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WLF Urges Supreme Court to Restore Express Preemption in State Courts (*Philip Morris USA, Inc. v. Fontaine*)

“Massachusetts may not impose by verdict what Congress forbade by statute.”

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to grant review and overrule *Altria Group, Inc. v. Good*, a 2008 decision that held state consumer protection laws targeting cigarette marketing are not preempted by federal law. In its amicus brief, WLF contends that the Massachusetts high court used the recently discarded “presumption against preemption” to sustain a \$56 million judgment for a warning that federal law never required.

The case arises from a Massachusetts wrongful-death suit against Philip Morris USA. Plaintiffs won \$8 million in compensatory damages and a remitted \$56 million punitive award for dropping a voluntary warning federal law never required. The Supreme Judicial Court affirmed, reading the Federal Cigarette Labeling and Advertising Act narrowly through *Altria*’s “presumption against preemption.”

In its amicus brief, WLF argues that the “presumption against preemption” has no footing in the Supremacy Clause and is not even a true presumption. *Altria*, a five-to-four decision that no sitting Justice joined, used that presumption to let suits bearing fraud captions to escape preemption under the Labeling Act. Although the Supreme Court later abandoned the presumption in 2016 in *Puerto Rico v. Franklin Cal. Tax-Free Trust*, many state courts continue to apply it. The doctrine cannot be priced, and Massachusetts punish firms that disclose more than federal law requires. WLF urges the Supreme Court to grant the petition, overrule *Altria*, and restore the Labeling Act’s plain text.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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