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Federal preemption endangers consumers' rights

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Earlier this year, in *Riegel v. Medtronic*, the U.S. Supreme Court immunized manufacturers of defective medical devices from liability and eliminated consumers' rights. The Court held that the Medical Device Amendments of 1976, passed by Congress to protect consumers from injury, actually eradicates the rights of millions injured by medical devices to seek compensation. According to the Court, consumers injured by defective medical devices given premarket approval by the U.S. Food and Drug Administration (FDA) cannot sue the manufacturers for compensation – no matter what the manufacturers knew, told the FDA, or failed to tell the FDA – because federal law preempts, i.e., wipes out, their claims. Now, in *Wyeth v. Levine*,

drug companies are asking the Court to grant them immunity by judicial fiat, too.

On May 14, 2008, in reaction to *Riegel* and anticipation of *Wyeth v. Levine*, the U.S. House Committee on Oversight and Government Reform, chaired by Congressman Henry Waxman, held hearings on the liability of medical device and drug manufacturers – and the Supreme Court's misuse of federal preemption to violate Congress's intent. At that hearing, actor Dennis Quaid gave gripping testimony (See page 38), about how an inadequately-labeled, FDA-approved drug almost killed his newborn twins.

While the Supreme Court hears *Wyeth v. Levine* and Congress considers action, corporate defendants in a wide range of cases throughout America are arguing that, no matter how outrageously they may have acted, federal law preempts and eliminates the plaintiffs'

claims against them. All plaintiffs' lawyers need to be aware of – and prepared to deal with – the growing attempt to expand federal preemption and eradicate injured consumers' rights.

Public Justice's Federal Preemption Project has been successfully fighting and helped others to fight federal preemption for over two decades. We have won major victories nationwide, including in the U.S. Supreme Court, involving, among other things, cars, trucks, trains, drugs, medical devices, phones, credit cards, banks, mortgages, and health care. If you or anyone you know is confronting or concerned about a federal preemption defense, please feel free to contact me at abryant@publicjustice.net or Public Justice Staff Attorney Leslie Brueckner at lbrueckner@publicjustice.net. We must all work together to preserve consumers' rights.