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**New CPR White Paper:  
NHTSA's 'Pendant for Preemption'  
Will Weaken Safety Protections for Motorists**

Washington, DC --- A new white paper from the Center for Progressive Reform warns that ongoing efforts by the National Highway Traffic Safety Administration to shield automobile manufacturers from lawsuits filed under state laws will weaken critical safety protections for motorists.

*Regulatory Preemption at the National Highway Traffic Safety Administration*, by CPR Member Scholars William Funk, Thomas McGarity, Nina Mendelson, Sidney Shapiro, David Vladeck, and Policy Analyst Matthew Shudtz argues NHTSA has exceeded its legal reach in three separate instances where it has asserted that its regulations preempt state tort laws. The scholars also note that simultaneous efforts by automobile industry defense lawyers to radically expand the scope of court decisions permitting preemption in specific instances are out of step with Supreme Court rulings and would go a long way toward freeing manufacturers from accountability in court for negligence in design and production of their automobiles.

“NHTSA’s penchant for preemption is dangerous business for consumers,” said McGarity, a CPR Member Scholar and professor of law at the University of Texas. “The threat of being held accountable in court for the safety decisions they make is rightly motivating to automobile manufacturers – always has been, and always should be. But there’s an unholy alliance taking shape whereby NHTSA asserts its regulations preempt state tort laws even though the law says otherwise, and industry lawyers try to exploit narrow legal rulings embracing limited instances of preemption.”

Three times in recent years, NHTSA has asserted in the text of proposed safety-standards that the regulation would preempt state tort law, thus seeking to deny consumers the right to sue under state law for safety defects. The three regulations dealt with standards for the strength of automobile roofs (the “roof crush resistance” regulation); a requirement for particular mirrors or back-up cameras on trucks; and a “designated seating position rule” aimed at making sure that the design of seating in vehicles ensures that occupants are protected by seat belts or airbags. In each of the three instances, the CPR Member Scholars write, the assertion of preemption is inconsistent with the specific language of the law under which the regulation was promulgated, as well as Executive Order 12988, still in effect, in which the President directs agencies not to construe a statute as authorizing preemption in the absence of a specific provision in the law to that effect.

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“This is not a case of sloppy rule-making by the Administration,” says Vladeck, a CPR Member Scholar and professor of law at Georgetown University Law Center. “This is a concerted effort by the Administration that goes beyond NHTSA to protect industry from litigation. The Administration’s method puts consumers at increased risk, because it encourages industry to do nothing more than meet minimum safety standards. Time and again we’ve seen that some manufacturers will do as little as they can get away with. Tort law motivates them to do better, however much they may dislike it.”

“For years, federal safety regulations and tort law have operated side-by-side, with good effect,” said CPR Member Scholar Sidney Shapiro, a professor of law at Wake Forest University. “Lawsuits help hold manufacturers accountable, allow accident victims a chance to recover damages, and help policymakers and regulators keep tabs on the safety choices manufacturers are making. Those are exactly the reasons that industry lawyers are working overtime to shield manufacturers from litigation by trying to expand on narrow court rulings embracing preemption in specific instances.”

In its 2000 ruling in *Geier v. American Honda*, the U.S. Supreme Court ruled that a federal regulation requiring the phase-in of airbags by 1996 preempted a lawsuit filed by a woman claiming that her 1987 Honda Accord should have had airbags or other passive restraints. The CPR Member Scholars write,

Although the Court split 5 to 4 and the majority’s decision was entirely dependent on the controversial history specific to FMVSS 208 [the airbag regulation], the defense bar has taken it as an open invitation to make preemption claims in every automobile safety lawsuit that implicates a federal safety standard. But properly understood, *Geier* created only a limited universe of cases in which courts should consider preemption claims.

The Scholars write that NHTSA’s assertions of preemption and the courts’ acceptance of them have dubious legal underpinnings. But they also argue that preemption is just bad public policy, and that even if NHTSA had the statutory authority to preempt tort law, it shouldn’t, because doing so slows down the implementation of safer technologies. The Scholars call on Congress to pass a new law making clear the limits of NHTSA’s authority to preempt state tort laws.

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*Regulatory Preemption at the National Highway Traffic Safety Administration*, made possible by a grant from the Robert L. Habush Endowment, is the fourth installment of CPR’s [Truth About Torts](#) series. All are available at CPR’s [website](#). The Center for Progressive Reform is a nonprofit research and educational organization whose network of scholars across the nation is dedicated to protecting health, safety, and the environment through analysis and commentary. For more information, contact Matthew Freeman at 301-762-8980 or at [mfreeman@progressivereform.org](mailto:mfreeman@progressivereform.org). Visit CPR on the web at [www.progressivereform.org](http://www.progressivereform.org).

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