No. 08-1314

IN THE
Supreme Court of the United States

DELBERT WILLIAMSON, *et al.*,
Petitioners,
v.
MAZDA MOTOR OF AMERICA, INC., *et al.*,
Respondents.

On a Writ of Certiorari to the
California Court of Appeal,
Fourth Appellate District, Division Three

PETITIONERS' BRIEF

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July 2010

QUESTION PRESENTED

The National Traffic and Motor Vehicle Safety Act of 1966 directs the Department of Transportation to issue federal motor vehicle safety standards, 49 U.S.C. § 30111(a), defines the safety standards as "minimum" standards, 49 U.S.C. § 30102(a)(9), and provides that compliance with a minimum standard "does not exempt a person from liability at common law." 49 U.S.C. § 30103(e).

Does the 1989 version of Standard 208, which allowed vehicle manufacturers to install either Type 1 lap-only or Type 2 lap/shoulder seatbelts in the aisle seating positions of passenger vans, impliedly preempt a state tort claim alleging that a manufacturer should have installed a Type 2 seatbelt in the aisle seating position of a passenger van manufactured in 1993?

PARTIES

Petitioners are Delbert and Alexa Williamson and the Estate of Thanh Williamson. Respondents are Mazda Motor Corporation and Mazda Motor Corporation of America, Inc. dba Mazda North American Operations.

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INTRODUCTION

Thanh Williamson was killed while riding in the second-row aisle seat of a Mazda minivan when it was struck head on by another vehicle. Her seat was equipped with a lap-only seatbelt, which caused fatal internal injuries when the impact of the collision caused her body to jackknife over the belt. After her death, Mrs. Williamson's family brought suit against Mazda, alleging that the van was defective because it lacked a lap/shoulder belt for the aisle seat. When the minivan was manufactured and sold, the relevant federal safety standard allowed but did not require that seat to have a lap/shoulder belt. The question here is whether the Williamsons' damages claim is barred by implied conflict preemption, on the theory that holding Mazda accountable for failing to install a lap/shoulder belt would pose an obstacle to the federal safety standard in effect at the time.

OPINIONS BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division Three is reported at *Williamson v. Mazda Motor of America, Inc.*, 84 Cal. Rptr. 3d 545 (Cal. Ct. App. 2008). The final opinion is reproduced in the Petition Appendix at pages 1-27. An order modifying an earlier version of the opinion is reproduced in the Petition Appendix at pages 28-30. The California Supreme Court's order denying discretionary review is unreported and is reproduced in the Petition Appendix at page 31.

JURISDICTION

The judgment of the California Court of Appeal was entered on October 22, 2008. The California Supreme Court denied discretionary review on February 11, 2009.

The petition for a writ of certiorari was timely filed on April 22, 2009. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The principal constitutional, statutory, and regulatory provisions involved in this case are the Supremacy Clause, U.S. Const. art. 6, cl. 2, the Motor Vehicle Safety Act, 49 U.S.C. § 30101 *et seq*., and the 1989 version of Federal Motor Vehicle Safety Standard 208. 54 Fed. Reg. 46,257, 46,266-69 (Nov. 2, 1989). The text of the pertinent provisions is set out at pages 1-3 of the petition for writ of certiorari.

STATEMENT OF THE CASE

A. The Safety Act

In 1966, Congress enacted the Motor Vehicle Safety Act. 49 U.S.C. § 30101 *et seq*.[1] As its title confirms, the purpose of the Safety Act is "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." 49 U.S.C. § 30101. "[T]he Motor Vehicle Safety Act was necessary because the industry was not sufficiently responsive to safety concerns." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 49 (1983). "Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act." *Id*. at 55.

Congress placed responsibility for implementing the Safety Act with the Secretary of Transportation at the Department of Transportation (DOT). *See, e.g.*, 49 U.S.C.

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[1]The Safety Act was originally codified at 15 U.S.C. § 1381 *et seq*. In 1994, the Safety Act was recodified without substantive change. This brief refers to the current version of the statute.

§§ 30111(a), 30117(a). The Secretary, in turn, delegated that authority to the Administrator of the National Highway Traffic Safety Administration (NHTSA), a unit of DOT. 49 C.F.R. §§ 1.3(b)(4), 1.50(a).

One of NHTSA's most important responsibilities under the Safety Act is the promulgation of Federal Motor Vehicle Safety Standards (FMVSS). The Safety Act defines a "safety standard" as a "*minimum standard* for motor vehicle or motor vehicle equipment performance," 49 U.S.C. § 30102(a)(9) (emphasis added), and specifies that each standard "shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms." *Id.* § 30111(a). NHTSA has promulgated safety standards for a wide variety of vehicle components and related equipment, including controls and displays, brake systems, rearview mirrors, head restraints, window glazing, and door locks. *See generally* 49 C.F.R. Part 571.

Subject to limited exceptions, the Safety Act prohibits the manufacture, sale, or delivery of any new motor vehicle or motor vehicle equipment that does not comply with the minimum safety standards. 49 U.S.C. § 30112(a). The Act authorizes DOT to seek remedies against manufacturers for noncompliance with the safety standards or other defects relating to motor vehicle safety. *Id.* §§ 30118-30120. The available remedies include requiring manufacturers to repair or replace vehicles or their component parts. *Id.* § 30120(a). The Act also authorizes the agency to bring civil enforcement actions and to seek civil penalties for noncompliance. *Id.* §§ 30121, 30163, 30165.

The Safety Act includes a "savings clause" that provides: "Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." *Id.* § 30103(e). As

explained in the House Report, the savings clause "specifically establishes, that compliance with safety standards is not to be a defense or otherwise to affect the rights of the parties under common law, particularly those relating to warranty, contract, and tort liability." H.R. Rep. No. 89-1776 at 24 (1966); *see also* S. Rep. No. 89-1301 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720 ("[T]he federal minimum safety standards need not be interpreted as restricting State common law standards of care. Compliance with such standards would thus not necessarily shield any person from product liability at common law.").

The Safety Act also contains an express preemption provision, 49 U.S.C. § 30103(b)(1), which provides that, when a FMVSS is in effect, a state "may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." As this Court has held, this provision preempts certain state statutes and regulations, but does not preempt state-law damages actions. *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 867-68 (2000). Mazda does not argue that the express preemption provision applies here.

B. Seatbelt Regulations Under Standard 208

In 1967, NHTSA adopted the first set of federal motor vehicle standards pursuant to the Safety Act. 32 Fed. Reg. 2,408 (Feb. 3, 1967). In the preamble to the final rule, NHTSA made "findings" that defined each standard as a "minimum standard" for motor vehicle or equipment performance. *Id.*

Standard 208—now entitled "Occupant Crash Protection"—was among the standards issued in 1967 and origin-

ally covered only manual seatbelts in passenger vehicles. The initial version of Standard 208 (also known as FMVSS 208) allowed manufacturers to install either lap-only (Type 1) or lap/shoulder (Type 2) seatbelts in all *rear* seating positions, but required Type 2 lap/shoulder seatbelts in the *front* "outboard" seating positions.[2] *Id.* at 2,415.

In 1982, two researchers at the University of Michigan Transportation Research Institute filed a petition with NHTSA to require Type 2 lap/shoulder belts in rear outboard seating positions. 49 Fed. Reg. 15,241 (Apr. 18, 1984). "[T]he primary reason for their request was enhancing child safety, by facilitating the use of booster seats in the rear seat." 53 Fed. Reg. 47,982 (Nov. 29, 1988). Because in 1984 at least fifty percent of child restraint systems (such as infant seats) then in use were anchored with a tether, NHTSA denied the petition based on its belief that child restraint systems equipped with a tether anchorage would offer greater protection than those held in place by Type 2 seatbelts. 49 Fed. Reg. at 15,241. At the same time, however, the agency acknowledged a growing trend away from tethered restraint systems. *Id.* In fact, according to the petition, only three of the twenty-five models of child restraints then on the market (as opposed to those still in use) required the use of tethers. *Id.*

In 1986, the National Transportation Safety Board (NTSB) issued a series of safety recommendations

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[2]An "outboard" seating position is defined as one less than 12 inches from the side interior wall of the vehicle. 49 C.F.R. § 571.3(b).

regarding lap-only seatbelts.[3] NTSB Safety Recommendations H-86-38 - H-86-49 (Aug. 8, 1986), http://www.ntsb.gov/recs/letters/1986. Based on its own study of vehicle crash data, NTSB found that lap-only seatbelts were capable of causing severe to fatal injuries to the head, spine, and abdomen "brought about by the violent jackknifing motion over the lap belt" in frontal collisions. NTSB Safety Recommendation H-86-44 - H-86-47, at 1-4 & n.3. NTSB concluded: "Lap/shoulder belts provide superior crash protection to that of lap belts alone, and present a significantly lesser risk of induced injury; such systems appear to work effectively even for children, and they can be used with child safety seats and booster seats." *Id.* at 4. Accordingly, NTSB recommended that NHTSA adopt a rule requiring Type 2 seatbelts in rear outboard seating positions and, if technically feasible, in all other seating positions. *Id.* at 6-7.

In 1987, NHTSA revisited the issue of Type 2 seatbelts for rear seats in response to a petition by the Los Angeles Area Child Passenger Safety Association. 52 Fed. Reg. 22,818, 22,819 (June 16, 1987). This petition "again focused on the protection afforded to children riding in motor vehicles." 53 Fed. Reg. at 47,983. As NHTSA explained:

> The agency decided to grant the petition and reexamine this issue, because of two new factors. First, many States had adopted safety belt use laws, which led to an increase in belt use in the rear seat. Second, child restraint production had shifted

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[3]The NTSB is an independent federal agency with statutory responsibility to "propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents." 49 U.S.C. § 1116(a)(2).

> away from those that were designed to have a tether anchored to the vehicle.

Id. Accordingly, in June 1987, the agency issued an Advance Notice of Proposed Rulemaking requesting comments on whether Type 2 seatbelts should be required in rear seating positions. 52 Fed. Reg. at 22,818-19. In November 1988, NHTSA issued a Notice of Proposed Rulemaking (NPRM) to amend Standard 208 by mandating Type 2 seatbelts in rear outboard seating positions. 53 Fed. Reg. at 47,982.

NHTSA identified several safety benefits associated with Type 2 seatbelts in rear seating positions. First, the agency estimated that Type 2 seatbelts were seven percent more effective in reducing fatalities and seventeen percent more effective in reducing moderate-to-severe injuries than Type 1 seatbelts. 52 Fed. Reg. at 22,820. Second, NHTSA concluded that requiring Type 2 seatbelts would increase rear seatbelt usage, because passengers were more likely to use them than Type 1 seatbelts. 53 Fed. Reg. at 47,983-84. Finally, NHTSA found that "[t]he presence of lap/shoulder belts in rear seating positions would help booster seats installed in rear seats to provide even more effective protection for child occupants, by allowing booster seats to use the shoulder belt to provide additional upper torso restraint." *Id.* at 47,984.

In proposing the new standard, NHTSA found no empirical support for questions raised by two commenters about the compatibility of child car seats and Type 2 seatbelts equipped with "emergency locking retractors" (ELRs), which hold the belt taut when pressure is exerted against it. *Id.* at 47,988. As summarized in the NPRM, "[t]he alleged problem of incompatibility between child car seats and ELRs is based on the fact that the ELR locks

only upon rapid occupant movement, vehicle deceleration, or impact." *Id.* Referring to earlier findings the agency had made on the safety of ELRs in 1985, NHTSA concluded that "'there are no data to show that low-speed movement of child safety seats is affecting the safety performance of child restraint devices in motor vehicle accidents.'" *Id.* (quoting 50 Fed. Reg. 46,056, 46,057 (Nov. 6, 1985)). Thus, the agency "tentatively determined that effective protection for both children and adults can be achieved without proposing any additional requirements for lap belt retractors." *Id.*

The agency summarized its overall findings regarding the effect of Type 2 seatbelts on child safety as follows:

> Accordingly, the agency believes that this proposal for rear seat lap/shoulder belts would offer benefits for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and would offer older children the same incremental safety protection that would be afforded adult rear seat occupants.

Id. at 47,988-89.

NHTSA particularly emphasized the expected safety benefits of Type 2 seatbelts in the rear seating positions of passenger vans and minivans: "This type of vehicle represents a growing share of the market, so that the estimated safety benefits to rear seat occupants from lap/shoulder belts was greater than any other vehicle type, except passenger cars." *Id.* at 47,985. In addition, NHTSA explained, "these vehicles are frequently purchased because of their greater passenger-carrying capacity. Thus, it is reasonable for the agency to infer that

these vehicles will have a greater-than-average occupancy rate in the rear seats, with accompanying greater-than-average benefits from this proposed requirement." *Id.* at 47,985-86. NHTSA noted that "passenger vans, especially the newer 'mini-vans,' are frequently purchased to accommodate, and used for, the same family transportation purposes for which station wagons were used exclusively in the past." *Id.* at 47,986.

NHTSA ultimately promulgated the new Type 2 seatbelt requirements in two steps. First, in June 1989, NHTSA mandated Type 2 lap/shoulder seatbelts for the rear outboard seating positions of passenger cars manufactured on or after December 11, 1989. 54 Fed. Reg. 25,275, 25,278 (June 14, 1989). Although NHTSA had not yet completed its evaluation of comments pertaining to other types of vehicles, the agency decided it would be "unwise and inappropriate" to delay the safety benefits of a basic requirement for Type 2 seatbelts in rear outboard seats of passenger cars. *Id.* at 25,276 (rule issued in two steps "[t]o ensure the earliest possible implementation" of the requirement). Second, in November 1989, NHTSA finalized detailed aspects of the rule and expanded it to the rear outboard seats of all convertibles, light trucks, small buses, and multipurpose passenger vehicles manufactured on or after September 1, 1991. 54 Fed. Reg. 46,257 (Nov. 2, 1989). NHTSA emphasized that "[e]arlier compliance is also permitted and encouraged." *Id.* at 46,265.

NHTSA explained the rationale for the new rule as follows:

> Rear-seat lap/shoulder belts are estimated to be even more effective than rear-seat lap-only belts in reducing fatalities and moderate-to-severe injuries. As safety belt use in the rear seat of these vehicle

> types increases, the greater effectiveness of rear-seat lap/shoulder belts should yield progressively greater safety benefits. NHTSA also anticipates that this rule will achieve benefits by helping to increase safety belt use in rear seating positions of these vehicle types, by providing rear-seat occupants with maximum safety protection when they buckle up.

Id. at 46,257; *see also* 54 Fed. Reg. at 25,275. NHTSA estimated that "rear-seat lap-only belts only reduce the risk of death by 24-40 percent, while rear seat lap/shoulder belts reduce that risk by 32-50 percent." 54 Fed. Reg. at 46,257.

In issuing the final rule, NHTSA reiterated that the data on ELRs failed to show "that low-speed movement of child safety seats actually reduces to any extent the effectiveness of those seats in crashes." *Id.* at 46,261. Although the ELR safety concerns had "not been substantiated," the agency decided to counteract the *perception* of a safety issue by mandating an additional lockability requirement to allay public concerns and ensure that child safety seats would be tightly secured.[4] *Id.* at 46,262.

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[4]The lockability requirement mandated "that safety belts that incorporate an ELR in the lap belt or lap belt portion of a lap/shoulder belt shall provide some means other than an external device that requires manual attachment or activation that will prevent any further webbing from spooling out until that means is released or deactivated." 54 Fed. Reg. at 46,262. The agency received multiple petitions for reconsideration of the lockability requirement, which it responded to in subsequent proposals to modify the rule. 55 Fed. Reg. 30,937 (July 30, 1990); 56 Fed. Reg. 63,914 (Dec. 6, 1991). NHTSA adopted the final modified lockability rule in 1993. 58 Fed. Reg. 52,922 (Oct. 13, 1993).

When it finalized the 1989 standard, NHTSA decided against requiring Type 2 seatbelts for *center* rear seating positions. The agency explained "that there are more technical difficulties associated with any requirement for lap/shoulder belts at center rear seating positions, and that lap/shoulder benefits at center rear seating positions would yield small safety benefits and substantially greater costs, given the lower center seat occupancy rate and the more difficult engineering task." 54 Fed. Reg. at 46,258; *see also* 53 Fed. Reg. at 47,984-85.

NHTSA also decided not to mandate lap/shoulder belts for the *aisle* seating positions of passenger vans, such as the Mazda minivan at issue here. NHTSA expressed agreement with General Motors' comment "that locating the anchorage for the upper end of the shoulder belt on the aisle side of the vehicle would stretch the shoulder belt across the aisleway and cause entry and exit problems for occupants of seating positions to the rear of the aisleway seating position." 54 Fed. Reg. at 46,258. However, NHTSA further stated: "Of course, in those cases where manufacturers are able to design and install lap/shoulder belts at seating positions adjacent to aisleways without interfering with the aisleway's purpose of allowing access to more rearward seating positions, NHTSA encourages the manufacturers to do so." *Id.*

In adopting the final rules, NHTSA specifically addressed the requirements of Executive Order 12612. 54 Fed. Reg. at 46,265-66; 54 Fed. Reg. at 25,278. Issued by President Reagan in 1987, Executive Order 12612 stated that "[a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated." 52 Fed. Reg. 41,685 (Oct. 26, 1987).

Section 6(b) required agencies to prepare a Federalism Assessment whenever a proposed regulation had "sufficient federalism implications," *id.* at 41,687, which were defined to include "any substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." *Id.* NHTSA expressly concluded that the 1989 seatbelt rule did "not have sufficient federalism implications to warrant the preparation of a Federalism Assessment" pursuant to Executive Order 12612. 54 Fed. Reg. at 46,265-66; 54 Fed. Reg. at 25,278.

The 1989 amendments to Standard 208 were in effect when Mazda manufactured the Williamsons' 1993 minivan.

In December 2002, President George W. Bush signed "Anton's Law," which required NHTSA to issue a new rule mandating installation of Type 2 seatbelts in *all* rear seating positions of specified passenger vehicles. Pub. L. No. 107-318, § 5, 116 Stat. 2772 (2002), 49 U.S.C. § 30127, note. In 2004, NHTSA issued a new rule requiring Type 2 seatbelts in all rear seating positions of passenger vehicles manufactured on or after September 1, 2007. 69 Fed. Reg. 70,904 (Dec. 8, 2004). NHTSA stated that the 2004 rule was "not intended to preempt state tort civil actions" except in one narrowly defined area not relevant here. *Id.* at 70,912.

C. The *Geier* Decision

Geier v. American Honda Motor Co., 529 U.S. 861 (2000), arose from injuries sustained by the driver of a 1987 Honda. The driver filed a damages claim under state common law alleging that her vehicle was defective because the front driver's seat was not equipped with an airbag. In contrast to this case, *Geier* did not involve the

1989 version of Standard 208 governing manual seatbelts in rear seating positions. Rather, at issue in *Geier* was the portion of the 1984 version of Standard 208 governing "passive restraints" in front seating positions.[5] The question presented was whether the state common-law claims were preempted, either expressly or impliedly, by the Safety Act and Standard 208.

The Court first held that the express preemption clause of the Safety Act, 49 U.S.C. § 30103(b)(1), did *not* preclude state tort liability. Based on the savings clause, 49 U.S.C. § 30103(e), the Court adopted a "narrow reading" of the express preemption clause "that excludes common-law actions." *Geier*, 529 U.S. at 868. The Court found that the savings clause "preserves those actions that seek to establish greater safety than the minimum safety achieved by a federal regulation intended to provide a floor." *Id.* at 870. At the same time, the Court ruled that the savings clause did not foreclose "the operation of ordinary pre-emption principles insofar as those principles instruct us to read statutes as preempting state laws (including common-law rules) that 'actually conflict' with the statute or federal standards promulgated thereunder." *Id.* at 869. Accordingly, the Court found that a state common-law claim relating to vehicle safety would be preempted if it "prevent[ed] or frustrate[d] the accomplishment of a federal objective" or "ma[d]e it impossible for private

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[5] "Passive restraints" are "devices that do not depend for their effectiveness on any action by the vehicle occupant," such as "airbags and automatic seatbelts." *Geier*, 529 U.S. at 889-90 (Stevens, J., dissenting). Seatbelts that must be fastened manually are not passive restraints. *Id.* at 880 (distinguishing between "ordinary manual lap and shoulder seat belts" and "passive restraints").

parties to comply with both state and federal law." *Id.* at 873-74.

Finally, the Court considered whether Geier's state tort claim conflicted with the 1984 version of Standard 208. *Id.* at 874-87. Although the *Geier* majority agreed with the dissent's position "that a court should not find pre-emption too readily in the absence of clear evidence of a conflict," *id.* at 885, it found clear evidence that Geier's suit would stand as an obstacle to the objectives of the passive restraint regulations contained in the 1984 version of Standard 208.

Relying primarily on "DOT's own contemporaneous explanation" of "the 1984 version of FMVSS 208" as expressed in the Federal Register, *id.* at 877, the Court focused on three unique features of the 1984 passive restraint regulations. First, the 1984 regulations were intended to promote a wide "variety" of passive restraints to encourage the industry to develop "alternative, cheaper, and safer passive restraint systems." *Id.* at 878-79. Second, the 1984 regulations "deliberately sought a *gradual* phase-in of passive restraints" to give manufacturers time to develop better systems and to prevent a public backlash against airbags. *Id.* at 879. Third, the "passive restraint requirement was conditional" because "DOT believed that ordinary manual lap and shoulder belts would produce about the same amount of safety as passive restraints and at significantly lower costs—*if only auto occupants would buckle up*." *Id.* at 880 (emphasis in original). Thus, the regulation provided for rescission of the passive restraint requirements if two-thirds of the States adopted mandatory seatbelt buckle-up laws by September 1, 1989. *Id.*

The Court concluded that Geier's tort claim conflicted with these three regulatory objectives. First, Geier's claim "that, to be safe, a car must have an airbag," *id.* at 886—and that state common law therefore imposed a duty to install airbags—"presented an obstacle to the variety and mix of devices that the federal regulation sought." *Id.* at 881. Second, Geier's vehicle was manufactured during the initial phase-in period when the 1984 regulation "required only that 10% of a manufacturer's nationwide fleet be equipped with any passive restraint device at all." *Id.* Thus, Geier's claim that *all* vehicles manufactured during this period should have been equipped with airbags "would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed." *Id.* Finally, such a requirement "could have made less likely the adoption of a state mandatory buckle-up law." *Id.*

In holding Geier's claims impliedly preempted, the Court gave considerable weight to DOT's longstanding view that airbag tort claims would interfere with the objectives of the 1984 passive restraint regulations, as expressed by the Government in three amicus briefs dating back to 1990. *Id.* at 883 (citing amicus briefs for United States). The Court noted: "The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely qualified' to comprehend the likely impact of state requirements." *Id.*

From the very first sentence of the opinion, the Court repeatedly emphasized that its ruling was based solely on the *passive restraint* provisions of the *1984 version* of Standard 208. *Id.* at 864 ("This case focuses on the 1984 version" of Standard 208 regarding "passive restraints"); *id.* at 874-75 (citing 1984 DOT statements in the Federal Register "which accompanied the promulgation of FMVSS

208"); *id* at 877 (referring to "the version [of Standard 208] that is now before us"); *id.* at 877 (referring to "DOT's own contemporaneous explanation of ... the 1984 version of FMVSS 208"); *id.* at 879 (referring to "[t]he 1984 FMVSS 208 standard" on "passive restraints"); *id.* at 881 (summarizing the purpose of "the 1984 version of FMVSS 208"); *id.* at 886 (referring to "the contemporaneous 1984 DOT explanation" of its passive restraints regulation). The Court explicitly limited its holding to "'no airbag' lawsuits." *Id.* at 866.

Justice Stevens dissented, joined by Justices Souter, Thomas, and Ginsburg. The four dissenting Justices agreed with the majority that the express preemption clause does not apply to common-law tort claims. *Id.* at 896-99 (Stevens, J., dissenting). However, they disagreed with the majority's holding that Geier's tort claim was impliedly preempted because it interfered with the objectives of the 1984 passive restraint regulations. *Id.* at 899-913 (Stevens, J., dissenting); *see also Wyeth v. Levine*, 129 S. Ct. 1187, 1214 (2009) (Thomas, J., concurring) (expressing view that *Geier* "conflicted with the plain statutory text of the saving clause within the Safety Act, which expressly preserved state common-law actions").

D. Factual Background and Proceedings Below

On August 14, 2002, Delbert Williamson and his wife, Thanh Williamson, were traveling with their daughter Alexa in their 1993 Mazda MPV Minivan. Mr. Williamson was driving, Mrs. Williamson was seated in the right-hand aisle seat of the middle row, and Alexa was seated immediately to her left. Mr. Williamson and Alexa were both wearing Type 2 lap/shoulder seatbelts installed in their seating positions. Mrs. Williamson was wearing the

Type 1 lap-only seatbelt installed in the aisle seat of the minivan.[6] JA 32-33, 44-45, 68-69, 72-73, 206, 209-10.

A motor home towing a Jeep Wrangler was traveling in the opposite direction. Suddenly, the Jeep Wrangler became detached from the motor home, crossed into oncoming traffic, and struck the Williamsons' van. Mrs. Williamson was killed when the forces of the collision caused her body to jackknife around her Type 1 lap-only seatbelt, resulting in severe abdominal injuries and internal bleeding. JA 32-34, 44-45, 72-73, 206, 209-10. Mrs. Williamson's injuries were consistent with "something physicians call seat belt syndrome, when a passenger restrained by only a lap belt jackknifes over at the waist due to the force of the collision." *Karlsson v. Ford Motor Co.*, 45 Cal. Rptr. 3d 265, 269 (Cal. Ct. App. 2006) (affirming product liability verdict against Ford for failure to install Type 2 seatbelt in rear center seating position of 1986 minivan). Mr. Williamson and Alexa suffered non-fatal injuries. JA 44, 72, 206, 210.

Mrs. Williamson's survivors and her estate (the petitioners here) filed suit in California state court, asserting state tort claims including strict products liability and negligence. In addition to other claims not before this Court, they alleged that Mazda should have equipped Mrs. Williamson's seat with a Type 2 lap/shoulder belt to restrain the passenger's upper torso in a frontal collision. JA 33-36, 44-49, 72-80, 209-23.

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[6]The complaints did not specifically allege that Mrs. Williamson was seated in the aisle seat. However, Mazda has expressly conceded that she was. JA 176; Supp. Br. for Respondents at 6-8 & n.3 (filed May 4, 2010).

Petitioners' theory of liability is that when the Williamsons' minivan was manufactured in 1993, there were technologically feasible and cost-effective methods of installing Type 2 seatbelts in aisle seats without obstructing the aisle. Because the Type 1 seatbelt exposed passengers to a known risk of serious injury or death and did not perform as safely as an ordinary consumer would have expected at the time, Mazda had a common-law duty to install a Type 2 seatbelt in the aisle seating position. *See, e.g.*, Judicial Council of Cal. Civ. Jury Instructions, No. 1203 (strict liability for design defect under "consumer expectation" test), No. 1204 (strict liability for design defect under "risk-benefit" test), No. 1221 (negligence liability for failure to exercise reasonable care in designing product to avoid exposing others to foreseeable risk of harm).

In a motion for judgment on the pleadings and a subsequent demurrer, Mazda asserted that the Williamsons' state-law claims were preempted by Standard 208 because they conflicted "with the choice that federal law gave to manufacturers to choose which type of safety belt they would install in those center seats." JA 107. According to Mazda, *Geier* broadly "held that FMVSS 208 preempts state-law claims based on an exercise of options granted by FMVSS 208." JA 108; *see also* JA 113-20, 170-72, 177, 281-83, 340.

The trial court ultimately sustained Mazda's demurrer without leave to amend as to all of petitioners' claims arising out of Mrs. Williamson's death. JA 375. After Mr. Williamson and Alexa stipulated to the dismissal of their own personal injury claims and entry of a final judgment, JA 377-83, petitioners appealed the judgment to the California Court of Appeal. On appeal, Mazda again argued that "when a safety standard grants a choice

between two specified equipment options, neither of which is described as a 'minimum,' a state court suit eliminating that choice creates a direct conflict." Respondents' Br. in Cal. Ct. App. at 22 (filed Apr. 3, 2008). Mazda stated that "'*Geier* confirms ... that a state lawsuit that forecloses an option left open by FMVSS 208 is in fact preempted.'" *Id.* at 23 (quoting *Hurley v. Motor Coach Indus., Inc.*, 222 F.3d 377, 382 (7th Cir. 2000)). Mazda also claimed that the lawsuit would interfere with other federal objectives, including NHTSA's asserted "policy promoting compatibility with child restraint systems." *Id.* at 37.

The California Court of Appeal affirmed the judgment and found the Williamsons' lawsuit to be preempted under *Geier* "because it conflicts with FMVSS 208." Pet. App. 2. The court followed a line of federal and state appellate cases broadly construing *Geier* as holding "that when a Federal Motor Vehicle Safety Standard leaves a manufacturer with a choice of safety device options, a state suit that depends on foreclosing one or more of those options is preempted." *Hurley*, 222 F.3d at 383; *accord Carden v. Gen. Motors Corp.*, 509 F.3d 227, 230-31 (5th Cir. 2007); *Griffith v. Gen. Motors Corp.*, 303 F.3d 1276, 1282 (11th Cir. 2002); *Heinricher v. Volvo Car Corp.*, 809 N.E.2d 1094, 1098 (Mass. App. Ct. 2004). The court concluded: "[T]hese cases have almost uniformly found FMVSS 208 preempts common law actions alleging a manufacturer chose the wrong seatbelt option and we find their analysis to be persuasive." Pet. App. 24.

> In effect, [plaintiffs] seek to hold defendants liable for choosing the lap-only seatbelt option for a rear inboard seat position. If successful, plaintiffs' claim would bar motor vehicle manufacturers from employing one of the passenger restraint options authorized by FMVSS 208 because it would

> effectively require them to install lap/shoulder seatbelts at inboard seating positions to avoid liability under California law. Such a result would 'stand as an obstacle to the implementation of the comprehensive safety scheme promulgated in [FMVSS] 208' [citation] and is therefore preempted.[7]

Pet. App. 23, 29. Quoting excerpts from this same line of authorities, the California Court of Appeal also identified several other asserted reasons why NHTSA's 1989 decision not to mandate Type 2 seatbelts for rear inboard seating positions preempted petitioners' common law claims, such as a supposed issue involving child safety and NHTSA's supposed interest in promoting a mix of seatbelt types. Pet. App. 17-18.

Petitioners filed a petition for review in the California Supreme Court solely on the federal preemption issue, which was denied on February 11, 2009.

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[7] In its original opinion, the court referred to Mrs. Williamson's seat as a "center" seat. After petitioners filed a petition for rehearing to reiterate that it was an aisle seat, the court modified its opinion to substitute the word "inboard" for "center" in all of the references to Mrs. Williamson's seating position. Pet. App. 28-29. The version of the final opinion contained in the Petition Appendix mistakenly includes the original unmodified language of one sentence beginning "In effect." *See* Pet. App. 23, 29. This sentence is quoted in its final modified form in the text accompanying this footnote.

SUMMARY OF ARGUMENT

1. When it enacted the Safety Act in 1966, Congress made a deliberate decision to allow state common law to operate concurrently with federal minimum safety standards to achieve the preeminent goal of vehicle safety. The case for implied conflict preemption is particularly weak where Congress has expressly stated its intent to allow state tort law to complement federal regulations. To overcome the strong presumption against preemption, there must be clear evidence of an irreconcilable conflict between petitioners' common-law claims and NHTSA's regulation. Here, there is no such evidence of any conflict between the relevant 1989 version of Standard 208 and the common-law theory asserted by the Williamsons.

2. The California Court of Appeal and several other lower courts have misconstrued *Geier* as holding that whenever a FMVSS offers a choice of options for complying with the minimum regulatory standard, a common-law claim challenging a manufacturer's choice is preempted. This reading is not supported by the Court's opinion and runs counter to NHTSA's longstanding position as expressed in amicus briefs dating back to 1990—the very same amicus briefs on which this Court relied in *Geier*. The lower courts' broad theory of implied preemption should be repudiated because it would effectively convert the federal safety floor into a liability ceiling and defeat the scheme of cooperative federalism embodied in the Safety Act.

This Court's finding of implied obstacle preemption in *Geier* was based on the unique regulatory history and specific policy objectives of the parts of the *1984* version of Standard 208 governing *passive* restraints in *front* seating positions. By contrast, this case involves the parts of the

1989 version of Standard 208 governing *manual seatbelts* in *rear* seating positions. The agency's 1984 objectives with respect to passive restraints have no relevance to the 1989 rule governing Type 2 seatbelts in rear seating positions. Petitioners' claim that Mazda should have installed a Type 2 seatbelt in the aisle seating position of a passenger van manufactured in 1993 is fully consistent with NHTSA's objectives as expressed in both the 1989 version of Standard 208 and its regulatory history.

When NHTSA enacted the 1989 rule, the agency explicitly encouraged manufacturers to find ways to design and install Type 2 seatbelts in the aisle seating positions of passenger vans without anchoring the shoulder belt to the side of the vehicle and obstructing the aisle. By 1993, there were technologically feasible ways of doing so. Petitioners' common-law claim supports and promotes NHTSA's policy of encouraging Type 2 seatbelts in the aisle seating positions of passenger vans.

NHTSA expressly concluded that the 1989 seatbelt rule did not have sufficient federalism implications to warrant preparing a Federalism Assessment pursuant to Executive Order 12612. This finding and the agency's contemporaneous interpretation of Executive Order 12612 support its current position that the 1989 seatbelt rule was not meant to preempt higher common-law standards.

As NHTSA has confirmed in its amicus brief at the petition stage, petitioners' tort claim would not frustrate any federal objective manifest in the 1989 seatbelt standard or its regulatory history. The Court should accord special weight to the agency's position that petitioners' lawsuit does not interfere with its own policy objectives.

3. The other factors cited by the California Court of Appeal do not support a finding of implied obstacle preemption. The issue of child safety had nothing to do with NHTSA's 1989 decision not to mandate Type 2 seatbelts for center and aisle seating positions; *Geier* was not based on the "comprehensiveness" of Standard 208; NHTSA did not believe that promoting a mix of seatbelt types would increase rear seatbelt use; and petitioners' common-law theory would not pose an obstacle to any technological innovation that NHTSA was encouraging.

ARGUMENT

I. TO OVERCOME THE PRESUMPTION AGAINST PREEMPTION, THERE MUST BE CLEAR EVIDENCE THAT PETITIONERS' COMMON-LAW CLAIMS WOULD INTERFERE WITH THE OBJECTIVES OF STANDARD 208.

This case is governed by the strong presumption against preemption that this Court has repeatedly applied in cases involving the States' historic role in protecting the health and safety of their citizens and providing an avenue for tort victims to seek compensation for injuries. *See, e.g.*, *Wyeth*, 129 S. Ct. at 1194-95; *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). To avoid federal encroachment on powers Congress intended to reserve to the States, the Court begins with the assumption that federal law does not supersede state law "'unless that was the clear and manifest purpose of Congress.'" *Lohr*, 518 U.S. at 485 (quoting *Rice v. Sante Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)); *see also Sprietsma v. Mercury Marine*, 537 U.S. 51, 69 (2002) (finding Congress expressed no "clear and manifest" intent to preempt state common-law claim relating to boat safety). "We rely on the presumption because respect for the States as 'independent sovereigns

in our federal system' leads us to assume that 'Congress does not cavalierly pre-empt state-law causes of action.'" *Wyeth*, 129 S. Ct. at 1195 n.3 (quoting *Lohr*, 518 U.S. at 485). As this Court confirmed in *Wyeth*, this presumption applies to claims of implied conflict preemption. *Id.* (citing *California v. ARC Am. Corp.*, 490 U.S. 93, 101-02 (1989); *Hillsborough Cty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 716 (1985)).

Thus, here, Mazda must establish the existence of a conflict between federal and state law "strong enough to overcome the presumption that state and local regulation of health and safety matters can constitutionally coexist with federal regulation." *Hillsborough Cty.*, 471 U.S. at 716. "Ordinarily, state causes of action are not pre-empted solely because they impose liability over and above that authorized by federal law." *ARC Am. Corp.*, 490 U.S. at 105. As Justice Kennedy has emphasized: "Our decisions establish that a high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of a federal Act." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring). "Any conflict must be 'irreconcilable.... The existence of a hypothetical or potential conflict is insufficient ....'" *Id.* (quoting *Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982)). "The Court has observed repeatedly that pre-emption is ordinarily not to be implied absent an 'actual conflict'.... The 'teaching of this Court's decisions ... enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists.'" *English v. Gen. Elec. Co.*, 496 U.S. 72, 90 (1990) (quoting *Huron Portland Cement Co. v. City of Detroit*, 362 U.S. 440, 446 (1960)).

"The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has

nonetheless decided to 'stand by both concepts and to tolerate whatever tension there [is] between them.'" *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166-67 (1989) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984)); *accord Wyeth*, 129 S. Ct. at 1200. A prime example is when Congress enacts a statute that authorizes a federal agency to establish "minimum" safety standards, but also includes a savings clause to preserve the ordinary operation of state common law. *See, e.g.*, *Sprietsma*, 537 U.S. at 57-59 (discussing Federal Boat Safety Act).[8]

The Motor Vehicle Safety Act fits this profile exactly. By including the savings clause, 49 U.S.C. § 30103(e), and by defining the federal motor vehicle safety standards as only "minimum" standards, 49 U.S.C. § 30102(a)(9), Congress manifested a deliberate decision to allow state common law to operate concurrently with the federal regulatory standards to achieve the preeminent goal of vehicle safety. "Congress sought to meet its goal of minimizing the number of deaths and injuries caused by auto accidents by setting forth minimum standards *and leaving common law liability in place*." *Perry v. Mercedes Benz*

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[8]Even when Congress preempts state regulation, it is "perfectly rational for Congress not to preempt common-law claims, which—unlike most administrative and legislative regulations—necessarily perform an important remedial role in compensating accident victims." *Sprietsma*, 537 U.S. at 64; *see also Silkwood*, 464 U.S. at 257-58 (holding state tort suit for plutonium contamination at nuclear facility did not frustrate objectives of Atomic Energy Act because Congress intended "to vest the NRC with exclusive regulatory authority over the safety aspects of nuclear development while at the same time allowing plaintiffs like Silkwood to recover for injuries caused by nuclear hazards").

of N. Am., Inc., 957 F.2d 1257, 1265-66 (5th Cir. 1992) (emphasis added). Thus, when NHTSA issues safety standards, it does so under the authority of a statute that expressly preserves state common-law claims imposing higher standards than the federal safety floor. *See* 49 U.S.C. § 30103(e). Where, as here, there is no "clear evidence of a conflict," *Geier*, 529 U.S. at 885, a finding of implied preemption would undermine the scheme of cooperative federalism embodied in the Safety Act and run counter to the preemption principles repeatedly stated by this Court.

II. PETITIONERS' COMMON-LAW CLAIMS DO NOT CONFLICT WITH THE 1989 VERSION OF STANDARD 208 ADDRESSING SEATBELTS IN REAR SEATING POSITIONS.

Geier expressly held that the Safety Act's savings clause *preserves* common-law actions seeking to establish greater vehicle safety than a regulatory standard setting a safety floor. *Geier*, 529 U.S. at 868-70. Contrary to the holdings of some lower courts, *Geier* did *not* hold that mere compliance with an option permitted by one of NHTSA's minimum safety standards is sufficient to preempt state common law.

Unlike the airbag claim in *Geier*, petitioners' seatbelt claims would not stand as an obstacle to any federal policy objective manifested by NHTSA in the applicable *1989* version of Standard 208 or its regulatory history. To the contrary, this lawsuit is fully consistent with NHTSA's goal of encouraging manufacturers to install Type 2 seatbelts in the aisle seating positions of passenger vans. None of the 1984 federal policy objectives on passive restraints at issue in *Geier* has any relevance to the 1989 seatbelt rule at issue here. Thus, there is no conflict

between petitioners' common-law claims and the 1989 version of Standard 208 applicable to this case.

A. A Manufacturer's Compliance With One of the Regulatory Options Permitted by a Federal Motor Vehicle Safety Standard Is Not Sufficient to Preempt State Common Law.

1. In finding that petitioners' tort claims were preempted, the California Court of Appeal followed a line of cases that has broadly construed *Geier* as holding that whenever a federal motor vehicle safety standard offers a choice of equipment options, a state common-law claim against a manufacturer for installing one of those options as opposed to another is preempted. *See supra* pp. 19-20. However, nothing in the *Geier* opinion supports such a broad theory of implied obstacle preemption. If the mere existence of regulatory options were sufficient to preempt state common law, it would have been a simple matter for the Court to say so. Instead, the Court conducted a detailed analysis of the agency's specific policy reasons for adopting the 1984 passive restraints regulation. The Court found that the plaintiff's airbag claim was preempted because it posed an obstacle to the agency's policy objectives as expressed in the 1984 regulatory history, *not* because of the mere fact that the manufacturer had complied with one of the restraint options permitted by Standard 208. *Geier*, 529 U.S. at 877-88.

Geier neither holds nor suggests that mere compliance with one of several options permitted by a safety standard exempts a manufacturer from common-law liability for choosing an option that is less safe than another. Such a result would defeat the statutory scheme enacted by Congress. Even when a motor vehicle safety standard provides options for compliance, it is still by definition only

a "minimum standard," 49 U.S.C. § 30102(a)(9), as NHTSA confirmed when it first promulgated Standard 208 and gave manufacturers the option of installing either Type 1 or Type 2 seatbelts in rear seating positions. 32 Fed. Reg. at 2,408 (stating that "all standards" are only "minimum standard[s]"). These minimum standards "specify a floor, not a ceiling, for performance. They are intended to allow manufacturers flexibility in the selection of means of compliance." 63 Fed. Reg. 3,654, 3,656 (Jan. 26, 1998) (explaining why new safety standards on rear impact guards did not preempt state tort law).

Taken to its logical conclusion, the theory that a manufacturer's compliance with an option permitted by a FMVSS precludes state-law liability would swallow the general rule that a FMVSS is a minimum standard that does not foreclose state-law liability. By definition, *all* minimum standards give a manufacturer an option either to satisfy the minimum or exceed it. Opting among multiple choices given by a regulation is no more or less deserving of protection from liability than opting for the bare minimum rather than exceeding it.[9]

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[9]In addition to Standard 208, numerous other safety standards promulgated by NHTSA give vehicle manufacturers several options for compliance. *See*, *e.g.*, 49 C.F.R. § 571.105 at S5.1.3; *id.* § 571.202 at S4.1; *id.* § 571.121 at S5.6(a)(1); *id.* § 571.105 at S5.1.3; *id.* § 571.108 at S6.4.3; *id.* § 571.401 at S4.1; *id.* § 571.201 at S6.1; *id.* § 571.214 at S6; *id.* § 571.217 at S5.2.3.1. In fact, there are so many different safety standards providing options for compliance that NHTSA has addressed the issue in a general provision entitled "Explanation of usage." 49 C.F.R. § 571.4 (explaining that the phrase "at the option of the manufacturer" as used in the safety standards "clearly indicates that the selection of items is at the manufacturer's option"). The agency has never suggested that a safety standard providing different options for compliance has any

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If federal law preempted any state tort suit based on a manufacturer's exercise of an option permitted by a minimum safety standard, it would effectively convert the federal safety floor created by Congress into a national liability ceiling. That result cannot be what Congress had in mind when it defined the motor vehicle safety standards as "minimum standard[s]," 49 U.S.C. § 30102(a)(9), and dictated that "[c]ompliance with a motor vehicle safety standard ... does not exempt a person from liability at common law." *Id.* § 30103(e). "[A]s *Geier*'s interpretation of the savings clause makes clear, a uniform *minimum* safety standard is not normally intended to preempt more stringent common law requirements." *Harris v. Great Dane Trailers, Inc.*, 234 F.3d 398, 402 (8th Cir. 2000) (emphasis in original) (holding common-law claim for absence of reflective tape on rear of trailer was not impliedly preempted even though manufacturer had complied with FMVSS 108 on reflective devices); *see also O'Hara v. Gen. Motors Corp.*, 508 F.3d 753, 762-63 (5th Cir. 2007) (holding NHTSA's decision to give manufacturers option between laminated or tempered glass for side windows in FMVSS 205 did not preempt tort claim for failure to install laminated glass).

2. When it decided *Geier*, this Court was well aware of the broad theory of implied preemption endorsed by some lower courts. Before *Geier*, several circuits had already adopted this theory. *See Geier*, 529 U.S. at 866 (citing *Taylor v. Gen. Motors Corp.*, 875 F.2d 816, 827 (11th Cir. 1989) (holding that state common law cannot impose liability for vehicle manufacturer's choice of any option permitted by FMVSS 208); *Pokorny v. Ford Motor Co.*,

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[9](...continued)
greater preemptive effect than any of its other safety standards.

902 F.2d 1116, 1124-25 (3d Cir. 1990) (following *Taylor*)). Yet *Geier* adopted a much narrower theory of implied conflict preemption consistent with DOT's longstanding position on the issue as expressed in amicus briefs dating back to 1990. *Id.* at 883. In each of those amicus briefs, DOT explained why a "no airbag" lawsuit would conflict with its specific policy objectives in promulgating the 1984 version of Standard 208 governing passive restraints. *Id.* (quoting amicus briefs for United States in *Geier*, 529 U.S. 861 (No. 98-1911), *Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995) (No. 94-286), and *Wood v. Gen. Motors Corp.*, 494 U.S. 1065 (1990) (No. 89-46)). Because DOT had explained its position "consistently over time," this Court concluded that "the agency's own views should make a difference." *Id.*

In those very same amicus briefs, however, DOT consistently *rejected* the broad theory of implied preemption set forth in cases such as *Taylor* and *Pokorny*. For example, in a 1990 brief, the agency stated:

> Respondent argues that FMVSS 208 preempts state tort claims because that standard has always allowed manufacturers to use various types of occupant restraints. [Citations.] We disagree with this reasoning.... That state tort law may compel an auto maker as a practical matter to choose one of the options authorized by federal law also does not necessarily establish an actual conflict between federal and state law.... If any design 'permitted' in this sense could not be the subject of a common law design defect claim, manufacturers would obtain by implication what Congress expressly denied them in [the savings clause]: immunity from common law liability by complying with minimum safety standards.

Br. for United States as Amicus Curiae at 15, *Wood*, No. 89-46.

Again, in *Freightliner Corp.*, the government stated:

> Although the majority of courts to have considered the question have concluded that 'no-airbag' suits are preempted, they have done so on a broader theory of implied preemption with which the United States does not agree, i.e., that the existence of 'options' to comply with Standard 208 in itself precludes state-court judgments based on the failure to install one particular option.

Br. for United States as Amicus Curiae Supporting Respondents at 28 n.16, *Freightliner Corp*, No. 94-286 (citing cases including *Taylor* and *Pokorny*).

And in *Geier* itself, the United States argued:

> [S]tate tort law does not conflict with a federal 'minimum standard' ... merely because state law imposes a more stringent requirement.... We therefore agree with petitioners that their claims are not preempted merely because the Secretary made airbags one of several design options that manufacturers could choose.

Br. for United States as Amicus Curiae Supporting Affirmance at 21 & n.18, *Geier*, No. 98-1911.

Likewise, in this case, the agency has reaffirmed its longstanding position. In its amicus brief at the petition stage, the government expressed its views as follows:

> The reasoning of the decision below conflicts with the consistent position of the United States, expressed in three amicus briefs filed in this Court beginning in 1990. Those briefs maintained that a

> FMVSS permitting a manufacturer to choose among different options consistent with a minimum standard does not alone preempt state common-law tort claims seeking to impose liability for selecting one option instead of another.

Br. for United States at 16 (filed Apr. 23, 2010). "[W]ithout more (such as the emphasis on diversity of solutions discussed in *Geier*), the States are not foreclosed from concluding, through a duty of care applied in common-law tort actions, that one option is superior to the others." *Id.* at 19.

The significance of NHTSA's statements on this issue is not that the agency has any special expertise on the legal question of how to approach preemption. *See Wyeth*, 129 S. Ct. at 1201. Rather, NHTSA's statements are important because they demonstrate that, in the usual case, the agency does not perceive any conflict between the policy objectives it seeks to achieve by providing options for compliance with a FMVSS and state common-law claims challenging a choice of one of those options. "The agency is likely to have a thorough understanding of its own regulation and its objectives and is 'uniquely qualified' to comprehend the likely impact of state requirements." *Geier*, 529 U.S. at 883; *see also Lohr*, 518 U.S. at 496 (giving "substantial weight" to FDA's views on preemptive effect of statute it was responsible for implementing and stating that "the agency is uniquely qualified to determine whether a particular form of state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'"). Accordingly, here, as in *Geier*, DOT's consistently stated views as to the impact of state law on its own policies are entitled to "special weight." *Geier*, 529 U.S. at 886.

Where the responsible federal agency has never suggested that state law would interfere with its own objectives, this Court has emphasized that it is "reluctant" to find any threat to federal goals. *Hillsborough Cty.*, 471 U.S. at 721; *accord Geier*, 529 U.S. at 884. Where the agency has expressly disavowed any conflict between state law and its own policy objectives, or has disavowed the federal policy asserted by the party claiming preemption, the Court should be even more wary of finding an implied conflict. *See, e.g.*, *Altria Group, Inc. v. Good*, 129 S. Ct. 538, 549 (2008) (noting that the Government "disavows" the policy asserted to have a preemptive effect); *Sprietsma*, 537 U.S. at 68 (relying on the fact that "the Solicitor General, joined by counsel for the Coast Guard, has informed us that the agency does not view the 1990 refusal to regulate or any subsequent regulatory actions by the Coast Guard as having any pre-emptive effect"). The Court's approach is a reflection of our system of separation of powers. Because courts have no authority to make law, they cannot imply preemption based on their own suppositions about federal policy objectives not clearly articulated in the applicable rule and its regulatory history. *See Wyeth*, 129 S. Ct. at 1205-08, 1214-16 (Thomas, J., concurring) (criticizing theories of obstacle preemption based on congressional and agency "musings" not contained within the text of federal law).

3. The view that compliance with a federal safety standard is not sufficient, in the usual case, to trigger preemption of state common law is also consistent with this Court's discussion of *Geier* in *Wyeth*. The issue in *Wyeth* was whether the FDA's approval of a drug and its label preempted a state common-law claim alleging that the manufacturer should have warned against a particular method of administering the drug. The three dissenting

Justices viewed *Geier* as controlling and described it as follows: "Because the Secretary [of Transportation] determined that a menu of alternative technologies was 'safe,' the doctrine of conflict pre-emption barred Geier's efforts to deem some of those federally approved alternatives 'unsafe' under state tort law." *Id.* at 1221 (Alito, J., dissenting). The dissent argued that the plaintiff in *Wyeth* was similarly attempting to deem a federally approved method of administering the drug as unsafe under state tort law. *Id.* However, the majority rejected this reading of *Geier* and described the holding in more narrow terms based on the interference with the agency's "plan to phase in a mix of passive restraint devices," the "DOT's contemporaneous record," and "the agency's explanation of how state law interfered with its regulation." *Id.* at 1203. Thus, *Wyeth* rejected the notion that a state common-law claim is preempted whenever it challenges a manufacturer's choice of an option permitted by a federal regulation. If anything, the case for preemption is even weaker in this case, because the federal statute in *Wyeth* did *not* define the FDA's actions as "minimum" standards and did *not* contain a savings clause. *See id.* at 1221-22 (Alito, J., dissenting).

It would be extraordinary for this Court to hold that simply by offering manufacturers different options for compliance with a minimum safety standard, NHTSA has unwittingly set a liability ceiling rather than a safety floor. Such a result would deprive the agency of the ability to set flexible minimum standards without preempting common law. Because the agency itself has never viewed its own options as having such a preemptive effect, and the agency's longstanding position on the issue is consistent with the intent of Congress as expressed in the Safety Act,

the Court should emphatically reject this broad theory of implied obstacle preemption.

B. The Passive Restraint Policies at Issue in *Geier* Have No Relevance to the Manual Seatbelt Claim at Issue Here.

In *Geier*, this Court based its finding of implied obstacle preemption on a detailed analysis of the regulatory history of the *1984* version of Standard 208 governing *passive* restraints in front seating positions.[10] Based on its independent examination of the 1984 rule and its regulatory history, and the consistently stated views of DOT as expressed in a series of amicus briefs dating back to 1990, the Court concluded that Geier's "all airbag" claim frustrated the agency's goal of achieving a *gradual* phase-in of a *variety* of different types of passive restraint devices adopted to prevent a public backlash against airbags and encourage the industry to develop alternative passive restraint systems. *Geier*, 529 U.S. at 877-86; *see also Wyeth*, 129 S. Ct. at 1203 (explaining that Geier's "all airbag" claim posed an obstacle to the agency's call "for a gradual phase-in of a mix of passive restraints in order to spur technological development and win consumer acceptance" as expressed in "the rule itself and the DOT's contemporaneous record, which revealed the factors the agency had weighed and the balance it had struck").

The agency objectives identified by the Court in *Geier* have no relevance to the seatbelt claim at issue here. Unlike *Geier*, this case does not involve the parts of the

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[10]The passive restraints regulation at issue in *Geier* did not apply to rear seating positions. 49 Fed. Reg. 28,962, 28,963 (July 17, 1984) ("Rear seats are not covered by the requirements for automatic protection.").

1984 version of Standard 208 governing passive restraints in front seating positions. Rather, it involves the parts of the 1989 version of Standard 208 governing manual seatbelts in rear seating positions. In contrast to the 1984 rulemaking on passive restraints, NHTSA's 1989 rulemaking on Type 2 seatbelts does *not* reveal the existence of any preemptive federal policy of the type at issue in *Geier*.

First, unlike the 1984 passive restraint regulations, the 1989 seatbelt regulations were *not* intended to encourage a variety or mix of different seatbelt types. On the contrary, the 1989 regulations were based on NHTSA's explicit recognition that Type 2 lap/shoulder belts are "more effective than rear-seat lap-only belts in reducing fatalities and moderate-to-severe injuries." 54 Fed. Reg. at 25,275; *accord* Br. for United States at 14 (filed Apr. 23, 2010) ("NHTSA was *not* seeking to promote safety by encouraging variety in seatbelt design or fostering a mix of Type 1 and Type 2 seatbelts.") (emphasis added). The agency neither suggested that vehicle occupants would be safer with a mix of Type 1 and Type 2 seatbelts, nor articulated any policy promoting a mix of manual seatbelt types.

In finding to the contrary, the California Court of Appeal quoted the following language from the Eleventh Circuit's opinion in *Griffith*: "'DOT intended and expected FMVSS 208 to produce a mix of restraint devices, *both passive and manual*, in cars and trucks.'" Pet. App. 18 (emphasis added) (quoting *Griffith*, 303 F.3d at 1281). However, neither the Eleventh Circuit nor the California Court of Appeal cited anything in the 1987-1989 regulatory history that supports this assertion. The California court only cited to *Griffith*, and *Griffith* only cited to *Geier*. *See Griffith*, 303 F.3d at 1281 (citing *Geier*, 529 U.S. at 879).

However, the cited page of *Geier* merely found that the 1984 regulations were intended to produce a mix of "airbags and other *nonseatbelt* passive restraint systems." *Geier*, 529 U.S. at 879 (emphasis added). *Geier* never suggested that the agency intended to achieve a mix of different *manual seatbelt* types in rear seating positions.

Second, NHTSA in 1989 emphasized its desire to implement the new seatbelt rule swiftly and did not identify any policy reason for gradually phasing it in over time. Indeed, the agency issued the rule for passenger cars before it had worked out the final details of the rule's application to other vehicles to ensure "the earliest possible implementation" of the requirement for Type 2 seatbelts in rear outboard seats. 54 Fed. Reg. at 25,276; *see also id.* at 25,277; 54 Fed. Reg. at 46,258. The agency also treated the second step of the rulemaking as a "high priority action, to ensure that the incremental benefits are available in a timely fashion." 54 Fed. Reg. at 25,276. In contrast to NHTSA's statements in issuing the 1984 passive restraint regulations, *see Geier*, 529 U.S. at 878-79, NHTSA in 1989 did not express any fear of a public backlash against immediate imposition of the requirement for Type 2 seatbelts in rear outboard seats. In fact, the agency based its decision to require Type 2 seatbelts for these seats in large part on the increased use and public acceptance of Type 2 seatbelts. 53 Fed. Reg. at 47,983. And for rear aisle seats, the agency issued no new rule or requirement, but encouraged manufacturers to install Type 2 seatbelts. 54 Fed. Reg. at 46,258.

Third, unlike the 1984 passive restraint standard, the 1989 manual seatbelt regulations were not conditional and were not designed to be rescinded if states adopted mandatory seatbelt buckle-up laws. As noted by NHTSA, most states had already adopted buckle-up laws by 1989.

54 Fed. Reg. at 25,276. NHTSA anticipated that the new rule requiring Type 2 seatbelts would itself "encourage increased rear seat belt use, by providing rear seat occupants with maximum safety protection when they buckle up." 53 Fed. Reg. at 47,982; *accord* 54 Fed. Reg. at 46,257. The agency reasoned: "If people who are familiar with and in the habit of wearing lap/shoulder belts in the front seat find lap/shoulder belts in the rear seat, it stands to reason that they would be more likely to wear those belts when riding in the rear seat. Thus, the presence of lap/shoulder belts in the rear seat should result in an increase in rear seat belt use." 53 Fed. Reg. at 47,983-84. This prediction has since proven to be correct. *See* 69 Fed. Reg. at 70,905 (citing 1999 NHTSA study finding "that belt use was approximately seven to ten percent higher at rear outboard designated seating positions with a lap/shoulder belt than at ones with only a lap belt").

Finally, NHTSA expressly concluded that the 1989 seatbelt rule did "not have sufficient federalism implications to warrant the preparation of a Federalism Assessment" pursuant to President Reagan's Executive Order 12612. 54 Fed. Reg. at 46,265-66; 54 Fed. Reg. at 25,278. This Executive Order required NHTSA to discuss the extent of the regulation's interference with state sovereignty. 52 Fed. Reg. at 41,687-88. And NHTSA concluded that the regulation did not have any impact on state sovereignty that was worthy of discussion.[11]

NHTSA was faithfully applying Executive Order 12612 during the time period when it adopted the 1989 seatbelt regulations. As NHTSA stated in 1988: "The purpose of the Order is to limit Federal preemption of State laws,

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[11] Executive Order 12612 had not yet been issued at the time of the 1984 passive restraint regulations at issue in *Geier*.

unless preemption is necessary to address a national safety need." 53 Fed. Reg. 23,673 (June 23, 1988). In 1991, the agency confirmed that "NHTSA has taken care to minimize, to the extent consistent with safety, the preemptive effect of its regulations in accordance with the regulatory philosophy behind the Executive Order." 56 Fed. Reg. 38,100, 38,101 (Aug. 12, 1991). Thus, NHTSA's decision not to prepare a Federalism Assessment for the 1989 seatbelt rule, and its contemporaneous application of Executive Order 12612, further demonstrate that the agency itself saw no conflict between the 1989 rule and state common-law duties. *See Wyeth*, 129 S. Ct. at 1201 (relying on FDA's federalism statement that rule would "not contain policies that have federalism implications or that preempt State law"); *United States v. Massachusetts*, 493 F.3d 1, 18-19 (1st Cir. 2007) (relying on Coast Guard's federalism statements in addressing claim of implied conflict preemption).

For these reasons, the policy objectives on which *Geier* turned do not support a finding of preemption here. The agency's 1984 policies on passive restraints have no relevance to the pertinent provisions of the 1989 version of Standard 208 governing Type 2 seatbelts in rear seats.

C. Petitioners' Common-Law Claims Do Not Conflict With the Agency's 1989 Decision Not to Mandate Type 2 Seatbelts for the Aisle Seating Positions of Passenger Vans.

When NHTSA enacted the 1989 rule governing Type 2 seatbelts in rear outboard seating positions, the agency explained exactly why it had decided not to mandate Type 2 seatbelts for center and aisle seating positions. For the aisle seating positions of passenger vans, NHTSA explained that its decision was based on a concern that

anchoring the shoulder belt to the side of the vehicle would obstruct access to the more rearward (*e.g.*, third row) seats. 54 Fed. Reg. at 46,258. At the same time, NHTSA explicitly *encouraged* manufacturers to find ways to design and install Type 2 seatbelts in aisle seating positions without obstructing the aisle. *Id.*

NHTSA's reason for exempting aisle seating positions from the Type 2 seatbelt requirement does not preempt petitioners' common-law claims. First, it is difficult to imagine how petitioners' claim that Mazda *should have* installed a Type 2 seatbelt in the aisle seating position of a minivan manufactured in 1993 could present an obstacle to the agency's 1989 policy of *encouraging* manufacturers to install Type 2 seatbelts in aisle seating positions. Far from hindering the agency's goals, petitioners' tort claim advances NHTSA's policy of promoting Type 2 seatbelts for aisle seats. This is exactly the type of complementary role Congress intended state tort law to play when it defined the motor vehicle safety standards as only "minimum" standards and deliberately preserved common-law liability. *See* S. Rep. No. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2714 ("Manufacturers and parts suppliers will thus be free to compete in developing and selecting devices and structures that can meet or surpass the performance standard"); *Ketchum v. Hyundai Motor Co.*, 57 Cal. Rptr. 2d 595, 599 (Cal. Ct. App. 1996) ("Both [the Safety Act's definition of a motor vehicle safety standard] and the Senate Report reflect Congress's desire to specify only the minimum standards for motor vehicle safety, with the expectation that market factors would encourage manufacturers to develop higher safety performance," factors including "the risk of tort liability.").

Second, the agency's assessment of technological feasibility as of 1989 was obviously based on the conditions

and technology existing at that point in time. By 1993, when the Williamsons' vehicle was manufactured, the industry had four years of experience with the new rule mandating Type 2 seatbelts in rear outboard seating positions. By that time, there were technologically feasible ways of installing Type 2 seatbelts in aisle seating positions without anchoring the shoulder belt to the vehicle in a way that blocked the aisle. For example, General Motors began installing Type 2 seatbelts in aisle seating positions as early as 1991. 69 Fed. Reg. at 70,909. Nothing in the 1989 rulemaking suggests that NHTSA intended to freeze safety levels to the restraint technology existing in 1989.

The Safety Act was crafted with the goal of encouraging technological innovation to achieve greater vehicle safety. *See* S. Rep. No. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2709 (stating that Safety Act intended to "channel the creative energies and vast technology of the automobile industry into a vigorous and competitive effort to improve the safety of vehicles"); *id.* at 2712 ("[V]igorous competition in the development and marketing of safety improvements must be maintained."). By defining federal safety standards as only minimum standards, Congress confirmed that they were "not intended or likely to stifle innovation in automotive design." *Id.* at 2714. And by providing that compliance with a safety standard "does not exempt a person from liability at common law," 49 U.S.C. § 30103(e), Congress gave manufacturers a continuing incentive to develop even safer vehicles. *See* William W. Buzbee, *Asymmetrical Regulation: Risk, Preemption, and the Floor/Ceiling Distinction*, 82 N.Y.U. L. Rev. 1547, 1615 (2007) (noting "a risk that a design minimum over time will become obsolete and underprotective; indeed, car safety is one area where companies compete and states and juries might reasonably determine that an out-of-date standard

is far from the state of the art"); *see also State Farm*, 463 U.S. at 49 (noting Congress intended that DOT's implementation of the Safety Act would "not depend on current technology and could be 'technology-forcing' in the sense of inducing the development of superior safety design"). If technological constraints at a particular point in time could operate to preempt future common-law liability, vehicle manufacturers would no longer have this incentive to develop safer technologies once a standard was in place.

Third, as the California Court of Appeal itself acknowledged, the Safety Act *requires* NHTSA "to consider factors such as feasibility and cost in issuing motor vehicle safety standards." Pet. App. 21 (citing 49 U.S.C. § 30111(b)(1), (3) & (4)); *see also State Farm*, 463 U.S. at 54-55; *Public Citizen, Inc. v. Mineta*, 340 F.3d 39, 57-58 (2d Cir. 2003); *Ctr. for Auto Safety v. Peck*, 751 F.2d 1336, 1343 (D.C. Cir. 1985); S. Rep. No. 89-1301, *reprinted in* 1966 U.S.C.C.A.N. at 2714. If the agency's mandatory consideration of these factors were sufficient to exert preemptive effect, *any* decision by NHTSA to adopt a motor vehicle safety standard and reject a stricter standard would preempt state common law. This result would subvert the intent of the savings clause and obliterate the valuable role that Congress intended state tort law to play in providing compensation to accident victims and creating an incentive for manufacturers to provide a reasonable level of safety, even above the federal minimum.

Finally, in the context of another statutory scheme similar to the Safety Act, this Court has ruled that an agency's concerns about the costs and technological feasibility of a particular safety device do not constitute the type of "authoritative" message of federal policy sufficient

to preempt state common law. *Sprietsma*, 537 U.S. at 67. In *Sprietsma*, the applicable statute was the Federal Boat Safety Act of 1971, which authorizes the Coast Guard to establish minimum boat safety standards, but also includes a savings clause to preserve the operation of state common law. *Id.* at 57-59. The question in *Sprietsma* was whether the Coast Guard's decision not to mandate propeller guards impliedly preempted a state tort claim for failure to install a propeller guard. *Id.* at 64-68.

In a unanimous decision distinguishing *Geier*, this Court found that the Coast Guard's "intentional and carefully considered" decision not to mandate boat propeller guards did not preempt the plaintiff's tort claim. *Id.* at 67. The Court found that the Coast Guard's decision was based primarily on "available data" regarding the costs, technical feasibility, and relative safety benefits of mandating a universally acceptable propeller guard for all modes of boat operation. *Id.* at 61-62, 66-67. However, the Coast Guard did not make any "policy" judgment that states "should not impose some version of propeller guard regulation, and it most definitely did not reject propeller guards as unsafe." *Id.* at 67. Because the Coast Guard's reasoning did "not convey an 'authoritative' message of a federal policy against propeller guards," this Court found that the plaintiff's tort claim was not preempted. *Id.* at 67-68; *see also Freightliner Corp. v. Myirck*, 514 U.S. 280, 289 (1995) (finding tort claim for failure to install antilock braking system (ABS) on tractor-trailers was not impliedly preempted where "NHTSA has not ordered truck manufacturers to refrain from using ABS devices").

Just as the Coast Guard "did not reject propeller guards as unsafe," *Sprietsma*, 537 U.S. at 67, NHTSA has never rejected Type 2 seatbelts as unsafe for aisle seating positions. In fact, NHTSA recognized that Type 2

seatbelts are safer and more effective in all rear seats. 54 Fed. Reg. at 46,257-58; 54 Fed. Reg. at 25,275-76. Under *Sprietsma*, NHTSA's 1989 concern about the technological feasibility of installing Type 2 seatbelts in aisle seating positions did "not convey an 'authoritative' message of a federal policy" sufficient to preempt petitioners' tort claim. *Sprietsma*, 537 U.S. at 67. The agency's concern about technological feasibility as of 1989 "does not justify the displacement of state common-law remedies that compensate accident victims and their families and that serve the Act's more prominent objective, emphasized by its title, of promoting [vehicle] safety." *Id.* at 70.

In sum, petitioners' common-law claims do not conflict with the 1989 version of Standard 208. In light of NHTSA's own findings that Type 2 seatbelts offer greater occupant protection and that their availability increases rear seatbelt usage, and the agency's explicit encouragement of Type 2 seatbelts in aisle seats, petitioners' theory that a reasonable manufacturer in 1993 should have installed a Type 2 seatbelt in a rear aisle seat is consistent both with the statutory purpose "to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents," 49 U.S.C. § 30101, and with NHTSA's policy objectives as expressed in the 1987-1989 regulatory history and final rule.

III. THE OTHER FACTORS CITED BY THE CALIFORNIA COURT OF APPEAL DO NOT SUPPORT A FINDING OF IMPLIED PREEMPTION.

The California Court of Appeal also relied on a hodgepodge of additional factors to support its finding of implied obstacle preemption. Pet. App. 16-18. Some of these factors had nothing to do with the agency's 1989 decision not to mandate Type 2 seatbelts for center and aisle

seating positions, and none supports a finding of implied obstacle preemption.

A. Compatibility with Child Restraints

Mazda has argued that NHTSA's 1989 decision not to mandate Type 2 seatbelts for rear center and aisle seating positions was related to the compatibility of Type 2 seatbelts and child restraints. *See, e.g.*, JA 175-76, 344-45. The California Court of Appeal and several other lower courts have found that "'safety and consumer acceptance (with respect to child restraints)'" were factors for the 1989 rule that support a finding of implied preemption. Pet. App. at 18 (quoting *Roland v. Gen. Motors Corp.*, 881 N.E.2d 722, 727 (Ind. Ct. App. 2008)); *see also Carden*, 509 F.3d at 231 n.2.

The 1987-1989 regulatory history emphatically refutes this theory. During the rulemaking, NHTSA considered and expressly dismissed two distinct concerns relating to child restraints. First, the agency mentioned that it had denied the earlier citizen petition for Type 2 rear seatbelts because, in 1984, it believed that child restraints equipped with a tether anchorage would offer greater protection than booster seats with Type 2 seatbelts. 53 Fed. Reg. at 47,982. Even in 1984, however, the agency acknowledged a growing trend away from tether anchorages. 49 Fed. Reg. at 15,241. By 1988, the agency explained that it had decided to revisit the issue because "child restraint production had shifted away from those that were designed to have a tether anchored to the vehicle." 53 Fed. Reg. at 47,983. Thus, the issue regarding tether anchorages was moot by the time of the 1989 rule.

Second, in promulgating the 1989 standard, NHTSA discussed commenters' concerns about the compatibility of child seats with Type 2 seatbelts equipped with ELRs. *See*

supra pp. 7-8, 10. Although the agency found that these concerns were unsubstantiated, it nevertheless decided to remove any *public perception* of a safety issue by mandating an additional lockability requirement. 53 Fed. Reg. at 47,988; 54 Fed. Reg. at 46,261-62. The agency expressed confidence that this lockability requirement would "remove these perceived questions" and "ensure that child safety seats can be tightly secured." *Id.* at 46,262.

Significantly, neither the commenters nor NHTSA suggested that these concerns regarding child restraints were specific to center or aisle seating positions. To the contrary, NHTSA's reasons for rejection of these concerns applied equally to all seating positions, including the rear outboard seats for which the agency mandated Type 2 seatbelts. NHTSA mentioned nothing at all about compatibility with child seats when it explained why it was not mandating Type 2 seatbelts for center and aisle seating positions. 53 Fed. Reg. at 47,984-85; 54 Fed. Reg. at 46,258-59.

Thus, concern about compatibility with child seats had nothing to do with the agency's 1989 decision regarding center and aisle seating positions. Rather, NHTSA expressly concluded that Type 2 seatbelts would provide greater protection for children in booster seats because of the additional upper torso restraint. 53 Fed. Reg. at 47,984. The safety benefit of this additional upper torso restraint was not somehow limited to outboard seating positions. As previously noted, the agency found that Type 2 seatbelts in rear seats "would offer benefits for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and would offer older children the same incremental safety protection that would be afforded adult

rear seat occupants." *Id.* at 47,988-89. NHTSA never suggested that these safety benefits for children were inapplicable to aisle and center seating positions.

In light of this regulatory history, the conclusion that NHTSA gave manufacturers the option of installing Type 1 or Type 2 seatbelts in center and aisle seating positions because of some child safety issue is plainly wrong. Indeed, if the use of Type 2 seatbelts in center and aisle seating positions did pose a child safety issue, surely NHTSA would not have given manufacturers the option of installing Type 2 seatbelts in those seating positions and would not have encouraged manufacturers to find ways to install Type 2 seatbelts in aisle seating positions. Accordingly, petitioners' state-law tort claim would not interfere with any federal policy regarding child safety.

B. Comprehensiveness of Standard 208

The California Court of Appeal also relied on the following language from the Eleventh Circuit's opinion in *Griffith*: "'In *Geier*, the Court found that the rulemaking history of FMVSS 208 makes clear that DOT saw it not merely as a minimum standard, but as a comprehensive regulatory scheme.'" Pet. App. 18 (quoting *Griffith*, 303 F.3d at 1281). This description is not an accurate portrayal of either *Geier* or the agency's position.

Geier did *not* hold that the plaintiff's airbag claim was preempted because DOT viewed Standard 208 as a "comprehensive" regulatory scheme, rather than a minimum standard. The word "comprehensive" does not appear in the majority opinion. In fact, the Court explicitly rejected the notion that the mere volume and complexity of agency regulation can impliedly preempt state law in the absence of a specific statement of preemptive intent. *Geier*, 529 U.S. at 884 (citing *Hillsborough Cty.*, 471 U.S.

at 717). As the Court explained in *Hillsborough*: "We are even more reluctant to infer pre-emption from the comprehensiveness of regulations than from the comprehensiveness of statutes." *Hillsborough Cty.*, 471 U.S. at 717. "To infer pre-emption whenever an agency deals with a problem comprehensively is virtually tantamount to saying that whenever a federal agency decides to step into a field, its regulations will be exclusive. Such a rule, of course, would be inconsistent with the federal-state balance embodied in our Supremacy Clause jurisprudence." *Id.* Thus, whether or not the court below properly characterized Standard 208 as "comprehensive," that characterization is not sufficient to trigger preemption.

C. Use of Rear Seatbelts

The California Court of Appeal also relied on *Griffith*'s finding that the agency purportedly intended Standard 208 "'to produce a mix of restraint devices, both passive and manual'" to "'maximize the likelihood that people would actually use the passenger restraint systems installed in their cars and trucks.'" Pet. App. 18 (quoting *Griffith*, 303 F.3d at 1280-81).

As previously explained, there is no evidence that the agency intended to achieve a mix of different manual seatbelt types. Nor did the agency ever suggest that having a variety of seatbelt types would increase seatbelt use in rear seating positions. When NHTSA enacted the 1989 rule, it specifically concluded that requiring Type 2 seatbelts in rear seating positions would increase seatbelt use. In its NPRM, the agency stated: "NHTSA's decision to proceed with a proposal to require rear seat lap/shoulder belts is based on the agency's tentative conclusion that *these types of belts will increase belt use* in the rear seats." 53 Fed. Reg. at 47,987 (emphasis added).

When it adopted the final rule, the agency reiterated that Type 2 seatbelts would "*increase safety belt use* in rear seating positions of these vehicle types." 54 Fed. Reg. at 46,257 (emphasis added). In sum, NHTSA believed that installing Type 2 seatbelts would increase rear seatbelt use; it did not suggest that ensuring a mix of Type 1 and Type 2 seatbelts in rear seating positions would do so.

D. Technological Innovation

Finally, the California Court of Appeal concluded that the agency's decision was based on a policy of "'lowering costs to encourage technological developments.'" Pet. App. 18 (quoting *Roland*, 881 N.E.2d at 727). However, the only relevant technological innovation the agency encouraged through the 1989 standard was new ways to design and install Type 2 seatbelts in aisle seating positions without obstructing the aisle. 54 Fed. Reg. at 46,258. Petitioners' tort claim promotes rather than obstructs this goal. When NHTSA encourages manufacturers to overcome a technological hurdle to achieve greater vehicle safety, state tort law plays a complementary role by giving manufacturers a financial incentive to do what the agency has encouraged. Without the threat of tort liability, manufacturers would have little incentive to do anything more than comply with the federal minimum standards. *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 450 (2005) (rejecting preemption argument and stating that tort litigation "history emphasizes the importance of providing an incentive to manufacturers to use the utmost care in the business of distributing inherently dangerous items"); Buzbee, 82 N.Y.U. L. Rev. at 1588 ("Without the fear of tort liability, and absent new regulation, risk creators would have little incentive to improve their operations and reduce risk, absent a profit motive that coincided with improvement.").

In sum, none of the factors cited by the California Court of Appeal supports its finding of implied conflict preemption. And given the absence of a clear conflict between the 1989 seatbelt rule and the Williamsons' claims, this Court has "a duty to accept the reading that disfavors pre-emption." *Bates*, 544 U.S. at 449. For the Court to find an implied conflict with federal policies that the agency either has disavowed (such as the asserted policy in favor of diversity of manual seatbelt types) or has said are not obstructed by the state-law claim (such as child safety) would be unprecedented.

CONCLUSION

The decision of the California Court of Appeal should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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July 2010