



Federal Preemption: States' Powers, National Interests

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When does federal law trump state law? The arcane topic of federal preemption has become the stuff of public debate and major news stories. The partisan lines are clearly drawn. On one side, consumer advocates, plaintiffs' attorneys, and state officials argue that broad federal preemption claims interfere with the states' historic police power to protect their citizens against corporate misconduct. On the other side, corporations and federal agencies maintain that preemption is a vital safeguard against unwarranted and inconsistent state interferences with the national economy and against aggressive trial lawyers and attorneys general.

Fierce struggles along these lines dominate the political debate, judicial decisions, and legal commentary in a wide range of regulatory arenas, from financial regulation to automobile safety; from clean air laws to the regulation of telecommunications, energy, and other network industries; from securities law to consumer products standards; from pharmaceutical drugs to pesticides to outboard motors. In all these areas, billions of dollars hang on regulatory nuances and arcane points of legal interpretation.

The preemption debate is also being waged in the shadow of broader, sometimes constitutional arguments concerning the role and utility of federalism and "states' rights" in a modern, highly mobile, integrated economy. Legal scholars are sharply divided over both the substance of those arguments and the extent to which they should dominate economic considerations or statutory language.

What the preemption debate needs is an examination that reflects the delicate interplay between our constitutional structure and the details of specific regulations. In *Federal Preemption: States' Powers, National Interests*, Richard A. Epstein and Michael S. Greve, two leading scholars in the field of preemption, have assembled an exceptional group of prominent legal scholars and practicing attorneys for a probing analysis and spirited discussion of these difficult issues.

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