

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 WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE SUPPORTING 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 CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an amicus in important preemption cases to help ensure that federal law operates uniformly and efficiently, as Congress intended. *See, e.g., Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019).

WLF's concern in this case is a practical one. When state law—above all, a state tort verdict—overrides the uniform national rules Congress has enacted, regulated businesses must answer two masters: a federal regime that prescribes what they must do, and fifty state-law regimes free to punish them for doing it. Express preemption clauses are Congress's chosen instrument for preventing that result, and they work only if courts read them to mean what they say.

WLF appeared as amicus in support of Philip Morris USA in the Supreme Judicial Court below, urging preemption under the Labeling Act's express command. It appears here because the decision below perpetuates both a doctrine this Court has repudiated and a precedent no sitting Justice joined. Those defects

* No party's counsel authored any part of this brief. No one, other than WLF and its counsel, helped pay for the brief's preparation or submission. This brief's filing more than ten days before the due date constitutes timely notice to all parties of WLF's intent to file.

come at the expense of the legal certainty on which risk is priced, capital is allocated, and national markets depend.

INTRODUCTION & SUMMARY OF ARGUMENT

“Presumptions may be looked on as the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.” *Mockowik v. Kan. City, St. Joseph & Council Bluffs R.R.*, 94 S.W. 256, 262 (Mo. 1906) (Lamm, J.). Judge Lamm knew what a presumption is. It is a modest thing. It fills a gap in the proof, and it vanishes the moment real evidence arrives. Prove the company owned the truck, and the law presumes the driver was on company business—until the employer, who knows the truth, comes forward with it. Prove seven years’ unexplained absence, and the law presumes death—until someone produces the person, alive and well. The paradigm runs: basic fact, presumed fact, reason, and rebuttal. Every genuine presumption lives in the twilight and dies in the light.

One presumption defies that natural order. The “presumption against preemption” flies at noon. Courts invoke it not in the absence of evidence of congressional intent, but in the face of the best evidence there is: the enacted text of an express preemption clause. *See Chamber of Com. of the U.S. v. Whiting*, 563 U.S. 582, 594 (2011). A decade ago, this Court prescribed the cure. When a statute “contains an express pre-emption clause,” courts “do not invoke any presumption against pre-emption” but “focus on the plain wording of the clause.” *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (cleaned up).

Since then, a pattern has repeated itself. Most federal courts of appeals obeyed. (Some did not.) And state courts have gone on applying the presumption anyway—in North Carolina, in Wisconsin, in Pennsylvania, in Illinois, in Colorado—confining *Franklin* to its facts or ignoring it outright. Now Massachusetts has cast its lot with them—in a judgment only this Court can undo.

The Supreme Judicial Court declared that the preemptive scope of the Federal Cigarette Labeling and Advertising Act “is governed entirely by the express language” of 15 U.S.C. § 1334—and, in the same breath, that this express language “is to be read narrowly ‘in light of the presumption against the preemption of state police power regulations.’” Pet. App. 36 (quoting *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517–18 (1992)). Peering through that narrowing lens, the court sustained a judgment built in substantial part on Philip Morris’s failure to include a health warning that federal law does not require. Pet. App. 4, 36–37. The jury had awarded \$8 million in compensatory damages and \$1 billion in punitive damages—the largest punitive award in Massachusetts history—which the trial court remitted to \$56 million. Pet. App. 1–2, 11–12 & n.11. That liability, whatever else it may be, is a “requirement or prohibition based on smoking and health” of the very kind Congress placed off limits. 15 U.S.C. § 1334(b). A command Congress wrote in 1970 was read through the presumption against preemption—a gloss this Court laid over it in 1992 and repudiated in 2016.

In this brief, we focus on the vexing doctrine that made this possible—and we urge the Court to finish it off. *First*, the presumption against preemption

deserves a burial because it never deserved a birth. It has no source in the Supremacy Clause, whose *non obstante* command instructs courts *not* to strain federal text to spare state law. It has no pedigree in history, which knew nothing of it until the New Deal. And—a point that has received too little attention—it is not even a presumption. It lacks every attribute the law demands of one—a triggering fact, a reason to believe it, an allocation of burdens, and a standard of rebuttal. It is not an interpretive aid at all; rather, it is a license. *Franklin* tried to bury it, but *Franklin* is a dead letter in the state courts, where most tort litigation takes place. And a state court of last resort answers, on questions of federal law, to this Court alone. The burial must therefore happen here, in a judgment no state court can mistake for mere dicta.

Second, Altria Group, Inc. v. Good, 555 U.S. 70 (2008), should be overruled. *Altria* is the presumption's greatest monument: a five-to-four decision that deployed the presumption to hold that § 1334(b) preempts claims that a manufacturer warned too little, but not fraud claims resting on the same conduct. *Altria* was wrong the day it was decided; no sitting Justice joined it; and it is indefensible now that *Franklin* has extinguished the doctrine that produced it.

Third, the stakes run far beyond tobacco. Express preemption clauses are Congress's promise of one national rule. American enterprise prices risk, allocates capital, and builds supply chains in reliance on that promise. A presumption with no fixed trigger, no fixed weight, and no fixed standard of rebuttal cannot be priced. It can only be feared—and litigated.

ARGUMENT

I. THE PRESUMPTION AGAINST PREEMPTION IS NOT LAW.

The presumption against preemption’s credentials fail in every respect. It has no source in the constitutional text, no pedigree in history, none of the architecture of a genuine presumption, and—since *Franklin*—no warrant in this Court’s precedent. Yet it continues to be deployed by state courts, shrinking Congress’s clearest commands in the forums where most tort suits are filed and where preemption matters most.

A. Both the Constitution and history refute it.

The Constitution does not whisper about the status of federal law. It declares. Federal statutes “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. That closing phrase is a classic *non obstante* provision—a familiar eighteenth-century drafting device signaling that the new law may displace old law and “instruct[ing] courts not to apply the general presumption against implied repeals.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 622 (2011) (plurality opinion) (cleaned up); see Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 238–42 (2000). Courts are not to strain federal statutes into harmony with state law. They are to give federal text “its natural meaning” and “let the chips fall where they may.” Nelson, *supra*, at 242.

The presumption directs judges to do the precise thing the Supremacy Clause forbids: adopt a “narrow reading” of federal law—something other than its best reading—whenever the natural reading would displace state authority. *Cipollone*, 505 U.S. at 518. Five Justices—four of them still on the Court—have explained that this cannot be squared with the Clause’s text. See *Mensing*, 564 U.S. at 621–23 (plurality opinion of Thomas, J., joined by Roberts, C.J., and Scalia and Alito, JJ.); *Kansas v. Garcia*, 589 U.S. 191, 213–14 (2020) (Thomas, J., concurring, joined by Gorsuch, J.). Nor can it be squared with this Court’s interpretive method.

Justice Barrett has made the same point in broader terms: a canon that “instruct[s] a court to adopt something other than the statute’s most natural meaning” stands “in significant tension with textualism” itself, *Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring) (cleaned up), and applying such a canon without constitutional warrant is not “faithful agency,” Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 181 (2010).

For express preemption clauses, the rule is the ordinary one: “[t]heir language should be given its ordinary meaning.” *Cipollone*, 505 U.S. at 548 (Scalia, J., concurring in the judgment in part and dissenting in part); accord Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 293 (2012) (“[T]he preemption canon ought not to be applied to the text of an explicit preemption provision.”).

If the presumption were part of the constitutional design, it would appear at the Founding. It does not. Chief Justice Marshall asked only whether the state law “interfere[d] with,” was “contrary to,” or came “into collision with” the federal act. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210–11 (1824). No presumption. No thumb on the scale. Nineteenth-century treatises contain no trace of a special preemption canon either. See Barrett, *supra*, at 153 n.211 (“Early cases confronting preemption analyzed the issue without discussing any special interpretive rule.”).

The presumption is a New Deal artifact. It first appeared in *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), as a judicial answer to an anxiety of that era—the fear that a fast-expanding federal government would sweep away too much state regulation. See Stephen Gardbaum, *New Deal Constitutionalism and the Unshackling of the States*, 64 U. Chi. L. Rev. 483, 536–40 (1997). Whatever the merit of that anxiety in 1947, a mid-twentieth-century vibe is not a warrant for rewriting statutes in 2026. Constitutional structure, in short, supplies no warrant for a systematic presumption in either direction. See Viet D. Dinh, *Reassessing the Law of Preemption*, 88 Geo. L.J. 2085, 2092 (2000).

B. It is not even a presumption.

There exists a deeper defect still, and it deserves this Court’s attention. Measured against the law’s own centuries-old understanding of what a presumption is, the presumption against preemption is an impostor.

A genuine presumption has an architecture. It runs from a proven basic fact to a presumed fact. It rests on

a reason—the inference is usually true, one side holds the proof, or a settled policy demands it. It assigns who must come forward with proof. And it says how much proof dissolves it. See Otis H. Fisk, *Presumptions*, 11 Cornell L.Q. 20, 22–23, 25 (1925); Edmund M. Morgan, *Some Observations Concerning Presumptions*, 44 Harv. L. Rev. 906, 906, 931–32 (1931); Ernest F. Roberts, *An Introduction to the Study of Presumptions*, 4 Vill. L. Rev. 475, 482–83 (1959). The presumption of agency holds until the employer speaks. The presumption of death holds until the missing man walks through the door. Twilight creatures all, which vanish in the sunshine. *Mockowik*, 94 S.W. at 262.

Now consider the presumption against preemption. What is its basic fact? It purports to attach to the States’ “historic police powers,” *Rice*, 331 U.S. at 230—but at what level of generality? Health? Consumer protection? The law of fraud? No court has ever said, and this Court abandoned the parallel “traditional governmental functions” inquiry as “unworkable” for exactly that reason. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546–47 (1985).

Why should anyone believe it? The official rationale is that Congress does not lightly displace state law and will correct courts that err. The evidence says otherwise. Congress “almost never responds” to this Court’s preemption decisions at all—so the presumption predicts nothing, and its errors are never legislatively repaired. Note, *New Evidence on the Presumption Against Preemption: An Empirical Study of Congressional Responses to Supreme Court Preemption Decisions*, 120 Harv. L. Rev. 1604, 1605 (2007). That finding also unravels the presumption’s leading academic defense—that anti-preemption

rulings force Congress to deliberate. See Roderick M. Hills, Jr., *Against Preemption: How Federalism Can Improve the National Legislative Process*, 82 N.Y.U. L. Rev. 1 (2007). A doctrine defended as a spur to a supine Congress is a doctrine defended by a fiction.

What is its standard of rebuttal? A “clear and manifest” purpose, *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (citation omitted)—but no one has ever said how clear is clear. Cf. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 408 (2024). So every case asks a judge to decide whether the text’s clarity outweighs the presumption’s force—two quantities with no common measure. Justice Scalia had a metaphor for that exercise: “judging whether a particular line is longer than a particular rock is heavy.” *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring in the judgment). He had the same objection to canons of this kind generally: they add “on one or the other side of the balance, a thumb of indeterminate weight.” Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 28 (1997).

And here is the tell. A true presumption yields to proof. This one is deployed *against* proof—against “the plain wording of the clause, which necessarily contains the best evidence of Congress’ pre-emptive intent.” *Whiting*, 563 U.S. at 594 (citation omitted).

Small wonder, then, that the presumption never even described this Court’s practice. Even in its heyday, the presumption against preemption came and went without explanation. Sometimes the Court rested its decisions on it. See, e.g., *Cipollone*, 505 U.S. at 518; *Lohr*, 518 U.S. at 485; *Altria*, 555 U.S. at 77. Just as

often, the Court decided express-preemption cases without mentioning it at all. *See, e.g., Rowe v. N.H. Motor Transp. Ass’n*, 552 U.S. 364 (2008); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2011); *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452 (2012); *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013). No principle separates the two lists. The Court applied the presumption to the Medical Device Amendments in 1996, *Lohr*, 518 U.S. at 485, then construed the same preemption provision twelve years later without a word about it, *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008). In 2008 alone, the Court decided *Rowe* and *Riegel* in silence—and then, in December, rested *Altria* on the presumption.

Dissenting Justices have noticed the vanishing act. *See Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 497–98 & n.1 (2013) (Sotomayor, J., dissenting) (presumption “conspicuously absent from the majority opinion”). Careful observers could not even agree which way the presumption’s thumb pressed. *See* Mary J. Davis, *Unmasking the Presumption in Favor of Preemption*, 53 S.C. L. Rev. 967 (2002). That is not a canon of construction. It is caprice by another name. And the rule of law, Justice Scalia taught, is a law of rules. Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989). A doctrine that judges can wield or abandon as they see fit is not a rule; it is a result in search of a rationale.

Strip away the borrowed vocabulary, and the presumption is a judge-made instruction to give federal statutes something other than their best reading—triggered by nothing, calibrated to nothing, rebutted by nothing. The bats of the law at least have the decency to disappear in daylight. This one flies at noon. It should be grounded for good.

**C. *Franklin* should have settled the question,
but state courts have not heeded it.**

Franklin should have ended the presumption’s career in express-preemption cases. In the federal system, it largely did. Seven courts of appeals took the decision at its word. *See, e.g., Atay v. Cnty. of Maui*, 842 F.3d 688, 699 (9th Cir. 2016); *Watson v. Air Methods Corp.*, 870 F.3d 812, 817 (8th Cir. 2017) (en banc); *EagleMed LLC v. Cox*, 868 F.3d 893, 903 (10th Cir. 2017); *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 761–62 (4th Cir. 2018); *Dialysis Newco, Inc. v. Cmty. Health Sys. Grp. Health Plan*, 938 F.3d 246, 258–59 (5th Cir. 2019); *Medicaid & Medicare Advantage Prods. Ass’n of P.R., Inc. v. Emanuelli Hernández*, 58 F.4th 5, 11–12 (1st Cir. 2023); *Carson v. Monsanto Co.*, 72 F.4th 1261, 1267 (11th Cir. 2023). Two read *Franklin* narrowly and apply the presumption still. *See Council for Responsible Nutrition v. James*, 159 F.4th 155, 171 (2d Cir. 2025); *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 771 (3d Cir. 2018).

Obedience, once given, has not always held. The Eighth Circuit took *Franklin* at its word in 2017, then relied on *Altria* six years later to make the presumption dispositive. *Compare Watson*, 870 F.3d at 817, *with R.J. Reynolds Tobacco Co. v. City of Edina*, 60 F.4th 1170, 1176–77 (8th Cir. 2023). Judges caught in the middle say plainly that they cannot tell what the law is. *See Cal. Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1108 (9th Cir. 2024) (O’Scannlain, J., concurring) (the law after *Franklin* “remains troubling and confused—beset by tensions in Supreme Court precedents, disagreement among the circuits, and important practical questions still unanswered”). The

petition chronicles that federal disarray in detail. Pet. 27–29.

But the presumption’s true refuge is the state courts. The decision below treated *Cipollone*’s 1992 presumption as governing law in 2026—without even a citation to *Franklin*. Pet. App. 36. It has company. The Wisconsin Supreme Court, quoting *Altria*, called the presumption “particularly strong” where state police powers are involved, held that Congress’s express guarantee of “reasonable access” to the interstate highways “should be read narrowly,” and let a town’s seasonal weight limit prevail over it. *Town of Delafield v. Cent. Transp. Kriewaldt*, 944 N.W.2d 819, 821, 828 (Wis. 2020). The Pennsylvania Supreme Court, reciting the presumption among its governing principles and citing *Altria* for it, held last year that Congress’s grant of “original and exclusive” federal jurisdiction over interstate pipelines leaves state administrative review untouched. *Cole v. Pa. Dep’t of Envtl. Prot.*, 329 A.3d 1228, 1241, 1250 n.104 (Pa. 2025). Neither opinion cites *Franklin*.

North Carolina’s highest court did cite it—only to brush it aside as an “open question” confined to bankruptcy, then applied the presumption to an express immunity provision. *Happel v. Guilford Cnty. Bd. of Educ.*, 913 S.E.2d 174, 202 n.8 (N.C. 2025). The Colorado Supreme Court invoked it to hold that federal law left state-law claims intact, in a decision now before this Court. *Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy USA, Inc.*, 586 P.3d 161, 170 (Colo. 2025), *cert. granted sub nom. Suncor Energy (U.S.A.) Inc. v. Cnty. Comm’rs of Boulder Cnty.*, No. 25-170 (U.S. Feb. 23, 2026). And an Illinois appeals court, told that *Franklin* forbids the presumption, agreed—then

construed the statute’s safety exception under a “well-accepted maxim” that federal law will not displace a State’s traditional authority absent a clear directive. *Kaipust v. Echo Glob. Logistics, Inc.*, 271 N.E.3d 1066, 1073 (Ill. App. Ct. 2025). Even where the presumption is formally disclaimed, the thumb stays on the scale.

This is not the work of outlier courts. It is the considered position of the highest courts of North Carolina, Wisconsin, Pennsylvania, Colorado, and now Massachusetts. This Court’s silence will not cure the problem. The presumption, like *Chevron* deference before *Loper Bright*, has simply fallen out of the Court’s vocabulary—but the old decisions invoking it remain “on the books,” and so “litigants must continue to wrestle with” them. *Loper Bright*, 603 U.S. at 406. *Cipollone*, *Lohr*, and *Altria* still stand, still recite the presumption, and still supply state courts with all the authority they need to thwart federal law. Doctrines are not interred by being ignored. They are interred by a holding. And a holding requires a grant.

The state-court character of this problem is not a detail. It is the heart of the matter. The Supremacy Clause is addressed, by name, to “the Judges in every State.” U.S. Const. art. VI, cl. 2. The Framers knew where the pressure on federal supremacy would concentrate. Preemption is the traffic rule at the boundary between two sovereigns. When a State’s highest court resolves every doubt about that boundary in favor of state power, it is umpiring its own sovereign’s game.

An errant federal decision can be corrected en banc, tested against sister circuits, and refined through percolation. A state court of last resort answers, on

questions of federal law, to this Court alone. 28 U.S.C. § 1257(a). If this Court will not enforce *Franklin* against state judgments, no one ever will. And a rule the States feel blithely free to disregard is not yet a rule.

The law of incentives follows. Most tort suits are filed in state court, and plaintiffs choose the forum. So long as the presumption survives in state courthouses after dying in federal ones, every mass-tort complaint will be steered toward the forum where Congress's words mean the least. The result is the same statute, the same clause, the same words—all shrinking or holding firm depending on which side of the street the courthouse sits. That's not uniformity; it's chaos.

This Court has said what the law is. What remains is to say it to a state court of last resort, in a judgment that leaves no room for an answer that depends on the forum.

II. *ALTRIA* SHOULD FALL WITH THE PRESUMPTION THAT BUILT IT.

One Congress enacted one Labeling Act. It should have one meaning.

A. *Altria* was wrong then and is indefensible now.

Altria is the presumption's most durable monument. The question there was whether a fraud claim attacking cigarette advertising imposes a "requirement or prohibition based on smoking and health." 15 U.S.C. § 1334(b). The words had a natural answer. The majority did not give it. It began instead

with the “assumption that the historic police powers of the States [are] not to be superseded,” 555 U.S. at 77 (quoting *Rice*, 331 U.S. at 230), resolved to “accept the reading that disfavors pre-emption,” *id.* (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)), and adopted, as governing law, the predicate-duty test the *Cipollone* plurality had spun from its own “narrow reading,” 505 U.S. at 523–24 (plurality opinion). The result: § 1334(b) preempts a claim that a manufacturer warned too little, but not a fraud claim resting on the same conduct, the same statements, and the same injury.

Liability thus turns not on what the defendant did but on the caption the plaintiff chooses. Five Justices in *Cipollone* had refused to join that test at its creation—Justice Blackmun’s three because they could perceive “no principled basis” for its distinctions, 505 U.S. at 543 (opinion of Blackmun, J.), and Justice Scalia’s two because it strayed from the statutory text, *id.* at 544–48 (opinion of Scalia, J.)—so it never commanded a majority of this Court, 555 U.S. at 92 (Thomas, J., dissenting). *Altria* enshrined it anyway—five votes to four, with the presumption supplying the margin.

Even *Altria*’s defenders could muster no more than a shrug. The majority conceded that its analysis “may lack ‘theoretical elegance’” and defended it as nothing more than “a fair understanding of congressional purpose.” 555 U.S. at 84. The dissent answered with the lower courts’ own words—“no easy task,” “an impossibility.” *Id.* at 97 (Thomas, J., dissenting).

Altria was wrong in 2008. It is indefensible in 2026. *Franklin* has since clarified that when a statute

contains an express preemption clause, courts “do not invoke any presumption against pre-emption” at all. 579 U.S. at 125. The doctrinal source of *Altria*’s narrow construction is extinguished. What remains are “the still visible beams of an already extinguished star.” Vladimir Nabokov, *Breaking the News* (1935), in *A Russian Beauty and Other Stories* 37, 38 (1973). The light still misleads the lower courts, though its source is gone.

Altria is not merely wrong; it is the instrument by which the presumption survives. When a state court reaches for the presumption against an express federal command, *Altria* is what it cites. Wisconsin cited page 77 to narrow the highway-access guarantee. *Delafield*, 944 N.W.2d at 821. Pennsylvania cited page 77 in construing the Natural Gas Act. *Cole*, 329 A.3d at 1241. The court below cited *Cipollone*, from which *Altria* drew the rule. Pet. App. 36. *Franklin* left *Altria* standing, and so *Altria* remains there to be cited—and is cited still. Overruling it would not merely correct one judgment in one Commonwealth. It would withdraw the authority on which the presumption’s afterlife depends.

WLF has been here before. In *Altria* itself, we urged this Court to hold that the presumption “has proven to be unworkable and ought to be eliminated,” on much the same grounds we press today. Brief of Washington Legal Foundation as Amicus Curiae Supporting Petitioners at 7, *Altria Grp., Inc. v. Good*, 555 U.S. 70 (2008) (No. 07-562) (Apr. 7, 2008). The Court applied the presumption instead. Less than a decade later, *Franklin* adopted the rule we proposed—for every case except the ones already decided. *Altria* thus survives as grandfathered error, a holding no current doctrine

supports and no current Justice joined. All five Members of its majority have left the Court. Three of its four dissenters remain.

Nothing in stare decisis preserves such a decision. Its force is weakest where a precedent has proved unworkable, for “the mischievous consequences to litigants and courts alike from the perpetuation of an unworkable rule are too great.” *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965). Reliance interests? The only reliance *Altria* protects is the artful pleader’s. And congressional silence is not ratification; this Court does not “place on the shoulders of Congress the burden of the Court’s own error.” *Girouard v. United States*, 328 U.S. 61, 69–70 (1946). The *Altria* dissent closed with a prophecy: the confusion to come “may even force us to yet again revisit the Court’s interpretation of the Labeling Act.” 555 U.S. at 112 (Thomas, J., dissenting). That day has arrived, by way of Massachusetts.

B. The decision below is the dead star’s light still at work.

Congress left nothing to inference in the Labeling Act. It declared its purpose to protect “commerce and the national economy” from “diverse, nonuniform, and confusing cigarette labeling and advertising regulations.” 15 U.S.C. § 1331(2)(B). It prescribed the exact warnings that must appear on every package sold in the United States. *Id.* § 1333. And it commanded 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 conforming cigarettes. *Id.* § 1334(b). Even *Altria* conceded what those words mean: Congress determined that “the prescribed federal warnings are both necessary *and*

sufficient to achieve its purpose of informing the public of the health consequences of smoking,” so States may not “enforc[e] rules that are based on an assumption that the federal warnings are inadequate.” 555 U.S. at 79 (emphasis added).

Now consider what happened below. The plaintiff’s fraud and conspiracy theories rested on Philip Morris’s decision to stop including a voluntary warning—“Smoking is Addictive”—on the packages of brands acquired from another manufacturer. Pet. App. 71, 72–73. Federal law nowhere requires that warning. The unmistakable gravamen of the theory is that the company should have warned *more* than Congress prescribed—in other words, that “the federal warnings are inadequate.” 555 U.S. at 79. As the petition demonstrates, Pet. 15–20, even under *Altria*’s own test, that should have been the end of the matter, for a claim is preempted when “the gravamen of the claim was the defendants’ failure to warn.” 555 U.S. at 81.

Yet the Supreme Judicial Court—expressly invoking this Court’s “presumption against the preemption of state police power regulations”—held that claims pleaded as breaches of the “duty not to deceive” escape § 1334(b) even when they rest on the same theory and the same evidence as an otherwise-preempted failure-to-warn claim. Pet. App. 36–37. A \$56 million punitive award now stands as Massachusetts’s official judgment that the federally prescribed warnings were not enough. Pet. App. 2.

Perhaps the court below misread *Altria*. Perhaps it took *Altria* at its word. That both answers are available on one set of facts is the indictment. A test that turns on characterizing a claim’s “predicate duty” at a

“shifting level of generality” cannot constrain anyone, 555 U.S. at 106 (Thomas, J., dissenting), because every failure-to-warn claim can be redescribed, one rung up the ladder of abstraction, as a breach of a “general duty” not to deceive, *id.* at 87. The true rule is simple: “if, whatever the source of the duty, the claim imposes an obligation *because of the effect of smoking upon health*, it is preempted.” *Id.* at 96 (Thomas, J., dissenting) (emphasis added; cleaned up).

This Court has said it “would make no sense” to let state regulations “escape preemption because they addressed the purchase, rather than manufacture, of a federally regulated product.” *Nat’l Meat Ass’n*, 565 U.S. at 464; *accord Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 254 (2004). It makes no more sense to let a requirement based on smoking and health escape preemption because the plaintiff pleaded it as fraud. The decision below carries *Altria* to its logical end: an object lesson, in eight figures, that an Act of Congress can be defeated by a caption.

There is a bitter irony in the geography. A quarter century ago, this Court held that the Labeling Act preempted Massachusetts’s cigarette-advertising regulations. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 550–51 (2001). What the Commonwealth could not do then by regulation, it has now done by verdict. Unless this Court intervenes, that mischief will continue—state by state, jury by jury.

And consider the incentive this creates. If removing a *voluntary* warning is actionable fraud, then every manufacturer that discloses more than federal law requires has built its own gallows. No firm will make that mistake again, knowing it cannot be clawed back.

The decision below uses *Altria* to punish the very candor it purports to protect—and it conscripts the law of fraud to stitch together exactly the “diverse, nonuniform, and confusing” patchwork Congress forbade. 15 U.S.C. § 1331(2)(B).

Franklin extinguished the star. Only overruling *Altria* can extinguish the beams.

III. NATIONAL MARKETS CANNOT PRICE A DOCTRINE THIS COURT HAS ABANDONED BUT NOT OVERRULED.

“In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 192 (2025). Express preemption clauses are Congress’s principal instrument of that predictability. Each is one-half of a bargain struck again and again across the modern regulatory state: comprehensive federal oversight in exchange for a single national rule. Congress struck it for medical devices, 21 U.S.C. § 360k(a); pesticides, 7 U.S.C. § 136v(b); trucking, 49 U.S.C. § 14501(c)(1); vaccines, 42 U.S.C. § 300aa-22(b)(1); and meat, 21 U.S.C. § 678. *See Riegel*, 552 U.S. 312; *Monsanto Co. v. Durnell*, 146 S. Ct. 2001 (2026); *Rowe*, 552 U.S. 364; *Bruesewitz*, 562 U.S. 223; *Nat’l Meat Ass’n*, 565 U.S. 452. Every one of those preemption clauses embodies the same judgment as the Labeling Act: a national market cannot run under fifty overlapping regimes.

Certainty is not a luxury in that system. It is the baseline from which everything else is calculated. Clear rules let decision-makers translate unpredictable outcomes into probabilities—

probabilities that can be priced, insured against, and acted upon. Express preemption clauses “reflect Congress’s judgment that the ability to sell a product throughout the country with a single label can be important to maintaining an efficient nationwide market.” *Durnell*, 146 S. Ct. at 2012. Set that judgment aside and the costs are neither abstract nor deferred. When the Pennsylvania Supreme Court narrowed the Natural Gas Act’s jurisdictional command, a concurring justice warned that the ruling would “undoubtedly stymie” Congress’s purpose, inviting “dual track litigation” and its predictable yield: contradictory decisions, longer cases, and delayed permits. *Cole*, 329 A.3d at 1256–57 (Mundy, J., concurring).

That is how a free market allocates capital—toward ventures whose legal exposure can be measured, away from those whose exposure cannot. An express preemption clause, read to mean what it says, is measurable. A clause read “narrowly” in light of a presumption with no fixed trigger, no fixed weight, and no fixed standard of rebuttal is not measurable at all. It is little more than a mood. A mood cannot be priced; it can only be feared. Firms pay for the fear in duplicative compliance systems, in defensive labeling, in warnings withheld lest candor become tomorrow’s evidence of fraud—and, in the end, in investments never made.

Those costs do not stay where they land. Like every cost of production, they move down the line until they reach the one party with no one left to pass them to: the consumer. The tab arrives as higher prices, thinner choices, and products that never reach the market at all—a hidden tax levied verdict by verdict and paid at

the register. And because the decision below makes voluntary candor punishable, consumers pay in lost information too. The irony is that a doctrine defended as protection for consumers ends by charging them more and telling them less.

Nor does burying the presumption leave the field unpoliced. The federal government comprehensively regulates what cigarette manufacturers may say about smoking and health, and it wields ample enforcement tools against deception. *See* Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. § 387 *et seq.* The question is not *whether* such conduct will be policed, but by *whom*: one national government speaking through federal statutory law, or juries in fifty States speaking through verdicts like this one. Congress answered that question in 1970, in words. *Altria's* monument to the presumption against preemption is the only thing standing between those words and their meaning.

CONCLUSION

The Court should grant the petition, overrule *Altria*, and let the presumption against preemption disappear at last in the sunshine of the statutory text.

Respectfully submitted,

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