

State's Victory Against Preemption

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States' Victory Against Preemption - FDA Approval Does not Block State Tort Claims Against Drug Makers

<<http://progressivestates.org/sync/images/dispatch/DangerousDrugs.jpg>>

In a much anticipated decision, *Wyeth v. Levine* <<http://salsa.democracynaction.org/dia/track.jsp?v=2&c=Z93s2%2F3EiGsrcEKAPMKpzshWO95K5c39>> , the Supreme Court in a 6-3 decision upheld states' right to hold the drug industry accountable for not adequately warning consumers and prescribers of a drug's impact. The pharmaceutical industry had argued that Federal Drug Administration approval of a drug's warning label pre-empts state claims of injury based on the failure by a company to warn of additional dangers not covered by the FDA-approved label. The court rejected this argument. As the Constitutional Accountability Center wrote <<http://salsa.democracynaction.org/dia/track.jsp?v=2&c=yWPs2nl3BJe%2FZnOaBqzbZchWO95K5c39>> in analyzing the decision:

In a key part of its ruling, the Court applied the "presumption against preemption" that the Court has used to preserve the traditional authority of the states to protect their citizens, describing it as one of the two "cornerstones of our preemption jurisprudence."

The Bush Administration had sided with big business interests by including language preempting state laws in regulatory preambles -- or, the introduction to regulations outlining the reasoning behind the rules. These preambles, however, are not formulated through a public comment process. However, the Court rejected such regulatory endrums around laws that had no intent to preempt state law.

As Public Citizen notes <<http://salsa.democracynaction.org/dia/track.jsp?v=2&c=LEXTDhXEI%2Fdvwggy6adrachWO95K5c39>> , the FDA is "overworked and underfunded, and it depends almost entirely on drug companies for information about the safety and effectiveness of drugs," so initial approval of a drug label should not be taken as a permanent bar on those potentially injured by the drug from having legal protections. Once a drug is widely marketed, new problems often appear, so state law should hold those companies responsible for failure to warn about those new dangers as they appear.

The broader principle here is that federal law should provide a "floor, not a ceiling" on consumer rights. As Justice Thomas wrote (in a break from his conservative colleagues), state laws should not be struck down because courts somehow divine an "implied preemption" based on the supposed "intent or purpose" of federal law. State laws should only be rejected when there is a clear conflict with the text of federal law.

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Growing-Economy

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