No. 98-1811

IN THE SUPREME COURT OF THE UNITED STATES

ALEXIS GEIER, et al.,
Petitioner

v.

AMERICAN HONDA MOTOR COMPANY, INC.,
Respondent

BRIEF OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS AND THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC., AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Filed November 19, 1999

QUESTION PRESENTED

Amici will address the following question: Whether a civil action seeking to hold an automobile manufacturer liable under state tort law for failing to include an airbag in a vehicle that was manufactured at a time when the applicable Federal Motor Vehicle Safety Standard gave manufacturers an option as to whether to install airbags is expressly preempted by the National Traffic and Motor Vehicle Safety Act of 1966.

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INTEREST OF *AMICI CURIAE*[1]

The Alliance of Automobile Manufacturers ("Alliance") and the Association of International Automobile Manufacturers, Inc. ("AIAM") are non-profit national trade organizations whose member companies are principally engaged in the production and sale of motor vehicles. They include all of the major distributors of motor vehicles in the United States market.[2]

The vehicles that these companies distribute in the United States must comply with the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §§ 1381-1431 (1988) (recodified at 49 U.S.C §§ 30101-30169 (1994)) (the "Safety Act"), and with the Federal Motor Vehicle Safety Standards that are adopted by the National Highway Traffic Safety Administration ("NHTSA") pursuant to the statute. Among those standards is FMVSS 208, 49 C.F.R. § 571.208 (1998) ("Standard 208"), which addresses occupant restraint systems.

The version of Standard 208 applicable to petitioners' automobile, a 1987 Honda Accord, expressly permitted

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[1] Petitioners and respondents have consented to the filing of this brief, in letters that are on file in the Clerk's office. The undersigned counsel alone have authored this brief, and no other person or entity other than the two *amici* has made a monetary contribution to its preparation or submission. *See* Sup. Ct. R. 37.3.

[2] The members of the Alliance are BMW of North America, Inc., DaimlerChrysler Corp., Fiat Auto S.p.A., Ford Motor Co., General Motors Corp., Isuzu Motors America, Inc., Mazda Motor of America, Inc., Nissan North America, Inc., Toyota Motor North America (Toyota Motor Sales USA Inc.), Volkswagen of America, Inc., and Volvo Cars of North America, Inc.

The members of AIAM are American Honda Motor Co., Inc., American Suzuki Motor Corp., BMW of North America, Inc., Daewoo Motor Co., Ltd., Hyundai Motor America, Isuzu Motor America, Inc., Mitsubishi Motor Sales of America, Inc., Porsche Cars of North America, Inc., Saab Cars USA, Inc., Subaru of America, Inc., Toyota Motor Sales USA, Inc., Volkswagen of America, Inc., and Volvo North America Corp.

and encouraged manufacturers to install a variety of occupant restraint systems in vehicles produced that year, of which airbags were but one option. Petitioners' legal claim is that, notwithstanding the choice granted to manufacturers by Standard 208, the States are nevertheless free to impose civil liability on manufacturers for failing to install airbags in 100 percent of the vehicles manufactured in that year. This legal claim, if upheld, would punish automobile manufacturers for carrying out an express federal policy in favor of diversity among restraint systems in 1987. It would also allow motor vehicles to be subject to a multitude of safety standards in different States.

The result would be intolerable. Motor vehicles are produced and distributed on a national scale. And, once sold, they are resold through a national wholesale market for used vehicles. If States were free to set safety standards that differ from federal standards dealing with the very same safety issues, after-the-fact through their tort law, manufacturers would have no way of anticipating which standard would eventually apply to any given car. Some States might follow the federal standard and permit but not require airbags. Some might decide that all vehicles must have airbags. A few might even decide that no vehicles should have airbags. It is doubtful at best whether the resulting uncertainty would have any positive effect on motor vehicle safety, although the litigation it would spawn would certainly increase the costs to consumers.

The resolution of the express and implied preemption issues presented in this case are therefore of great interest to *amici*. This brief will focus, in particular, on the express preemption issue.

SUMMARY OF ARGUMENT

1. The Safety Act contains an express preemption clause, 15 U.S.C. § 1392(d), which prohibits the States from establishing or continuing in effect "any safety standard" which is "not identical" to a federal motor vehicle safety standard that applies to "the same aspect of performance" of a vehicle or its equipment. The plain language of this clause makes clear that Congress established a fundamental principle of uniformity with respect to safety standards. Once the federal agency has established a safety standard with respect to a particular aspect of performance, that standard is the only safety standard with which the vehicle must comply, no matter where in the United States it may be subsequently driven or resold.

Petitioners' no-airbag claim in this case falls squarely within Standard 208, which governs vehicle occupant restraint systems. Under the version of Standard 208 that applies to petitioners' vehicle, manufacturers had a choice either to install a manual seat belt and shoulder harness system, an automatic belt passive restraint system, or a passive restraint system including an airbag. A requirement that manufacturers install airbags in all vehicles is "not identical to" a standard that says manufacturers have a choice among a variety of occupant restraint systems, of which an airbag is only one option.

2. This conclusion does not change because petitioners seek the same result through the adoption of a common-law tort standard. This Court has held that words such as "requirement" or "prohibition" in express preemption clauses include standards of care enforced through common-law damages actions. The basis for concluding that the operative language of Section 1392(d)—"any safety standard"—includes common-law standards of care is if anything even stronger, since the common law proceeds more often by articulating standards than by prescribing requirements.

Petitioners also err in asserting that interpreting "any safety standard" to include common-law standards would preempt "virtually all" common-law causes of action. Pet. Br. 24-25. The preemptive effect of Section 1392(d) extends only to common-law actions that seek to impose a standard with respect to the "same aspect of performance" addressed by a federal safety standard. Thus, claims of improper design or manufacture falling outside the performance requirements of a federal standard would not be preempted. In addition, Section 1392(d) expressly excludes from preemption state standards that seek to enforce a standard identical to a federal standard. This means that States are free to impose common-law liability on manufacturers for failing to adhere to the requirements of federal standards.

3. Section 1397(k) of the Safety Act likewise does not change the conclusion that petitioners' action is expressly preempted by Section 1392(d). That provision states that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." One cannot be "exempted" from common-law liability unless one is first subject to such liability. Because Section 1392(d) deprives the States of any authority to adopt safety standards that are not identical to federal safety standards with respect to the same aspect of performance, a defendant who properly establishes preemption under Section 1392(d) is not subject to a common-law duty the breach of which could give rise to any liability.

Properly construed, Sections 1392(d) and 1397(k) each play an important role in determining when common-law claims are preempted. Where a federal standard governs an aspect of performance, Section 1392(d) establishes that the States can enforce an identical standard, but may not enforce any safety standard as to that aspect of performance, through the common law or otherwise,

that is not identical to the federal standard. By contrast, where an aspect of performance is not governed by a federal standard—even where a federal safety standard has been adopted with respect to some other aspect of performance for the specific equipment involved—Section 1397(k) makes clear that the States are free to enforce their own standards of care and impose them by means of state tort law. Specifically, Section 1397(k) establishes in these circumstances that the Safety Act does not create a federal "compliance with government standards" defense, and that such compliance does not preempt the field of state tort liability. Finally, even if a federal safety standard is in effect as to a particular aspect of performance, Section 1397(k) establishes that the States may enforce other common-law standards—under the law of contract, for example—as long as they are not related to safety.

Harmonizing Section 1392(d) and Section 1397(k) in this fashion is especially appropriate here, given the established canon that a savings provision should not be construed so that the Act "destroy[s] itself." See *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907). Petitioners' interpretation of Section 1397(k), which would exempt all common law from preemption, destroys the uniformity of safety standards commanded by Congress. Harmonizing these two provisions as suggested herein is not only consistent with the Act's language and structure; it also preserves the Act's fundamental policy of uniformity.

ARGUMENT

The court of appeals in this case addressed two theories as to why petitioners' legal action is preempted by the Safety Act and Standard 208: express preemption and implied preemption. The court ultimately concluded that it was not necessary to resolve the express preemption issue because it found that petitioners' action conflicts

with Standard 208, and hence is preempted by implication. *Amici* concur fully in the lower court's conclusion and reasoning with respect to implied preemption. Nevertheless, *amici* also believe that the judgment below can be affirmed on the alternative theory of express preemption, which was also raised below by respondent American Honda Motors Co. The purpose of this brief is to discuss more fully the legal basis supporting the express preemption theory.

I. THE PLAIN LANGUAGE OF SECTION 1392(d) PREEMPTS A STATE SAFETY STANDARD THAT WOULD MANDATE THE INSTALLATION OF AIRBAGS IN VEHICLES WHEN THE APPLICABLE FEDERAL STANDARD MADE AIRBAGS OPTIONAL.

The Safety Act includes an express preemption clause, 15 U.S.C. § 1392(d). The first sentence of that clause sets forth the scope of state activity that is preempted, and is followed by two sentences setting forth exceptions. Because the language of the clause is critical to the express preemption argument, we set it forth here in full:

> [1] Whenever a Federal motor vehicle safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard. [2] Nothing in this section shall be construed as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. [3] Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

15 U.S.C. 1392(d).[3]

1. As is obvious from its language, Section 1392(d) enacts a fundamental federal policy of *uniformity* with respect to certain key motor vehicle safety standards. Under the clause, where the federal government has established a standard with respect to a particular safety issue, the States are prohibited from adopting any safety standard that is "not identical to the Federal standard." Thus, Congress decreed that when a federal safety standard is in effect with respect to "an aspect of performance" of a vehicle or item of equipment, there shall be only one safety standard with which the vehicle must comply—and that is the standard set forth in the federal safety standard.

This policy of uniformity is confirmed by the second and third sentences of the preemption clause. The second sentence recognizes a narrow exception to the express preemption created by the first sentence, to wit, where States are seeking to enforce safety standards that are "identical to a Federal safety standard." This reveals that Congress had no objection to state enforcement of safety standards as such. See S. Rep. No. 89-1301, at 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720. The point of the preemption clause was not to confer a federal monopoly on enforcement, but to assure that, whoever does the enforcing, there will be a single uniform standard applied once a federal safety standard is in effect.

The third sentence also confirms the importance of uniformity by recognizing another narrow exception for

[3] The recodified version of the express preemption clause uses fewer words, but is to the the same effect. *See* 49 U.S.C. § 30103(b) (1994). Following the lead of the lower court and the parties, we refer in this brief to the earlier version of the Act.

procurement decisions by governmental authorities. This sentence clarifies that governmental authorities are free to establish "safety requirement[s]" for vehicles they purchase for their own use (such as highway patrol cars) that reflect a "higher standard of performance" than the federal safety standards. It is telling that Congress thought it necessary to specify that state and local governmental entities have authority to enter into contracts for vehicles that have different safety requirements than are required by federal standards. This underscores Congress's understanding that, whenever a federal standard exists with respect to a particular safety issue, the preemption clause otherwise mandates the strictest uniformity in governmental standards.

Congress adopted this policy of uniform safety standards to prevent the motor vehicle market from being balkanized by a proliferation of different safety standards in different jurisdictions. As the Senate Report observed in explaining the rationale for the express preemption clause: "The centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country." *Id.* Although divergent standards might cause little disruption in markets involving products having a fixed location or products and services having a limited geographic distribution, such a regime would wreak havoc with products manufactured and distributed on a national scale. Motor vehicles, in particular, are typically mass-produced on assembly lines in one or two locations and then distributed throughout the fifty states. After they are first sold, they are often driven to different jurisdictions or resold through the national wholesale market for used cars. Subjecting such a product to "50 standards in 50 different States" would be "chaotic" and "unthinkable." 112 Cong. Rec. 14253 (1966) (statement of President Johnson).

To implement this policy of uniform national safety standards, the Safety Act confers authority on the Secretary of Transportation to adopt motor vehicle safety standards that regulate the design, construction, and performance of motor vehicles and associated equipment. See 15 U.S.C. §§ 1392(a), 1391(1) & (2).[4] The Safety Act does not disregard the role of the States in the development and enforcement of these standards. The statute requires the Secretary to "consult with . . . State or interstate agencies" when establishing a federal safety standard. *Id.* § 1392 (f)(2). And, as expressly recognized in § 1392(d), the States are free to enforce the federal standards after they are adopted. But the plain language of the express preemption clause and the structure of the Act make clear that once a federal safety standard is established, that standard serves as the nationally uniform standard for all vehicles it covers.

2. To understand the proper application of Section 1392(d) in this case, it is useful to begin by considering what would have happened if the District of Columbia (which the Act treats as a State, see 15 U.S.C. § 1391(8)), had adopted an ordinance directing that all 1987 model automobiles in the District, such as the Honda involved in this case, include an airbag.

The version of the federal standard that addresses occupant restraint systems, Standard 208, took effect in 1984. See Federal Motor Vehicle Safety Standard, 49 Fed. Reg. 28,962 (1984) (codified at 49 C.F.R. pt. 571). With respect to 1987 model vehicles, Standard 208 expressly

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[4] The Secretary's statutory authority to adopt safety standards has been delegated to NHTSA, which is the expert agency with respect to motor vehicle safety. *See* 49 C.F.R. § 1.50(a) (1998). Over the years, NHTSA has exercised this authority by adopting numerous regulations imposing specific safety standards in many different areas. *See* 49 C.F.R. §§ 571.101-.500 (1998). A manufacturer is subject to federal civil penalties and injunctive relief for failure to comply. *See* 15 U.S.C. §§ 1398(a), 1399(a).

authorized and encouraged manufacturers to provide a variety of occupant protection systems as the best means of promoting safety. See, *e.g.*, 49 C.F.R. § 571.208 (1998). These included manual lap and shoulder belt systems as well as passive restraint systems, *i.e.*, systems that require no action by the occupant to make the system operational after the ignition has been turned on. The authorized types of passive restraint systems included both automatic seat belts and airbags as well as other passive technologies. *Id.* Standard 208 further required during this period that manufacturers of passenger cars phase in progressively higher percentages of cars having passive restraint systems. *Id.* With respect to the 1987 model year, each manufacturer was required to install some form of passive restraint in at least ten percent of its passenger cars. See *id.*, S4.1.3.1 (1998).[5]

The occupant restraint system built into petitioners' 1987 Honda, a manual three-point lap belt and shoulder harness, is one of the systems explicitly authorized by Standard 208 for vehicles manufactured at that time. Thus, petitioners' vehicle was manufactured in full compliance with Standard 208 and in furtherance of the Secretary's policy to introduce passive restraints gradually.

If the District of Columbia attempted to enforce an ordinance requiring airbags in all 1987 model year passenger vehicles in the District, there is no question that such an action would be preempted by Section 1392(d) and

[5] The requirements of Standard 208 evolved over time, and eventually were replaced by a mandate requiring the installation of airbags. All passenger cars manufactured after September 1, 1997, must have "an inflatable restraint system at the driver's and right front passenger's position," which is the regulatory description of an airbag. 49 C.F.R. § 571.208, S4.1.5.3. For a time, Congress specifically prohibited NHTSA from requiring airbags to be installed without prior congressional review. *See* 15 U.S.C. § 1410b. Now that airbags are mandatory, this provision has been repealed. *See* Act of July 5, 1994, Pub. L. No. 103-272, § 7(b), 108 Stat. 745, 1379, 1385.

Standard 208. The analysis is straightforward. The "aspect of performance" is whether an automobile must include an occupant restraint system and, if so, whether it must be of a particular kind. This aspect of performance is expressly addressed by Standard 208, which for the year in question allowed manufacturers to choose among different restraint systems, including manual seat belts and airbags. The hypothesized ordinance, in contrast, would compel manufacturers to install airbags in all vehicles. Such a state standard clearly regulates the same "aspect of performance," but in a way that is plainly not "identical" to Standard 208. As a result, the ordinance or regulation would be preempted.

Note that the District of Columbia could not defend such an ordinance on the ground that, since Standard 208 is elective and the local ordinance compulsory, it is "not impossible" to comply with both. Cf. Pet. Br. 41-42. Nor could such an enactment be sustained on the ground that the federal standards should be construed as "minimum" standards that States are free to supplement with higher standards. Cf. *Id.* at 42-43. Section 1392(d) does not preempt only state standards that are "impossible" to meet consistent with the terms of the federal standard, nor does it preempt only those state standards that fall "below" the federal standard. It preempts *any* state standard that is "not identical" to the federal standard.

II. THE EXPRESS PREEMPTION OF "ANY SAFETY STANDARD" NOT IDENTICAL TO A FEDERAL STANDARD INCLUDES A SAFETY STANDARD IMPOSED BY STATE COMMON LAW.

Given that Section 1392(d) expressly preempts any state statute or regulation that would mandate the installation of airbags in cars during years when Standard 208 gave manufacturers the option to install airbags, the next question is whether a different result should apply if the state standard is adopted after-the-fact as a matter of state com-

mon law. Petitioners and their supporting *amici* advance a number of arguments in an effort to cabin the uniformity required by Section 1392(d) to the realm of positive regulation, leaving common-law standards free to proliferate. None of these arguments is persuasive in the context of the Safety Act.

A. "Any Safety Standard" Is Not Limited To Positive Regulations.

First, petitioners and their *amici* argue that the phrase "any safety standard" in Section 1392(d) should be interpreted restrictively to mean only "state legislative and administrative enactments." See Pet. Br. 18-25. This position—which would permit even a mandatory injunction based on a common-law standard—is wrong, for several mutually supporting reasons.

To begin with, the claim that "any safety standard" refers only to positive enactments is contrary to this Court's decisions construing other express preemption clauses. Those decisions hold that terms such as "requirement," "prohibition," and "standard" in a preemption provision do in fact encompass rules of decision established by common-law damages actions. See *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 520-24 (1992) (Stevens, J., plurality opinion); *id.* at 548-49 (Scalia, J., concurring and dissenting in part); *CSX Transp., Inc.* v. *Easterwood*, 407 U.S. 658, 664 (1993); *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 503-05 (1996) (Breyer, J., concurring); *id.* at 510-12 (O'Connor, J., concurring and dissenting in part). The Court's repeated holdings on this interpretive point have been fully and deliberately considered and should be adhered to as a matter of *stare decisis*.

Indeed, if any distinction is to be drawn between *Cipollone*, *CSX*, and *Medtronic* and this case, it would favor a finding that Section 1392(d) is more easily construed as covering common-law standards of care. The word "requirement," which provided the focal point of the discussion in *Cipollone* and *Medtronic*, denotes an "order," "command," or "directive." *Random House Dictionary of the English Language* (Unabridged ed. 1966). The word "standard," in contrast, denotes a "rule or principle" that is "used as a basis for judgment." *Id.* Although the common law sometimes adopts precise requirements (as in the Rule Against Perpetuities), it more often employs general standards. See, *e.g.*, Isaac Ehrlich & Richard A. Posner, *An Economic Analysis of Legal Rulemaking*, 3 J. Legal Stud. 257, 261 (1974) (noting that "precise rules" are most commonly associated with legislative decisionmaking while "standards" are associated with judicial decisionmaking). Thus, if anything, an express preemption clause that refers to "any safety standard" is more naturally construed as covering common-law rules of decision than were the preemption clauses construed in *Cipollone* and *Medtronic*.[6]

The conclusion that "any safety standard" includes common-law duties of care is reinforced by the definitions of the Safety Act. The Act does not specifically define the phrase "any safety standard," which necessarily refers to a variety of possible state standards. But it does define "motor vehicle safety standards," which are the federal standards to which state "safety standards" must be identical. That definition requires, among other things, that a

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[6] The Court has indicated in a variety of contexts that the term "standards" refers to state common law as well as state positive law. *See, e.g., Atherton* v. *FDIC*, 519 U.S. 213, 217-26 (1997) (state common law may be taken as setting the "standard of conduct" and the "standard of care" that directors and officers owe to a federally chartered financial institution); *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 114-15 (1987) (referring to "safety standards" set by California products liability law); *United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392, 400 (1965) (referring to "common law standards"); *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U.S. 625, 630-31 (1959) (referring to "standard[s] of care" imposed by common law).

motor vehicle safety standard must "meet the need for motor vehicle safety." [7]

The Safety Act goes on to define "motor vehicle safety" in a way that is highly significant in determining whether common-law tort rules are included in the meaning of "any safety standard." That definition provides as follows:

> "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against *unreasonable risk of accidents* occurring as a result of the design, construction or performance of motor vehicles and is also protected against *unreasonable risk of death or injury to persons* in the event accidents do occur, and includes nonoperational safety of such vehicles.

15 U.S.C. § 1391(1). The highlighted phrases in this definition—"unreasonable risk of accidents" and "unreasonable risk of death or injury"—are of course identical to the conventional formulation of the duty of care recognized in the common law of torts. See, *e.g.*, *Restatement (Second) of Torts* § 282 (1965) (defining negligence as "conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm"); *id.* § 284 (defining negligent conduct as "an

[7] The full definition is as follows:

> "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

15 U.S.C. § 1391(2). Petitioners (at 23) and the Government (at 13) stress that this definition requires that federal standards provide "objective criteria," a characterization more appropriate for positive regulation than common law. But the relevant statutory term for preemption purposes is "any safety standard," not "motor vehicle safety standard." The best indication of what is covered by "any safety standard" is the definition of "motor vehicle safety," which demarcates the *content*, as opposed to the *form*, of the federal standards.

act which the actor as a reasonable man should recognize as involving an unreasonable risk of causing an invasion of an interest of another"); *Restatement (Third) of Torts: Product Liability* § 2 (1997) (a product "is defective in design when the foreseeable risks of harm posed by the product could have been reduced by the adoption of a reasonable alternative design . . . and the omission of the alternative design renders the product not reasonably safe"). In other words, federal motor vehicle standards and the common law of torts are both grounded in the same general principle—the avoidance of unreasonable risks of accidents, death or injury.

It follows that federal motor vehicle safety standards and state common-law tort rules cover the same terrain, and have similar objectives. This of course heightens the potential that these two sources of law will develop non-identical standards with respect to the same aspect of performance. At the very least, the definition of motor vehicle safety establishes that it is nonsense to speak of motor vehicle safety standards and state tort law as being "entirely different," see Brief Amicus Curiae of Missouri *et al.*, at 14, and hence as presenting no potential for conflict.[8]

Finally, petitioners' argument that common-law judgments do not establish "standards" simply defies common

[8] Petitioners argue that common-law claims regulate *design* rather than *performance* and that performance alone is what the Safety Act regulates. *See* Pet. Br. 21-24. But this is clearly untrue. The Safety Act authorizes the Secretary to adopt standards. *See* 15 U.S.C. § 1392. The standards must "meet the need for motor vehicle safety," *id.*, which is defined as "the performance of motor vehicles or motor vehicle equipment" in a way that protects the public "against unreasonable risk of accidents occurring because of the *design*, construction or performance of motor vehicles." *Id.* § 1391(1) (emphasis added). The Safety Act thus authorizes the agency to regulate the design, construction, and performance of such equipment as a means of meeting the need for motor vehicle safety.

sense. This Court has long recognized that "regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy." *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 247 (1959). Justice Breyer made the point in *Medtronic* by alluding to a hypothetical federal regulation requiring a 2-inch wire in a hearing aid component:

> If the federal law, embodied in the "2-inch" . . . regulation, preempts the state "1-inch" agency regulation, why would it not similarly preempt a state-law tort action that premises liability upon the defendant manufacturer's failure to use a 1-inch wire (say, an award by a jury persuaded by expert testimony that use of a more than 1-inch wire is negligent)? *The effects of the state agency regulation and the state tort suit are identical.*

Medtronic, 518 U.S. at 504 (Breyer, J., concurring in judgment) (emphasis added).

Petitioners' *amici* advance a variety of arguments in an effort to show that positive regulation and common-law liability are different. They are of course different in many respects. But none of the *amici* denies that common-law liability performs the important regulatory function of forcing defendants to internalize the social costs of their behavior.[9] Indeed, several of petitioners' *amici* celebrate

[9] The academic writings relied upon by petitioners' *amici* are in full agreement with the basic proposition that safety regulation and common law liability are alternative means to the same end. *See* Guido Calabresi, *The Costs of Accidents*, 68-129 (1970) (discussing safety regulation (which he calls "specific deterrence") and tort liability (which he calls "general deterrence") as alternative means of reducing the sum of accident costs and accident prevention costs); Stephen Breyer, *Regulation and Its Reform*, 177 (1982) (noting that tort liability rules are, "in some instances, a possible substitute for (or supplement to) a classical system of regulation"); Steven Shavell, *Liability for Harm Versus Regulation of Safety*, 13 J. Legal Stud. 357, 374 (1984) (noting that "the injunction and safety regulation may be viewed as substitutes, but not perfect ones, and similarly with the fine and liability"); Mary L. Lyndon, *Tort Law and Technology*, 12 Yale J. on Reg. 137, 143 (1995) (tort law and safety regulation "can best be thought of as branches of health and safety law, which provide different procedural options or formats for addressing the social costs of technical change").

this feature of the common law, and argue that it creates more powerful incentives for safety than do federal safety standards. See, *e.g.*, Brief Amicus Curiae of The Association of Trial Lawyers of America, at 11-12; Brief Amicus Curiae of Robert E. Leflar, *et al.*, at 17-19. Petitioners' *amici* are of course free to espouse the superiority of common-law liability as a mode of safety regulation. But they cannot at the same time take the position that the standards on which such liability is premised are not "safety standards." That, of course, is the only relevant question to be answered in determining whether common-law standards of care come within the terms of Section 1392(d).

B. Common-Law Standards Are "Established" Or "Continued In Effect" By A "State."

Petitioners (Br. 23) and the Government (Br. 13) further argue that Congress was concerned only with positive laws and regulations because it chose to describe the preempted safety standards as ones that are "establish[ed]" or "continue[d] in effect" by a "State or political subdivision of a State." This language, they suggest, is more apposite to standards adopted by legislative or regulatory bodies than to the rules of decision adopted and applied by courts.

Petitioners and the Government may be right that this language is not what one would most naturally select if one were drafting a preemption clause to apply *only* to judicial standards. But Congress was writing broadly, and wanted to cover nonidentical standards from all sources of state and local authority, including, for example, counties and municipal governments. Naturally, it had to

choose language that is not precisely tailored to courts. Once again, however, careful attention to the exact words Congress used rebuts any notion that Section 1392(d) does not apply to standards adopted by courts.

Consider, first, the use of the word "establish" to refer to the prohibited safety standards. Although petitioners and the government claim this word is not ordinarily used to describe common-law rules of decision, this is in fact untrue. This Court, for example, has referred to "common-law rules *established* by the different States" precisely in the context of discussing the scope of preemption of state standards. *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 496 (1987) (emphasis added). In any event, even if there were something anomalous in speaking about common-law rules being "established," the statute speaks in the alternative: States are forbidden "to establish, *or to continue in effect*" nonidentical safety standards. There is nothing anomalous about speaking of States "continuing in effect" common-law standards. Indeed, in virtually every State, the courts' ultimate authority to apply common-law standards in resolving disputes rests on legislation that "continues" the common law of England. See Ford W. Hall, *The Common Law: An Account of Its Reception in the United States*, 4 Vand. L. Rev. 791, 798-800 (1951).

Nor is there anything unusual in referring to common-law standards as being established or continued in effect by a "State." In *Medtronic*, for example, the statute at issue contained the same phrase—" 'State or a political subdivision' " found in Section 1392(d). *Medtronic*, 518 U.S. at 481. Yet a majority of the Court held that the preemption clause in that case reached common-law claims. *Id.* at 503-05 (Breyer, J., concurring); *id.* at 509-10 (O'Connor, J., concurring and dissenting in part).

Moreover, this Court has concluded in a variety of contexts that common-law judgments rendered by state

courts are a form of state action. See, *e.g.*, *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 572 n. 17 (1996) ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute."); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 265 (1964) ("It matters not that that law has been applied in a civil action and that it is common law only, though supplemented by statute."); *Shelley* v. *Kraemer*, 334 U.S. 1, 19-20 (1948) (judicial enforcement of racially restrictive covenant is state action). It is hard to imagine a plausible argument that would reach the opposite conclusion. Not only are parties expected to comply with the judgments of courts as a matter of direct legal obligation, see, *e.g.*, *Cooper* v. *Aaron*, 358 U.S. 1, 18 (1958), their failure to comply with a judgment, even if only one for the payment of damages, can bring down upon them the coercive powers of the State in the form of execution against their property or garnishment of their wages.

Petitioner's argument that Congress differentiated between the standards adopted by courts and standards adopted by the "State" is also at odds with *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938). *Erie* of course held that the "laws of the several states," as that phrase is used in the Rules of Decision Act, 28 U.S.C. § 1652, includes common-law rules of decision. The *Erie* doctrine reflects an important background principle of law, and it is unlikely that Congress legislated based on a different understanding. See *Cipollone*, 505 U.S. at 522-23; see also *id.* at 549 (Scalia, J., concurring and dissenting in part). Accordingly, for all these reasons, Congress could not have meant to exclude common-law standards and rules when it extended the prohibition in Section 1392(d) to all safety standards "establish[ed] or . . . continue[d] in effect" by a "State."

C. Construing "Any State Standard" To Include Common-Law Standards Does Not Preempt "Virtually All" Common-Law Claims.

In a last-ditch effort to avoid the conclusion that Section 1392(d) includes common-law claims, petitioners argue that the preemption clause must be limited to positive regulation to avoid preempting "virtually *all* common law claims involving aspects of motor vehicle performance." Pet. Br. 24-25. In fact, reading the preemption clause to include common-law standards would delineate only a narrow scope of preemption: it would proscribe only those common-law claims that adopt a safety standard with respect to "the *same* aspect of performance" addressed by a federal standard, and even then only insofar as the common-law standard is "*not identical* to the Federal standard."

In the context of restraint systems, for example, the Safety Act leaves the States free to enforce any standard of care with regard to an aspect of vehicle safety that does *not* involve "the same aspect of performance" covered by a federal safety standard. Thus, Section 1392(d) and Standard 208 do not preempt common-law claims that the particular occupant restraint system selected by the manufacturer, such as an airbag, was improperly designed or was improperly manufactured. See, *e.g.*, *Perry* v. *Mercedes Benz of N. Am., Inc.*, 957 F.2d 1257, 1265-66 (5th Cir. 1992) (manufacturer that installs airbag may be liable for defect in design or manufacture). For purposes of this case, only the claim that a manufacturer installed one rather than another of the authorized occupant restraint systems (*e.g.*, a "no-airbag" claim) is expressly preempted.

In addition, under the second clause of Section 1392(d), the States could enforce the "identical" standard embodied in Standard 208 by allowing tort suits against any manufacturer that did not install any of the occupant

restraint systems required by federal law during the relevant period. Thus, now that airbags are required for the driver and right front seating positions in all new vehicles, state "no-airbag" claims no longer are preempted with respect to such equipment in new vehicles because they would impose the identical standard of care as is embodied in the current version of Standard 208. See 49 C.F.R. § 571.208, S4.1.5.3 (1998). The scope of express preemption is thus quite measured and sensible as a matter of federal-state regulatory policy.

III. SECTION 1397(k) DOES NOT LIMIT OR QUALIFY THE PREEMPTIVE FORCE OF SECTION 1392(d).

Petitioners and the Government also seek refuge in what some have called the Safety Act's "savings" clause, which states that "[c]ompliance with any Federal motor vehicle safety standard issued under this title does not exempt any person from any liability under common law." 15 U.S.C. § 1397(k). They contend that this provision overrides, limits, or qualifies the express preemption mandated by Section 1392(d), so that common-law claims are placed entirely beyond the reach of Section 1392(d). See Pet. Br. 25-28; U.S. Br. 13-15. This interpretation, however, does not square with the Act's text (including the language of Section 1397(k) itself), or with its structure and context. Indeed, such an interpretation would destroy the very uniformity of federal standards that the Act was designed to create, in violation of the important canon that savings provisions should not be construed so that the Act "destroy[s] itself." *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 445 (1907). Sections 1392(d) and 1397(k) can and should be harmonized so that some common-law claims—those that defeat the uniformity of federal standards—are preempted, whereas other types of common-law claims are preserved.

A. The Language Of Section 1397(k) Does Not Limit Or Qualify The Scope Of Section 1392(d).

Section 1397(k) does not by its terms limit or qualify the scope of express preemption mandated by the preemption clause in Section 1392(d). In fact, when read closely and in accordance with their plain meaning, the two provi sions are not, as the Government assumes (Br. 15), even in "tension" with each other.

Section 1397(k) speaks of an "exemption" from "common-law liability." A defendant who properly invokes Section 1392(d) has no need for an "exemption" because he is not subject to a duty the breach of which could ever give rise to any liability. As one court of appeals recently held in rejecting the very interpretation advanced by petitioners here, "[t]o be 'exempted' from liability [under Section 1397(k)], one must first be subject to it." *Harris* v. *Ford Motor Co.*, 110 F.3d 1410, 1415 (9th Cir. 1997).

It is axiomatic that "common-law liability" in tort can arise only for breach of a duty or standard. See, *e.g.*, *Restatement (Second) of Torts*, § 4(c) (1965). By depriving the States of "any authority either to establish, or to continue in effect, . . . any safety standard" that is not identical to the federal standard, Section 1392(d) deprives the States of authority to create any such duties or standards with respect to the same "aspect of performance." Indeed, any attempt to impose such a duty or standard would be "void" and "without effect." *Maryland* v. *Louisiana*, 451 U.S. 725, 746, 747 (1981). Thus, no liability for the breach of such a standard or duty could ever arise in the first place, and Section 1397(k) simply would not apply in that situation.

This conclusion is confirmed by the fact that Section 1397(k) is expressly triggered by a manufacturer's "compliance" with a federal safety standard. A defendant who

properly invokes 1392(d) does not need to be in compliance with the federal standards for that provision to preempt a non-identical state standard. By its terms, that provision preempts a non-identical state safety standard of its own force, regardless of the manufacturer's actions. This too suggests that Section 1397(k) cannot reasonably be construed as blocking, limiting, or qualifying the ordinary operation of Section 1392(d). If Section 1397(k) had been intended to have that effect, Congress simply would not have chosen the language it did.

B. Sections 1392(d) And 1397(k) Play Complementary Roles In Determining Which Common-Law Claims Can Be Maintained.

Petitioners, joined by the Government, nevertheless contend that unless all common-law standards are excluded from preemption under Section 1392(d), "there would be no meaningful role for Section 1397(k)." U.S. Br. 14. This is incorrect. When one carefully examines the Act's structure and makes a good-faith effort to construe both provisions in tandem, it is apparent that both Section 1392(d) and Section 1397(k) can each apply to common-law actions, depending on the relationship of the particular common-law claim to existing motor vehicle safety standards. See, *e.g.*, *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993) (in interpreting an express preemption provision, "[e]vidence of pre-emptive purpose is sought in the text and structure of the statute"); *Smith* v. *United States*, 508 U.S. 223, 233 (1993) (provisions should be construed in tandem, not in isolation). Indeed, Section 1397(k) plays an important role in the statutory scheme, albeit one quite different from that urged by petitioners and the Government. This is seen from an examination of the four scenarios in which preemption of common-law claims might be an issue.

1. The first is the situation presented by this case, *i.e.*, where the proposed state safety standard applies to the

same "aspect of performance" as the federal standard, but is not identical to it. As explained above, Section 1397(k) does not, by its terms, apply in this situation, because Section 1392(d) prevents the creation or retention of a non-identical "safety standard"—common-law or otherwise—on which liability could be based.

2. The second scenario is one in which a state safety standard applies to the same aspect of performance, but is identical to it. Section 1397(k) has no role to play in this scenario either because, as discussed above, the second sentence of Section 1392(d) expressly allows states to "enforce[] any safety standard which is identical to a Federal safety standard."

3. Section 1397(k), however, does play an important role in the third scenario, one in which a state tort-law standard allegedly governs an "aspect of performance" that is *not* directly covered by a federal standard. That would be the case, for example, if a plaintiff claimed that a manufacturer, although installing an airbag in compliance with Standard 208, nevertheless violated state tort law by using a defective design. *E.g., Perry*, 957 F.2d at 1265.

Absent Section 1397(k), as Honda, the Government, and several other *amici* discuss at length, manufacturers in these circumstances might have argued that the Safety Act impliedly creates a federal-law "government standards" defense which shields them from tort liability as long as they complied with all applicable standards. Section 1397(k) makes clear that the Act does not create such a defense or "exemption from liability," and therefore does not preempt state-law rules foreclosing or refusing to recognize such a defense. Thus, whenever there is no federal standard with respect to the specific "aspect of performance" at issue, it is up to the States to determine what effect, if any, a manufacturer's compliance with any or all of the extant federal standards have on its liability.

This reading of Section 1397(k) is consistent not only with the statute's language and structure, but also with the relevant legislative history.[10] This reading is also strengthened by the fact that in 1966, when the Safety Act was passed, the States differed—and still differ—in their views regarding such an affirmative defense and the admissibility of evidence of compliance with federal standards.[11]

In addition, without Section 1397(k), manufacturers could have argued that the Act should be construed to occupy the entire field of motor vehicle safety standards.[12]

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[10] For example, one of the conferees, Senator Cotton stated:

> The Senate conferees also yielded on a provision, inserted by the House, declaring that compliance with any Federal standard does not exempt any person from liability under common law. Nevertheless, it seems clear and was, I believe, the consensus of the conferees on both sides, that proof of compliance with Federal standards may be offered in any proceeding for such relevance and weight as courts and juries may give it.

112 Cong. Rec. 21,490 (1966); *accord id.* at 21,487 (remarks of Senator Magnuson, quoted in Pet. Br. 31-32). That is exactly what Section 1397(k) did. It ensured that the fear of a broad "government standards" defense expressed by some congressional witnesses would not materialize, and that states would therefore have flexibility to decide whether and to what extent a party's compliance with federal standards exempts a manufacturer from being subject to "any liability" under state tort law.

[11] Some States recognize a rebuttable presumption that a product which complies with federal standards is not defective. *E.g.*, Mich. Comp. Laws Ann. § 600.2946(4) (West 1999); Kan. Stat. Ann. § 60-3304(a) (1999). Others hold compliance with federal standards is relevant to whether there is a defect, but not conclusive, *e.g.*, *Wagner* v. *Clark Equip. Co.*, 700 A.2d 38, 49-50 (Conn. 1997); *Brooks* v. *Beech Aircraft Corp.*, 902 P.2d 54, 63 (N.M. 1995), while some States hold generally that compliance conclusively negates any defect, *see, e.g.*, *Beatty* v. *Trailmaster Prods.*, 625 A.2d 1005, 1013-14 (Md. 1993).

[12] As the Government points out (Br. 14 n.11), the second sentence of Section 1392(d) makes clear that Congress did not attempt to occupy the field of safety-standard *enforcement*, inasmuch as the provision expressly allows the States to enforce federal standards. But that section does not expressly authorize the States to establish

Such an argument would have been highly plausible in 1966. At that time, it had been only ten years since this Court, in *Pennsylvania* v. *Nelson*, 350 U.S. 497 (1956), held that a congressional act was deemed to occupy a particular field when—as is also true of the Safety Act—the statute created a pervasive federal regulatory scheme, was based on a perceived need for national uniformity, and there existed a danger of conflict between state laws and the administration of the federal program. *Id.* at 502, 504-05. And it had only been seven years since this Court had held, in *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959), that the National Labor Relations Act ("NLRA") completely occupied the field of labor-management relations, so as to preclude a state-law tort action for damages occasioned by union picketing—even where no provision of the NLRA dealt with that issue. *Id.* at 241-43, 245.[13]

In the wake of *Nelson* and *Garmon*, it would only have been prudent for Congress to insert a provision making clear that the Safety Act did not completely occupy the field of motor vehicle safety standards, and therefore that common-law actions would be permitted to enforce state standards dealing with "aspects of performance" not covered by a federal standard, even if the manufacturer was otherwise complying fully with all federal standards. See *Gracia* v. *Volvo Europa Truck, N.V.*, 112 F.3d 291, 298 (7th Cir. 1997), *cert. denied*, 118 S. Ct. 697 (1998). That, among other things, is exactly what it did in Section 1397(k).

4. Section 1397(k) would also play an important role in a fourth scenario as well. That is where a federal safety standard is in effect with regard to a particular aspect of performance or "item of equipment" within the meaning of Section 1392(d), but the plaintiff claims that the manufacturer's actions with respect to that aspect or item violate a body of common law that is unrelated to safety—specifically, contract law.

For example, suppose that, during the time Standard 208 allowed manufacturers the option of installing airbags or other occupant restraint devices, a manufacturer signed a contract to provide to a rental company a fleet of vehicles equipped with airbags. In a breach-of-contract action seeking to enforce that promise, Section 1397(k) makes clear that the manufacturer could not invoke its compliance with federal safety standards to block the claim. Cf. *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 228-33 (1995) (express preemption clause did not protect airline from "alleged breach of its own, self-imposed undertakings").

In other words, Section 1397(k) makes clear that state common-law actions can be maintained to enforce the manufacturer's own commercial contracts, even if the standard the manufacturer agrees to by contract is not one the State could otherwise impose consistent with Section 1392(d), and even if the manufacturer is complying with the applicable federal standard. This view of Section 1397(k) likewise finds support in the legislative history.[14]

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state-law standards that are not identical to an applicable federal standard, and therefore does not by itself foreclose the field occupation argument discussed in the text.

[13] Even today, the argument would have force given that NHTSA has promulgated comprehensive regulations governing motor vehicle safety. *See* 49 C.F.R. §§ 571.101-.500 (1998). "Where a multiplicity of federal . . . regulations govern and densely criss-cross a given field, the pervasiveness of such federal laws will help to sustain a conclusion that Congress intended to exercise exclusive control over the subject matter." Laurence H. Tribe, *American Constitutional Law* § 6-31, at 1206-07 (3d ed. 1999).

[14] It is, for example, consistent with Representative Dingell's statement during the floor debates that in the Safety Act, "we have preserved every single common-law remedy that exists against a manufacturer for the benefit of a motor vehicle purchaser. This means that all of the warranties and all of the other devices of

In short, properly construed, Section 1392(d) and Section 1397(k) each play important roles in determining which common-law claims may go forward, and in what circumstances. In contrast, petitioners' sweeping interpretation of Section 1397(k) deprives Section 1392(d) of any meaning in the context of common-law standards. Such a result would be contrary not only to the language and structure of the Act, but also to its legislative history, which clearly indicates an awareness that Section 1392(d) would sometimes preempt common-law tort actions notwithstanding Section 1397(k).[15]

C. Section 1397(k) Should Not Be Interpreted To Destroy The Uniformity Of Safety Standards.

This reading of the interplay between Sections 1392(d) and 1397(k) is also most consistent with the underlying purposes of the Safety Act. As explained above (*supra* at 7-8), Congress wanted not only to promote safety, but

common law which are afforded to the purchaser, remain in the buyer, and they can be exercised against the manufacturer." 112 Cong. Rec. 19,663 (1996) (quoted in Pet. Br. 30-31). As explained above, Sections 1392(d) and 1397(k) can easily be read as preserving all common-law "remedies" and "devices," including commercial contract actions. The statements from the House Committee Report, cited by the petitioners (Br. 30), and the statement by Senator Magnuson, cited by the petitioners (*id.* at 28-29), are likewise consistent with this reading.

[15] Referring to Section 1397(k), Senator Magnuson noted to his Senate colleagues that it simply "makes explicit, in the bill, a principle developed in the Senate report." 112 Cong. Rec. 21,487 (1966). But the "principle developed in the Senate report" to which Senator Magnuson referred is that federal safety standards "*need not* be interpreted as restricting State common law standards of care," and that "[c]ompliance with such standards would thus *not necessarily* shield any person from product liability at common law." S. Rep. No. 89-1301, at 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720 (emphasis added). By negative implication, these statements clearly evince an understanding that, in some circumstances, the Safety Act would restrict the range of permissible common-law product liability actions.

also to preserve a single market for the production and distribution of automobiles. Petitioners' extreme reading of Section 1397(k), however, would destroy the uniformity that Congress sought to create. Petitioners' interpretation therefore runs headlong into the fundamental axiom of statutory construction that so-called "savings clauses" should not be interpreted so as to destroy the fundamental policies of the statute in which they appear.

The principle was first stated almost a century ago in *Texas & Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907). There, a federal act contained a broad savings clause that purported to save "the remedies now existing at common law or by statute." *Id.* In spite of that savings clause, the Court held that an existing but conflicting common-law claim was preempted because a savings clause "cannot in reason be construed as continuing . . . a common-law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself." *Id.*

The *Abilene Cotton* holding is a settled principle of statutory construction that has been consistently applied in a variety of contexts. Thus, where necessary, the Court has given savings clauses an appropriately narrow reading so as not to impair the preemptive thrust of the statute as a whole.[16]

[16] *See, e.g., AT&T Co.* v. *Central Office Tel., Inc.*, 118 S. Ct. 1956, 1965 (1998) (savings clause "preserves only those rights that are not inconsistent with" the statute's requirements); *American Airlines, Inc.* v. *Wolens*, 513 U.S. 219, 222 (1995) (state fraud suit expressly preempted notwithstanding savings clause providing that statute does not " 'abridge or alter the remedies now existing at common law or by statute' "); *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 485-97 (1987) (state common-law claims impliedly preempted because they conflicted with the method chosen by federal law to implement the statutory goals, despite broad savings clause); *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 51-52 (1987) (savings

Moreover, the *Abilene Cotton* canon is not limited to cases involving implied preemption claims. In *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992), for example, the Court implicitly recognized this principle when it held that a "general 'remedies' saving clause cannot be allowed to supersede the specific substantive preemption provision." *Id.* at 385.

Indeed, if a saving provision generally cannot be construed to negate a conclusion of implied preemption, *a fortiori* a savings provision ought not be construed to negate an express preemption clause. A statute should not be held "to destroy itself," *Abilene Cotton*, 204 U.S. at 446, whether that destruction occurs because of a conflict with an implied feature of the federal scheme, or, as here, because of a conflict with an express congressional command that federal and state safety standards must be uniform whenever they govern the same aspect of performance.

CONCLUSION

For the foregoing reasons, as well as those set forth in respondents' brief, the decision below should be affirmed.

clause given narrow reading after the Court looked "to the provisions of the whole law, and to its object and policy") (internal quotation marks omitted); *Chicago & Northwest Transp. Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 328-31 (1981) (same).

Respectfully submitted,

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