

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ALTRIA GROUP, INC., ET AL. *v.* GOOD ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 07–562. Argued October 6, 2008—Decided December 15, 2008

Respondents, smokers of petitioners’ “light” cigarettes, filed suit, alleging that petitioners violated the Maine Unfair Trade Practices Act (MUTPA) by fraudulently advertising that their “light” cigarettes delivered less tar and nicotine than regular brands. The District Court granted summary judgment for petitioners, finding the state-law claim pre-empted by the Federal Cigarette Labeling and Advertising Act (Labeling Act). The First Circuit reversed, holding that the Labeling Act neither expressly nor impliedly pre-empts respondents’ fraud claim.

Held: Neither the Labeling Act’s pre-emption provision nor the Federal Trade Commission’s actions in this field pre-empt respondents’ state-law fraud claim. Pp. 5–20.

(a) Congress may indicate pre-emptive intent through a statute’s express language or through its structure and purpose. See *Jones v. Rath Packing Co.*, 430 U. S. 519, 525. When the text of an express pre-emption clause is susceptible of more than one plausible reading, courts ordinarily “accept the reading that disfavors pre-emption.” *Bates v. Dow Agrosciences LLC*, 544 U. S. 431, 449. The Labeling Act’s stated purposes are to inform the public of the health risks of smoking while protecting commerce and the economy from the ill effects of nonuniform requirements to the extent consistent with the first goal. Although fidelity to these purposes does not demand the pre-emption of state fraud rules, the principal question here is whether that result is nevertheless required by 15 U. S. C. §1334(b), which provides that “[n]o requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.” Pp. 5–9.

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(b) Respondents’ claim is not expressly pre-empted by §1334(b). As determined in *Cipollone v. Liggett Group, Inc.*, 505 U. S. 504, and *Lorillard Tobacco Co. v. Reilly*, 533 U. S. 525, the phrase “based on smoking and health” modifies the state-law rule at issue rather than a particular application of that rule. The *Cipollone* plurality concluded that “the phrase ‘based on smoking and health’ fairly but narrowly construed” did not pre-empt the *Cipollone* plaintiffs’ common-law claim that cigarette manufacturers had fraudulently misrepresented and concealed a material fact, because the claim alleged a violation of a duty not to deceive—a duty that is not “based on” smoking and health. 505 U. S., at 528–529. Respondents here also allege a violation of the duty not to deceive as codified in the MUTPA, which, like the common-law duty in *Cipollone*, has nothing to do with smoking and health. Respondents’ claim is not analogous to the “warning neutralization” claim found to be pre-empted in *Cipollone*. *Reilly* is consistent with *Cipollone*’s analysis. This Court disagrees with petitioners’ alternative argument that the express pre-emption framework of *Cipollone* and *Reilly* should be rejected. *American Airlines, Inc. v. Wolens*, 513 U. S. 219, and *Riegel v. Medtronic, Inc.*, 552 U. S. —, are distinguished. Pp. 9–16.

(c) Various Federal Trade Commission decisions with respect to statements of tar and nicotine content do not impliedly pre-empt state deceptive practices rules like the MUTPA. Pp. 17–20.

501 F. 3d 29, affirmed and remanded.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined.