No. 08-1314

In the Supreme Court of the United States

DELBERT WILLIAMSON, ET AL., PETITIONERS

v.

MAZDA MOTOR OF AMERICA, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA,
FOURTH APPELLATE DISTRICT, DIVISION THREE

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, now codified at 49 U.S.C. 30101 *et seq.*, the National Highway Traffic Safety Administration has promulgated Federal Motor Vehicle Safety Standard (FMVSS) 208, 49 C.F.R. 571.208, which addresses crash protection. In 1993, that provision required automobiles to have a Type 1 (lap) or Type 2 (lap/shoulder) seatbelt in rear non-outboard seating positions. The question presented is:

Whether FMVSS 208 preempts a state common-law tort claim that an automobile manufactured in 1993 was defectively designed because it lacked a Type 2 (lap/shoulder) seatbelt in a rear non-outboard seating position.

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INTEREST OF THE UNITED STATES

The question presented in this case is whether Federal Motor Vehicle Safety Standard (FMVSS) 208, 49 C.F.R. 571.208, issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act), 49 U.S.C. 30101 *et seq.*, preempts a state common-law tort claim that an automobile manufactured in 1993 was defectively designed because it lacked a Type 2 (lap/ shoulder) seatbelt in one of its seating positions. The Secretary of Transportation is responsible for administering the Safety Act, and the United States therefore has a substantial interest in the preemptive effect of a safety standard issued under that statute. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

Petitioners are the estate and survivors of Thanh Williamson. They filed this action against respondents Mazda Motor Corporation and Mazda Motor of America, Inc., the manufacturers of their minivan, alleging that respondents are liable under California common-law tort principles for Ms. Williamson's death from injuries sustained in a car accident. The state trial court entered judgment for respondents on the ground that petitioners' state common-law tort suit is preempted by a federal regulation, FMVSS 208. The Court of Appeal of California affirmed, Pet. App. 1-27, and the Supreme Court of California denied discretionary review, *id.* at 31.

1. The Safety Act requires the Secretary of Transportation to "prescribe motor vehicle safety standards," which are "minimum standard[s] for motor vehicle or motor vehicle equipment performance." 49 U.S.C. 30102(a)(9), 30111(a); see 49 U.S.C. 30101(1). The Secretary has delegated the authority to promulgate safety standards to the National Highway Traffic Safety Administration (NHTSA), an operating administration in the Department of Transportation (DOT). See 49 C.F.R. 1.50(a).

The Safety Act includes a savings clause, which provides that "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e). Although the Safety Act also includes an express preemption provision, which precludes a state or local government from "prescrib[ing] or continu[ing] in effect" its own standards if those standards differ from an applicable FMVSS, 49 U.S.C. 30103(b)(1), this Court has held that the savings clause removes common-law

tort actions from the scope of the express preemption clause. *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 868 (2000).

This case concerns FMVSS 208, 49 C.F.R. 571.208, which is entitled "Occupant crash protection" and which "specifies performance requirements for the protection of vehicle occupants in crashes." 49 C.F.R. 571.208(S1). NHTSA issued the original version of FMVSS 208 in 1967, as part of the initial motor vehicle safety standards called for by the Safety Act. 32 Fed. Reg. 2408-2421 (1967). Since its inception, FMVSS 208 has included a requirement to install seatbelts in passenger cars. See *id*. at 2415.

FMVSS 208 refers to two different types of seatbelts. A Type 1 seatbelt is a lap-only seatbelt, "for pelvic restraint." 49 C.F.R. 571.209(S3). A Type 2 seatbelt is a lap and shoulder belt, "a combination of pelvic and upper torso restraints." *Ibid*. The first version of FMVSS 208 required that Type 2 seatbelts be installed for the driver's and right front passenger's seats, and that either Type 1 or Type 2 seatbelts be installed for all other seats. See 32 Fed. Reg. at 2415.

NHTSA has amended FMVSS 208 several times since 1967. At issue in this case is a 1989 modification to the types of seatbelts required for rear seats. The 1989 amendments required manufacturers to install Type 2 (lap/shoulder) seatbelts in all "forward-facing rear outboard designated seating positions," but continued to allow manufacturers to install either Type 1 (lap-only) seatbelts or Type 2 (lap/shoulder) seatbelts in all non-outboard positions. 53 Fed. Reg. 47,982-47,993 (1988) (notice of proposed rulemaking); 54 Fed. Reg. 25,275-25,279 (1989) (final rule applicable to passenger cars); *id*. at 46,257-46,268 (1989) (final rule applicable to

other vehicles, including the multipurpose passenger vehicle at issue here).

An "[o]utboard designated seating position" was defined as a seat less than 12 inches from the side interior wall of the vehicle. 49 C.F.R. 571.3(b) (1990). A "[r]ear outboard designated seating position," in turn, was defined as any such position "that is rearward of the front seat(s)," unless it is "adjacent to a walkway located between the seat and the side of the vehicle, which walkway is designed to allow access to more rearward seating positions." 49 C.F.R. 571.208(S4.2.4.1(b)) (standard for light trucks and multipurpose passenger vehicles); accord 49 C.F.R. 571.208(S4.1.4.2(c)) (same, for passenger cars). Thus, under FMVSS 208 as amended in 1989, Type 2 seatbelts were not required in rear seats adjacent to a walkway or in rear center seats. This case involves a rear seat adjacent to a walkway.[1]

2. a. On August 14, 2002, the Williamson family, consisting of father Delbert, mother Thanh, and daughter Alexa, was traveling in a 1993 Mazda MPV minivan, which FMVSS 208 treats as a multipurpose passenger vehicle. Pet. App. 3; see 49 C.F.R. 571.3(b) (1990). The Mazda MPV has three rows of seats: the front row, with physically separate seats for the driver and a front passenger; the middle row bench, with two seats and an aisle on the right-hand side that allows access to the last row; and the last row bench, with three seats. Delbert

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[1] The standard at issue in this case is no longer in effect for new cars. In response to a congressional directive, see Anton's Law § 5, 49 U.S.C. 30127 note, NHTSA revised its rule to require all passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating of 10,000 pounds or less, if manufactured on or after September 1, 2007, to include Type 2 seatbelts at all rear designated seating positions that face forward. 49 C.F.R. 571.208(S4.1.5.5) and (S4.2.7.1).

was driving and wearing a Type 2 (lap/shoulder) seatbelt. Alexa was sitting directly behind him in the middle-row left outboard seat of the vehicle, also wearing a Type 2 seatbelt. Thanh was sitting in the middle row to Alexa's right. Because that seat was adjacent to the aisle, it was a "non-outboard rear seating position" under FMVSS 208. Thanh wore the Type 1 (lap-only) seatbelt installed by Mazda in that seating position, as FMVSS 208 permitted at the time. Pet. App. 3.

The Williamsons' vehicle collided with another vehicle, and Thanh sustained fatal injuries. Pet. App. 3. Petitioners allege that "the forces generated by th[e] collision caused [Thanh's] body to 'jackknife' around her defective lap[]belt, causing severe abdominal injuries and internal bleeding." *Ibid.* (first and third brackets in original); see J.A. 210, 216-217.

b. Petitioners sued respondents in California state court, asserting state common-law tort claims. As relevant here, they alleged that the 1993 Mazda MPV was defective because respondents should have installed a Type 2 seatbelt in Thanh's seating position. J.A. 73, 216-223. Respondents moved for judgment on the pleadings on the ground that federal law preempted this tort claim. J.A. 105-123.

The trial court sustained the preemption defense. The court held that federal law precluded state-law tort actions "to the extent those claims arise from an alleged design defect or failure to warn based on the lack of a lap-shoulder seat belt." J.A. 234-235; see J.A. 194. The court gave petitioners leave to further amend their complaint, J.A.195-196, 234-235, because its ruling did not preclude petitioners from stating a cause of action for "negligen[ce] in how you hooked [the seatbelt] up or negligen[ce] in how you design the seat that was going

to accommodate it, or any other tort theory." J.A. 352. Petitioners stated to the trial court, however, that they were "left with nothing" if federal law preempted their challenge to the type of seatbelt respondents installed in Thanh's seating position. J.A. 362. The trial court therefore sustained respondents' demurrer to the remaining claims arising out of Thanh's death. J.A. 375. The parties then stipulated to dismissal of petitioners' remaining claims with prejudice and entry of final judgment. J.A. 377-383.

4. The Court of Appeal of California affirmed. Pet. App. 1-27. The appellate court's analysis of the preemption of petitioners' defective design claim focused on this Court's decision in *Geier*, *supra*. This Court held in *Geier* that an earlier version of FMVSS 208 preempted common-law tort claims that a manufacturer should have equipped a vehicle with a driver's-side airbag. At issue was the 1984 amendment to FMVSS 208, see 49 Fed. Reg. 28,962-29,010 (1984), which required manufacturers to equip some vehicles with passive restraints. Passive restraints are devices—such as airbags or automatic seatbelts—the effectiveness of which does not depend on any action by a vehicle occupant. The 1984 regulation provided that, after a phase-in period, manufacturers could choose either to install airbags or to install other forms of passive restraints.

This Court held in *Geier* that a common-law duty of care requiring installation of airbags conflicted with FMVSS 208 and, therefore, was preempted under ordinary principles of conflict preemption. 529 U.S. at 874-886. The Court explained that DOT, in promulgating FMVSS 208, "deliberately sought variety—a mix of several different passive restraint systems." *Id.* at 878. For local tort law to provide that a manufacturer's

choice to install passive restraints other than airbags amounted to negligence, the Court reasoned, "would have presented an obstacle to the variety and mix of devices that the federal regulation sought." *Id.* at 881.

In this case, the state appellate court acknowledged that *Geier* was "distinguishable because it dealt with passive restraints, not seatbelts." Pet. App. 15; accord *id.* at 23. But the court found "persuasive" the reasoning of several lower-court decisions applying *Geier*'s reasoning to cases involving Type 1 seatbelts. *Id.* at 24. Those decisions concluded that FMVSS 208 reflected "NHTSA's decision to allow car manufacturers the option to install either lap-only or lap/shoulder seat belts" at the relevant seating positions—*i.e.*, "the same policy concerns . . . identified in *Geier*." *Id.* at 16, 18 (quoting *Carden* v. *General Motors Corp.*, 509 F.3d 227, 231 (5th Cir. 2007), cert. denied, 128 S. Ct. 2911 (2008), and *Roland* v. *General Motors Corp.*, 881 N.E.2d 722, 727 (Ind. Ct. App.), transfer denied, 898 N.E.2d 1218 (Ind. 2008) (Table)). Following the reasoning of those decisions, the court of appeal held that accepting petitioners' claim "would bar motor vehicle manufacturers from employing one of the passenger restraint options authorized by FMVSS 208," and that petitioners' claim therefore is preempted as "an obstacle to the implementation of the comprehensive safety scheme promulgated in [FMVSS] 208." *Id.* at 23 (citation omitted; brackets in original).

5. The Supreme Court of California denied petitioners' petition for review. Pet. App. 31.

6. This Court granted certiorari, limited to the question whether petitioners' design-defect claim is preempted. See 130 S. Ct. 3348 (2010); Pet. i.

SUMMARY OF ARGUMENT

The Safety Act directs the Secretary of Transportation to establish "minimum standard[s]" and provides that compliance with those standards will not suffice to excuse a manufacturer from liability under state common law. 49 U.S.C. 30102(a)(9); see 49 U.S.C. 30103(e), 30111(a). Accordingly, petitioners' attempt to establish that respondents had a duty under state common law to install a Type 2 seatbelt is not preempted, unless respondents can show that such a state-law duty actually conflicts with the purposes and objectives of FMVSS 208 or the Safety Act. *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 869-870 (2000). Merely establishing that the state common-law standard is higher than the federal minimum standard is not enough to establish such a conflict. Rather, a conflict results only when the Safety Act (or regulations implementing the Safety Act) does not just set out options for compliance, but also provides that the regulated parties must remain free to choose among those options.

The court of appeal erred in perceiving such a conflict between petitioners' common-law tort action and the policies embodied in the 1989 amendment of FMVSS 208. Although NHTSA decided not to impose a federal requirement to install Type 2 seatbelts in all rear nonoutboard seating positions, NHTSA's policy objectives would have been fully met if manufacturers *had* immediately installed Type 2 seatbelts in those positions. By contrast, the decision at issue in *Geier*—to phase in a mixture of airbags and other passive restraints over time—would have been frustrated if state common law had forced all manufacturers to install airbags immediately. The state tort duty in *Geier* therefore conflicted with FMVSS 208; the state tort duty here does not.

In the 1989 rulemaking, NHTSA made plain its intention to retain Type 1 seatbelts as the minimum level of safety, not part of a required mix of devices. NHTSA recognized that Type 2 seatbelts were more effective, that rear-seat passengers were more likely to use them, and therefore that replacing Type 1 seatbelts with Type 2 seatbelts was likely to promote safety. In center seats and other non-outboard seating positions, the costs of making that change would have been higher, and NHTSA accordingly decided not to require such a change as a matter of federal law. But NHTSA never suggested that it wanted manufacturers to retain Type 1 seatbelts; neither technical infeasibility, compatibility with child-safety seats, safe passage through a vehicle's aisle, nor any other consideration suggested that Type 1 seatbelts must remain in use.

This Court should sustain NHTSA's assessment that petitioners' tort action is consistent with the purposes and objectives of the Safety Act and its implementing regulations. The agency's own understanding of the regulatory framework that it implements and administers is the best evidence that the common-law duty on which petitioners rely will not pose an obstacle to the full achievement of those federal purposes and objectives.

ARGUMENT

FMVSS 208 required manufacturers of vehicles for the 1993 model year to install at least a Type 1 seatbelt at rear non-outboard seating positions, and permitted them to install a Type 2 seatbelt. That minimum standard requiring at least a Type 1 seatbelt does not preempt a state common-law duty that requires manufacturers to install the safer Type 2 seatbelt. The court of

appeal, however, concluded that FMVSS 208 embodied not just a minimum safety standard, but a policy judgment by NHTSA that manufacturers must remain free, unencumbered by external constraints, to choose either Type 1 or Type 2 seatbelts for the relevant seating positions. That conclusion was incorrect: although NHTSA in 1989 chose not to require the universal adoption of Type 2 seatbelts, it had no objection to the immediate installation of such belts in all rear seats, and it did not adopt a provision seeking to ensure that manufacturers would have an unencumbered and free choice to install either Type 1 or Type 2 seatbelts. That sets this case apart from *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000), in which the agency affirmatively rejected, as counterproductive, any rule that would have mandated the immediate and universal adoption of airbags instead of a gradually evolving mix of airbags and other passive restraints. Because petitioners' common-law tort action does not conflict with any federal goal embodied in FMVSS 208 or the Safety Act, it is not preempted.

A. Under The Safety Act, A Common-Law Tort Action Is Saved From Preemption Unless It Actually Conflicts With A Federal Standard

Under the Safety Act, a safety standard is a "minimum standard for motor vehicle or motor vehicle equipment performance." 49 U.S.C. 30102(a)(9). And under the Safety Act's savings clause, compliance with such a minimum standard does not in itself "exempt a person from liability at common law." 49 U.S.C. 30103(e). Thus, petitioners' cause of action is saved from preemption by the savings clause unless it actually conflicts

with the purposes and objectives of FMVSS 208 or the Safety Act. *Geier*, 529 U.S. at 869-870.

As this Court explained in *Geier*, Congress included the savings clause to preserve a substantial role for state tort law in compensating accident victims and promoting safety in automobile design. 529 U.S. at 871. To be sure, the savings clause does not displace ordinary principles of conflict preemption: state law is preempted if it conflicts with a federal standard. *Id.* at 869-870. But the Court explained that the application of those conflict-preemption principles will, in all likelihood, "leav[e] adequate room for state tort law to operate" and allow a "significant number of common-law liability cases" to go forward. *Id.* at 868.

Under "ordinary pre-emption principles, grounded in longstanding precedent," *Geier*, 529 U.S. at 874, state law is preempted not only when it is "'impossible' for private parties to comply with both state and federal law," *id.* at 873, but also when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). In a traditional field of state regulation, this Court generally proceeds on the "assumption" that a state law poses no such obstacle to the accomplishment of a federal purpose. *Wyeth* v. *Levine*, 129 S. Ct. 1187, 1194-1195 (2009) (quoting *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). But that assumption may be countered in a particular case by a showing that, inter alia, "the state policy may produce a result inconsistent with the objective of the federal statute," *Rice*, 331 U.S. at 230, or, as in *Geier*, with the objective of an implementing regulation.

B. A State-Law Requirement Ordinarily Is Not Preempted Merely Because It Exceeds A Federal Minimum Standard

This Court explained throughout its opinion in *Geier* that the paradigmatic example of a tort action that does *not* conflict with the Safety Act's purposes—and thus is not preempted—is a state liability rule that "seek[s] to establish greater safety than the minimum safety achieved by a federal regulation *intended to provide a floor*." 529 U.S. at 870 (emphasis added). Thus, a "minimum safety standard" ordinarily will not preempt a state common-law rule of decision that imposes a higher standard. *Id.* at 868. For that reason, this Court in *Geier* found implied preemption not simply because NHTSA permitted more than one passive-restraint device to satisfy its standards, but because NHTSA affirmatively and "deliberately sought variety—a mix of several different passive restraint systems," *id.* at 878—and "deliberately sought a *gradual* phase-in of passive restraints," *id.* at 879.

1. In the 1984 amendment to FMVSS 208, NHTSA phased in the passive-restraint requirement and deliberately allowed manufacturers to choose among several types of passive restraints, so that a variety of passive restraints would be available on the market. NHTSA specifically had rejected a proposed "all airbag" standard because of safety concerns, arising partly from the potential for a public backlash to an airbag mandate. *Geier*, 529 U.S. at 879. As this Court explained, NHTSA concluded that allowing manufacturers to choose among passive restraints "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 devel-

opment of alternative, cheaper, and safer passive restraint systems. And it would thereby build public confidence." *Ibid.* (citing 49 Fed. Reg. at 28,990, 29,001-29,002); accord *Wyeth*, 129 S. Ct. at 1203.

The Court in *Geier* contrasted that affirmative policy choice with a simple minimum standard. As the Court noted, the government had offered as an example the safety standard that establishes minimum requirements for brakes, which permits, but does not require, antilock brakes. That standard does not preempt a common-law claim contending that antilock brakes should have been installed. 529 U.S. at 868 (citing 49 C.F.R. 571.105 (1999)). Indeed, if a federal minimum standard, without more, were enough to preempt any state law setting a higher floor, *every* FMVSS would be preemptive, because every FMVSS promulgated under the Safety Act is, by definition, "a minimum standard for motor vehicle or motor vehicle equipment performance." 49 U.S.C. 30102(a)(9). See also *Wyeth*, 129 S. Ct. at 1202-1203 (contrasting the framework at issue in *Geier*, in which the state-law mandate would have upset "the balance [NHTSA] had struck," with one in which federal law set "a floor upon which States could build").

Respondents acknowledged at the petition stage (Supp. Br. 2) that a minimum standard set out in the FMVSS does not by itself preempt stricter state common law as a basis for liability. Rather, like the court of appeal, they contend that the safety standard at issue in this case did more than just set a federal minimum standard requiring *at least* a Type 1 seatbelt at all rear non-outboard seating positions. The court of appeal concluded, and respondents urge, that NHTSA instead made a "deliberate," policy-driven "decision to *allow* manufacturers the *option* of selecting between the two seat belt

designs," *i.e.*, to authorize manufacturers to choose either one at will. Pet. App. 20 (quoting *Carden* v. *General Motors Corp.*, 509 F.3d 227, 232 (5th Cir. 2007), cert. denied, 128 S. Ct. 2911 (2008)) (emphasis added). The court of appeal's decision, therefore, turned on its erroneous view that the seatbelt standard embodied the same sort of policy judgment by NHTSA that underlay the passive-restraint standard that this Court considered in *Geier*. The court of appeal was mistaken, as shown below.

C. The Rear Seatbelt Rule Did Not Affirmatively Seek To Promote Diverse Seatbelt Designs Or To Preserve A Role For Type 1 Seatbelts

In the passive-restraint rulemaking, NHTSA rejected the view that "the more airbags, and the sooner, the better." *Geier*, 529 U.S. at 874. In the seatbelt rulemaking, by contrast, NHTSA made clear that it *agreed* that installing more Type 2 seatbelts, and installing them sooner, would be better, even though it stopped short of mandating Type 2 seatbelts at every possible seating position. That difference in approach separates this case from *Geier* and defeats respondents' claim of preemption.

1. Between 1967 and 1989, NHTSA did not require Type 2 seatbelts in any rear seating positions. The original 1967 version of FMVSS 208 required manufacturers to install either Type 1 or Type 2 seatbelts for all rear passenger seating positions. See 32 Fed. Reg. at 2415. In 1984, NHTSA denied a petition for rulemaking to require Type 2 seatbelts for all passenger cars' rear outboard seating positions. 49 Fed. Reg. at 15,241-15,242; see also 53 Fed. Reg. at 47,982. That petition for rulemaking had sought such a standard primarily to facili-

tate the use of a type of booster seat for children that was held in place by Type 2 seatbelts (rather than by tethers, which at the time were more widely used to secure child restraints), although the petition also noted that adult passengers could benefit from Type 2 seatbelts in rear outboard seating positions. 49 Fed. Reg. at 15,241. Rejecting the proposal, NHTSA stated that "child restraint systems and child booster seats equipped with tethers offer greater protection for children when those tethers are attached than when those seats and systems are held in place by Type 2 belts." *Ibid.* Further, although NHTSA agreed with the view that "Type 2 belts in rear seats might give some added degree of protection to adults," the agency concluded that "the benefits, if any, to be gained by replacing the Type 1 belts with Type 2 belts for adults would not justify the additional cost." *Id.* at 15,241-15,242.

2. In 1987, NHTSA decided that the time had come to propose a reversal of its earlier decision and to require Type 2 seatbelts in at least some rear seating positions. 53 Fed. Reg. at 47,982-47,993. The agency proposed what would become the 1989 amendments to FMVSS 208, requiring Type 2 seatbelts in all rear outboard seating positions in (inter alia) passenger cars and multipurpose passenger vehicles such as petitioners' minivan. *Id.* at 47,982. In the 1988 notice of proposed rulemaking (NPRM) and the subsequent final rules, NHTSA explained the main reasons for its change in position since 1984. First, more people had begun to use rear seatbelts, primarily because of new state seatbelt laws. *Id.* at 47,983. Second, more people could be expected to wear lap-shoulder belts in rear seats because of greater familiarity with them as a result of using them in front seats. *Ibid.* Third, rear-seat Type 2 seat-

belts were "even more effective" in reducing the risk of death than Type 1 seatbelts, and NHTSA expected that greater effectiveness to result in "progressively greater safety benefits" as more rear-seat occupants used their seatbelts. 54 Fed. Reg. at 25,276 (final rule applicable to passenger cars); *id.* at 46,257-46,258 (final rule applicable to other vehicles). Fourth, many manufacturers had voluntarily installed Type 2 seatbelts in rear outboard seats, and as a result, the cost of requiring all manufacturers to do so had diminished substantially. *Id.* at 46,258. Fifth, child restraint systems had shifted away from those requiring a tether anchor. NHTSA determined that Type 2 seatbelts would "offer benefits for children riding in some types of booster seats, would have no positive or negative effects on children riding in most designs of car seats and children that are too small to use shoulder belts, and would offer older children the same incremental safety protection" as adults. 53 Fed. Reg. at 47,988-47,989; see *id.* at 47,983; 54 Fed. Reg. at 25,276.

The 1988 NPRM also explained why NHTSA had decided not to propose requiring manufacturers to install Type 2 seatbelts for rear inboard seating positions. The agency stated that there would be "more technical difficulties" associated with installing Type 2 seatbelts in rear inboard seating positions than in rear outboard seating positions. 53 Fed. Reg. at 47,984. Additionally, regardless of the technical difficulties, such a requirement would yield "small safety benefits and substantially greater costs." *Ibid.* The agency acknowledged that "some aisle seating positions," such as the one at issue in this case, "may not be covered by [the] proposed requirement" to install Type 2 seatbelts, as "the seating positions next to the aisle on the right hand side of many

passenger vans * * * may *not* be outboard seating positions, because they may be more than 12 inches from the inside of the vehicle." *Id.* at 47,985.

3. In adopting its final rule amending FMVSS 208 for multipurpose passenger vehicles, NHTSA reemphasized its rationale for not requiring Type 2 seatbelts in rear inboard seats. 54 Fed. Reg. at 46,257-46,268. The agency stated that no commenters had "presented any new data that would cause the agency to change its tentative conclusion," enunciated in the 1988 NPRM, that requiring Type 2 seatbelts in rear inboard positions would be "technical[ly] difficult[]" and "would yield small safety benefits and substantially greater costs, given the lower center seat occupancy rate and the more difficult engineering task." *Id.* at 46,258.

NHTSA also stated when it promulgated its final rule that it had decided not to require Type 2 seatbelts for rear seating positions adjacent to an aisle, whether or not those seats were technically "outboard" seats—*i.e.*, less than 12 inches from the side wall of the vehicle. 54 Fed. Reg. at 46,258. The agency "did not mean to suggest" that FMVSS 208 would require manufacturers to install shoulder belts "at seating positions where they would obstruct an aisle designed to give access to rear seating positions." *Ibid.* Significantly, however, NHTSA also stated that, "[o]f course, in those cases where manufacturers are able to design and install lap/shoulder belts at seating positions adjacent to aisleways without interfering with the aisleway's purpose of allowing access to more rearward seating positions, *NHTSA encourages the manufacturers to do so.*" *Ibid.* (emphasis added).

4. Thus, in its final rule, NHTSA was not seeking to encourage variety in seatbelt design or to foster a mix of

Type 1 and Type 2 seatbelts. To the contrary, NHTSA showed a clear preference for Type 2 seatbelts and even encouraged manufacturers to install them for inboard seating positions adjacent to an aisle (the type of seat at issue in this case). The reasons why NHTSA did not mandate Type 2 seatbelts at those positions pertained to its assessment at the time of the technological difficulties, costs, and benefits of such a requirement.

NHTSA's contemporaneous explanation of its 1989 rear seatbelt amendments stands in sharp contrast to the agency's reasoning with respect to airbags and other passive restraints, discussed in *Geier*. There, the agency affirmatively explained in its rulemaking notices that it wished to provide for and encourage the availability of several options for passive restraints over a period of time, to help achieve the ultimate purpose of the regulation—the reduction of highway deaths and injuries. That purpose of promoting safety by fostering a variety of passive-restraint devices would have been frustrated by a state common-law duty to install airbags in all vehicles. Here, by contrast, NHTSA simply left in place a minimum standard requiring at least Type 1 seatbelts for rear inboard and aisle seats, based on its assessment at the time of technical feasibility and cost-benefit analyses (which are common to virtually all NHTSA rulemakings setting an FMVSS), while still encouraging manufacturers to install Type 2 seatbelts in those seats. Thus, the existence of the purported "option" to install either Type 1 or Type 2 seatbelts was *not* the result of a NHTSA policy of affirmatively encouraging diversity and freedom of choice, as in *Geier*—a policy that would be frustrated by a rule of liability based on the failure to adopt a single course rather than diverse solutions. Rather, it was simply the byproduct of NHTSA's setting

of a minimum standard that could be satisfied in more than one way.

Manufacturers always have the "option" of exceeding a minimum safety standard when NHTSA has decided to permit, not to mandate, a more stringent alternative because of considerations of cost or feasibility—as NHTSA did in this case and, indeed, often does in considering regulatory alternatives. But if such an "option" alone were enough to trigger federal preemption under *Geier*, the Safety Act's savings clause would be greatly undermined. *Geier* does not mandate that result.

D. The Rear Seatbelt Rule Does Not Embody Any Preemptive Policy

The court of appeal was correct to observe that NHTSA's determination not to require Type 2 seatbelts was reached through careful consideration and based on sound reasons. But as this Court's cases establish, a determination that a federal agency's decision not to impose a particular regulation was "intentional and carefully considered" is not enough to show that the agency also precluded the States from imposing the same requirement. *Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 67 (2002). And here, the rear seatbelt rule does not embody "an authoritative federal determination that the [issue of rear-seat shoulder belts] is best left *un*regulated," *id.* at 66 (quoting *Arkansas Elec. Coop. Corp.* v. *Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983)). Cf. *Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 148-151 (1976) (state law preempted where federal law was intended to leave conduct unregulated and subject to free play of economic forces). In other words, the agency did not "consider and reject"

any imposition of a higher safety standard. *Wyeth*, 129 S. Ct. at 1203 n.14.

1. Respondents cannot sustain the state court's ruling on grounds specific to aisle seating positions

As an initial matter, respondents cannot properly recast their preemption theory into one about aisle seating positions alone. In their supplemental brief at the petition stage, respondents asserted for the first time that their preemption defense is based on considerations specific to the particular type of non-outboard seating position that Ms. Williamson occupied, *i.e.*, a seating position adjacent to an aisle. That contention was not passed upon below and is not properly presented at this stage of the case, which came to this Court as a preemption case involving rear non-outboard seats generally. In any event, NHTSA made clear in adopting FMVSS 208 that it "encouraged" manufacturers to install the safer Type 2 seatbelts at aisle positions if they could do so without blocking access to rearward seats, 54 Fed. Reg. at 46,258; plainly, therefore, the agency saw no insurmountable safety obstacle to installing Type 2 seatbelts in seating positions next to an aisle.

Petitioners framed their preemption question to apply to all rear seating positions. See, *e.g.*, Pet. 13. As the government noted at the petition stage, respondents did not suggest in their brief in opposition that the preemption analysis should differ based on whether the accident victim was in a "true" center seat or in an aisle seat. U.S. Invitation Br. 19 n.3.[2] Only in a supplemental

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[2] Nor did respondents make such an argument below. See, *e.g.*, Resp. C.A. Br. 13 ("center rear seating positions"; "middle row center seat"); *id.* at 16 ("all rear row center seating positions"); *id.* at 26 ("rear center seating position").

brief, filed after the government filed its amicus brief recommending that certiorari be granted, did respondents suggest that this case could be resolved on considerations "unique" to aisle seats. Supp. Br. 7. Accordingly, respondents should not now be heard to argue that seatbelt claims involving *aisle* seats are preempted even if seatbelt claims involving center seats are not. See Sup. Ct. R. 15.2.

In any event, NHTSA's decision to treat aisle seats as inboard seating positions for purposes of the seatbelt standard offers respondents no help. NHTSA's decision did not rest on any desire to ensure the continued availability of Type 1 seatbelts in aisle seats, or on any concern that Type 2 seatbelts would necessarily be unsafe in that position. To the contrary: as noted above, NHTSA affirmatively "encourage[d]" the installation of Type 2 seatbelts, even in rear aisle seating positions. 54 Fed. Reg. at 46,258. See also pp. 27-29, *infra*.

2. Respondents have not identified any federal policy requiring that Type 1 seatbelts remain available

Respondents, and various lower courts, have suggested that NHTSA wished to guarantee the continued availability of Type 1 seatbelts based on various considerations of cost, child safety, and seatbelt promotion. Those contentions lack merit.

a. *Seatbelt utilization.* Some courts have surmised that NHTSA sought affirmatively to guarantee that manufacturers could continue to install Type 1 seatbelts as a way of promoting seatbelt usage. See, *e.g.*, Pet. App. 18; *Griffith* v. *General Motors Corp.*, 303 F.3d 1276, 1281-1282 (11th Cir. 2002) (citing *Hurley* v. *Motor Coach Indus., Inc.*, 222 F.3d 377, 382 (7th Cir. 2000), cert. denied, 531 U.S. 1148 (2001)), cert. denied, 538 U.S.

1023 (2003).[3] NHTSA certainly did seek to promote safety by increasing the rate of seatbelt usage. See, *e.g.*, *Geier*, 529 U.S. at 877. But it sought to do so by encouraging the switch to Type 2 seatbelts, not by retaining Type 1 seatbelts.

As the agency explained in its 1988 NPRM, seatbelt use was much higher in front seats, where Type 2 seatbelts were required, than in rear seats. As a result, when passengers "g[ot] into the habit" of wearing a seatbelt, it was a *Type 2* seatbelt. 53 Fed. Reg. at 47,983. "Thus," the agency concluded, "the presence of lap/shoulder belts in the rear seat should result in an increase in rear seat belt use," not a decrease. *Id.* at 47,983-47,984.[4] See also *id.* at 47,982, 47,983 (NHTSA's conclusion that Type 2 seatbelts were more effective than Type 1 seatbelts); 54 Fed. Reg. at 46,257 (same). Because Type 2 seatbelts were both more popular and more effective, there is no reason to think that NHTSA would have wanted to promote Type 1 seatbelts to cater to consumer preference. And indeed, the agency encouraged manufacturers to implement the switch to Type 2 as quickly as possible. See *id.* at 46,265 (allowing some lead time before implementation, but noting that "[e]arlier compliance is also permitted and encouraged").

b. *Cost-benefit analysis.* Respondents have emphasized that NHTSA referred to cost-benefit concerns when it decided not to mandate Type 2 seatbelts at rear

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[3] *Griffith* involved a tort claim based on the failure to install Type 2 seatbelts in the *front* center seat of a pickup truck.

[4] That conclusion has since been confirmed empirically. See 69 Fed. Reg. 70,905 (2004) (reporting that a 1999 NHTSA study found that seatbelt use was seven to ten percent higher in rear outboard seating positions with a Type 2 seatbelt).

non-outboard seating positions. See, *e.g.*, Pet. Stage Supp. Br. 7. Some lower courts have likewise contended that NHTSA's cost-benefit calculus represents a federal policy with which state tort law may not interfere. See, *e.g.*, *Carden*, 509 F.3d at 232. But a determination that mandating a particular safety standard is not economically justified under a specific federal statutory framework at a particular point in time is not enough to establish implied conflict preemption.

The Court made that point clear in its unanimous decision in *Sprietsma*. The Coast Guard has authority to promulgate "minimum safety standards" under the Federal Boat Safety Act of 1971 (Boat Safety Act), 46 U.S.C. 4302(a)(1). The agency decided not to invoke that authority to require boats to install propeller guards, in part because "the question of retrofitting millions of boats would certainly be a major economic consideration." *Sprietsma*, 537 U.S. at 66; see *id.* at 60-61. As this Court explained, that cost-benefit consideration reflected only the Boat Safety Act's "'stringent' criteria for federal regulation"; it did not represent a judgment that no State or locality could impose a propeller-guard requirement. *Id.* at 66-67.

So too here. The Safety Act requires NHTSA to consider "whether a proposed standard is reasonable, practicable, and appropriate," among other factors. 49 U.S.C. 30111(b)(3). "This qualifying language was added to ensure that NHTSA would 'consider reasonableness of cost, feasibility and adequate lead time.'" *E.g.*, *Center for Auto Safety* v. *Peck*, 751 F.2d 1336, 1343 (D.C. Cir. 1985) (Scalia, J.) (quoting S. Rep. No. 1301, 89th Cong., 2d Sess. 6 (1966)). But in considering those factors in administering the federal statute, NHTSA does not purport to set national policy that would super-

sede the ability of a state court, in applying the distinct body of state common-law tort principles, to assess costs and benefits for itself. See generally, *e.g.*, *Hurley*, 222 F.3d at 380-381 (noting that Illinois products-liability law requires proof of an alternative, economical design).

In *Geier*, this Court listed the high cost of airbags among the seven "significant considerations" that motivated NHTSA to adopt its gradual phase-in of airbags as part of a mixture of passive restraints. 529 U.S. at 877. But the cost factor had a direct impact on safety: an airbag must be replaced each time it deploys, and drivers might balk at the replacement cost and choose instead to drive without the protection of *any* passive restraint. *Id.* at 878. By contrast, NHTSA gave no indication that it thought the cost of installing Type 2 seatbelts would deter passengers from using them; to the contrary, NHTSA thought that replacing Type 1 with Type 2 seatbelts would actually *encourage* seatbelt use. See pp. 21-22, *supra*.

c. *Child safety.* Respondents have previously argued that NHTSA did not mandate Type 2 seatbelts for rear inboard seating positions in the final rule because of agency concerns about the seatbelts' compatibility with child restraint systems. See, *e.g.*, Pet. Stage Supp. Br. 4, 5, 7-8. Such a rationale for allowing Type 1 seatbelts in rear non-outboard seating positions, however, does not appear anywhere in either the 1988 NPRM or the final 1989 amendment of FMVSS 208. Both the NPRM and final rule discuss the compatibility of child restraint systems with Type 2 seatbelts generally—*i.e.*, at any rear seating position, not just in the non-outboard seats involved in this case. Nor did NHTSA suggest that compatibility with child restraints was a reason to

APPENDIX

1. 49 U.S.C. 30101 provides:

Purpose and policy

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and

(2) to carry out needed safety research and development.

2. 49 U.S.C. 30102 provides in pertinent part:

Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

* * * * *

(9) "motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

* * * * *

3. 49 U.S.C. 30103 provides in pertinent part:

Relationship to other laws

* * * * *

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

4. 49 U.S.C. 30111 provides in pertinent part:

Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85-684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

* * * * *

5. 49 C.F.R. 571.3 (1990) provided in pertinent part:

Definitions

* * * * *

(b) *Other definitions*. As used in this chapter—

* * * * *

Outboard designated seating position means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the seating reference point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion.

* * * * *

6. 49 C.F.R. 571.208 provides in pertinent part:

Standard No. 208; Occupant crash protection.

S1. *Scope*. This standard specifies performance requirements for the protection of vehicle occupants in crashes.

S2. *Purpose*. The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the

severity of injuries, by specifying vehicle crashworthiness requirements in terms of forces and accelerations measured on anthropomorphic dummies in test crashes, and by specifying equipment requirements for active and passive restraint systems.

* * * * *

S4. *General requirements.*

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S4.1.4.2. * * *

(b) Except as provided in S4.1.4.2.1 and S4.1.4.2.2, each passenger car, other than a convertible, manufactured on or after September 1, 1990 and each convertible passenger car manufactured on or after September 1, 1991 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. * * *

(c) As used in this section, "rear outboard designated seating position" means any "outboard designated seating position" (as that term is defined at 49 CFR 571.3) that is rearward of the front seat(s), except any designated seating position adjacent to a walkway that is located between the seat and the near side of the vehicle and is designed to allow access to more rearward seating positions.

* * * * *

S4.2.4. *Rear outboard seating positions in trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000*

pounds or less. Except as provided in S4.2.4.2 and S4.2.4.3, each truck and each multipurpose passenger vehicle, other than a motor home, manufactured on or after September 1, 1991 that has a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension- relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

S4.2.4.1. As used in this section—

* * * * *

(b) Rear outboard designated seating position means any "outboard designated seating position" (as that term is defined at 49 CFR 571.3) that is rearward of the front seat(s), except any designated seating positions adjacent to a walkway located between the seat and the side of the vehicle, which walkway is designed to allow access to more rearward seating positions.

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6. 49 C.F.R. 571.209 provides in pertinent part:

Standard No. 209; Seat belt assemblies.

* * * * *

S3. *Definitions*. * * *

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Type 1 seat belt assembly is a lap belt for pelvic restraint.

Type 2 seat belt assembly is a combination of pelvic and upper torso restraints.

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keep Type 1 seatbelts available at certain seating positions—inboard or otherwise.

In 1984, NHTSA declined to require Type 2 seatbelts in *any* rear seating position because, it concluded at the time, neither child safety nor adult safety would justify such a requirement. NHTSA believed that tether systems, then in common use, were preferable to Type 2 seatbelts as a means of securing child seats. NHTSA also determined at the time that child seats without tethers worked better with Type 1 seatbelts. And adults used seatbelts in rear seats so rarely that the incremental safety benefit would not justify the considerable cost. 49 Fed. Reg. at 15,241-15,242; see 53 Fed. Reg. at 47,982-47,983.

By the time of the 1988 NPRM, the agency explained, those considerations were no longer controlling. More adults were buckling up in the back seat, so the benefit of installing Type 2 seatbelts in those positions was increasing. And tethered child seats were no longer in widespread use. 53 Fed. Reg. at 47,983.

Significantly, moreover, NHTSA determined that Type 2 seatbelts were compatible with child safety seats. In response to some concerns, NHTSA had specifically solicited comments on that issue. 53 Fed. Reg. at 47,988.[5] And in the final rule, NHTSA concluded that Type 2 seatbelts could safely and tightly secure a child safety seat. 54 Fed. Reg. at 46,262.[6]

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[5] As part of its request for comment in the NPRM, NHTSA inquired whether Type 2 seatbelts might be too short to fit around a child safety seat. 53 Fed. Reg. at 47,988. That concern did not occasion further discussion in the final rule.

[6] One amicus suggested otherwise in the courts below. See Alliance of Auto. Mfrs. C.A. Amicus Br. 13 n.3, 19. The 1992 source that the amicus cited, however, confirms that Type 2 seatbelts were adequate to

NHTSA did receive comments regarding the possibility that seatbelts (whether Type 1 or Type 2) equipped with a particular type of *retractor* would be unsuitable for use with child restraint systems such as car seats. 53 Fed. Reg. at 47,988. Emergency locking retractors (ELRs) make seatbelts more comfortable for adults, because they allow the seatbelt strap to spool out under normal conditions, but lock tightly in an emergency such as a sudden stop. A car seat secured by a seatbelt with an ELR therefore could move around somewhat, and some commenters expressed concern that that movement might make the car seat unstable or unreliable. *Ibid.*; 54 Fed. Reg. at 46,261-46,262. NHTSA accordingly decided to modify the standards for seatbelts with ELRs—both Type 1 and Type 2 seatbelts—to ensure that the lap portion of the belt could be locked to hold a child seat securely. *Id.* at 46,261-46,262, 46,267; see also 56 Fed. Reg. 63,914 (1991) (supplemental notice of proposed rulemaking on this subject); 58 Fed. Reg. 52,922 (1993) (final rule).

Thus, NHTSA's regulatory response ensured that Type 2 seatbelts would be just as efficacious as Type 1 seatbelts in securing child seats. NHTSA certainly did not endorse the notion that child safety depended on the continued availability of Type 1 seatbelts—whether in rear non-outboard seating positions or anywhere else.

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secure child safety seats. Department of Transp., NHTSA, *Child Passenger Safety Resource Manual* 87 (1992) (child safety seats "can be used with lap/shoulder belts as well" as with lap belts); *id.* at 88 ("The center rear seating position often has a belt that is tightened by hand and therefore usually poses fewer compatibility problems. If there is no center rear seating position or if you are transporting more than one child, the child safety seat can be installed in another location with a lap or lap/shoulder belt.").

Indeed, in non-outboard seating positions such as the one at issue in this case, ELRs were not required at all, see 49 C.F.R. 571.208(S7.1.1.3) (1990), and NHTSA's discussions of child safety in proposing and finally promulgating the rule did not discuss outboard versus inboard seating positions.

NHTSA thus did not rely on compatibility with child restraint systems in deciding not to require Type 2 seatbelts in rear inboard seating positions. At most, that concern contributed to NHTSA's 1984 decision not to require Type 2 seatbelts in *any* rear seating positions, see 49 Fed. Reg. at 15,241; pp. 14-15, *supra*, a decision substantially reversed by the rulemaking at issue in this case. And although the question of how best to use seatbelts to secure child safety seats persisted, the question of whether to continue to permit Type 1 seatbelts at inboard seating positions was settled with the adoption of the final rule in 1989.

d. *Technical difficulties associated with aisle seats.* NHTSA offered two principal reasons for exempting aisle seating positions. First, NHTSA acknowledged that if the shoulder belt were anchored on the side wall of the vehicle, then the shoulder belt strap would have to extend across the aisle and might "cause entry and exit problems" for passengers using the aisle to reach the rearmost seats. 54 Fed. Reg. at 46,258. The agency stated that it did not wish to impose a safety standard that would cause shoulder belts to "obstruct an aisle." *Ibid.* But, NHTSA explained, this was a "practical difficult[y]," rather than an insuperable technical obstacle: "[t]o avoid such difficulties," the shoulder belt could be anchored on the roof instead of the side wall. *Ibid.*

Second, leaving the aisle clear by installing a roof anchorage would require structural modifications to the

roof, which the agency agreed "would impose disproportionately high costs" relative to the anticipated safety benefits. 54 Fed. Reg. at 46,258. The agency accordingly decided not to mandate that step as a matter of federal law. "Of course," the agency added, "in those cases where manufacturers are able to design and install lap/shoulder belts at seating positions adjacent to aisleways without interfering with * * * access to [the rearmost seats], NHTSA encourages the manufacturers to do so." *Ibid.*

Under the regulatory framework of the Safety Act, the "practical" and "technical difficulties" that NHTSA identified were sufficiently significant to justify keeping Type 1 seatbelts as the minimum level of crash protection in aisle seats and not mandating Type 2 seatbelts for those seats as a matter of federal law. But NHTSA did not suggest that those difficulties could not safely be overcome; indeed, throughout the rule, NHTSA acknowledged that some of the safety steps that it *did* mandate would be technically difficult, but expressed confidence that manufacturers could meet the challenge.[7] And in fact, manufacturers voluntarily installed Type 2 seatbelts in aisle seats as early as 1991, resolving some of these practical difficulties by making the seatbelt anchorage detachable. See 69 Fed. Reg. 70,909 (2004).

Furthermore, as explained above, pp. 22-24, *supra*, NHTSA's determination that these structural changes were too costly to justify NHTSA's requiring them as a matter of federal prescriptive law was not a determina-

[7] For instance, applying the new Type 2 seatbelt requirement to minivans and other multipurpose passenger vehicles required "structural changes" and posed some technical "difficulties," but "NHTSA ha[d] no reason to believe that these difficulties [could not] be overcome." 53 Fed. Reg. at 47,986.

tion that they were also too costly to be installed at all, or to be required for compliance with a duty under a particular State's common law of torts.

E. This Court Should Give Weight To NHTSA's Expert Conclusion That Petitioners' Tort Theory Does Not Conflict With FMVSS 208

The government has consistently maintained that a minimum safety standard provided in a FMVSS, without more, does not conflict with a stricter state requirement. As this Court explained in *Geier*, because the agency has a "thorough understanding of its own regulation and its objectives" and a "unique[]" perspective on whether state requirements conflict with federal standards, "the agency's own views should make a difference" in the conflict-preemption analysis. 529 U.S. at 883 (citation omitted); accord, *e.g.*, *Wyeth*, 129 S. Ct. at 1201 (noting that agencies "have a unique understanding of the statutes they administer and an attendant ability to make informed determinations about how state requirements may pose an 'obstacle'"); *Sprietsma*, 537 U.S. at 67-68; see also *Bates* v. *Dow Agroscis. LLC*, 544 U.S. 431, 455 (2005) (Breyer, J., concurring).

Although the Court has noted that an agency's view that a state law *is* preempted is not dispositive, *Wyeth*, 129 S. Ct. at 1201, in implied-preemption cases the Court has given considerable weight to the responsible federal agency's representation that a state law does *not* interfere with the policies or objectives of the federal statute and regulations the agency administers. See, *e.g.*, *Altria Group, Inc.* v. *Good*, 129 S. Ct. 538, 549 (2008); *Sprietsma*, 537 U.S. at 67-68. That is particularly so where, as here, the agency has spoken with a

consistent voice for a lengthy period of time. *Wyeth*, 129 S. Ct. at 1201.

The United States has taken the position set out above in a series of briefs dating back to 1990. In each, the United States has consistently maintained to this Court that a FMVSS permitting a manufacturer to choose among different options consistent with a minimum standard does not alone preempt state common-law tort claims seeking to impose liability for selecting one option instead of another.

In its amicus brief in *Wood* v. *General Motors Corp.*, 494 U.S. 1065 (1990), submitted at this Court's invitation, the United States stated that "the mere fact that manufacturers may comply with federal law by installing one of several types of occupant restraint systems does not mean, standing alone, that a state law tort action seeking to impose liability for failing to install airbags is preempted." U.S. Amicus Br. at 15, *Wood*, *supra* (No. 89-46). The United States reiterated that position in its amicus brief in *Freightliner Corp.* v. *Myrick*, 514 U.S. 280 (1995), which stated that the government did "not agree" with the "broader theory of implied preemption" that some lower courts had advanced—"*i.e.*, that the existence of 'options' to comply with [FMVSS] 208 in itself precludes state-court judgments based on the failure to install one particular option." U.S. Amicus Br. at 29 n.16, *Freightliner Corp.*, *supra* (No. 94-286). And the United States' amicus brief in *Geier* itself echoed that position: "We therefore agree with petitioners that their claims are not preempted merely because the Secretary made airbags one of several design options that manufacturers could choose." U.S. Amicus Br. at 21 n.18, *Geier*, *supra* (No. 98-1811). See also *Geier*, 529 U.S. at 883 ("DOT has explained FMVSS 208's objec-

tives, and the interference that 'no airbag' suits pose thereto, consistently over time.").

That principle is dispositive here. Under the 1989 amendments to FMVSS 208, Type 1 seatbelts remained only a minimum standard for passenger safety in rear non-outboard seats. Thus, under the Safety Act's savings clause as construed in *Geier*, maintenance of that minimum standard as a matter of federal prescriptive law does not preempt a state common-law cause of action based on a duty to install more stringent safety protection in the form of Type 2 seatbelts.

CONCLUSION

The judgment of the Court of Appeal of California should be reversed.

Respectfully submitted.

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APPENDIX

1. 49 U.S.C. 30101 provides:

Purpose and policy

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and

(2) to carry out needed safety research and development.

2. 49 U.S.C. 30102 provides in pertinent part:

Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

* * * * *

(9) "motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

* * * * *

3. 49 U.S.C. 30103 provides in pertinent part:

Relationship to other laws

* * * * *

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

4. 49 U.S.C. 30111 provides in pertinent part:

Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85-684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

* * * * *

5. 49 C.F.R. 571.3 (1990) provided in pertinent part:

Definitions

* * * * *

(b) *Other definitions*. As used in this chapter—

* * * * *

Outboard designated seating position means a designated seating position where a longitudinal vertical plane tangent to the outboard side of the seat cushion is less than 12 inches from the innermost point on the inside surface of the vehicle at a height between the seating reference point and the shoulder reference point (as shown in fig. 1 of Federal Motor Vehicle Safety Standard No. 210) and longitudinally between the front and rear edges of the seat cushion.

* * * * *

6. 49 C.F.R. 571.208 provides in pertinent part:

Standard No. 208; Occupant crash protection.

S1. *Scope*. This standard specifies performance requirements for the protection of vehicle occupants in crashes.

S2. *Purpose*. The purpose of this standard is to reduce the number of deaths of vehicle occupants, and the

severity of injuries, by specifying vehicle crashworthiness requirements in terms of forces and accelerations measured on anthropomorphic dummies in test crashes, and by specifying equipment requirements for active and passive restraint systems.

* * * * *

S4. *General requirements.*

* * * * *

S4.1.4.2. * * *

(b) Except as provided in S4.1.4.2.1 and S4.1.4.2.2, each passenger car, other than a convertible, manufactured on or after September 1, 1990 and each convertible passenger car manufactured on or after September 1, 1991 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. * * *

(c) As used in this section, "rear outboard designated seating position" means any "outboard designated seating position" (as that term is defined at 49 CFR 571.3) that is rearward of the front seat(s), except any designated seating position adjacent to a walkway that is located between the seat and the near side of the vehicle and is designed to allow access to more rearward seating positions.

* * * * *

S4.2.4. *Rear outboard seating positions in trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000*

pounds or less. Except as provided in S4.2.4.2 and S4.2.4.3, each truck and each multipurpose passenger vehicle, other than a motor home, manufactured on or after September 1, 1991 that has a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension- relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

S4.2.4.1. As used in this section—

* * * * *

(b) Rear outboard designated seating position means any "outboard designated seating position" (as that term is defined at 49 CFR 571.3) that is rearward of the front seat(s), except any designated seating positions adjacent to a walkway located between the seat and the side of the vehicle, which walkway is designed to allow access to more rearward seating positions.

* * * * *

6. 49 C.F.R. 571.209 provides in pertinent part:

Standard No. 209; Seat belt assemblies.

* * * * *

S3. *Definitions*. * * *

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Type 1 seat belt assembly is a lap belt for pelvic restraint.

Type 2 seat belt assembly is a combination of pelvic and upper torso restraints.

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