No. 98-1811

In the Supreme Court of the United States

ALEXIS GEIER, ET AL., PETITIONERS

v.

AMERICAN HONDA MOTOR COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE

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QUESTION PRESENTED

Whether the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 *et seq.* (1988), or Federal Motor Vehicle Safety Standard 208, 49 C.F.R. 571.208 (1987), preempts a state common law tort claim that an automobile manufactured in 1987 was defectively designed because it lacked an airbag.

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INTEREST OF THE UNITED STATES

The National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 *et seq.* (1988), requires the Secretary of Transportation to promulgate motor vehicle safety standards. 15 U.S.C. 1392(a).[1] This case concerns the preemptive effect of the Act and one of those standards, Federal Motor Vehicle Safety Standard 208, 49 C.F.R. 571.208 (1987), which governs occupant crash protection. The Court's decision may affect the manner in which the Secretary exercises his regulatory authority under the Act.

[1] The Act was recodified, along with other Acts governing transportation, on July 5, 1994, "without substantive change." Pub. L. No. 103-272, § 1(a), 108 Stat. 745; see § 1(e), 108 Stat. 941-973 (codifying new 49 U.S.C. 30101 *et seq.*). Like the court of appeals and petitioners, we generally refer to the earlier version of the Act.

STATEMENT

1. Congress enacted the National Traffic and Motor Safety Vehicle Act of 1966 (Safety Act or Act) to "reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." 15 U.S.C. 1381. The Act directs the Secretary of Transportation to "establish by order motor vehicle safety standards," 15 U.S.C. 1392(a), which are defined as "minimum standard[s] for motor vehicle performance or motor vehicle equipment performance," 15 U.S.C. 1391(2). Each standard "shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms." 15 U.S.C. 1392(a).

The Safety Act contains a preemption provision, which provides in relevant part:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment[,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

15 U.S.C. 1392(d).[2] The Act also contains a provision, which petitioners refer to as a savings clause, that de-

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[2] As we explain in note 1, *supra*, the Safety Act was amended and recodified in 1994 without substantive change. Section 1392(d) is now codified at 49 U.S.C. 30103(b)(1) and states in relevant part:

> When a motor vehicle safety standard is in effect under this chapter, a State or political subdivision of 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.

scribes the effect of compliance with federal standards on common law liability. That clause provides that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. 1397(k).[3]

2. Federal Motor Vehicle Safety Standard 208 regulates occupant crash protection. 49 C.F.R. 571.208. The Secretary promulgated the version of Standard 208 at issue in this case in 1984, after nearly 15 years of analysis, rulemaking, and litigation. See *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 34-38 (1983); *State Farm Mut. Auto. Ins. Co.* v. *Dole*, 802 F.2d 474, 477-478 (D.C. Cir. 1986), cert. denied, 480 U.S. 951 (1987).

Beginning with the 1987 model year (in which petitioners' car was manufactured), Standard 208 phased in a requirement that all new passenger cars have some type of passive restraint system, *i.e.*, a device that works automatically, without any action by the occupants, to help protect occupants from injury during a collision. Standard 208 required manufacturers to install some type of passive restraint in at least 10% of their 1987 model year cars. 49 C.F.R. 571.208.S4.1.3.1.[4]

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[3] Section 1397(k) is now codified at 49 U.S.C. 30103(e), which states: "Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law."

[4] The percentages increased each year until the 1990 model year. Beginning in that model year, all new cars were required to have a passive restraint system. 49 C.F.R. 571.208.S4.1.3.2, 571.208.S4.1.3.3, 571.208.S4.1.4. In response to the Intermodal Surface Transportation Efficiency Act of 1991, 49 U.S.C. 30127, the Secretary has amended Standard 208 to require that, beginning in the 1998 model year, all new cars have an airbag at the driver's and right front passenger's position. 49 C.F.R. 571.208.S4.1.5.3. Section 30127(f)(2) provides that "[t]his section and the

The rule did not, however, require installation of any particular type of passive restraint. Instead, it gave manufacturers the option to install automatic seatbelts, airbags, or any other suitable technology that they might develop, provided they met the performance requirements specified in the rule.

In adopting that standard, the Secretary expressly considered, and rejected, a proposal to require airbags in all cars. See 49 Fed. Reg. 29,000-29,002 (1984). The Secretary reasoned that some people had serious concerns about airbags, and, if airbags were required in all cars, there could be a public backlash in which some people disabled the airbags, thus eliminating their safety benefit. *Id.* at 29,001. The Secretary also concluded that, although airbags and seatbelts together may provide greater safety benefits than automatic seatbelts alone, the effectiveness of an airbag system is "substantially diminished" if, as then often occurred, the occupant does not wear the seatbelt. *Id.* at 28,996. Further, airbags were found "unlikely to be as cost effective" as automatic seatbelts, and, because of the high replacement cost of airbags, some people might not replace them after deployment, leaving no automatic protection for front seat occupants. *Id.* at 29,001. Finally, little developmental work had been done to install airbags in smaller cars, and the Secretary found that unrestrained occupants, particularly children, could be injured by the deployment of airbags in those cars. *Ibid.*

In light of those concerns, the Secretary determined that manufacturers should have a choice of ways to

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amendments to Standard 208 made under this section may not be construed as indicating an intention by Congress to affect any liability of a motor vehicle manufacturer under applicable law related to vehicles with or without [airbags]."

comply with the passive restraint requirement. 49 Fed. Reg. at 28,997. The Secretary anticipated that manufacturers would respond to that choice by using a variety of passive restraints, including airbags and automatic seatbelts. Although airbags were more expensive than automatic seatbelts, the Secretary expected manufacturers to install airbags in some cars because one manufacturer had already begun to offer airbags, others had indicated plans to do so, and the rule provided an incentive to use airbags and other non-belt technologies. *Ibid.*[5]

The Secretary concluded that installation of a variety of passive restraint systems would have several safety advantages. The latitude provided the industry would enable manufacturers to "develop the most effective systems" and would "not discourag[e] the development of other technologies." 49 Fed. Reg. at 28,997. In addition, the availability of alternative devices would enable the industry to "overcome any concerns about public acceptability by permitting some public choice." *Ibid.* Customers who did not like airbags could buy a car with automatic seatbelts, and those who did not want the automatic belts could select a car with airbags. *Ibid.* Finally, widespread use of both airbags and automatic seatbelts was "the only way to develop definitive data" about which alternative is more effective. *Ibid.*[6]

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[5] In determining whether a manufacturer installed passive restraints in the requisite percentage of its fleet during the phase-in period, Standard 208 counted each car with an airbag or other non-belt passive restraint as the equivalent of 1.5 cars with automatic seatbelts. 49 C.F.R. 571.208.S4.1.3.4; 49 Fed. Reg. at 29,000.

[6] The Secretary also concluded that a gradual phase-in of the passive restraint requirement would better serve the Act's safety purpose than a uniform implementation on a single future date.

3. In January 1992, while driving a 1987 Honda Accord, petitioner Alexis Geier collided with a tree in the District of Columbia. Although she was wearing her seatbelt, she sustained "serious and grievous injuries." J.A. 2-5. Ms. Geier and her parents (also petitioners) sued respondent American Honda Motor Company, Inc., in the United States District Court for the District of Columbia. Pet. App. 2 n.1. Alleging that their car was negligently and defectively designed because it lacked a driver's-side airbag in addition to a manual seatbelt, they sought damages under the common law of the District of Columbia. Pet. Br. 12.

The district court granted respondent's motion for summary judgment. Pet. App. 17-20. The court held that petitioners' tort claims were expressly preempted by the Safety Act because recovery on the claims would be "equivalent to a safety standard promulgated by the state legislature or a state regulatory body." *Id.* at 19.

4. The court of appeals affirmed, but it employed a different preemption analysis. Pet. App. 1-16. The court acknowledged that the term "standard" in the Safety Act's preemption provision could be read in isolation to encompass requirements imposed by common law tort verdicts, but the court recognized that the preemption clause must be interpreted in light of the entire Safety Act, including the savings clause. *Id.* at 9-

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One purpose of the phase-in was to achieve the installation of passive restraints in some cars earlier than if a single effective date had been established, since it would have taken longer for all cars to be redesigned to include a passive restraint. The phase-in also increased the likelihood that manufacturers would use airbags, which required a longer lead time for redesign. Finally, the phase-in gave consumers and the agency time to develop more information about the benefits of passive restraints, thus enhancing the opportunity to overcome public resistance. 49 Fed. Reg. at 28,999-29,000.

11. The court ultimately found it unnecessary to resolve the express preemption question, because it concluded that a verdict in petitioners' favor "would stand as an obstacle to the federal government's chosen method of achieving the Act's safety objectives, and consequently, the Act impliedly pre-empts [the] lawsuit." *Id.* at 12.

The court of appeals rejected petitioners' claim that this Court's decision in *Cipollone* v. *Liggett Group*, 505 U.S. 504 (1992), prevents courts from conducting implied preemption analysis when a statute has an express preemption provision and a savings clause. Pet. App. 12-13. The court of appeals noted that this Court rejected a similar argument in *Freightliner Corp.* v. *Myrick*, 514 U.S. 280 (1995), in which the Court engaged in implied preemption analysis after concluding that the Safety Act did not expressly preempt the state tort claim at issue.

Applying implied preemption analysis, the court of appeals determined that "allowing liability for the absence of airbags would 'interfer[e] with the *method* by which Congress intended to meet its goal of increasing automobile safety.'" Pet. App. 14 (citation omitted). The court explained:

> A successful no-airbag claim would mean that an automobile without an airbag was defectively designed. Congress, however, delegated authority to prescribe specific motor vehicle safety standards to the Secretary of Transportation, who in turn explicitly rejected requiring airbags in all cars on the ground that a more flexible approach would better serve public safety.

Ibid. (citation omitted). The Secretary had decided that a choice among passive restraint systems would advance public safety by "allowing consumers to adjust to

the new technology and by permitting experimentation with designs for even safer systems." *Id.* at 15. The court therefore concluded that "allowing design defect claims based on the absence of an airbag for the model-year car at issue would frustrate the Department's policy of encouraging both public acceptance of the airbag technology and experimentation with better passive restraint systems." *Ibid.*

SUMMARY OF ARGUMENT

Petitioners' tort claims are not expressly preempted by the Safety Act, but they are impliedly preempted because they conflict with Standard 208. The Safety Act's preemption clause, 15 U.S.C. 1392(d), does not bar the claims, because, particularly when read in conjunction with the Act's savings clause, 15 U.S.C. 1397(k), it expressly preempts only prescriptive rules affirmatively promulgated by a state legislature or administrative agency. Although the reference in the preemption provision to a state "standard" could, in isolation, be understood to encompass common law tort rules, that reading is not consistent with the remainder of the Act, including the express reference to "common law" in Section 1397(k). Moreover, if Section 1392(d) preempted all common law actions involving the same aspect of performance as a federal safety standard, there would be no meaningful role for Section 1397(k), which provides that compliance with a federal safety standard does not "exempt" a person from common law liability.

The Secretary of Transportation has therefore long taken the view that, although state legislatures and administrative agencies may not adopt a safety standard that differs from a federal standard governing the same aspect of performance, state courts are not necessarily precluded from entering tort judgments that a

vehicle was defectively designed with respect to that aspect of performance. That interpretation could create some tension within the Safety Act, but any tension reflects a congressional compromise between the interests in uniformity and in permitting States to compensate accident victims.

There is no danger that tort liability will undermine the Act, because common law claims still must yield if they conflict with federal safety standards. Section 1397(k) does not preserve those claims because it neither refers to preemption nor states that common law liability is preserved even if it conflicts with a federal standard. Congress legislates against the background of the Supremacy Clause, which provides that state law yields if it conflicts with federal law. Thus, absent a solid basis to believe that Congress intended to alter traditional preemption analysis, a statute should not be interpreted to permit state laws to operate in a manner that conflicts with federal law.

Petitioners' claims conflict with Federal Motor Vehicle Safety Standard 208, because a judgment for petitioners would stand as an obstacle to the accomplishment of the full purposes and objectives of the Standard. In promulgating the version of Standard 208 that was in effect when petitioners' car was manufactured, the Secretary rejected a proposal to require airbags in all cars, because she determined that safety would best be served if manufacturers were permitted at that time to install a variety of passive restraints. Petitioners' attempt to hold a manufacturer liable for failing to install a particular type of passive restraint—an airbag—would conflict with that policy of encouraging a diversity of passive restraints. Petitioners' claims are therefore preempted.

ARGUMENT

THE SAFETY ACT DOES NOT EXPRESSLY PREEMPT PETITIONERS' TORT CLAIMS, BUT THE CLAIMS ARE IMPLIEDLY PREEMPTED BECAUSE A JUDGMENT FOR PETITIONERS WOULD FRUSTRATE THE PURPOSES OF STANDARD 208

In cases addressing whether the Safety Act or Standard 208 preempts tort claims that an automobile is defectively or negligently designed because it does not contain an airbag, the parties, and some courts, have tended to take an all-or-nothing view of preemption. Manufacturers have argued, and some courts have held, that Section 1392(d) preempts any common law ruling imposing a standard of care greater than the standard set by federal law. See, *e.g.*, *Harris* v. *Ford Motor Co.*, 110 F.3d 1410, 1413-1415 (9th Cir. 1997); *Wood* v. *General Motors Corp.*, 865 F.2d 395, 412-413 (1st Cir. 1988), cert. denied, 494 U.S. 1065 (1990). In contrast, plaintiffs have argued (as do petitioners in this case) that a federal safety standard can never preempt a tort claim because Section 1397(k) preserves all common law actions.

We agree with neither approach. As this Court has explained, when a federal regulatory scheme preserves a role for state law, "conflict-pre-emption analysis must be applied sensitively * * * to prevent the diminution of the role Congress reserved to the States while at the same time preserving the federal role." *Northwest Cent. Pipeline Corp.* v. *State Corp. Comm'n*, 489 U.S. 493, 515 (1989).

The Secretary's longstanding view is that, read in the full statutory context, Section 1392(d) prohibits state legislative or administrative bodies from prescribing safety standards different from those prescribed by the Secretary but does not expressly preempt state tort

claims. At the same time, the Secretary's view has been that Section 1397(k) does not preserve tort claims that actually conflict with a federal standard but rather provides that compliance with federal standards does not, in itself, immunize manufacturers from liability. See U.S. Amicus Br. at 16 & n.10, 28-29, *Freightliner Corp.* v. *Myrick*, 514 U.S. 280 (1995); U.S. Amicus Br. at 7-16, *Wood* v. *General Motors Corp.*, 494 U.S 1065 (1990) (No. 89-46). That view is entitled to "substantial weight." *Medtronic, Inc.*, v. *Lohr*, 518 U.S. 470, 496 (1996); *id.* at 505-506 (Breyer, J., concurring).

Petitioners' tort claims that their vehicle was defectively and negligently designed because it lacked an airbag are thus not expressly preempted by the Safety Act. Their claims are, however, preempted by implication, because a judgment for petitioners would frustrate Standard 208's policy of encouraging a variety of passive restraints.

A. The Safety Act Does Not Expressly Preempt Petitioners' Tort Claims.

In 1987, when petitioners' automobile was manufactured, the Safety Act's preemption clause stated:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment[,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

15 U.S.C. 1392(d).[7] It is our view that, read in its statutory context, this provision expressly preempts only prescriptive rules affirmatively promulgated by a state legislature or administrative agency.

The term "standard," construed in isolation, could be read to encompass duties imposed by tort law. The common law of torts is sometimes described in general terms as articulating "standards of care" to be applied on a case-by-case basis to assess a defendant's conduct and fault. See S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966); cf. *CSX Transp., Inc.* v. *Easterwood*, 507 U.S. 658, 664 (1993) (legal duties imposed by common law fall within scope of "law, rule, regulation, order, or standard relating to railroad safety"); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 246-247 (1959). However, "standard" may also connote a prescriptive criterion, adopted in advance by responsible authorities, such as legislative or administrative bodies.[8] Consideration of the Safety Act as a whole confirms that this is the meaning of "standard" as used in the express preemption provision of Section 1392(d).

Unlike the statute in *CSX*, which preempted any relevant "law, rule, regulation, order or standard" (507 U.S. at 664), and thus reached every method by which a State can impose legal obligations, or the statutes in *Cipollone* v. *Liggett Group*, 505 U.S. 504 (1992), and *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470 (1996), Section

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[7] As explained at notes 1-2, *supra*, that provision has been amended and recodified at 49 U.S.C. 30103(b)(1), but the amendments were not intended to be substantive.

[8] See *Webster's Third New International Dictionary* 2223 (1993) (def. 3a "something that is established by authority, custom, or general consent as a model or example to be followed: *CRITERION, TEST*;" def. 4 "something that is set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality").

1392(d) preempts only "safety standard[s]," which is also the term used to describe the administrative requirements promulgated by the Secretary. See 15 U.S.C. 1392(a). Moreover, Section 1392(d) uses the verb "establish" to describe the enactment of the state standards it preempts, just as the Safety Act uses that verb to describe the promulgation of standards by the Secretary. See 15 U.S.C. 1392.[9] It is a "normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 570 (1995) (internal quotation marks omitted). Further, Section 1392(d) preempts standards established by a "State or political subdivision of a State," a phrase not normally used to describe a court in a common law damages action. Finally, the Act defines standards as providing "objective criteria," 15 U.S.C. 1391(2); see also 15 U.S.C. 1392(a) ("objective terms"), a description that would appear to exclude tort judgments, which are case-specific determinations of liability and damages.

Our interpretation of Section 1392(d) is further buttressed by the specific reference to common law in Section 1397(k), which states that "[c]ompliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law."[10] The reference to common law liability in that Section suggests that Congress

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[9] The recodification uses "prescribe" to describe the enactment of both state and federal standards. See 49 U.S.C. 30103(b)(1); note 2, *supra*. The use of "prescribe," which was not intended as a substantive change from the use of "establish" in the former 15 U.S.C. 1392(d) (see note 1, *supra*), confirms that "standards" are limited to positive enactments.

[10] As we have explained in notes 1 & 3, *supra*, this Section is now codified as amended at 49 U.S.C. 30103(e), but the changes were not intended to alter the substance of the provision.

would have referred to common law expressly in Section 1392(d) if it had wanted to preempt all common law actions involving the same aspect of performance as a federal safety standard. See, *e.g.*, *City of Chicago* v. *Environmental Defense Fund*, 511 U.S. 328, 338 (1994).

Finally, if Section 1392(d) preempted all common law tort actions involving the same aspect of performance as a federal safety standard, there would be no meaningful role for Section 1397(k). That Section provides that compliance with a federal safety standard does not "exempt" a person from, *i.e.*, provide a defense to, common law liability. See 15 U.S.C. 1397(k); H.R. Rep. No. 1776, 89th Cong., 2d Sess. 24 (1966) ("compliance with safety standards is not to be a defense or otherwise to affect the rights of parties under common law"). There is, however, no need to negate a defense to claims that have already been preempted. And the only claims that would not be preempted under the broad reading of Section 1392(d) are those that involve an aspect of performance not addressed by any federal standard. Yet no court would otherwise have held that compliance with a federal standard provided a defense to such a suit. Congress could not have intended the preemption provision to sweep so broadly that it renders superfluous another provision in the Act. See, *e.g.*, *Gustafson*, 513 U.S. at 574.[11]

For those reasons, the Safety Act prohibits state legislatures and administrative agencies from adopting

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[11] The only remaining role for Section 1397(k) would be to disavow congressional intent to occupy the field and thereby displace all tort actions involving motor vehicle safety. But even that role is unnecessary because the preemption provision itself makes the lack of field preemption clear by permitting States to establish standards identical to the federal standards and standards covering aspects of performance not addressed by the federal standards. See 15 U.S.C. 1392(d).

prescriptive safety standards that differ from a federal standard governing the same aspect of performance. It does not, however, necessarily preclude state courts from entering tort judgments that a vehicle was defectively designed with respect to that aspect of performance.

That interpretation could create some tension within the Safety Act, because allowing manufacturers to be held liable for design defects in vehicles that comply with federal standards could run counter to Congress's interest in uniform performance standards. But any tension reflects a congressional compromise between the interests in uniformity and in permitting States to compensate accident victims, embodied both in the savings clause (15 U.S.C. 1397(k)) and in the definition of a federal standard as a "minimum standard" (15 U.S.C. 1391(2)). See *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 256 (1984). Moreover, tort suits can sometimes complement federal regulations and the Act's safety purpose by supplying manufacturers with an additional incentive to design a safe product. See *Medtronic*, 518 U.S. at 495. Finally, there is no danger that tort liability will impair the purpose of the Act, because, as we explain below, common law claims still must yield if they conflict with federal standards. Cf. *Silkwood*, 464 U.S. at 256 (conflict preemption analysis still applies despite congressional intent generally to preserve state tort actions).

B. Standard 208 Impliedly Preempts Petitioners' Tort Claims.

State law is impliedly preempted if it is "impossible for a private party to comply with both state and federal requirements * * * or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of [federal law].'"

English v. *General Elec. Co.*, 496 U.S. 72, 79 (1990) (citations omitted). Petitioners' tort claims are pre-empted under that analysis. Holding respondent liable for not installing airbags in petitioners' car would frustrate Standard 208's policy of encouraging a variety of passive restraints.

1. Contrary to petitioners' contention (Br. 25-41), the Safety Act's savings clause, 15 U.S.C. 1397(k), does not foreclose implied preemption analysis.

a. As an initial matter, any suggestion (see Pet. Br. 37-38) that the presence of a savings clause automatically precludes implied preemption analysis is incorrect. Savings clauses vary significantly in both phraseology and context, and, as with any other statutory provision, a court must ascertain the meaning of the specific clause. Cf. *Freightliner*, 514 U.S. at 289.[12] Thus, this Court frequently conducts implied preemption analysis even though a statute contains a savings clause. Indeed, the Court hesitates to read a savings clause to authorize claims that conflict with federal law. See, *e.g.*, *American Telephone & Telegraph Co.* (*AT&T*) v. *Central Office Telephone*, 524 U.S. 214, 227-228 (1998); *International Paper Co.* v. *Ouellette*, 479 U.S. 481, 494 (1987); *Chicago & N.W. Trans. Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 328

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[12] Petitioners' reliance (Br. 38) on *Malone* v. *White Motor Corp.*, 435 U.S. 497 (1978), and *California Federal Savings & Loan Ass'n* v. *Guerra*, 479 U.S. 272 (1987), is unpersuasive. In *Malone*, the issue was essentially field preemption, and the Court held that two savings provisions (more broadly worded than the one at issue here) indicated that the federal labor statutes did not foreclose all state regulation of pension plans. 435 U.S. at 504-505. In *Guerra*, the plurality examined the savings provisions in the Civil Rights Act of 1964 and found that "Congress has indicated that state laws will be pre-empted only if they actually conflict with federal law" (479 U.S. at 281); see also *id.* at 295-296 (Scalia, J., concurring).

(1981); *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907).

There is good reason for that approach. Conflict preemption arises directly from the operation of the Supremacy Clause (U.S. Const. Art. VI, Cl. 2), rather than from a specific intent to displace state law. Thus, "[a] holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142-143 (1963). Similarly, a state law that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" may be impliedly preempted by a federal statute, even in the absence of any expression of intent to supersede state law-making authority. See *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 540-543 (1977). Those implied preemption principles are equally applicable to conflicts between state laws and federal regulations. Whether or not Congress has addressed preemption, "[t]he statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof." *City of New York* v. *FCC*, 486 U.S. 57, 64 (1988).

Because Congress enacts laws against the background of the Supremacy Clause, a court should assume that Congress believes that federal law (whether enacted directly by Congress or promulgated by a federal agency pursuant to statutory authorization) will prevail in any collision with state law. Of course, Congress is free to change the general rule and to allow state laws to operate in the place of conflicting federal law. But absent a "solid basis" for believing that Congress "intended fundamentally to alter traditional preemption analysis," *John Hancock Mut. Life Ins. Co.*

v. *Harris Trust & Sav. Bank*, 510 U.S. 86, 99 (1993), a statute should not be interpreted to permit state laws to operate in conflict with federal law.[13]

The presumption that Congress does not intend to alter traditional principles of conflict preemption is particularly appropriate when Congress enacts a statute such as the Safety Act that takes effect through administrative action. Congress did not itself prescribe motor vehicle safety standards in the Safety Act. Instead, it delegated their promulgation (and revision in light of experience) to the Secretary of Transportation. Thus, Congress could not know what federal standards would be promulgated, and it could not predict whether or how States might adopt conflicting measures.

b. The Act's savings clause, Section 1397(k), provides no sound basis to conclude that Congress intended to alter the general rule that federal law preempts conflicting state law. Nothing in the text of the clause suggests that common law liability is saved from preemption even if it conflicts with a federal safety standard. Indeed, the language of the clause does not directly address preemption at all. It states that "[c]ompliance with any Federal motor vehicle safety standard issued under [the Safety Act] does not exempt any person from any liability under common law." 15 U.S.C. 1397(k).[14] As we have explained, the

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[13] Petitioners therefore err in suggesting (Br. 38-39) that the presumption that cautions against unduly broad construction of preemption provisions favors their reading of the savings clause. The presumption against preemption of state laws that can coexist harmoniously with federal law is quite different from a presumption in favor of preservation of state laws that conflict with federal law.

[14] The recodification substituted the modifier "a" for "any," note 3, *supra*, without intending substantive change, note 1, *supra*.

clause thus preserves common law liability in the sense that a manufacturer cannot invoke its compliance with federal law as an automatic defense against a claim that a car was defectively designed. See p. 14, *supra*. The clause does not, however, preserve common law liability that conflicts with federal law.

The legislative history supports that interpretation. The provision originated in the House of Representatives, and the House Report expressly states that the clause "establishes[] that compliance with safety standards is not to be a *defense* or otherwise to affect the rights of parties under common law." See H.R. Rep. No. 1776, *supra*, at 24 (emphasis added). Other references in the legislative history are consistent with the understanding that Section 1397(k) negates a substantive defense to liability and does not directly address preemption.[15] Petitioners have not identified,

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The fact that Congress perceived no distinction between the use of the words "a" and "any" refutes the suggestion (see Pet. Br. 25) that the use of "any" was intended to signal a broad construction of the clause.

[15] See, *e.g.*, S. Rep. No. 1301, *supra*, at 12 (explaining that federal standards "*need not* be interpreted as *restricting* State common law standards of care" so that compliance with federal standards "would thus *not necessarily* shield any person from product liability at common law") (emphasis added); 112 Cong. Rec. 14,230 (1966) (Sen. Magnuson) (also using qualifier "not necessarily"); *id.* at 21,487 (Sen. Magnuson) (stating that Senate conferees adopted the House provision, which "makes explicit, in the bill, a principle developed in the Senate report"); *ibid.* (explaining that the provision does not prevent use of compliance or noncompliance as "evidence"); *id.* at 21,490 (Sen. Cotton) ("proof of compliance" may be offered "for such relevance and weight as courts and juries may give it"). Petitioners also rely (Br. 29) on the comments of a witness at House hearings who expressed the concern that manufacturers would respond to lawsuits with a claim that "Our product meets Government standards." Comments by members of the public reveal little about congressional intent. In

and we have not found, any statement in the legislative history that describes Section 1397(k) as preserving from preemption common law claims that conflict with federal law.[16]

That interpretation of Section 1397(k) is reinforced by the fact that Congress did not include the savings clause in the Section of the Safety Act that addresses preemption (Section 103(d) (codified at 15 U.S.C. 1392(d))) but inserted it five sections later (Section 108(c) (codified at 15 U.S.C. 1397(k))). Thus, the structure of the Act confirms that the savings clause was not intended directly to address preemption.[17]

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any event, the witness's concern was precisely that manufacturers would use compliance with federal standards as a substantive defense to liability.

[16] As noted in the text, the House Report states that "compliance with federal standards is not to be a defense or *otherwise to affect the rights* of parties under common law." H.R. Rep. No. 1776, *supra*, at 24 (emphasis added). The context suggests that the italicized language refers to substantive changes to common law rules rather than the possibility of preemption. Petitioners also note (Br. 29) that Senator Magnuson stated that "[t]he common law on product liability still remains as it was." That statement too is properly understood as explaining that the Act made no change to the substance of product liability law. Finally, petitioners rely (Br. 30-31) on a statement by Representative Dingell that "we have preserved every single common-law remedy that exists against a manufacturer for the benefit of a motor vehicle purchaser." 112 Cong. Rec. at 19,663. Mr. Dingell made that statement to explain why he opposed an amendment that would have criminalized willful violations of federal standards. Thus, the statement indicates only that common law actions based on the violation of federal standards are preserved; it does not indicate that actions that would conflict with federal standards are similarly preserved. See *Wood*, 865 F.2d at 407 n.14.

[17] The recodification included both provisions in 49 U.S.C. 30103 (entitled "Relationship to other laws") but in separate subsections, one entitled "Preemption" (49 U.S.C. 30103(b)) and the other entitled "Common law liability" (49 U.S.C. 30103(e)).

Our interpretation does not render the savings clause meaningless, as petitioners contend (Br. 26-27). Petitioners' argument would have force only if the preemption clause applied to common law claims, a reading that we reject. See *ibid.*; pp. 11-15, *supra*. Instead, our interpretation preserves an important role for Section 1397(k): In cases in which tort liability does not conflict with a federal standard, Section 1397(k) makes clear that compliance with the standard does not immunize a manufacturer from liability. Those cases can arise frequently, since state tort law does not conflict with a federal "minimum standard" (15 U.S.C. 1391(2)) merely because state law imposes a more stringent requirement.[18] For example, Federal Motor Vehicle Safety Standard 105, 49 C.F.R. 571.105, which establishes requirements for brake performance, does not require anti-lock brakes in addition to airbrakes in all vehicles, but the Secretary has not determined that requiring anti-lock brakes would disserve safety. Section 1397(k) makes clear that compliance with Standard 105 is not a defense to a common law tort claim that a vehicle is defectively designed because it lacks anti-lock brakes. Federal Motor Vehicle Safety Standard 125, 49 C.F.R.

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[18] We therefore agree with petitioners (Br. 46-47) that their claims are not preempted merely because the Secretary made airbags one of several design options that manufacturers could choose. We disagree, however, with the contention (Br. 44, 46) that the Secretary provided options because she had no statutory authorization to do otherwise. The Secretary could have imposed performance requirements that effectively required an airbag design. See *Wood*, 865 F.2d at 416-417; 112 Cong. Rec. at 21,487 (Sen. Magnuson) (performance standards expected to affect design). As we explain at pages 23-26, *infra*, the Secretary chose not to do so in order to encourage the provision of a variety of passive restraints, because she determined that would best promote safety. Petitioners' claims are preempted because they would frustrate that policy judgment.

571.125, provides multiple options for the design of reflective devices to warn approaching traffic of the presence of a stopped vehicle, but the Secretary did not determine that the availability of options was necessary to promote safety. Section 1397(k) makes clear that compliance with Standard 125 is not a defense to a common law tort claim that the reflective device is defectively designed unless it uses one rather than another of those options. Thus, under our reading, Section 1397(k) has a sensible and important role.[19]

c. It is petitioners' reading of the clause as preserving tort claims even if they conflict with federal safety standards that would have anomalous results. The Safety Act's purpose "is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents," 15 U.S.C. 1381, and Congress chose to carry out that purpose by empowering the Secretary to issue safety standards, 15 U.S.C. 1392, 1397. In some instances, such as the present case, holding a manufacturer liable for what a jury might find to be a design defect would significantly impair the Secretary's efforts to promote safety. Reading the savings clause to preserve that liability from preemption would impermissibly allow courts to second-guess the Secretary's judgment on matters "entrusted to [his] informed discretion" (*Kalo Brick & Tile Co.*, 450 U.S. at 330) and

[19] Petitioners contend (Br. 27 n.11) that there was no need for Congress to specify that compliance with federal standards is not a defense to common law liability because every State already provided that compliance with a federal regulation is not a defense to a design defect claim. But even if Congress understood that to be the common law rule, it could not be certain that rule would not change. It therefore had ample reason to assure that the Safety Act would not be construed to create a new, automatic federal defense.

lead the Act "to destroy itself" (*AT&T*, 524 U.S. at 228).

For example, the Secretary has established windshield retention requirements in Federal Motor Vehicle Safety Standard 212, 49 C.F.R. 571.212, in order to prevent occupants from being thrown from their cars in crashes. If manufacturers could be held liable under state tort law on a theory that it is a design defect for windshields in those vehicles to be retained in a crash because passengers could be injured if they struck the windshields, it would be impossible for manufacturers to comply with both the federal standard and the duties imposed by state tort law. Thus, if the tort claims were not preempted, the Secretary would have to rescind the federal standard, or manufacturers would have to continue to produce windshields that do not eject in order to comply with Standard 212, while paying tort judgments based on the theory that the federally mandated failure of the windshields to release in a crash rendered their cars defectively designed. There is no indication that Congress intended that startling result.

2. a. This case does not pose that type of conflict, but it poses a closely related one. In issuing the version of Standard 208 in effect when petitioners' car was manufactured, the Secretary rejected a rule requiring airbags in all cars in favor of a rule encouraging manufacturers to offer a variety of passive restraints. The Secretary determined—based on the history of consumer (and congressional) responses to passive restraint requirements—that diversity would best promote safety by helping to ensure public acceptance of passive protection systems,[20] encouraging the de-

[20] In 1972, the Secretary adopted a rule requiring an interlock mechanism preventing engine ignition unless manual seatbelts

velopment of new and improved technologies,[21] and enabling the agency to acquire more data to make regulatory decisions. See 49 Fed. Reg. at 28,987-28,997, 29,000-29,001. The Secretary also determined that the high replacement costs of airbags could cause some consumers to decline to replace them after they were deployed, which would leave occupants without passive protection. *Id.* at 29,000-29,001. At the same time, the Secretary took steps that she reasonably determined would prompt manufacturers to install airbags in *some*

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were fastened. That rule provoked a strong public reaction, prompting Congress to ban the interlock requirement and impose procedural limitations on the agency's future efforts to require restraints other than seatbelts. Motor Vehicle and School Bus Safety Amendments of 1974, Pub. L. No. 93-492, § 109, 88 Stat. 1482 (codified at 15 U.S.C. 1401(b) (1988)). Given the public's adverse reaction to the interlock system, one factor the Secretary properly considered was the public's willingness to accept various passive restraint technologies. 49 Fed. Reg. at 28,987. See *Pacific Legal Found.* v. *DOT*, 593 F.2d 1338, 1345-1346 (D.C. Cir.), cert. denied, 444 U.S. 830 (1979). "Airbags engendered the largest quantity of, and most vociferously worded, comments" during the rulemaking. 49 Fed. Reg. at 29,001. Commenters expressed concerns that the chemical used to inflate airbags would be hazardous, that airbags would deploy inadvertently and thereby cause injury, and that airbags would not deploy during an accident. *Ibid.* Given those widespread concerns, the Secretary concluded that "[i]f airbags were required in all cars, these fears, albeit unfounded, could lead to a backlash affecting the acceptability of airbags. This could lead to their being disarmed, or, perhaps, to a repeat of the interlock reaction." *Ibid.*

[21] The Secretary determined that experience could show that automatic seatbelts would be used more frequently than anticipated, and that manufacturers might develop better and more acceptable automatic seatbelt systems. That development could result in automatic seatbelts that were as effective as airbags but cost less. The Secretary also concluded that requiring airbags in all cars would unnecessarily stifle further innovation in occupant protection systems. 49 Fed. Reg. at 29,001.

of their cars. See p. 5 & n. 5, *supra*. Standard 208 thus embodies the Secretary's policy judgment that safety would best be promoted if manufacturers installed *alternative* protection systems in their fleets rather than one particular system in every car.

That policy of affirmatively encouraging diversity would be frustrated if manufacturers could be held liable for not installing airbags. If, when the Secretary promulgated the rule in 1984, respondent and other manufacturers had known that they could later be held liable for failure to install airbags, the prospect of sizable compensatory and punitive damage awards, combined with the "centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States," S. Rep. No. 1301, *supra*, at 12, would likely have led them to install airbags in all cars. That outcome would have eliminated the diversity that the Secretary found necessary at that time to promote motor vehicle safety. At the very least, holding manufacturers liable for not installing airbags would have "interfere[d] with the methods by which [Standard 208] was designed to reach [its] goal." *Ouellette*, 479 U.S. at 494.[22] Therefore, tort claims like

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[22] Petitioners mistakenly argue (Br. 16, 44) that their tort claims would not interfere with the Secretary's chosen methods because, they assert (Br. 2, 10-11), the Secretary intended tort liability to provide an incentive for manufacturers to install airbags. In support of that assertion, petitioners cite the Secretary's statement that "potential liability for any deficient systems" would discourage manufacturers from "us[ing] the cheapest system to comply with an automatic restraint requirement." 49 Fed. Reg. at 29,000. Petitioners misunderstand the Secretary's statement, which meant that manufacturers could face tort liability if they installed defective passive restraints. The Secretary did not mean that manufacturers could be held liable for choosing one type of passive restraint rather than another. Petitioners' amici (Missouri Br. 6; Ass'n of Trial Lawyers Br. 29) also mistakenly rely on a

petitioners', which are based on the theory that a car (subject to the version of Standard 208 in effect in 1987) was defectively designed because it lacked an airbag, "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of [Standard 208]." *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

For those reasons, the Secretary has long taken the view that Standard 208 preempts such claims.[23] See U.S. Amicus Br. at 28-29, *Freightliner Corp.* v. *Myrick*, *supra*; U.S. Amicus Br. at 11-15, *Wood* v. *General Motors Corp.*, *supra*. That view is consistent with this Court's decisions holding that when Congress or an agency determines that certain activity must be permitted in order to further the purposes of federal law, state law that would forbid that behavior is preempted. See, *e.g.*, *Barnett Bank* v. *Nelson*, 517 U.S. 25, 31 (1996); *Fidelity Fed. Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 154-155 (1982); *Kalo Brick & Tile Co.*, 450 U.S. at 326.

The Secretary's view is entitled to substantial weight. "Because the [Department of Transportation] is the federal agency to which Congress has delegated its authority to implement the [Safety] Act, the [Secretary] is uniquely qualified to determine whether a particular form of state law 'stands as an obstacle to

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public comment that the Secretary summarized in the description of comments in the preamble. 49 Fed. Reg. at 28,972. An agency does not endorse a comment merely by describing it.

[23] Not all tort claims involving airbags would be preempted. A claim that a manufacturer installed an airbag that deployed improperly would not be preempted because it would not frustrate the purposes of Standard 208. Even a claim that a manufacturer should have chosen to install airbags rather than another type of passive restraint in a certain model of car because of other design features particular to that car (see Nat'l Conf. of State Leg. Br. 12) would not necessarily frustrate Standard 208's purposes.

the accomplishment and execution of the full purposes and objectives of Congress.'" *Medtronic*, 518 U.S. at 496; *id.* at 506 (Breyer, J., concurring) (administering agency has "special understanding of the likely impact of both state and federal requirements, as well as an understanding of whether (or the extent to which) state requirements may interfere with federal objectives").[24]

b. Petitioners mistakenly contend (Br. 16, 47-48) that their claims do not conflict with the Secretary's goal of allowing consumers to adjust to new airbag technology because tort liability would not lead manufacturers to change their conduct. To the contrary, "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct."

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[24] Petitioners and their amici contend (Pet Br. 40-41, 49-50; Nat'l Conf. of State Leg. Br. 24-25; Leflar Br. 21-22) that there can be no implied conflict preemption here because, when the Secretary adopted Standard 208, she neither plainly stated her intent to preempt tort liability nor provided notice and comment on the question. That contention rests on a misunderstanding of the basis for conflict preemption. Unlike field preemption, which arises when agencies "intend for their regulations to be exclusive," *Hillsborough County* v. *Automated Med. Labs., Inc.*, 471 U.S. 707, 718 (1985), conflict preemption arises not from a specific intent to preempt but from the direct operation of the Supremacy Clause, which mandates that state law yield to federal law when they conflict. See p. 17, *supra.* Here, because conflict preemption is at issue, neither a statement of preemptive intent nor notice and comment on preemption was required. For the same reasons, the argument that the Secretary lacks authority to give any particular federal standard preemptive force (Nat'l Conf. of State Leg. Br. 24) is wide of the mark. We do not contend that petitioners' claims in this case are preempted because the Secretary decided that Standard 208 should preempt common law liability. We contend that the claims are preempted because they conflict with, and would frustrate implementation of, the policy judgment embodied in the Standard that a choice of passive restraints would best promote safety.

Garmon, 359 U.S. at 247. Indeed, petitioners' amici acknowledge that tort law "has a deterrence function." Nat'l Conf. of State Leg. Br. 14; see Ass'n of Trial Lawyers Br. 10-12; Leflar Br. 12-13, 17; Missouri Br. 6, 13.[25]

Petitioners also argue (Br. 16, 47-48) that, if manufacturers had changed their conduct and installed airbags, they would have promoted public acceptance of those devices. That may be true, but the Secretary reasonably determined at that time that experience with a variety of passive restraints would best promote public acceptance. In any event, speculation of the sort advanced by petitioners cannot displace the Secretary's reasonable conclusion that claims such as petitioners' would thwart the purposes behind Standard 208.[26]

Petitioners further err in contending (Br. 48-49) that their claims do not conflict with the goal of encouraging innovation and development of more effective restraint

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[25] That tort law also has other purposes (such as compensation) does not mean tort rules cannot conflict with federal law (Nat'l Conf. of State Leg. Br. 14-15; Leflar Br. 17-19). Conflict preemption flows from the effects of the state law, not its purposes. See *Gade* v. *National Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 105-106 (1992).

[26] Petitioners suggest (Br. 16, 44) that a tort rule requiring airbags is consistent with Standard 208 because the Secretary determined that airbags were technologically the most effective passive restraint and provided an incentive to encourage manufacturers to install them (see note 5, *supra*). That contention overlooks the Secretary's conclusion that airbags would *not* be effective *in practice* if they were installed in all cars because of the likely public reaction and potential safety dangers in small cars. It also overlooks the Secretary's determination that further research and development could lead to more cost-effective restraints. And it overlooks the Secretary's reason for providing the incentive to install airbags—to ensure a variety of passive restraints, not to maximize the number of cars with airbags.

systems. Contrary to petitioners' suggestion, the question is not whether tort liability in general stifles innovation but whether liability for failure to install airbags would have done so. The Secretary determined that it would, because of the potential for large damage awards and the "centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States," S. Rep. No. 1301, *supra*, at 12. This Court should decline petitioners' invitation to second-guess that reasonable determination.

Finally, petitioners argue (Br. 44-45) that their claims do not conflict with Standard 208 because their car was manufactured during the phase-in period (when Standard 208 required the installation of some type of passive restraint system in some, but not all, cars) and their car did not have any passive restraint. Those facts do not, however, alter the preemption analysis, because petitioners do not claim that their car was defectively designed because it lacked *any* type of passive restraint. Rather, they claim that the car was defectively designed because it lacked one particular type of passive restraint—an airbag. See Pet. i; Pet. Br. i. Thus, petitioners cannot prevail without a ruling that a car manufactured in 1987 was defectively designed unless it had an airbag. For the reasons we have described, that ruling would conflict with the Secretary's determination that no particular type of passive restraint should be required in any car because the use of a variety of passive restraints would best promote safety.[27]

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[27] This Court therefore need not decide whether Standard 208 would preempt a claim that a car manufactured during the phase-in is defective if it lacks any passive restraint. The Secretary believes that it would preempt such a claim, because the claim would frustrate the safety purposes for which the Secretary adopted the phase-in. See note 6, *supra*. A tort rule that effec-

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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tively required passive restraints in all cars during the phase-in would likely have resulted in the nearly exclusive use of automatic seatbelts rather than airbags and impeded the development of data about the benefits of passive restraints that could help prevent a public backlash against them. See 49 Fed. Reg. at 28,999-29,000. Contrary to petitioners' contention (Br. 45), the fact that the claim involved a car manufactured in 1987 or a crash that occurred after the phase-in would not save the claim from preemption. The relevant question is not what manufacturers would do after the jury verdict in question but what they would have done when the relevant version of Standard 208 was promulgated if they had anticipated that they could later be held liable.