NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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CIPOLLONE, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF CIPOLLONE *v.* LIGGETT GROUP, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 90–1038. Argued October 8, 1991—Reargued January 13, 1992—Decided June 24, 1992

Section 4 of the Federal Cigarette Labeling and Advertising Act (1965 Act) required a conspicuous label warning of smoking's health hazards to be placed on every package of cigarettes sold in this country, while §5 of that Act, captioned ``Preemption,'' provided: ``(a) No statement relating to smoking and health, other than the [§4] statement . . . , shall be required on any cigarette package,'' and ``(b) No [such] statement . . . shall be required in the advertising of any cigarettes the packages of which are labeled in conformity with'' §4. Section 5(b) was amended by the Public Health Cigarette Smoking Act of 1969 (1969 Act) to specify: ``No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are [lawfully] labeled.'' Petitioner's complaint in his action for damages invoked the District Court's diversity jurisdiction and alleged, *inter alia,* that respondent cigarette manufacturers were responsible for the 1984 death of his mother, a smoker since 1942, because they breached express warranties contained in their advertising, failed to warn consumers about smoking's hazards, fraudulently misrepresented those hazards to consumers, and conspired to deprive the public of medical and scientific information about smoking, all in derogation of duties created by New Jersey law. The District Court ultimately ruled, among other things, that these claims were pre-empted by the 1965 and 1969 Acts to the extent that the claims relied on respondents' advertising, promotional, and public relations activities after the effective date of the 1965 Act. The Court of Appeals affirmed on this point.

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Held: The judgment is reversed in part and affirmed in part, and the case is remanded.

893 F.2d 541, reversed in part, affirmed in part, and remanded.

JUSTICE STEVENS delivered the opinion of the Court with respect to Parts I, II, III, and IV, concluding that §5 of the 1965 Act did not pre-empt state law damages actions, but superseded only positive enactments by state and federal rulemaking bodies mandating particular warnings on cigarette labels or in cigarette advertisements. This conclusion is required by the section's precise and narrow prohibition of required cautionary ``statement[s]''; by the strong presumption against pre-emption of state police power regulations; by the fact that the required §4 warning does not by its own effect foreclose additional obligations imposed under state law; by the fact that there is no general, inherent conflict between federal pre-emption of state warning requirements and the continued vitality of common law damages actions; and by the Act's stated purpose and regulatory context, which establish that §5 was passed to prevent a multiplicity of pending and diverse ``regulations,'' a word that most naturally refers to positive enactments rather than common law actions. Pp.11–13.

JUSTICE STEVENS, joined by THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE O'CONNOR, concluded in Parts V and VI that §5(b) of the 1969 Act pre-empts certain of petitioner's failure to warn and fraudulent misrepresentation claims, but does not pre-empt other such claims or the claims based on express warranty or conspiracy. Pp.13–23.

(a)The broad language of amended §5(b) extends the section's pre-emptive reach beyond positive enactments to include some common law damages actions. The statutory phrase ``requirement or prohibition'' suggests no distinction between positive enactments and common law, but, in fact, easily encompasses obligations that take the form of common law rules, while the phrase ``imposed under State law'' clearly contemplates common law as well as statutes and regulations. This does not mean, however, that §5(b) pre-empts all common law claims, nor does the statute indicate that any familiar subdivision of common law is or is not pre-empted. Instead, the precise language of §5(b) must be fairly but—in light of the presumption against pre-emption—narrowly construed, and each of petitioner's common law claims must be examined to determine whether it is in fact pre-empted. The central inquiry in each case is straightforward: whether the legal duty that is the predicate of the common law damages action satisfies §5(b)'s express terms, giving those terms a fair but narrow reading. Each phrase within the section limits the universe of

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common law claims pre-empted by the statute. Pp.11–17.

(b)Insofar as claims under either of petitioner's failure to warn theories—*i. e.,* that respondents were negligent in the manner that they tested, researched, sold, promoted, and advertised their cigarettes, and that they failed to provide adequate warnings of smoking's consequences—require a showing that respondents' post-1969 advertising or promotions should have included additional, or more clearly stated, warnings, those claims rely on a state law ``requirement or prohibition . . . with respect to . . . advertising or promotion'' within §5(b)'s meaning and are pre-empted. Pp.17–18.

(c)To the extent that petitioner has a viable claim for breach of express warranties, that claim is not pre-empted. While the general duty not to breach such warranties arises under state law, a manufacturer's liability for the breach derives from, and is measured by, the terms of the warranty. A common law remedy for a contractual commitment voluntarily undertaken should not be regarded as a ``requirement . . . imposed under State law'' under §5(b). Pp.18–20.

(d)Because §5(b) pre-empts ``prohibition[s]'' as well as ``requirement[s],'' it supersedes petitioner's first fraudulent misrepresentation theory, which is predicated on a state law prohibition against advertising and promotional statements tending to minimize smoking's health hazards, and which alleges that respondents' advertising neutralized the effect of the federally mandated warning labels. However, the claims based on petitioner's second fraudulent misrepresentation theory—which alleges intentional fraud both by false representation and concealment of material facts—are not pre-empted. The concealment allegations, insofar as they rely on a state law duty to disclose material facts through channels of communication other than advertising and promotions, do not involve an obligation ``with respect to'' those activities within §5(b)'s meaning. Moreover, those fraudulent misrepresentation claims that do arise with respect to advertising and promotions are not predicated on a duty ``based on smoking and health'' but rather on a more general obligation—the duty not to deceive. Pp.20–23.

(e)Petitioner's claim alleging a conspiracy among respondents to misrepresent or conceal material facts concerning smoking's health hazards is not pre-empted, since the predicate duty not to conspire to commit fraud that underlies that claim is not a prohibition ``based on smoking and health'' as that §5(b) phrase is properly construed. P.23.

JUSTICE BLACKMUN, joined by JUSTICE KENNEDY and JUSTICE SOUTER, concluded that the modified language of §5(b) in the 1969 Act

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does not clearly exhibit the necessary congressional intent to pre-empt state common-law damages actions, and therefore concurred in the judgment that certain of petitioner's failure to warn and fraudulent misrepresentation claims, as well as his express warranty and conspiracy claims, are not pre-empted by that Act. P.4.

JUSTICE SCALIA, joined by JUSTICE THOMAS, concluded that all of petitioner's common-law claims are pre-empted by the 1969 Act under ordinary principles of statutory construction, and therefore concurred in the judgment that certain of his post-1969 failure-to-warn claims and certain of his fraudulent misrepresentation claims are pre-empted. P.5.

STEVENS, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III, and IV, in which REHNQUIST, C. J., and WHITE, BLACKMUN, O'CONNOR, KENNEDY, and SOUTER, JJ., joined, and an opinion with respect to Parts V and VI, in which REHNQUIST, C. J., and WHITE and O'CONNOR, JJ., joined. BLACKMUN, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part, in which KENNEDY and SOUTER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment in part and dissenting in part, in which THOMAS, J., joined.