

Preemption Choice

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This book examines the theory, law, and reality of pre-emption choice. The Constitution's federalist structures protect states' sovereignty but also create a powerful federal government that can pre-empt and thereby displace the authority of state and local governments and courts to respond to a social challenge. Despite this pre-emptive power, Congress and agencies have seldom pre-empted state power. Instead, they typically have embraced concurrent, overlapping power. Recent legislative, agency, and court actions, however, reveal a newly aggressive use of federal pre-emption, sometimes even pre-empting more protective state law. Pre-emption choice fundamentally involves issues of institutional choice and regulatory design: should federal actors displace or work in conjunction with other legal institutions? This book moves logically through each pre-emption choice step, ranging from underlying theory to constitutional history, to pre-emption doctrine, to assessment of when pre-emptive regimes make sense and when state regulation and common law should retain latitude for dynamism and innovation. Publisher: Cambridge University Press Illustration: N Language: ENG Title: Preemption Choice Pages: 00336 (Encrypted PDF) On Sale: 2008-11-30 SKU-13/ISBN: 9780521888059 Category: Law : Constitutional

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