SUPREME COURT OF THE UNITED STATES

No. 98–1811

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

[May 22, 2000]

JUSTICE BREYER delivered the opinion of the Court.

This case focuses on the 1984 version of a Federal Motor Vehicle Safety Standard promulgated by the Department of Transportation under the authority of the National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, 15 U. S. C. §1381 *et seq.* (1988 ed.). The standard, FMVSS 208, required auto manufacturers to equip some but not all of their 1987 vehicles with passive restraints. We ask whether the Act pre-empts a state common-law tort action in which the plaintiff claims that the defendant auto manufacturer, who was in compliance with the standard, should nonetheless have equipped a 1987 automobile with airbags. We conclude that the Act, taken together with FMVSS 208, pre-empts the lawsuit.

I

In 1992, petitioner Alexis Geier, driving a 1987 Honda Accord, collided with a tree and was seriously injured. The car was equipped with manual shoulder and lap belts which Geier had buckled up at the time. The car was not equipped with airbags or other passive restraint devices.

Geier and her parents, also petitioners, sued the car's

manufacturer, American Honda Motor Company, Inc., and its affiliates (hereinafter American Honda), under District of Columbia tort law. They claimed, among other things, that American Honda had designed its car negligently and defectively because it lacked a driver's side airbag. App. 3. The District Court dismissed the lawsuit. The court noted that FMVSS 208 gave car manufacturers a choice as to whether to install airbags. And the court concluded that petitioners' lawsuit, because it sought to establish a different safety standard– *i.e.*, an airbag requirement– was expressly pre-empted by a provision of the Act which pre-empts "any safety standard" that is not identical to a federal safety standard applicable to the same aspect of performance, 15 U. S. C. §1392(d) (1988 ed.); Civ. No. 95–CV–0064 (D. D.C., Dec. 9, 1997), App. 17. (We, like the courts below and the parties, refer to the pre-1994 version of the statute throughout the opinion; it has been recodified at 49 U. S. C. §30101 *et seq*.).

The Court of Appeals agreed with the District Court's conclusion but on somewhat different reasoning. It had doubts, given the existence of the Act's "saving" clause, 15 U. S. C. §1397(k) (1988 ed.), that petitioners' lawsuit involved the potential creation of the kind of "safety standard" to which the Safety Act's express pre-emption provision refers. But it declined to resolve that question because it found that petitioners' state-law tort claims posed an obstacle to the accomplishment of FMVSS 208's objectives. For that reason, it found that those claims conflicted with FMVSS 208, and that, under ordinary pre-emption principles, the Act consequently pre-empted the lawsuit. The Court of Appeals thus affirmed the District Court's dismissal. 166 F. 3d 1236, 1238–1243 (CADC 1999).

Several state courts have held to the contrary, namely, that neither the Act's express pre-emption nor FMVSS 208 pre-empts a "no airbag" tort suit. See, *e.g.*, *Drattel* v.

Toyota Motor Corp., 92 N. Y. 2d 35, 43–53, 699 N. E. 2d 376, 379–386 (1998); *Minton* v. *Honda of America Mfg., Inc.*, 80 Ohio St. 3d 62, 70–79, 684 N. E. 2d 648, 655–661 (1997); *Munroe* v. *Galati*, 189 Ariz. 113, 115–119, 938 P. 2d 1114, 1116–1120 (1997); *Wilson* v. *Pleasant*, 660 N. E. 2d 327, 330–339 (Ind. 1995); *Tebbetts* v. *Ford Motor Co.*, 140 N. H. 203, 206–207, 665 A. 2d 345, 347–348 (1995). All of the Federal Circuit Courts that have considered the question, however, have found pre-emption. One rested its conclusion on the Act's express pre-emption provision. See, *e.g.*, *Harris* v. *Ford Motor Co.*, 110 F. 3d 1410, 1413–1415 (CA9 1997). Others, such as the Court of Appeals below, have instead found pre-emption under ordinary pre-emption principles by virtue of the conflict such suits pose to FMVSS 208's objectives, and thus to the Act itself. See, *e.g.*, *Montag* v. *Honda Motor Co.*, 75 F. 3d 1414, 1417 (CA10 1996); *Pokorny* v. *Ford Motor Co.*, 902 F. 2d 1116, 1121–1125 (CA3 1990); *Taylor* v. *General Motors Corp.*, 875 F. 2d 816, 825–827 (CA11 1989); *Wood* v. *General Motors Corp.*, 865 F. 2d 395, 412–414 (CA1 1988). We granted certiorari to resolve these differences. We now hold that this kind of "no airbag" lawsuit conflicts with the objectives of FMVSS 208, a standard authorized by the Act, and is therefore pre-empted by the Act.

In reaching our conclusion, we consider three subsidiary questions. First, does the Act's express pre-emption provision pre-empt this lawsuit? We think not. Second, do ordinary pre-emption principles nonetheless apply? We hold that they do. Third, does this lawsuit actually conflict with FMVSS 208, hence with the Act itself? We hold that it does.

II

We first ask whether the Safety Act's express pre-emption provision pre-empts this tort action. The provision reads as follows:

> "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) (1988 ed.).

American Honda points out that a majority of this Court has said that a somewhat similar statutory provision in a different federal statute– a provision that uses the word "requirements"– may well expressly pre-empt similar tort actions. See, *e.g.*, *Medtronic, Inc.* v. *Lohr,* 518 U. S. 470, 502–504 (1996) (plurality opinion); *id.*, at 503–505 (BREYER, J., concurring in part and concurring in judgment); *id.*, at 509–512 (O'CONNOR, J., concurring in part and dissenting in part). Petitioners reply that this statute speaks of pre-empting a state-law "safety *standard*," not a "requirement," and that a tort action does not involve a safety *standard*. Hence, they conclude, the express pre-emption provision does not apply.

We need not determine the precise significance of the use of the word "standard," rather than "requirement," however, for the Act contains another provision, which resolves the disagreement. That provision, a "saving" clause, says that "[c]ompliance with" a federal safety standard "does not exempt any person from any liability under common law." 15 U. S. C. §1397(k) (1988 ed.). The saving clause assumes that there are some significant number of common-law liability cases to save. And a reading of the express pre-emption provision that excludes common-law tort actions gives actual meaning to the saving clause's literal language, while leaving adequate room for state tort law to operate– for example, where

federal law creates only a floor, *i.e.*, a minimum safety standard. See, *e.g.*, Brief for United States as *Amicus Curiae* 21 (explaining that common-law claim that a vehicle is defectively designed because it lacks antilock brakes would not be pre-empted by 49 CFR §571.105 (1999), a safety standard establishing minimum requirements for brake performance). Without the saving clause, a broad reading of the express pre-emption provision arguably might pre-empt those actions, for, as we have just mentioned, it is possible to read the pre-emption provision, standing alone, as applying to standards imposed in common-law tort actions, as well as standards contained in state legislation or regulations. And if so, it would pre-empt all nonidentical state standards established in tort actions covering the same aspect of performance as an applicable federal standard, even if the federal standard merely established a minimum standard. On that broad reading of the pre-emption clause little, if any, potential "liability at common law" would remain. And few, if any, state tort actions would remain for the saving clause to save. We have found no convincing indication that Congress wanted to pre-empt, not only state statutes and regulations, but also common-law tort actions, in such circumstances. Hence the broad reading cannot be correct. The language of the pre-emption provision permits a narrow reading that excludes common-law actions. Given the presence of the saving clause, we conclude that the pre-emption clause must be so read.

III

We have just said that the saving clause *at least* removes tort actions from the scope of the express pre-emption clause. Does it do more? In particular, does it foreclose or limit the operation of ordinary pre-emption principles insofar as those principles instruct us to read statutes as pre-empting state laws (including common-law

rules) that "actually conflict" with the statute or federal standards promulgated thereunder? *Fidelity Fed. Sav. & Loan Assn.* v. *De la Cuesta*, 458 U. S. 141, 153 (1982). Petitioners concede, as they must in light of *Freightliner Corp.* v. *Myrick*, 514 U. S. 280 (1995), that the pre-emption provision, by itself, does not foreclose (through negative implication) "any possibility of implied [conflict] pre-emption," *id.*, at 288 (discussing *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. 504, 517–518 (1992)). But they argue that the saving clause has that very effect.

We recognize that, when this Court previously considered the pre-emptive effect of the statute's language, it appeared to leave open the question of how, or the extent to which, the saving clause saves state-law tort actions that conflict with federal regulations promulgated under the Act. See *Freightliner*, *supra*, at 287, n. 3 (declining to address whether the saving clause prevents a manufacturer from "us[ing] a federal safety standard to immunize itself from state common-law liability"). We now conclude that the saving clause (like the express pre-emption provision) does *not* bar the ordinary working of conflict pre-emption principles.

Nothing in the language of the saving clause suggests an intent to save state-law tort actions that conflict with federal regulations. The words "[c]ompliance" and "does not exempt," 15 U. S. C. §1397(k) (1988 ed.), sound as if they simply bar a special kind of defense, namely, a defense that compliance with a federal standard automatically exempts a defendant from state law, whether the Federal Government meant that standard to be an absolute requirement or only a minimum one. See Restatement (Third) of Torts: Products Liability §4(b), Comment *e* (1997) (distinguishing between state-law compliance defense and a federal claim of pre-emption). It is difficult to understand why Congress would have insisted on a compliance-with-federal-regulation precondition to the provision's

applicability had it wished the Act to "save" all state-law tort actions, regardless of their potential threat to the objectives of federal safety standards promulgated under that Act. Nor does our interpretation conflict with the purpose of the saving provision, say by rendering it ineffectual. As we have previously explained, the saving provision still makes clear that the express pre-emption provision does not of its own force pre-empt common-law tort actions. And it thereby preserves those actions that seek to establish greater safety than the minimum safety achieved by a federal regulation intended to provide a floor. See *supra*, at 4–5.

Moreover, this Court has repeatedly "decline[d] to give broad effect to saving clauses where doing so would upset the careful regulatory scheme established by federal law." *United States* v. *Locke*, 529 U. S. __, __ (2000) (slip op., at 14); see *American Telephone & Telegraph Co.* v. *Central Office Telephone, Inc.*, 524 U. S. 214, 227–228 (1998) *(AT&T)*; *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 446 (1907). We find this concern applicable in the present case. And we conclude that the saving clause foresees– it does not foreclose– the possibility that a federal safety standard will pre-empt a state common-law tort action with which it conflicts. We do not understand the dissent to disagree, for it acknowledges that ordinary pre-emption principles apply, at least sometimes. *Post*, at 14–16 (opinion of STEVENS, J.).

Neither do we believe that the pre-emption provision, the saving provision, or both together, create some kind of "special burden" beyond that inherent in ordinary pre-emption principles– which "special burden" would specially disfavor pre-emption here. Cf. *post*, at 14. The two provisions, read together, reflect a neutral policy, not a specially favorable or unfavorable policy, towards the application of ordinary conflict pre-emption principles. On the one hand, the pre-emption provision itself reflects a

desire to subject the industry to a single, uniform set of federal safety standards. Its pre-emption of *all* state standards, even those that might stand in harmony with federal law, suggests an intent to avoid the conflict, uncertainty, cost, and occasional risk to safety itself that too many different safety-standard cooks might otherwise create. See H. R. Rep. No. 1776, 89th Cong., 2d Sess., 17 (1966) ("Basically, this preemption subsection is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards"); S. Rep. No. 1301, 89th Cong., 2d Sess., 12 (1966). This policy by itself favors pre-emption of state tort suits, for the rules of law that judges and juries create or apply in such suits may themselves similarly create uncertainty and even conflict, say, when different juries in different States reach different decisions on similar facts.

On the other hand, the saving clause reflects a congressional determination that occasional nonuniformity is a small price to pay for a system in which juries not only create, but also enforce, safety standards, while simultaneously providing necessary compensation to victims. That policy by itself disfavors pre-emption, at least some of the time. But we can find nothing in any natural reading of the two provisions that would favor one set of policies over the other where a jury-imposed safety standard actually conflicts with a federal safety standard.

Why, in any event, would Congress not have wanted ordinary pre-emption principles to apply where an actual conflict with a federal objective is at stake? Some such principle is needed. In its absence, state law could impose legal duties that would conflict directly with federal regulatory mandates, say, by premising liability upon the presence of the very windshield retention requirements that federal law requires. See, *e.g.*, 49 CFR §571.212 (1999). Insofar as petitioners' argument would permit

common-law actions that "actually conflict" with federal regulations, it would take from those who would enforce a federal law the very ability to achieve the law's congressionally mandated objectives that the Constitution, through the operation of ordinary pre-emption principles, seeks to protect. To the extent that such an interpretation of the saving provision reads into a particular federal law toleration of a conflict that those principles would otherwise forbid, it permits that law to defeat its own objectives, or potentially, as the Court has put it before, to "'destroy itself.'" *AT&T*, *supra*, at 228 (quoting *Abilene Cotton*, *supra*, at 446). We do not claim that Congress lacks the constitutional power to write a statute that mandates such a complex type of state/federal relationship. Cf. *post*, at 15, n. 16. But there is no reason to believe Congress has done so here.

The dissent, as we have said, contends nonetheless that the express pre-emption and saving provisions here, taken together, create a "special burden," which a court must impose "on a party" who claims conflict pre-emption under those principles. *Post*, at 14. But nothing in the Safety Act's language refers to any "special burden." Nor can one find the basis for a "special burden" in this Court's precedents. It is true that, in *Freightliner Corp.* v. *Myrick*, 514 U. S. 280 (1995), the Court said, in the context of interpreting the Safety Act, that "[*a*]*t best*" there is an "inference that an express pre-emption clause forecloses implied pre-emption." *Id*., at 289 (emphasis added). But the Court made this statement in the course of *rejecting* the more absolute argument that the presence of the express pre-emption provision entirely foreclosed the possibility of conflict pre-emption. *Id.*, at 288. The statement, headed with the qualifier "[a]t best," and made in a case where, without any need for inferences or "special burdens," state law obviously would survive, see *id.*, at 289–290, simply preserves a legal possibility. This Court did not hold that

the Safety Act *does* create a "special burden," or still less that such a burden necessarily arises from the limits of an express pre-emption provision. And considerations of language, purpose, and administrative workability, together with the principles underlying this Court's pre-emption doctrine discussed above, make clear that the express pre-emption provision imposes no unusual, "special burden" against pre-emption. For similar reasons, we do not see the basis for interpreting the saving clause to impose any such burden.

A "special burden" would also promise practical difficulty by further complicating well-established pre-emption principles that already are difficult to apply. The dissent does not contend that this "special burden" would apply in a case in which state law penalizes what federal law requires– *i.e.*, a case of impossibility. See *post*, at 8, n. 6, 15–16, n. 16. But if it would not apply in such a case, then how, or when, would it apply? This Court, when describing conflict pre-emption, has spoken of pre-empting state law that "under the circumstances of th[e] particular case . . . stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"– whether that "obstacle" goes by the name of "conflicting; contrary to; . . . repugnance; difference; irreconcilability; inconsistency; violation; curtailment; . . . interference," or the like. *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941); see *Jones* v. *Rath Packing Co.*, 430 U. S. 519, 526 (1977). The Court has not previously driven a legal wedge– only a terminological one– between "conflicts" that prevent or frustrate the accomplishment of a federal objective and "conflicts" that make it "impossible" for private parties to comply with both state and federal law. Rather, it has said that both forms of conflicting state law are "nullified" by the Supremacy Clause, *De la Cuesta*, 458 U. S., at 152–153; see *Locke*, 529 U. S., at ___ (slip op., at 17); *English* v. *General Elec. Co.*, 496 U. S. 72, 78–79 (1990), and it has

assumed that Congress would not want either kind of conflict. The Court has thus refused to read general "saving" provisions to tolerate actual conflict *both* in cases involving impossibility, see, *e.g.*, *AT&T*, 524 U. S., at 228, *and* in "frustration-of-purpose" cases, see, *e.g.*, *Locke*, *supra*, at ___ (slip op., at 11–20); *International Paper Co.* v. *Ouellette*, 479 U. S. 481, 493–494 (1987); see also *Chicago & North Western Transp. Co.* v. *Kalo Brick & Tile Co.*, 450 U. S. 311, 328–331 (1981). We see no grounds, then, for attempting to distinguish among types of federal-state conflict for purposes of analyzing whether such a conflict warrants pre-emption in a particular case. That kind of analysis, moreover, would engender legal uncertainty with its inevitable systemwide costs (*e.g.*, conflicts, delay, and expense) as courts tried sensibly to distinguish among varieties of "conflict" (which often shade, one into the other) when applying this complicated rule to the many federal statutes that contain some form of an express pre-emption provision, a saving provision, or as here, both. Nothing in the statute suggests Congress wanted to complicate ordinary experience-proved principles of conflict pre-emption with an added, "special burden." Indeed, the dissent's willingness to impose a "special burden" here stems ultimately from its view that "frustration-of-purpos[e]" conflict pre-emption is a freewheeling, "inadequately considered" doctrine that might well be "eliminate[d]." *Post*, at 24, and n. 22. In a word, ordinary pre-emption principles, grounded in longstanding precedent, *Hines*, *supra*, at 67, apply. We would not further complicate the law with complex new doctrine.

IV

The basic question, then, is whether a common-law "no airbag" action like the one before us actually conflicts with FMVSS 208. We hold that it does.

In petitioners' and the dissent's view, FMVSS 208 sets a

minimum airbag standard. As far as FMVSS 208 is concerned, the more airbags, and the sooner, the better. But that was not the Secretary's view. DOT's comments, which accompanied the promulgation of FMVSS 208, make clear that the standard deliberately provided the manufacturer with a range of choices among different passive restraint devices. Those choices would bring about a mix of different devices introduced gradually over time; and FMVSS 208 would thereby lower costs, overcome technical safety problems, encourage technological development, and win widespread consumer acceptance– all of which would promote FMVSS 208's safety objectives. See generally 49 Fed. Reg. 28962 (1984).

A

The history of FMVSS 208 helps explain why and how DOT sought these objectives. See generally *Motor Vehicle Mfrs. Assn. of United States, Inc.* v. *State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 34–38 (1983). In 1967, DOT, understanding that seatbelts would save many lives, required manufacturers to install manual seat belts in all automobiles. 32 Fed. Reg. 2408, 2415. It became apparent, however, that most occupants simply would not buckle up their belts. See 34 Fed. Reg. 11148 (1969). DOT then began to investigate the feasibility of requiring "passive restraints," such as airbags and automatic seatbelts. *Ibid*. In 1970, it amended FMVSS 208 to include some passive protection requirements, 35 Fed. Reg. 16927, while making clear that airbags were one of several "equally acceptable" devices and that it neither "'favored' [n]or expected the introduction of airbag systems." *Ibid*. In 1971, it added an express provision permitting compliance through the use of nondetachable passive belts, 36 Fed. Reg. 12858, 12859, and in 1972, it mandated full passive protection for all front seat occupants for vehicles manufactured after August 15, 1975, 37 Fed. Reg. 3911.

Although the agency's focus was originally on airbags, 34 Fed. Reg. 11148 (1969) (notice of proposed rulemaking); *State Farm*, 463 U. S., at 35, n. 4; see also *id.*, at 46, n. 11 (noting view of commentators that, as of 1970, FMVSS 208 was "'a de facto airbag mandate'" because of the state of passive restraint technology), at no point did FMVSS 208 formally require the use of airbags. From the start, as in 1984, it permitted passive restraint options.

DOT gave manufacturers a further choice for new vehicles manufactured between 1972 and August 1975. Manufacturers could either install a passive restraint device such as automatic seatbelts or airbags or retain manual belts and add an "ignition interlock" device that in effect forced occupants to buckle up by preventing the ignition otherwise from turning on. 37 Fed. Reg. 3911 (1972). The interlock soon became popular with manufacturers. And in 1974, when the agency approved the use of detachable automatic seatbelts, it conditioned that approval by providing that such systems must include an interlock system *and* a continuous warning buzzer to encourage reattachment of the belt. 39 Fed. Reg. 14593. But the interlock and buzzer devices were most unpopular with the public. And Congress, responding to public pressure, passed a law that forbade DOT from requiring, or permitting compliance by means of, such devices. Motor Vehicle and Schoolbus Safety Amendments of 1974, §109, 88 Stat. 1482 (previously codified at 15 U. S. C. §1410b(b) (1988 ed.)).

That experience influenced DOT's subsequent passive restraint initiatives. In 1976, DOT Secretary William Coleman, fearing continued public resistance, suspended the passive restraint requirements. He sought to win public acceptance for a variety of passive restraint devices through a demonstration project that would involve about half a million new automobiles. *State Farm, supra,* at 37. But his successor, Brock Adams, canceled the project,

instead amending FMVSS 208 to require passive restraints, principally either airbags or passive seat belts. 42 Fed. Reg. 34289 (1977).

Andrew Lewis, a new DOT Secretary in a new administration, rescinded the Adams requirements, primarily because DOT learned that the industry planned to satisfy those requirements almost exclusively through the installation of detachable automatic seatbelts. 46 Fed. Reg. 53419–53420 (1981). This Court held the rescission unlawful. *State Farm*, *supra*, at 34, 46. And the stage was set for then-DOT Secretary, Elizabeth Dole, to amend FMVSS 208 once again, promulgating the version that is now before us. 49 Fed. Reg. 28962 (1984).

B

Read in light of this history, DOT's own contemporaneous explanation of FMVSS 208 makes clear that the 1984 version of FMVSS 208 reflected the following significant considerations. First, buckled up seatbelts are a vital ingredient of automobile safety. *Id.*, at 29003; *State Farm*, *supra*, at 52 ("We start with the accepted ground that if used, seatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries"). Second, despite the enormous and unnecessary risks that a passenger runs by not buckling up manual lap and shoulder belts, more than 80% of front seat passengers would leave their manual seatbelts unbuckled. 49 Fed. Reg. 28983 (1984) (estimating that only 12.5% of front seat passengers buckled up manual belts). Third, airbags could make up for the dangers caused by unbuckled manual belts, but they could not make up for them entirely. *Id.*, at 28986 (concluding that, although an airbag plus a lap and shoulder belt was the most "effective" system, airbags alone were *less* effective than buckled up manual lap and shoulder belts).

Fourth, passive restraint systems had their own disad-

vantages, for example, the dangers associated with, intrusiveness of, and corresponding public dislike for, nondetachable automatic belts. *Id.*, at 28992–28993. Fifth, airbags brought with them their own special risks to safety, such as the risk of danger to out-of-position occupants (usually children) in small cars. *Id.*, at 28992, 29001; see also 65 Fed. Reg. 30680, 30681–30682 (2000) (finding 158 confirmed airbag-induced fatalities as of April 2000, and amending rule to add new requirements, test procedures, and injury criteria to ensure that "future air bags be designed to create less risk of serious airbag-induced injuries than current air bags, particularly for small women and young children"); U. S. Dept. of Transportation, National Highway Traffic Safety Administration, National Accident Sampling System Crashworthiness Data System 1991–1993, p. viii (Aug. 1995) (finding that airbags caused approximately 54,000 injuries between 1991 and 1993).

Sixth, airbags were expected to be significantly more expensive than other passive restraint devices, raising the average cost of a vehicle price $320 for full frontal airbags over the cost of a car with manual lap and shoulder seatbelts (and potentially much more if production volumes were low). 49 Fed. Reg. 28990 (1984). And the agency worried that the high replacement cost– estimated to be $800– could lead car owners to refuse to replace them after deployment. *Id.*, at 28990, 29000–29001; see also *id.*, at 28990 (estimating total investment costs for mandatory airbag requirement at $1.3 billion compared to $500 million for automatic seatbelts). Seventh, the public, for reasons of cost, fear, or physical intrusiveness, might resist installation or use of any of the then-available passive restraint devices, *id.*, at 28987–28989– a particular concern with respect to airbags, *id.*, at 29001 (noting that "[a]irbags engendered the largest quantity of, and most vociferously worded, comments").

FMVSS 208 reflected these considerations in several ways. Most importantly, that standard deliberately sought variety– a mix of several different passive restraint systems. It did so by setting a performance requirement for passive restraint devices and allowing manufacturers to choose among different passive restraint mechanisms, such as airbags, automatic belts, or other passive restraint technologies to satisfy that requirement. *Id.*, at 28996. And DOT explained why FMVSS 208 sought the mix of devices that it expected its performance standard to produce. *Id.*, at 28997. DOT wrote that it had *rejected* a proposed FMVSS 208 "all airbag" standard because of safety concerns (perceived or real) associated with airbags, which concerns threatened a "backlash" more easily overcome "if airbags" were "not the only way of complying." *Id.*, at 29001. It added that a mix of devices would help develop data on comparative effectiveness, would allow the industry time to overcome the safety problems and the high production costs associated with airbags, and would facilitate the development of alternative, cheaper, and safer passive restraint systems. *Id.*, at 29001–29002. And it would thereby build public confidence, *id.*, at 29001–29002, necessary to avoid another interlock-type fiasco.

The 1984 FMVSS 208 standard also deliberately sought a *gradual* phase-in of passive restraints. *Id.*, at 28999–29000. It required the manufacturers to equip only 10% of their car fleet manufactured after September 1, 1986, with passive restraints. *Id.*, at 28999. It then increased the percentage in three annual stages, up to 100% of the new car fleet for cars manufactured after September 1, 1989. *Ibid.* And it explained that the phased-in requirement would allow more time for manufacturers to develop airbags or other, better, safer passive restraint systems. It would help develop information about the comparative effectiveness of different systems, would lead to a mix in

which airbags and other nonseatbelt passive restraint systems played a more prominent role than would otherwise result, and would promote public acceptance. *Id.*, at 29000–29001.

Of course, as the dissent points out, *post*, at 19–20, FMVSS 208 did not guarantee the mix by setting a ceiling for each different passive restraint device. In fact, it provided a form of extra credit for airbag installation (and other nonbelt passive restraint devices) under which each airbag-installed vehicle counted as 1.5 vehicles for purposes of meeting FMVSS 208's passive restraint requirement. 49 CFR §571.208, S4.1.3.4(a)(1) (1999); 49 Fed. Reg. 29000 (1984). But why should DOT have bothered to impose an airbag ceiling when the practical threat to the mix it desired arose from the likelihood that manufacturers would install, not too many airbags too quickly, but too few or none at all? After all, only a few years earlier, Secretary Dole's predecessor had discovered that manufacturers intended to meet the then-current passive restraint requirement almost entirely (more than 99%) through the installation of more affordable automatic belt systems. 46 Fed. Reg. 53421 (1981); *State Farm*, 463 U. S., at 38. The extra credit, as DOT explained, was designed to "encourage manufacturers to equip *at least some* of their cars with airbags." 49 Fed. Reg. 29001 (1984) (emphasis added) (responding to comment that failure to mandate airbags might mean the "end of . . . airbag technology"); see also *id.*, at 29000 (explaining that the extra credit for airbags "should promote the development of what may be better alternatives to automatic belts *than would otherwise be developed*" (emphasis added)). The credit provision *reinforces* the point that FMVSS 208 sought a gradually developing mix of passive restraint devices; it does not show the contrary.

Finally FMVSS 208's passive restraint requirement was conditional. DOT believed that ordinary manual lap and

shoulder belts would produce about the same amount of safety as passive restraints, and at significantly lower costs– *if only auto occupants would buckle up*. See *id.*, at 28997–28998. Thus, FMVSS 208 provided for rescission of its passive restraint requirement if, by September 1, 1989, two-thirds of the States had laws in place that, like those of many other nations, required auto occupants to buckle up (and which met other requirements specified in the standard). *Id.*, at 28963, 28993–28994, 28997–28999. The Secretary wrote that "coverage of a large percentage of the American people by seatbelt laws that are enforced would largely negate the incremental increase in safety to be expected from an automatic protection requirement." *Id.*, at 28997. In the event, two-thirds of the States did not enact mandatory buckle-up laws, and the passive restraint requirement remained in effect.

In sum, as DOT now tells us through the Solicitor General, the 1984 version of FMVSS 208 "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." Brief for United States as *Amicus Curiae* 25; see 49 Fed. Reg. 28997 (1984). Petitioners' tort suit claims that the manufacturers of the 1987 Honda Accord "had a duty to design, manufacture, distribute and sell a motor vehicle with an effective and safe passive restraint system, including, but not limited to, airbags." App. 3 (Complaint, ¶ 11).

In effect, petitioners' tort action depends upon its claim that manufacturers had a duty to install an airbag when they manufactured the 1987 Honda Accord. Such a state law– *i.e.*, a rule of state tort law imposing such a duty– by its terms would have required manufacturers of all similar cars to install airbags rather than other passive restraint systems, such as automatic belts or passive interiors. It thereby would have presented an obstacle to the variety

and mix of devices that the federal regulation sought. It would have required all manufacturers to have installed airbags in respect to the entire District-of-Columbia-related portion of their 1987 new car fleet, even though FMVSS 208 at that time required only that 10% of a manufacturer's nationwide fleet be equipped with any passive restraint device at all. It thereby also would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed. In addition, it could have made less likely the adoption of a state mandatory buckle-up law. Because the rule of law for which petitioners contend would have stood "as an obstacle to the accomplishment and execution of" the important means-related federal objectives that we have just discussed, it is pre-empted. *Hines*, 312 U. S., at 67; see also *Ouellette*, 479 U. S., at 493; *De la Cuesta*, 458 U. S., at 156 (finding conflict and pre-emption where state law limited the availability of an option that the federal agency considered essential to ensure its ultimate objectives).

Petitioners ask this Court to calculate the precise size of the "obstacle," with the aim of minimizing it, by considering the risk of tort liability and a successful tort action's incentive-related or timing-related compliance effects. See Brief for Petitioners 45–50. The dissent agrees. *Post*, at 17–20. But this Court's pre-emption cases do not ordinarily turn on such compliance-related considerations as whether a private party in practice would ignore state legal obligations– paying, say, a fine instead– or how likely it is that state law actually would be enforced. Rather, this Court's pre-emption cases ordinarily *assume* compliance with the state law duty in question. The Court has on occasion suggested that tort law may be somewhat different, and that related considerations– for example, the ability to pay damages instead of modifying one's behavior– may be relevant for pre-emption purposes. See *Goodyear Atomic Corp.* v. *Miller*, 486 U. S. 174, 185 (1988);

Cipollone, 505 U. S., at 536–539 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part); see also *English*, 496 U. S., at 86; *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 256 (1984). In other cases, the Court has found tort law to conflict with federal law without engaging in that kind of an analysis. See, *e.g.*, *Ouellette*, *supra*, at 494–497; *Kalo Brick*, 450 U. S., at 324–332. We need not try to resolve these differences here, however, for the incentive or compliance considerations upon which the dissent relies cannot, by themselves, change the legal result. Some of those considerations rest on speculation, see, *e.g.*, *post*, at 17 (predicting risk of "no airbag" liability and manufacturers' likely response to such liability); some rest in critical part upon the dissenters' own view of FMVSS 208's basic purposes– a view which we reject, see, *e.g.*, *post*, at 17–20 (suggesting that pre-existing risk of "no airbag" liability would have made FMVSS 208 unnecessary); and others, if we understand them correctly, seem less than persuasive, see, *e.g.*, *post*, at 18 (suggesting that manufacturers could have complied with a mandatory state airbag duty by installing a *different* kind of passive restraint device). And in so concluding, we do not "put the burden" of proving pre-emption on petitioners. *Post*, at 23. We simply find unpersuasive their arguments attempting to undermine the Government's demonstration of actual conflict.

One final point: We place some weight upon DOT's interpretation of FMVSS 208's objectives and its conclusion, as set forth in the Government's brief, that a tort suit such as this one would "'stan[d] as an obstacle to the accomplishment and execution'" of those objectives. Brief for United States as *Amicus Curiae* 25–26 (quoting *Hines*, *supra*, at 67). Congress has delegated to DOT authority to implement the statute; the subject matter is technical; and the relevant history and background are complex and extensive. The agency is likely to have a thorough under-

standing of its own regulation and its objectives and is "uniquely qualified" to comprehend the likely impact of state requirements. *Medtronic*, 518 U. S., at 496; see *id*., at 506 (BREYER, J,. concurring in part and concurring in judgment). And DOT has explained FMVSS 208's objectives, and the interference that "no airbag" suits pose thereto, consistently over time. Brief for United States as *Amicus Curiae* in *Freightliner Corp.* v. *Myrick*, O. T. 1994, No. 94–286, pp. 28–29; Brief for United States as *Amicus Curiae* in *Wood* v. *General Motors Corp.*, O. T. 1989, No. 89–46, pp. 7, 11–16. In these circumstances, the agency's own views should make a difference. See *City of New York* v. *FCC*, 486 U. S. 57, 64 (1988); *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U. S. 707, 714, 721 (1985); *De la Cuesta, supra*, at 158; *Blum* v. *Bacon*, 457 U. S. 132, 141 (1982); *Kalo Brick, supra*, at 321.

We have no reason to suspect that the Solicitor General's representation of DOT's views reflects anything other than "the agency's fair and considered judgment on the matter." *Auer* v. *Robbins*, 519 U. S. 452, 461–462 (1997); cf. *Hillsborough County, supra*, at 721 (expressing reluctance, in the absence of strong evidence, to find an actual conflict between state law and federal regulation where agency that promulgated the regulation had not, at the time the regulation was promulgated *or subsequently*, concluded that such a conflict existed). The failure of the Federal Register to address pre-emption explicitly is thus not determinative.

The dissent would require a formal agency statement of pre-emptive intent as a prerequisite to concluding that a conflict exists. It relies on cases, or portions thereof, that did not involve conflict pre-emption. See *post*, at 25; *California Coastal Comm'n* v. *Granite Rock Co.*, 480 U. S. 572, 583 (1987); *Hillsborough, supra*, at 718. And conflict pre-emption is different in that it turns on the identification of "actual conflict," and not on an express statement of pre-

emptive intent. *English*, 496 U. S., at 78–79; see *Hillsborough*, *supra*, at 720–721; *Jones*, 430 U. S., at 540–543. While "[p]re-emption fundamentally is a question of congressional intent," *English*, *supra*, at 78, this Court traditionally distinguishes between "express" and "implied" pre-emptive intent, and treats "conflict" pre-emption as an instance of the latter. See, *e.g.*, *Freightliner*, 514 U. S., at 287; *English*, *supra*, at 78–79; see also *Cipollone*, 505 U. S., at 545, 547–548 (SCALIA, J., concurring in judgment in part and dissenting in part). And though the Court has looked for a specific statement of pre-emptive intent where it is claimed that the mere "volume and complexity" of agency regulations demonstrate an implicit intent to displace *all* state law in a particular area, *Hillsborough*, *supra*, at 717; see *post*, at 25, n. 23– so-called "field pre-emption"– the Court has never before required a specific, formal agency statement identifying conflict in order to conclude that such a conflict in fact exists. Indeed, one can assume that Congress or an agency ordinarily would not intend to permit a significant conflict. While we certainly accept the dissent's basic position that a court should not find pre-emption too readily in the absence of clear evidence of a conflict, *English*, *supra*, at 90, for the reasons set out above we find such evidence here. To insist on a specific expression of agency intent to pre-empt, made after notice-and-comment rulemaking, would be in certain cases to tolerate conflicts that an agency, and therefore Congress, is most unlikely to have intended. The dissent, as we have said, apparently welcomes that result, at least where "frustration-of-purpos[e]" pre-emption by agency regulation is at issue. *Post*, at 24, and n. 22. We do not.

Nor do we agree with the dissent that the agency's views, as presented here, lack coherence. *Post*, at 21–22. The dissent points, *ibid.*, to language in the Government's brief stating that

> "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* . . . would not necessarily frustrate Standard 208's purposes." Brief for United States as *Amicus Curiae* 26, n. 23 (emphasis added).

And the dissent says that these words amount to a concession that there is no conflict in this very case. *Post*, at 21. But that is not what the words say. Rather, as the italicized phrase emphasizes, they simply leave open the question whether FMVSS 208 would pre-empt a different kind of tort case– one *not* at issue here. It is possible that some special design-related circumstance concerning a particular kind of car might require airbags, rather than automatic belts, and that a suit seeking to impose that requirement could escape pre-emption– say, because it would affect so few cars that its rule of law would not create a legal "obstacle" to 208's mixed-fleet, gradual objective. But that is not what petitioners claimed. They have argued generally that, to be safe, a car must have an airbag. See App. 4.

Regardless, the language of FMVSS 208 and the contemporaneous 1984 DOT explanation is clear enough– even without giving DOT's own view special weight. FMVSS 208 sought a gradually developing mix of alternative passive restraint devices for safety-related reasons. The rule of state tort law for which petitioners argue would stand as an "obstacle" to the accomplishment of that objective. And the statute foresees the application of ordinary principles of pre-emption in cases of actual conflict. Hence, the tort action is pre-empted.

The judgment of the Court of Appeals is affirmed.

It is so ordered.