SUPREME COURT OF THE UNITED STATES

No. 08–1314

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

[February 23, 2011]

JUSTICE SOTOMAYOR, concurring.

As the Court notes, this is not the first case in which the Court has encountered the express pre-emption provision and saving clause of the National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, 15 U. S. C. §1381 *et seq.* (1988 ed.) (recodified without substantive change at 49 U. S. C. §30101 *et seq.* (2006 ed. and Supp. III)). In *Geier* v. *American Honda Motor Co.*, 529 U. S. 861 (2000), the Court concluded that the "saving clause (like the express pre-emption provision) does *not* bar the ordinary working of conflict pre-emption principles," *id.*, at 869, and therefore engaged in an implied pre-emption analysis. The majority and dissent in *Geier* agreed that "a court should not find pre-emption too readily in the absence of clear evidence of a conflict." *Id.,* at 885.

I agree with the majority's resolution of this case and with its reasoning. I write separately only to emphasize the Court's rejection of an overreading of *Geier* that has developed since that opinion was issued.

Geier does not stand, as the California Court of Appeal, 167 Cal. App. 4th 905, 918–919, 84 Cal. Rptr. 3d 545, 555–556 (2008), other courts, and some of respondents' *amici* seem to believe, for the proposition that any time an agency gives manufacturers a choice between two or more options, a tort suit that imposes liability on the basis of

one of the options is an obstacle to the achievement of a federal regulatory objective and may be pre-empted.* Rather, *Geier* turned on the fact that the agency, via Federal Motor Vehicle Safety Standard 208, "deliberately sought variety—a mix of several different passive restraint systems." 529 U. S., at 878; *ante*, at 7. As the United States notes, "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." Brief for United States as *Amicus Curiae* 8. In other words, the mere fact that an agency regulation allows manufacturers a choice between options is insufficient to justify implied pre-emption; courts should only find pre-emption where evidence exists that an agency has a regulatory objective—*e.g.,* obtaining a mix of passive restraint mechanisms, as in *Geier*—whose achievement depends on manufacturers having a choice between options. A link between a regulatory objective and the need for manufacturer choice to achieve that objective is the lynchpin of implied pre-emption when there is a saving clause.

Absent strong indications from the agency that it needs manufacturers to have options in order to achieve a "significant . . . regulatory objective," *ante*, at 5, state tort suits are not "obstacle[s] to the accomplishment . . . of the full purposes and objectives" of federal law, *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). As the majority explains, the agency here gave no indication that its safety goals required the mixture of seatbelt types that resulted from manufacturers' ability to choose different options.

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*See, *e.g., Carden* v. *General Motors Corp.*, 509 F. 3d 227, 230–232 (CA5 2007); *Griffith* v. *General Motors Corp.*, 303 F. 3d 1276, 1282 (CA11 2002); *Heinricher* v. *Volvo Car Corp.*, 61 Mass. App. 313, 318–319, 809 N. E. 2d 1094, 1098 (2004).

Ante, at 8–12 (distinguishing the regulatory record in this case from that in *Geier*).

Especially in light of the "statutory saving clause that foresees the likelihood of a continued meaningful role for state tort law," *ante*, at 11, respondents have not carried their burden of establishing that the agency here "deliberately sought variety" to achieve greater safety, *Geier*, 529 U. S., at 878. Therefore, the Williamsons' tort suit does not present an obstacle to any "significant federal regulatory objective," *ante*, at 5, and may not be pre-empted.

For these reasons, I concur.