

In The Shadow Of The Supremacy Clause: How A ?Logical-Contradiction? Test Can Resolve The Debate Over Legislative History In FIFRA Preemption

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In this Essay, I argue that the existing approach to preemption (especially in the environmental context) is flawed because it invites the kind of statutory interpretation that relies heavily on the use of legislative history. Of course, legislative history is not always an improper tool of interpretation. But when it is used, for example, to glean congressional intent to preempt state law, the costs to sound interpretation and institutional credibility are too high. To counter that risk, I propose that the Court replace its current preemption analysis for Professor Caleb Nelson's more versatile ?logical contradiction? test (which in any event is more textually faithful to the Supremacy Clause). Relevant to my thesis, Professor Nelson's approach would stymie the use of legislative history in preemption cases, and would motivate courts to engage in a fair, textual examination of the federal and state laws that are at odds with each other.

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