ADVISING LEGISLATORS ON FEDERALISM

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It is true that the federal structure serves to grant and delimit the prerogatives and responsibilities of the States and the National Government vis-a-vis one another. The allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States. The federal balance is, in part, an end in itself, to ensure that States function as political entities in their own right.

*Bond v. United States (Bond I), 564 U.S. 211, 221 (2011).*
Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.

From the existence of two sovereigns follows the possibility that laws can be in conflict or at cross-purposes. The Supremacy Clause provides a clear rule that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” Art. VI, cl. 2. Under this principle, Congress has the power to pre-empt state law.

There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express pre-emption provision.

State law must also give way to federal law in two other circumstances.

First, the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance. See *Gade v. National Solid Wastes Management Ass’n*, 505 U.S. 88, 115 (1992) (Souter, J. dissenting).

The intent to displace state law altogether can be inferred from a framework of regulation “so pervasive . . . that Congress left no room for the States to supplement it” or where there is a “federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990).
Second, state laws are pre-empted when they conflict with federal law. This includes cases where “compliance with both federal and state regulations is a physical impossibility”, and those instances where the challenged state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

Arizona, 567 U.S. at 399, 400 (2012) (quoting Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-143 (1963); Hines v. Davidowitz, 312 U.S. 52, 67 (1940)); see also Crosby, 530 U.S. at 373 (“What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects”).
In pre-emption analysis, courts should assume that “the historic police powers of the States” are not superseded “unless that was the clear and manifest purpose of Congress.”

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1) Express Pre-Emption Provision
2) Exclusive Governance - intent to displace state law altogether so that there’s no room for the States to supplement it
3) Conflict with Federal Law – compliance is a physical impossibility or is an obstacle to the purposes and objectives of Congress

But historic powers of States not superseded unless that was the clear purpose of Congress.