranging primary conduct. If anything, the decision denied them the uniformity on which Congress invited reliance. Overruling *Altria* would restore the statutory baseline: federal health-message requirements govern nationwide, while States retain authority outside the express clause.

Any transition concerns are manageable through ordinary rules governing preservation, finality, and retroactivity. Final judgments will remain final, while

pending cases can be assessed under the correct federal rule. This case is an especially suitable vehicle: the federal issue was preserved, the Massachusetts Supreme Judicial Court squarely relied on the rejected presumption, and the final judgment shows how *Altria* converts a federally preempted warning obligation into a fraud verdict through relabeling. Review would permit the Court both to overrule *Altria* and to make unmistakable that express-preemption clauses are construed according to ordinary meaning.

The Court should not require Congress to repair a judicially created, presumption-driven exception that contradicts the enacted text. *Leegin* properly refused to place the burden of correcting a judge-made antitrust rule on Congress. 551 U.S. at 904. The same principle applies here. *Altria* should yield to the statute Congress enacted.

The Court should overrule *Altria Group, Inc. v. Good*, disapprove use of the presumption against preemption in construing express preemption clauses, and hold that Section 1334(b) preempts a state-law claim whenever the specific obligation imposed by that claim is based on smoking and health with respect to cigarette advertising or promotion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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