No. 26-235

In the
Supreme Court of the United States

PHILIP MORRIS USA INC.,

Petitioner,

v.

ARMAND FONTAINE,
Individually and as Personal Representative of the Estate of Barbara Ellen Fontaine,

Respondent.

On Petition for Writ of Certiorari to the Supreme Judicial Court of Massachusetts

BRIEF FOR *AMICUS CURIAE* NATIONAL ASSOCIATION OF CONVENIENCE STORES IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

The National Association of Convenience Stores (NACS) is a non-profit trade organization representing more than 800 retail and 1,750 supplier company members. It is the preeminent representative of the interests of convenience store operators, who own more than 152,000 convenience stores nationwide. American convenience stores conduct 160 million transactions per day and have annual sales of more than $817 billion. These retailers provide consumers with convenient locations to quickly purchase a wide array of products and services, including gas, milk, juice, tobacco, soda, baked goods, and snack foods. Convenience stores also sell approximately 80% of the motor fuel sold at retail across the United States. Tobacco products, including cigarettes, account for more than 17% of convenience stores' in-store sales.

Since its founding in 1961, NACS has filed numerous amicus briefs on issues of importance to the convenience and fuel retailing industry. These briefs have been helpful to courts on an array of subject matter, including to this Court's consideration of preemption-based challenges to state tobacco advertising laws. *See Lorillard Tobacco Co. v. Reilly*,

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution toward the preparation or submission of this brief. *Amicus* gave counsel of record timely notice of its intention to file this brief under Rule 37.2.

533 U.S. 525, 575 n.2 (2001) (Thomas, J., concurring in part) (citing Brief for NACS as *Amicus Curiae*).

SUMMARY OF THE ARGUMENT

The decision below illustrates both the absurdity and dire real-world consequences of *Altria Group, Inc. v. Good*'s distortion of the Federal Cigarette Labeling and Advertising Act. 555 U.S. 70 (2008). Congress intended the Act to "establish a comprehensive Federal program" regarding "cigarette labeling and advertising" concerning "any relationship between smoking and health." 15 U.S.C. § 1331. To accomplish this, Congress followed a familiar playbook. It prescribed uniform health warnings and included an express-preemption provision prohibiting the imposition of other health-warning requirements under state law. *Id.* § 1334(b). The statutory text is therefore clear that the Labeling Act preempts any state law mandating health-related warnings beyond those required by the Act.

Nevertheless, in the decision below, the Massachusetts Supreme Judicial Court cited this Court's decision in *Altria* to affirm a jury verdict that Philip Morris committed fraud by removing a health warning from cigarette packaging that was *not* required by federal law. As Philip Morris observes, it is hard to imagine an outcome more at odds with the Labeling Act's text and purpose. Pet. 13.

Fortunately, the solution is readily apparent and simply requires returning to the statutory text. Three members of this Court have already recognized that *Altria*'s "predicate-duty test" is "atextual," "unworkable," and out of step with the Court's express-preemption doctrine. *See Altria*, 555 U.S. at 92, 104 (Thomas, J., dissenting). And this Court no longer applies a presumption against preemption "to distort the statutory text." *Id.* at 101. Indeed, this Court's recent decisions reflect that *Altria*'s approach to express preemption has been rightly abandoned. *See Monsanto Co. v. Durnell*, 146 S. Ct. 2001 (2026); *Commonwealth of Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115 (2016). There is accordingly no basis for continuing to apply *Altria*'s doctrine of narrow construction to the Labeling Act or any other express-preemption provision. Instead, under the Supremacy Clause, such "decrees of pre-emption" should be interpreted "neither narrowly nor broadly, but in accordance with their apparent meaning." *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 544 (1992) (Scalia, J., dissenting in part).

However, the failure to expressly overrule *Altria* has perpetuated confusion and uncertainty for convenience stores and other merchants. As in this case, local merchants are often included as defendants in product liability suits solely for their role in selling the product at issue and to defeat diversity jurisdiction. Such claims impose significant defense costs and threaten substantial liability. The increasing proliferation of such claims necessarily increases costs throughout the supply chain, impacting the national economy and resulting in higher consumer prices overall.[2] Congress included

[2] *See* David McKnight & Paul Hinton, Brattle Grp., U.S. Chamber Com. Inst. for Legal Reform, Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System 6–8, 10–11 (3d ed. 2024), https://tinyurl.com/vcyk9hxm.

the Labeling Act's express preemption provision to protect the market from these burdens by requiring immediate dismissal of state-law claims that, however characterized, impose additional labeling or advertising requirements related to smoking and health. Yet state and lower federal courts' inconsistent application of *Altria* continues to expose convenience stores and other merchants to claims alleging billions of dollars in damages despite compliance with the Labeling Act.

In addition to legal risks, *Altria* imposes significant business concerns. Like all merchants, convenience stores rely on the uniformity and predictability provided by federal preemption. This uniformity is particularly important to convenience stores in the context of cigarettes, where they have no meaningful ability to give different or "better" warnings than the manufacturers, and would likely expose themselves to liability under the Labeling Act if they attempt to do so. *See* 15 U.S.C. § 1333(a)(4). More broadly, even if convenience stores could realistically avoid trade libel claims and supplement federally mandated manufacturer warnings, doing so is likely to cause customer confusion, unduly suppress sales, and risk manufacturers pulling products from their shelves if they are featured next to additional "voluntary" warnings. Such burdens are precisely what the federal regulation of a national market is meant to prevent.

Ultimately, Congress crafted a uniform federal regime, protected by federal preemption, as the cure for these and other ills. But for the last three decades, an atextual and unworkable reading of the Labeling

Act has robbed it of its preemptive force, creating uncertainty and imposing billions of dollars in additional compliance and legal costs throughout the supply chain. As Philip Morris's petition explains, this case is the ideal vehicle for overruling *Altria* once and for all. Pet. 36–37. Philip Morris squarely raised a Labeling Act preemption objection throughout the state-court proceedings, and the Massachusetts Supreme Judicial Court explicitly relied on *Altria* and the presumption against preemption to reject this argument. *Id.* Thus, to end the regulation by litigation that is creating a patchwork of conflicting labeling requirements and potential liability, this Court should grant Philip Morris's petition, overrule *Altria*, and restore clarity to its express-preemption doctrine.

ARGUMENT

I. This Court Should Overrule *Altria* to Restore Clarity to Its Express-Preemption Doctrine and End Circumvention of the Labeling Act's Preemption Provision

The Labeling Act was enacted to "establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health." 15 U.S.C. § 1331. To that end, Congress provided a straightforward road to compliance. The Act prescribes standardized labeling and advertising requirements and bars states from "imped[ing]" "commerce and the national economy" by imposing "diverse, nonuniform, and confusing cigarette labeling and advertising regulations" regarding smoking and health. *Id.* This approach promises consistent, accurate messaging for consumers and regulatory certainty for the market.

The Labeling Act's express-preemption provision was Congress's chosen tool for preventing state interference with the statute's uniform regulatory scheme. It provides: "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion" of cigarettes "labeled in conformity with" the Labeling Act's requirements. 15 U.S.C. § 1334(b). Congress was also clear "no statement relating to smoking and health . . . shall be required on any cigarette package," beyond those provided by the Act. *Id.* § 1334(a).

Such express-preemption provisions are a familiar part of the regulatory landscape. Numerous "other federal statutes across a range of industries contain similar or identical labeling preemption provisions." *Durnell*, 146 S. Ct. at 2012 (collecting statutes). These provisions reflect Congress's judgment that selling products throughout the country under a single regulatory regime "can be important to maintaining an efficient nationwide market." *Id.*

Although the Labeling Act's express-preemption provision is one of many similar provisions in the federal code, this Court treats it differently. Rather than apply the usual principles of statutory construction to discern the scope of the Act's preemption provision, a plurality of this Court created regulatory confusion by giving the provision its narrowest possible reading "in light of the strong presumption against pre-emption." *Cipollone*, 505

U.S. at 523. In the 30 years since, this Court has half-heartedly tethered itself to an "atextual" and "unworkable" preemption analysis that neither it nor the lower courts have been able to consistently apply. *See Altria*, 555 U.S. at 92 (Thomas, J., dissenting).

As Philip Morris's petition explains, *Cipollone* and *Altria*'s predicate-duty test was egregiously wrong from its inception; is incompatible with the Labeling Act's text, structure, and stated purpose; and has proven to be an unworkable aberration in this Court's preemption caselaw. *See* Pet. 26–27. This Court should therefore grant Philip Morris's petition, overrule *Altria*, and restore clarity to its express-preemption doctrine.

A. *Altria*'s Predicate-Duty Test Was Born of Manifest Legal Error and Creates Regulatory Uncertainty

Although the Labeling Act explicitly prohibited the imposition of additional warning requirements under state law, this Court has applied an indefensible judicial gloss to the statute that allows litigants to do just that.

These problems emerged the first time this Court applied the Labeling Act's express-preemption provision. In *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992), this Court considered whether the Act preempts certain state-law fraud, failure-to-warn, and breach-of-warranty claims against tobacco companies. Unable to agree on outcome or methodology, the Court issued three opinions, none of which secured a majority.

Then, as now, it was understood that preemption may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose." *FMC Corp. v. Holliday*, 498 U.S. 52, 56–57 (1990) (citation omitted). If Congress includes an express preemption provision in a statute, courts operate under "the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (quoting *Holliday*, 498 U.S. at 57). In those circumstances, courts therefore apply the usual principles of statutory construction to discern the scope of the statute's preemption clause. *See Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 128–29 (1991). But if, after doing so, it remains unclear whether it was Congress's "clear and manifest purpose" for the federal statute to supersede "the historic police powers of the States," courts assume Congress did not intend to preclude the enforcement of state laws on the same subject. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

Cipollone's four-justice plurality flipped this established analysis on its head. Instead of applying the ordinary principles of statutory construction, the plurality structured its statutory analysis around the presumption against preemption. Thus, rather than give the statutory text its full effect, the plurality "narrowly construe[d] the precise language" of the express-preemption provision "in light of the strong presumption against pre-emption." *Cipollone*, 505 U.S. at 523.

Relying on this novel doctrine of "narrow construction," the plurality endorsed a claim-by-claim preemption analysis that asks "in each case . . . whether the legal duty that is the predicate of the common-law damages action constitutes a 'requirement or prohibition based on smoking and health.'" *Id.* at 518, 523–24. In doing so, the plurality did not explain why a common-law claim's "predicate legal duty" was the proper unit of analysis under the statutory text or, more basically, how to uniformly apply the standard to different common-law claims.

Justice Scalia, joined by Justice Thomas, criticized the plurality's approach as "an extraordinary and unprecedented principle of federal statutory construction" that was inconsistent with this Court's precedent. *Cipollone*, 505 U.S. at 544 (Scalia, J., dissenting in part). Recognizing that the plurality misapplied the "oft-repeated assumption that, *absent convincing evidence of statutory intent to pre-empt*, the historic police powers of the States are not to be superseded," Justice Scalia emphasized that this assumption "dissolves once there is conclusive evidence of intent to pre-empt in the express words of the statute itself." *Id.* at 545 (emphasis added) (cleaned up). So where, as in the Labeling Act, the statutory text provides such evidence, "the only remaining question is what the *scope* of that pre-emption is meant to be," based on the "ordinary principles of statutory construction." *Id.*

Had these principles been correctly applied, Justice Scalia concluded that the Act's express-preemption provision supported a simple "proximate application" methodology, which asks whether the plaintiff's state-law claim, if successful, would "impose[] an obligation" on the advertising or promotion of cigarettes "because of the effect of smoking upon health." *See id.* at 554.

Despite the evident infirmities of the *Cipollone* plurality's analysis, a narrow majority of this Court adopted its "predicate duty" test 16 years later. *See Altria Grp., Inc. v. Good*, 555 U.S. 70, 84 (2008). Justice Thomas, joined by the Chief Justice, Justice Scalia, and Justice Alito, dissented. He observed that the intervening years had only vindicated Justice Scalia's assessment that the "predicate duty" approach is atextual and inconsistent with this Court's other preemption decisions. *Id.* at 92, 97, 102–03 (Thomas, J., dissenting). Indeed, he observed that most of this Court's express-preemption decisions since *Cipollone* "refrained from invoking the presumption" against preemption. *Id.* at 99. Most notably, on the one occasion the Court revisited the Labeling Act's express-preemption provision, "the Court briefly alluded to the presumption, but did not rely on it to reach its decision." *Id.* at 100 (citing *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541–42 (2001)). Its analysis instead concentrated on the statute's text and purpose to evaluate whether the Act preempted Massachusetts law. *See Reilly*, 533 U.S. at 542–52.

The Court's more recent express-preemption decisions confirm that *Cipollone* and *Altria*'s approach to express preemption is "a remnant of abandoned doctrine." *Altria*, 555 U.S. at 103 (Thomas, J., dissenting) (quotation marks omitted). The Court has expressly disclaimed the presumption against preemption where statutes contain an express preemption clause. *See Commonwealth of Puerto Rico* *v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016). Accordingly, last term, this Court did not mention the presumption in reaching a "textual conclusion" regarding the scope of the express-preemption clause in the Federal Insecticide, Fungicide, and Rodenticide Act. *Durnell*, 146 S. Ct. at 2011; *see also id.* at 2020 (Jackson, J., dissenting) ("To analyze the reach of FIFRA's preemption provision, I begin, per usual, with the statute's text."); *cf. Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014) (holding "no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.").

However, this Court's decision to repeatedly look past—but not expressly overrule—"the decades of cases where the presumption had indeed been applied in like circumstances" has "left much room for confusion" in state and federal courts. *California Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094, 1108, 1110 (9th Cir.), *as amended* (Jan. 2, 2024) (O'Scannlain, J., concurring). Indeed, this confusion is why we are here today.

Like various other state and federal courts before it, the Massachusetts Supreme Judicial Court did not recognize in this case that *Cipollone* and *Altria*'s approach to express preemption has been abandoned. Instead, it relied on those very cases—and the presumption against preemption—to hold that Respondent's state-law "fraud and conspiracy" claims are not preempted by the Labeling Act. App.36–37.[3]

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[3] Going even further, the court below credited a clearly preempted warning neutralization theory in support of its

Thus, this case demonstrates that convenience stores and other market actors cannot be certain that express preemption provisions will be interpreted according their terms. Until *Altria* is expressly overturned, its distorted methodology will continue to muddle this Court's express-preemption precedent, creating uncertainty for courts and market participants, and imposing the very patchwork of state regulation the Labeling Act was designed to prevent.

B. *Altria*'s Predicate-Duty Test Is Incapable of Consistent Application and Enables Circumvention of the Labeling Act's Preemption Provision

Altria is not merely an outlier in this Court's express-preemption doctrine. From the start, its predicate-duty test has been unworkable. In *Cipollone*, five justices observed that the plurality's methodology was so incomprehensible that even its creators failed to apply it consistently. Justice Scalia, joined by Justice Thomas, mused that "[t]he life-span of this new rule may have been blessedly brief, inasmuch as the opinion that gives it birth in Part I proceeds to ignore it in Part V." *Cipollone*, 505 U.S. at 544 (Scalia, J., dissenting in part). And Justice Blackmun, joined by Justices Kennedy and Souter,

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holding, noting that Respondent's difficulty in quitting smoking was "compounded by exposure to cigarette advertising, which reinforces cigarette habits and enables smokers to rationalize their continued use despite widespread awareness of the health dangers of smoking." App.21 n.15; *see Cipollone*, 505 U.S. at 527 (finding plaintiff's warning-neutralization fraud claim preempted by Labeling Act).

likewise concluded that there was "no principled basis for many of the plurality's asserted distinctions among the common-law claims." (Blackmun, J., dissenting in part).

Looking ahead, Justice Blackmun rightly predicted that the "most obvious problem" with the plurality's analysis was "its frequent shift in the level of generality" at which it examined each claim. *Id.* at 543 (Blackmun, J., dissenting in part). For example, the plurality analyzed plaintiffs' failure-to-warn and warning-neutralization fraud claims at the lowest level of generality. They concluded that these claims were preempted because the failure-to-warn claims imposed a duty to "includ[e] additional, or more clearly stated, warnings" about the health risks of smoking, *id.* at 524, and the warning-neutralization fraud claim was "predicated on a state-law prohibition against statements . . . that tend to minimize the health hazards associated with smoking," *id.* at 527. By contrast, the plurality analyzed plaintiffs' fraudulent misrepresentation claims at the highest level of generality. They concluded that these claims were not preempted because state prohibitions on fraudulent statements in advertising "are predicated not on a duty 'based on smoking and health' but rather on a more general obligation—the duty not to deceive." *Id.* at 528–29.

Notably, neither the *Cipollone* plurality nor the *Altria* majority disputed that this analysis was inconsistent. Nor did they provide a coherent justification or framework for applying the predicate-duty test *differently* across common-law claims, including those based on the same conduct. Instead, they merely claimed that this lack of "theoretical elegance" effects "a fair understanding of congressional purpose." *See id.* at 529 n.27; *Altria*, 555 U.S. at 84. Thus, unlike the familiar principles of statutory construction, *Cipollone* and *Altria*'s approach provides no meaningful guidance for litigants or regulated entities.

As a result, *Altria* continues to sew uncertainty among courts and market participants. For common-law claims this Court has not considered under *Altria*, the predicate-duty test "perpetuate[s] give-it-a-try litigation before judges assigned an unwieldy and inappropriate task." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 286 (2022) (quotation marks omitted). And where, as here, the same conduct would support both state-law fraud and failure-to-warn claims, plaintiffs can easily circumvent the Labeling Act's "comprehensive Federal program," 15 U.S.C. § 1331, by attaching a "fraud" caption to their pleading, *see* Pet. 12. Thus, continued adherence to *Altria*'s predicate-duty test neither gives effect to "Congress' pre-emptive intent," *Franklin*, 579 U.S. at 125 (quotation marks omitted), nor permits market participants to rely on the predictable application of uniform legal principles, *see Payne v. Tennessee*, 501 U.S. 808, 827 (1991). By elevating form over substance, *Altria*'s predicate-duty test invites regulatory chaos.

Finally, *Cipollone* and *Altria*'s treatment of fraud claims is not just confusing but wrong. Among other issues, characterizing fraud as simply involving a "duty not to deceive" reduces the claim to an unrecognizable level of generality. Fraud requires reasonable reliance on material information—not just deception. In the context of cigarettes, the elements of reasonable reliance and materiality necessarily relate to a smoker's knowledge of the dangers of smoking *in light of the Labeling Act's mandatory warnings*. Because such fraud claims require a finding that the Labeling Act's health warnings are insufficient under state law, they are unquestionably preempted "as labeling requirements" that "set a standard for a product's labeling." *Durnell*, 146 S. Ct. at 2010 (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 446 (2005)).

Here, as Philip Morris explains, the court below likewise "operat[ed] at far too high a level of generality" by focusing its preemption analysis on a "general" standard rather than the fraud claim's "specific" application to cigarette labeling. *See* Pet. 29–30 (quoting *Durnell*, 146 S. Ct. at 2013); *see also Altria*, 555 U.S. at 95 (Thomas, J., dissenting) (citing *Cipollone*, 505 U.S. at 548, 553) (Scalia, J., dissenting in part)) ("Applying ordinary principles of statutory construction . . . [o]nce one is forced to select a *consistent* methodology for evaluating whether a given legal duty is based on smoking and health, it becomes obvious that the methodology must focus not on the ultimate source of the duty . . . but on its proximate application." (quotation marks omitted)). In doing so, the Supreme Judicial Court similarly nullified the Labeling Act's preemption clause and the uniformity that Congress sought to create. *Durnell*, 146 S. Ct. at 2013.

II. Failing to Overrule *Altria* Threatens Convenience Stores and Other Retailers with Dire Consequences

If left undisturbed, *Altria* and the decision below will impose the very "diverse, nonuniform, and confusing" regulations the Labeling Act was designed to prevent. 15 U.S.C. § 1331. Emboldened by the potential for billions of dollars in damages awards, private plaintiffs will continue to subject convenience stores and other retailers to a host of common-law claims under the regimes of the 50 States.

Such regulation-by-litigation has enumerable downsides. It foils Congress's goal of creating uniform, nationwide regulations for cigarette health warnings. This disuniformity makes it harder and more costly for cigarette retailers to do business, particularly in multiple states. What's more, it is nearly impossible for convenience stores and other retailers to anticipate every theory on which plaintiffs might rely to bring common-law claims. Unlike duly enacted state laws or regulations, retailers will not receive clear notice of governing requirements or prohibitions. Nor can they readily advocate for changes to such rules through the democratic process. Instead, much of the regulatory power will be concentrated in the plaintiffs' bar and inexpert juries as tort litigation gradually shapes the landscape. And since most cases will settle before the issuance of a jury verdict or court opinion, the market will be generally unaware of changing regulatory expectations.

Uniform labeling and advertising regimes are particularly important to convenience stores and other retailers that stock their shelves with scores of products subject to liability under myriad state and federal regulations. Due to their business model, convenience stores necessarily lack intimate familiarity with every product they stock. Even small convenience stores can conceivably stock dozens of cigarette brands, among thousands of other products, making it incredibly burdensome to ensure that every label and promotional material sufficiently insulates it from liability. Obviously, convenience stores do not control the labels and promotional materials produced by cigarette manufacturers. So absent a uniform national regime, convenience stores must decide whether it is necessary to supplement suppliers' messaging to comply with state law. Recognizing this, Congress explicitly exempted cigarette retailers from liability under the Labeling Act if the retailers do not materially alter the warning labels on the cigarettes they sell. *See* 15 U.S.C. § 1333(a)(4).

As this case illustrates, cigarette retailers remain common targets for state-law claims.[4] *See, e.g., Manious v. R.J. Reynolds Tobacco Co.*, 720 F. Supp. 3d 952 (D. Haw. 2024); *Ford v. R.J. Reynolds Tobacco Co.*, 553 F. Supp. 3d 693 (E.D. Mo. 2021); *Higgs v. R.J. Reynolds Tobacco Co.*, 591 P.3d 1185 (Or. Ct. App. 2026). While most cases will settle or be dismissed before an adjudication on the merits, even preliminary litigation costs can be ruinous for convenience store operators—63% of whom operate only a single store. For these small business owners, an early settlement

[4] As noted in Philip Morris's petition, Respondents also sued DeMoulas Super Markets as the seller of the cigarettes. Pet. 9 n.1. The claims against DeMoulas proceeded to trial, but the jury found in DeMoulas's favor. *Id.*

of similar state-law claims is not merely wise but essential. If, as in this case, such retailer-liability claims proceed to trial, it may well mean the end of their business.

In addition to legal risks, *Altria* imposes significant business concerns. Adding conflicting advertising, shelf messaging, and labels will cause customer confusion and distrust. Operators, who are neither lawyers nor doctors, have no meaningful ability to guess what additional disclaimers are adequate to stave off state-law claims while not unduly suppressing sales. Meanwhile, cigarette manufacturers will defend the warnings on their products and resist retailer messaging suggesting that their marketing and labels are false or misleading. This will put convenience stores in an unwinnable position—by bolstering the health and safety warnings on the cigarettes they sell, stores *may* avoid legal jeopardy under *state* law; but by doing so, they risk liability under the Labeling Act, *see* 15 U.S.C. § 1333(a)(4), and risk manufacturers pulling products from their shelves because they are featured next to additional "voluntary" warnings with which manufacturers disagree. Such concerns apply not only to cigarettes but also to many other common products subject to labeling laws.

In sum, the state law labeling claims permitted by *Altria* continue to frustrate the Labeling Act's text and purpose. Although Congress crafted a uniform federal regime, protected by federal preemption, to accomplish these goals, continued adherence to *Altria* robs the Labeling Act of its preemptive force. To end the regulation by litigation creating a costly patchwork of conflicting labeling and promotional requirements, this Court should grant Philip Morris's petition, overrule *Altria*, and restore clarity to its express-preemption doctrine.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari and overrule *Altria*.

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