

Preemption is the question of whether a state's legal rule is invalid because it conflicts with a federal statute. Environmentalists have been particularly concerned about this issue in recent years because state laws are often "greener" these days than federal ones.

The Supreme Court has an unusual number of preemption cases on its docket this year. There are five altogether, two of which have already been decided:

*Bruesewitz v. Wyeth* The Court held that design-defect claims against vaccine manufacturers are preempted by the National Childhood Vaccine Injury Act, which created a no-fault program to provide compensation for vaccine-related injuries.<sup>1</sup>

*Williamson v. Mazda Motor State*. The Court held that tort suits alleging that car manufacturers should have installed lap-and-shoulder belts are not preempted by federal auto safety standards.

*Chamber of Com. v. Whiting*. This is a challenge to an Arizona immigration law which requires that employers check the immigration status of job applicants and penalizes companies that hire undocumented aliens.

*Actavis v. Demahy*. Along with a companion case, this involves whether tort liability can be based on a failure to include warnings on the label of a generic drug.

Most observers consider preemption doctrine to be a mess. I've argued in a [recent paper](#) that the mess is inevitable because these cases aren't just about federalism. They're also about:

- Separation of powers (how much say should the executive branch have on these issues?)
- Statutory interpretation (how should Congress's intentions be divined?)
- Theories of regulation (is liability important or should policy be left to agencies?)
- Substantive views about the areas of law in question (is tort law out of control? are anti-immigration laws xenophobic or addressing real problems?).

Given the number of cross-cutting issues, it doesn't surprise me that it's hard to extract coherent general rules from the cases.