

A08-250

STATE OF MINNESOTA

IN SUPREME COURT

Nancy M. Meyer, as trustee for the heirs of Margaret Mphosi,
deceased, et al., and Nancy M. Meyer, as guardian ad litem
for Lucas Mphosi, injured, et al.,

Appellant,

and

Bunmi Obembe, et al.,

Intervenors,

vs.

Bibian Nwokedi,

Defendant,

Enterprise Rent A Car Co. of Montana/Wyoming,
d/b/a Enterprise Rent A Car of the Dakotas/Nebraska,

Respondent.

BRIEF OF AMICUS CURIAE STATE OF MINNESOTA

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LEGAL ISSUE

Does 49 U.S.C. § 30106, enacted in 2005 and known as the Graves Amendment, preempt Minn. Stat. §§ 65B.49, subd. 5a(i)(2), and 169.09, subd. 5a (2008), with respect to insurance coverage obligations of car-rental companies operating in Minnesota?

The district court and the Court of Appeals held that the federal Graves Amendment preempts the Minnesota statutory provisions.

Altria Group, Inc. v. Good, 129 S. Ct. 538 (2008)

Medtronic, Inc. v. Lohr, 518 U.S. 470, 116 S. Ct. 2240 (1996)

Hince v. O'Keefe, 632 N.W.2d 577 (Minn. 2001)

Martin v. City of Rochester, 642 N.W.2d 1 (Minn. 2002),
cert. denied, 539 U.S. 957 (2003)

STATEMENT OF THE CASE AND FACTS¹

The Court granted review on the issue of whether the federal Graves Amendment, enacted in 2005 and codified as 49 U.S.C. § 30106, preempts Minn. Stat. §§ 65B.49, subd. 5a(i)(2), and 169.09, subd. 5a (2008), with respect to insurance coverage obligations of car-rental companies operating in Minnesota. Affirming the district court's decision, the Court of Appeals held that the Graves Amendment preempts these Minnesota statutory provisions with respect to owners of rental vehicles. *Meyer v. Nwokedi*, 759 N.W.2d 426 (Minn. Ct. App. 2009). The effect of the Court of Appeals decision, if affirmed, is to reduce significantly the insurance coverage that previously has been available for persons injured or killed in rental-car accidents in Minnesota.

This Court granted the State's motion for leave to file an amicus brief. The State has an interest in the application of proper principles for deciding claims that Minnesota statutes are preempted by federal law. This is particularly so with respect to statutes that concern public health and safety, like those challenged here. The State has a similar interest in the recognition that such claims of federal preemption are a constitutional challenge. The Court of Appeals failed to treat the preemption claim as a constitutional challenge and no notice of the challenge was given to the Minnesota Attorney General.

The Court is otherwise referred to the statements of the case and facts set forth in the parties' briefs.

¹ Pursuant to Minn. R. Civ. App. P. 129.03, it is certified that no person other than counsel for the State of Minnesota authored any part of this brief and that no person or entity other than the State made a monetary contribution to the preparation or submission of this brief.

STANDARD OF REVIEW

Statutory construction is a question of law reviewed de novo, *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 679 (Minn. 2004), as is the constitutionality of a statute. *State v. Tennin*, 674 N.W.2d 403, 406 (Minn. 2004). Thus, whether the federal Graves Amendment preempts the challenged Minnesota statutes is purely an issue of law, on which no deference is given to the lower court's decision.

ARGUMENT

I. THE COURT SHOULD RECOGNIZE AND APPLY THE PROPER PRINCIPLES FOR DETERMINING WHETHER FEDERAL LAW PREEMPTS A MINNESOTA STATUTE.

Decisions of the United States Supreme Court establish the controlling principles for determining the preemptive effect of a federal statute. Under these principles, the Graves Amendment's preemption provision must be read narrowly, and its savings clause read broadly, so as to disfavor preemption of state law.

Interpretation of the challenged Minnesota statutes is governed by state law. Under the applicable state-law principles, the claim of federal preemption must be treated as a constitutional challenge and the Minnesota statutes must be given an expansive reading to avoid their displacement by the Graves Amendment if possible.

The Court of Appeals disregarded these governing principles in holding that the Graves Amendment preempts the Minnesota statutes. Other decisions addressing the Graves Amendment's preemptive scope have likewise failed to apply the prevailing standards for federal preemption. This Court should follow the required preemption analysis and, in so doing, also make clear that such claims are a constitutional challenge.

A. The Governing Federal-Law Principles Require A Narrow Construction Of The Preemptive Effect Of The Graves Amendment.

Federal law governs the determination of the preemptive scope of a congressional enactment such as the Graves Amendment. The United States Supreme Court has identified the federal Supremacy Clause as the source of such preemption. *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368, 106 S. Ct. 1890, 1898 (1986). The Supremacy Clause provides that “the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. Because it is a matter of federal constitutional law, state courts are bound by the United States Supreme Court decisions establishing the principles that govern congressional preemption of state statutes. *See Friedman v. Commissioner of Pub. Safety*, 473 N.W.2d 828, 830 (Minn. 1991) (“State courts must follow the United States Supreme Court in matters of federal constitutional law.”); *Dayton Co. v. Carpet, Linoleum & Resilient Floor Decorators’ Union*, 229 Minn. 87, 100, 39 N.W.2d 183, 190-91 (1949) (“In construing the constitution of the United States, the Supreme Court of the United States is the final arbiter.”).

In this area of federal constitutional law, the dominant principle established by the United States Supreme Court is the presumption against preemption. The presumption means that preemption analysis “start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947). This helps to protect the states’ status as “independent

sovereigns in our federal system.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S. Ct. 2240, 2250 (1996), and “provides assurance that the ‘federal-state balance’ will not be disturbed unintentionally by Congress or unnecessarily by the courts.” *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S. Ct. 1305, 1309 (1977) (citation omitted).

Recent decisions of the Supreme Court have reinvigorated the longstanding presumption against preemption, leaving no doubt it is to be applied with real force. *See Altria Group, Inc. v. Good*, 129 S. Ct. 538 (2008) (holding that the Federal Cigarette Labeling and Advertising Act does not preempt a state-law action alleging that a cigarette manufacturer deceptively advertised “light” cigarettes); *Wyeth v. Levine*, 129 S. Ct. 1187 (2009) (holding that federal law does not preempt a state-law tort claim asserting that an FDA-approved label for a drug did not contain an adequate warning).

In *Altria Group*, the Supreme Court reaffirmed that the presumption against preemption applies to the construction of an express preemption provision, such as that in the Graves Amendment. 129 S. Ct. at 543; *see also Lohr*, 518 U.S. at 485, 116 S. Ct. at 2250 (observing with approval that the Supreme Court had “used a ‘presumption against the pre-emption of state police power regulations’ to support a narrow interpretation” of an express preemption clause in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S. Ct. 2608 (1992)) (quoting *Cipollone*, 505 U.S. at 518, 523, 112 S. Ct. at 2618, 2621). Thus, where an express provision in a federal enactment clearly shows Congress intended to supersede some aspect of state law, the presumption against preemption must then be applied in determining the scope of the displacement of state statutes imposed by the express preemption provision. *Altria Group*, 129 S. Ct. at 543.

In *Wyeth*, the Supreme Court rejected the argument that the presumption against preemption does not apply in an area with a history of significant federal regulation, stating: “We rely on the presumption because respect for the States as independent sovereigns in our federal system leads us to assume that Congress does not cavalierly preempt state-law causes of action.” 129 S. Ct. at 1195 n.3 (quotation and citation omitted). The Court also made clear in *Wyeth* that the presumption against preemption applies as well to claims of implied conflict preemption. *See id.*²

As reiterated in *Altria Group*, the presumption against preemption “applies with particular force when Congress has legislated in a field traditionally occupied by the States.” 129 S. Ct. at 543. Health and safety are fields of traditional state power. *See, e.g., Lohr*, 518 U.S. at 475, 116 S. Ct. at 2245 (“Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens.”). Accordingly, there is an especially strong presumption that state regulation of matters related to health and safety is not preempted. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 715-20, 105 S. Ct. 2371, 2376-78 (1985). This extra-weighty presumption against preemption applies here because the challenged state statutes relate to the health and safety of victims of rental-car accidents. Overcoming this presumption imposes a “considerable burden” on the advocate of preemption. *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814, 117 S. Ct. 1747, 1752 (1997).

² Implied conflict preemption occurs where the federal law has no express preemption provision but it is either impossible to comply with both the state and federal law or the state law stands as an obstacle to the accomplishment and execution of the federal law’s objectives. *In re Estate of Barg*, 752 N.W.2d 52, 64 (Minn. 2008).

Applying these federal-law principles requires the Court to narrowly construe the Graves Amendment's preemption provision and broadly construe its savings clause. *See Sprietsma v. Mercury Marine*, 537 U.S. 51, 63-64, 123 S. Ct. 518, 526-27 (2002) (reading a federal act's express preemption clause in conjunction with the act's savings clause to limit the act's preemptive scope). Indeed, under the rule expressed in *Altria Group*, if the Graves Amendment is susceptible of an interpretation that avoids invalidating the challenged Minnesota statutes, the Court must adopt that interpretation. *Altria Group*, 129 S. Ct. at 543 (stating that "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption'" (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449, 125 S. Ct. 1788, 1801 (2005))). In short, a proper recognition and application of the presumption against preemption, as reinvigorated in the recent case law, requires the Court to adopt the Plaintiff-Appellant's interpretation of the Graves Amendment, which avoids preemption, if that interpretation is a plausible one.

The Court of Appeals failed to follow these principles. It made only a passing reference to the presumption against preemption, stating merely that "preemption is generally disfavored." *Meyer v. Nwokedi*, 759 N.W.2d 426, 429 (Minn. Ct. App. 2009). The Court of Appeals did not actually apply the presumption, much less with the vigor required by the recent United States Supreme Court decisions. In particular, it did not read the Graves Amendment's preemption provision narrowly to disfavor preemption, but instead effectively construed the provision under the backwards premise that the displacement of state law is favored.

Other courts addressing the preemptive effect of the Graves Amendment have not even mentioned, much less applied, the required presumption against preemption. *See Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1245-49 (11th Cir. 2008), *cert. denied*, 129 S. Ct. 1369 (2009); *Dupuis v. Vanguard Car Rental USA, Inc.*, 510 F. Supp.2d 980, 983-84 (M.D. Fla. 2007); *Vargas v. Enterprise Leasing Co.*, 993 So.2d 614, 616-23 (Fla. Dist. Ct. App. 2008). *But see Vargas*, 993 So.2d at 624-35 (dissenting opinion that identifies and applies presumption against preemption).

The erroneous path taken by the Court of Appeals and similar decisions from other jurisdictions should be rejected. Instead, this Court should adhere to the analytical approach required by the United States Supreme Court, an “approach [that] is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety.” *Lohr*, 518 U.S. at 485, 116 S. Ct. at 2250.

B. The Governing State-Law Principles Require A Liberal Interpretation Of The Challenged Minnesota Statutes That Avoids Preemption.

Interpretation of the challenged Minnesota statutes is a state-law question on which this Court’s decision is final. *See, e.g., Hebert v. Louisiana*, 272 U.S. 312, 316, 47 S. Ct. 103, 104 (1926) (“Whether state statutes shall be construed one way or another is a state question, the final decision of which rests with the courts of the state.”); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 48, 117 S. Ct. 1055, 1059 (1997). (“Federal courts lack competence to rule definitively on the meaning of state legislation.”). Thus, the Minnesota principles of statutory construction apply in interpreting the challenged state statutes. *See Gershman v. American Cas. Co.*, 251 F.3d

1159, 1162 (8th Cir. 2001) (recognizing that as to the interpretation of a state's statute, federal courts are "bound by" the state's rules of statutory construction).

Because federal preemption renders a state statute unconstitutional under the Supremacy Clause, the Court should apply the established Minnesota requirements for evaluating constitutional challenges to state legislation. Indeed, federal preemption "is almost certainly the most frequently used doctrine of constitutional law in practice." Stephen A. Gardbaum, *The Nature of Preemption*, 79 Cornell L. Rev. 767, 768 (1994).

As an initial matter, a civil litigant raising a constitutional challenge to a Minnesota statute is required to notify the Minnesota Attorney General in the district court under Minn. R. Civ. P. 5A, and on appeal under Minn. R. Civ. App. P. 144, when the Attorney General does not represent a party in the case. The purpose of these rules "is to permit the Attorney General to intervene to protect the state's interest in upholding the constitutionality of its statutes." 1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 5A.3, at 24 (Supp. 4th ed. 2008). Claims that federal law preempts a state statute have generally been viewed as triggering the similar requirement under 28 U.S.C. § 2403(b) for notice to the state attorney general of a constitutional challenge in federal court. See, e.g., *Puffer's Hardware, Inc. v. Donovan*, 742 F.2d 12, 15-18 (1st Cir. 1984); *Oconomowoc Residential Programs, Inc. v. City of Greenfield*, 23 F. Supp.2d 941, 943 n.1 (E.D. Wis. 1998). But see *Leher v. Consolidated Papers, Inc.*, 786 F. Supp. 1480, 1482 (W.D. Wis. 1992) (disagreeing with this view). The Court of Appeals did not require notice to the Attorney General in this case because it failed to recognize that a claim of federal preemption is a constitutional challenge. This Court should make clear

that civil litigants claiming federal law preempts a Minnesota statute must notify the Attorney General under Rule 5A and Rule 144, to ensure the requisite notice is provided in future cases.³

As to the substantive standards, Minnesota statutes are presumed constitutional and will be declared unconstitutional “with extreme caution and only when absolutely necessary.” *State v. Tennin*, 674 N.W.2d 403, 407 (Minn. 2004) (quoting *State v. Larsen*, 650 N.W.2d 144, 147 (Minn. 2002)). To successfully challenge the constitutionality of a statute, the challenger “must overcome the heavy burden of showing beyond a reasonable doubt that the statute is unconstitutional.” *Tennin*, 674 N.W.2d at 407 (citing *State v. Merrill*, 450 N.W.2d 318, 321 (Minn. 1990), *cert. denied*, 496 U.S. 931 (1990)). The burden is no different for constitutional challenges brought under the Supremacy Clause. *See Rio Vista Non-Profit Housing Corp. v. County of Ramsey*, 335 N.W.2d 242, 247 (Minn. 1983) (stating with respect to a challenge to a statute under the Supremacy Clause that “[t]he challenger, not the state, has the burden of proof of constitutional violation beyond a reasonable doubt”), *appeal dismissed*, 464 U.S. 1033 (1984).

Under these principles for evaluating a constitutional challenge, it is fundamental that Minnesota statutes must be interpreted to avoid constitutional defects. *Hince v. O’Keefe*, 632 N.W.2d 577, 582 (Minn. 2001); *see also Tennin*, 674 N.W.2d at 407 (“A

³ If the constitutionality of the Graves Amendment had been questioned in this case, then Rule 5A also would have required notice to the United States Attorney General. *See Garcia*, 540 F.3d at 1249-53 (addressing and rejecting claim that Graves Amendment is unconstitutional because it is outside Congress’s commerce powers). As the Court of Appeals noted, no challenge to the constitutionality of the Graves Amendment has been raised in this case and, consequently, that issue is not before this Court.

statute is unconstitutional only if there is no reasonable alternative construction available.”). Thus, if a Minnesota statute that otherwise would be preempted is susceptible to an alternative construction that avoids preemption, the courts must adopt the alternative construction. *Martin v. City of Rochester*, 642 N.W.2d 1, 17-18 (Minn. 2002), *cert. denied*, 539 U.S. 957 (2003); *see also id.* at 11 (recognizing further that “[w]hen federal laws do preempt conflicting state laws, the state laws are preempted only to the extent that they are in conflict with federal law”). This rule means the Plaintiff-Appellant’s interpretation of the challenged statutes must be adopted if the statutes are susceptible to that construction, in preference to the car-rental company’s interpretation that would result in the statutes being preempted and therefore unconstitutional under the Supremacy Clause.

The Court of Appeals did not adhere to these state-law principles that govern the interpretation of Minnesota statutes when they are challenged as preempted by federal law. *See Meyer*, 759 N.W.2d at 429-32. In particular, it did not fully consider whether the statutes are susceptible of an alternative construction that places them outside the ambit of the Graves Amendment’s preemption provision.

This Court should recognize and apply the required state-law principles, in concert with the governing federal-law principles, by expressly determining whether the Minnesota statutes are capable of an interpretation that avoids their invalidation under a constrained reading of the Graves Amendment’s preemptive scope. To proceed otherwise would repeat the Court of Appeals’ error in failing to treat this case as presenting a constitutional challenge. Because such a claim of federal preemption is

indeed a constitutional challenge, the Court should subject it to the procedural and substantive principles that apply to any attacks on the constitutionality of state statutes.

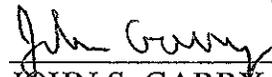
CONCLUSION

The Court should apply the proper framework for deciding a claim that a federal law preempts a Minnesota statute. This requires the Court to narrowly construe the preemptive effect of the Graves Amendment, 49 U.S.C. § 30106, by a confined reading of the preemption provision and a concomitant broad reading of the savings clause. It further requires the Court to seek a construction of Minn. Stat. §§ 65B.49, subd. 5a(i)(2), and 169.09, subd. 5a, that avoids invalidation under a narrow interpretation of the Graves Amendment's preemptive scope. The Court also should clarify, for both the Court of Appeals and the district courts, that a claim of federal preemption requires notice to the Attorney General under the rules of civil procedure, given that such a claim is a challenge to the constitutionality of the state statute under the Supremacy Clause.

Dated: May 7, 2009

Respectfully submitted,

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