

# COMING SOON FROM WLF

## **FEDERAL PREEMPTION: ORIGINS, TYPES AND TRENDS IN THE U.S. SUPREME COURT**

Washington Legal Foundation MONOGRAPH

Under America's system of government, sovereign states are permitted to adopt laws that do not conflict with federal laws, which are the "supreme Law of the Land." This concept appears uncomplicated in theory, but it has proven to be extremely complex in practice. That especially holds true today, when Congress is enacting regulatory schemes that implicate traditional state powers and states increasingly are attempting to nationalize their public-policy agendas. It comes as no surprise, then, that the U.S. Supreme Court's preemption jurisprudence, interpreting the U.S. Constitution's Supremacy Clause, has long been described as a "muddle."

A forthcoming Washington Legal Foundation (WLF) MONOGRAPH sheds some critically needed light on the messy doctrine of federal preemption by analyzing recent High Court cases and forecasting trends that practitioners and policymakers should anticipate. The MONOGRAPH's *pro bono* authors are Shook, Hardy & Bacon L.L.P. Partners **Frank Cruz-Alvarez** and **Jennifer Voss**, and Associates **Jared Sherr** and **Talia Zucker**. It features a foreword by **Daniel E. Troy**, Senior Vice President and General Counsel of GlaxoSmithKline, who previously served as Chief Counsel of the U.S. Food and Drug Administration.

The MONOGRAPH consists of four parts. Part I briefly discusses the constitutional underpinnings and historical development of the doctrine of federal preemption. Part II explains the differences between express and implied preemption and describes the distinct varieties of implied preemption the Court has recognized.

Part III reviews the Court's preemption-based decisions between the years 2007 and 2015 (roughly consistent with the duration of the Roberts Court). The authors separate their review into cases where the federal statute at issue contained a preemption clause and those where defendants argued a theory of implied preemption. Cases are further categorized by the specific area of law or industry at issue (*i.e.* prescription drugs, securities, arbitration, etc.).

Part IV assesses trends that have arisen from the Court's preemption jurisprudence and provides some guidance for issues that likely will find their way to the Court in the near future.

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***If you are interested in receiving a copy of the WLF MONOGRAPH "FEDERAL PREEMPTION: ORIGINS, TYPES AND TRENDS IN THE U.S. SUPREME COURT," please email Glenn Lammi at [glammi@wlf.org](mailto:glammi@wlf.org).***