

553 F.2d 701, *; 1977 U.S. App. LEXIS 14026, **

COMTRONICS, INC., PLAINTIFF, APPELLANT, v. PUERTO RICO TELEPHONE COMPANY, ET AL.,
DEFENDANTS, APPELLEES

No. 75-1321

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

553 F.2d 701; 1977 U.S. App. LEXIS 14026; 40 Rad. Reg. 2d (P & F) 751

March 31, 1977

SUBSEQUENT HISTORY: [**1]

As Modified and Petition for Rehearing Denied May 18, 1977.

PRIOR HISTORY:

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO.
409 F.SUPP. 800. HON. JOSE V. TOLEDO, U.S. District Judge.

DISPOSITION: Affirmed.

CORE TERMS: carrier, connecting, tariff, Communications Act, cause of action, common carrier, interconnection, interstate, legislative history, connecting carrier, telephone, consumer, supplier, exemption, physical connection, adhere, judicially created, federal regulation, regulatory scheme, statutory scheme, right of action, expressio, supplied, perceive, unius, duty, congressional intent, civil penalties, common carriers, carrier engaged

COUNSEL: Sigfredo A. Irizarry for Appellant.

Alberto Pico, with whom, Brown, Newsom & Cordova was on brief, for Appellees.

JUDGES: Coffin, Chief Judge, McEntee and Campbell, Circuit Judges. Coffin, Chief Judge.

OPINIONBY: McENTEE

OPINION: [*703] McENTEE, Circuit Judge.

This case arises from the same events as *Puerto Rico Telephone Co. v. FCC*, 553 F.2d 694 (1st Cir. 1977), in which we sustained a declaratory order of the Federal Communications Commission (FCC) holding that the Puerto Rico Telephone Company (PRTC) is bound by a tariff permitting the interconnection of subscriber-owned and supplied telephone equipment. The tariff in question, F.C.C. No. 263, provides in pertinent part:

"§ 2.6.1 General Provision. Customer-provided terminal equipment may be used with the facilities furnished by the Telephone Company, for long distance message telecommunications service, as specified in 2.6.2 through 2.6.6 following."

Sections 2.6.2 through [**2] 2.6.6 describe the types of equipment which may be connected by subscribers and enumerate restrictions designed to prevent harm to telephone

company equipment. Tariff No. 263 clearly authorizes interconnection of the equipment supplied by appellant Comtronics, Inc., viz. private branch exchange (PBX) facilities, switchboard equipment such as that used by hotels and large offices.

Appellee PRTC was privately owned in early 1974 at the time of its concurrence in Tariff No. 263. Several months later, pursuant to legislation enacted by the legislature of Puerto Rico, PRTC was purchased by the Commonwealth and thereafter it was run as a publicly owned utility. n1 In mid-1974, according to Comtronics' allegations, PRTC, without amending the pertinent tariff, announced a policy of refusing to interconnect its equipment with customer-owned equipment such as that supplied by Comtronics. Appellant sued for damages and for declaratory and injunctive relief, alleging violations by PRTC of the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* and of Comtronics' rights to due process and equal protection under the fourteenth amendment. The district court dismissed for lack of jurisdiction. [**3] n2 409 [*704] F. Supp. 800 (D.P.R. 1975). We deferred ruling on Comtronics' appeal from that order so that we might consider this case in conjunction with our review of the FCC's order holding PRTC bound to Tariff No. 263.

-----Footnotes-----

n1 In the pleadings filed with the district court and before the FCC, PRTC maintained that its concurrence in Tariff No. 263 did not survive the sale of the company to the Commonwealth. The FCC disagreed and we accept its finding in this respect. *See Puerto Rico Tel. Co. v. FCC*, 553 F.2d 694 at n.3 (1st Cir. 1977).

n2 The order of the district court might be more properly termed a dismissal for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). *See Carr v. Learner*, 547 F.2d 135 (1st Cir. 1976).

-----End Footnotes-----

I. *The Communications Act Claim.*

A common carrier such as AT&T which provides interstate telephone service is subject to all of the provisions of the Communications Act. However, the Act's application to a non-subsidiary "connecting" carrier, [**4] such as PRTC, which is "engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier" is limited. Under 47 U.S.C. § 152(b), "nothing in [the Act] shall be construed to apply or to give the Commission jurisdiction with respect to . . . any [connecting] carriers . . . except that sections 201 to 205 shall . . . apply." Sections 201 through 205 provide, *inter alia*, that tariffs be "just and reasonable," § 201(b), and that connecting carriers publish and adhere to the tariffs in which they have concurred, § 203 (a) & (b). Section 203(e) establishes penalties for violations of these duties, and § 205 vests the FCC with enforcement power and provides penalties for violations of FCC orders.

Sections 201 through 205 make no mention of a damages remedy. However, § 206 provides that "any common carrier" violating the Act shall be liable in damages to the person injured thereby. Furthermore, § 207 enables a person injured by such a common carrier to bring an action for damages in the district court. Finally, §§ 208-09 provide a procedure whereby the FCC may order payment of damages by an offending common carrier.

In the [**5] present case, the district court noted that the Act does not explicitly create a cause of action for damages caused by PRTC's alleged violation of § 203(b)'s requirement that it adhere to its tariff permitting interconnection of PBX equipment. *See* 409 F. Supp. at 417. The court also reasoned that no federal common law remedy should be implied because the interest asserted by Comtronics was not protected by the Communications Act:

"The Act does not impose any duty on PRTC with respect to plaintiff. It is only intended to establish the conditions upon which communications services of an interstate nature will be lawfully provided and thus only regulates the bilateral relationship between the carrier and its subscriber." *Id.*

We agree with the district court that the Act cannot be read as explicitly creating a damages remedy against a connecting carrier such as PRTC. Section 152(b) subjects PRTC to §§ 201-05 alone; the damages liability created by § 206 and the damages remedy authorized by §§ 207 and 209, therefore, do not apply to PRTC. *But see Ward v. Northern Ohio Telephone Co.*, 300 F.2d 816, 820 (6th Cir.), *cert. denied*, 371 U.S. 820, 9 L. Ed. 2d 61, [**6] 83 S. Ct. 37 (1962).

We also conclude that no judicially created damages remedy is available to Comtronics to compensate for the harm caused by PRTC's alleged violation of the Communications Act. However, we reach this result for reasons which differ from those expressed by the district court. We disagree with the district court's implicit conclusion that Comtronics is not within the class protected by § 203(b)'s requirement that a carrier adhere to its tariffs until amendments are adopted in conformity with the procedural requirements of the Act. n3 Undoubtedly, the dominant purpose of the liberalized interconnection policy embodied in the tariff which PRTC allegedly abrogated was to benefit consumers of telephone services. *See, e.g., Puerto Rico Telephone [*705] Co. v. FCC, supra* at n. 10; *Hush-a-Phone Corp. v. United States*, 99 U.S. App. D.C. 190, 238 F.2d 266, 269 (1956); *Carterfone*, 13 F.C.C.2d 420, 424, *reconsideration denied*, 14 F.C.C.2d 571 (1968). However, consumers' rights to obtain cheaper and more efficient interconnection equipment cannot be vindicated unless suppliers, acting in reliance on the tariff, undertake the cost of providing such equipment. [**7] n4 *Cf. Barrows v. Jackson*, 346 U.S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031 (1953); *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477, 84 L. Ed. 869, 60 S. Ct. 693 (1940). Indeed, a supplier's need for the assurance which a tariff provides is demonstrably more immediate and of greater weight than a consumer's. Given the identity of interests between a supplier and consumer and the supplier's greater reliance on tariff guarantees, we think that Comtronics is within the class of intended beneficiaries protected by § 203(b).

-----Footnotes-----

n3 Under the principles enunciated by the Supreme Court in *Cort v. Ash*, 422 U.S. 66, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975), an implied remedy is not available to a plaintiff who is not "one of the class for whose especial benefit the statute was enacted." *Id.* at 78, *quoting Texas & P.R. Co. v. Rigsby*, 241 U.S. 33, 39, 60 L. Ed. 874, 36 S. Ct. 482 (1916) (emphasis deleted). *Accord, Piper v. Chris-Craft Indus., Inc.*, 430 U.S. 1, 97 S. Ct. 926, 51 L. Ed. 2d 124, 45 U.S.L.W. 4182, 4192 (1977).

n4 In the context of agency action, it is noteworthy that consumers' rights under the policy of liberalized interconnection have been enforced primarily through actions brought by suppliers. *E.g., Carterfone*, 13 F.C.C.2d 420, *reconsideration denied*, 14 F.C.C.2d 571 (1968); *Hush-a-Phone Corp.*, 22 F.C.C. 112 (1957), on remand from 99 U.S. App. D.C. 190, 238 F.2d 266 (1956).

-----End Footnotes----- [**8]

Our conclusion that no judicially created damages remedy is available is impelled by what we perceive as a clear legislative intent to preclude such a remedy. We agree with our dissenting brother that it is unfortunate that economic harm flowing from PRTC's asserted violation of the Act should go unremedied. We also agree that the enforcement scheme of the Communications Act vis a vis connecting carriers might be seriously flawed by the absence of

a damages remedy. *Cf. Piper v. Chris-Craft Industries, Inc.*, 430 U.S. 1, 97 S. Ct. 926, 51 L. Ed. 2d 124, 45 U.S.L.W. 4182, 4193 (1977); *J.I. Case Co. v. Borak*, 377 U.S. 426, 433, 12 L. Ed. 2d 423, 84 S. Ct. 1555 (1964). However, it is not for us to expand the remedial scheme established by Congress unless expansion would be "consistent with the evident legislative intent." *National Railroad Passenger Corp. v. National Ass'n of Railroad Passengers*, 414 U.S. 453, 458, 38 L. Ed. 2d 646, 94 S. Ct. 690 (1974). "In situations in which it is clear that federal law has granted a class of persons certain rights, it is not necessary to show an intention to *create* a private cause of action, although an explicit purpose to *deny* [****9**] such cause of action would be controlling." *Cort v. Ash*, 422 U.S. 66, 82, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975). Turning to the statute before us and its legislative history, we perceive such "an explicit purpose to *deny* [a] cause of action."

Section 206 provides:

"In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful . . . such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained. . . ."

Section 153(h), in turn, defines a "common carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio . . . except where reference is made to common carriers not subject to this chapter."

By its literal terms, therefore, § 206 reaches PRTC as well as such pre-eminent common carriers as AT&T and ITT. However, as noted above, § 152(b) provides that "nothing in this chapter shall be construed to apply . . . to . . . any [non-subsidary] carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier [****10**] . . . except that sections 201 to 205 of this title shall . . . apply. . . ." Thus, a "connecting" carrier such as PRTC is explicitly removed from the class of carriers against which damages liability is created. The necessary implication is that Congress chose to shield "connecting" carriers from damages liability. This reading of the language of the statute is, we think, borne out by the legislative history of the Communications Act of 1934.

As originally reported by the Senate Commerce Committee, the Communications Act provided no specific exemption for "connecting" carriers from any of the Act's [***706**] provisions. Rather, in the words of the committee chairman, "we have tried . . . throughout the bill . . . to protect the independent companies." 78 Cong. Rec. 8847 (remarks of Senator Dill). Nevertheless, the Senate, without objection, adopted an amendment providing a total exemption for connecting carriers:

"(b) Nothing in this act shall be construed to apply or to give the commission jurisdiction with respect to charges, classifications, practices, or regulations for or in connection with intrastate communication service of any carrier, or to any carrier engaged [****11**] in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by such carrier, or under direct or indirect control with such other carrier." *Id.* at 8846.

Thus, as the bill passed the Senate, it was contemplated that "connecting" carriers would be wholly free of the Act's restraints.

In the House Committee, the Senate-passed exemption was modified:

"The [House] amendment retains this provision except that it makes such carriers subject to sections 201 and 205, providing for the regulation of charges and prohibiting discrimination." H.R. Rep. No. 1850, 73d Cong., 2d Sess. at 2 (1934).

Accord, 78 Cong. Rec. 10313 (remarks of Representative Rayburn). With the exemption thus amended, the bill was enacted. 48 Stat. 1064. See 47 U.S.C. § 152(b).

From this review of the legislative history, it is clear to us that Congress, working against the backdrop of a proposed total exemption for "connecting" carriers, chose to go no further than to subject a company such as PRTC to §§ 201-05. We must assume that the legislative draftsmen were conscious of the [**12] nearby § 206 and that when they provided that it shall not "apply," § 152(b), they meant that damages liability shall not apply.

Other portions of the legislative materials indicate to us that our perception of a congressional intent to deny a damages remedy against connecting carriers is not erroneous. For example, Representative Rayburn, Chairman of the House Commerce Committee, explained the creation of civil penalties for violations of § 202:

"Section 202(c) is a penal provision which will apply to those small independent companies made subject to sections 201-205 inclusive, but exempted from the other provisions of the act under [§ 152(b)]." 78 Cong. Rec. 10313.

We think it likely that the "other provisions" to which Chairman Rayburn contrasted § 202(c) are the damages provisions of §§ 206-09, and that his remarks may be taken to reflect a congressional intent that the civil penalties of § 202(c) and the other penalty and FCC order provisions of §§ 201-05 were to be the exclusive method of enforcing the Act with respect to connecting carriers.

Our reading of the statute as precluding a damages remedy is also consistent with the legislative purpose in [**13] excluding connecting carriers from most of the Act's provisions. The primary purpose of the 1934 Communications Act was to subject the burgeoning power of such near-monopolies as AT&T to more effective federal regulation. See 78 Cong. Rec. 10315 (remarks of Representative Rayburn). In contrast, the purpose of the Senate's total exclusion of "connecting" carriers was to exempt tiny, mostly rural telephone companies from federal regulation. 78 Cong. Rec. 8846 (remarks of Senator Clark). The House amendment subjecting such companies to §§ 201-05 likely represented a compromise between a desire to free such small businesses of federal regulation and a practical realization that a minimum of federal control was necessary to regulate that portion of the local companies' business which was interstate. Since Congress in 1934 perceived "connecting" carriers as weak, rural exchanges, it seems likely that Congress was reluctant to subject such companies to damages liability. Congress might have concluded instead that the civil penalties provided in §§ 201-05 would be sufficient to insure compliance with federal law. In the four decades since the Communications Act was passed, "connecting" [**14] carriers have [*707] come to include such a large enterprise as PRTC, against which the penalties provided in §§ 201-05 might prove ineffective. It is for Congress, however, and not for this Court, to rewrite the statute to reflect changed circumstances. See *Martinez Hernandez v. Air France*, 545 F.2d 279, 284 (1st Cir. 1976).

Finally, our interpretation of Congress' intent in 1934 is aided by the principle of statutory construction *expressio unius est exclusio alterius*, i.e., "when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to

subsume other remedies." *National Railroad Passenger Corp., supra*. Although the Supreme Court has assigned differing weight to this principle in recent years, *compare id. with Cort v. Ash, supra* at 82 n. 14, we think that, at the least, the maxim of *expressio unius* has vitality where "a private cause of action [is] provided in favor of certain plaintiffs concerning the particular provision at issue" while no damages remedy is afforded another class of plaintiffs suffering the same harm. *Id.* As a corollary, *expressio unius* should have some probative value [**15] with respect to congressional intent where a damages remedy is provided against one class of defendants but not against another class violating the same statutory prohibition. See *T.I.M.E., Inc. v. United States*, 359 U.S. 464, 470-71, 79 S. Ct. 904, 3 L. Ed. 2d 952 (1959) (Harlan, J.). In light of the "significant omissions," *id.* at 471, of damages liability, or a cause of action therefor, in the present case, we are reinforced in our belief that Congress intended that "connecting" carriers' violations of § 203(b) not give rise to damages liability. n5

-----Footnotes-----

n5 We need not decide Comtronics' claim to declaratory and injunctive relief. Our affirmance in *Puerto Rico Tel. Co. v. FCC, supra*, upholding the FCC's finding that PRTC was bound by the tariff and its order that it adhere to its published tariff is the equivalent of such relief.

-----End Footnotes-----

II. The Fourteenth Amendment Claim.

Comtronics also pleaded a cause of action based on the fourteenth amendment, claiming that PRTC had deprived it of its property in [**16] violation of due process and equal protection. Appellant's action under the fourteenth amendment raises a number of troubling issues. To resolve its claim, it would be necessary to decide, for example, whether PRTC's tariff filed with the FCC constituted "property" of Comtronics within the meaning of the fourteenth amendment, *see, e.g., Board of Regents v. Roth*, 408 U.S. 564, 569, 577, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972); *Medina v. Rudman*, 545 F.2d 244 (1st Cir. 1976), and whether a state-owned utility such as PRTC is a "person" against whom a claim may be stated under 42 U.S.C. § 1983. *See, e.g., City of Kenosha v. Bruno*, 412 U.S. 507, 511-13, 37 L. Ed. 2d 109, 93 S. Ct. 2222 (1973). And, if we were to conclude that Comtronics could not bring an action against PRTC under § 1983, it might be necessary to decide whether a judicially created remedy under the fourteenth amendment was available. *Cf. Mt. Healthy Board of Education v. Doyle*, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471, 45 U.S.L.W. 4079, 4080 (1977); *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971).

However, we need not [**17] reach these difficult questions. Congress has subjected PRTC's actions as a carrier to the detailed regulatory scheme of the Communications Act. In such circumstances, the "precisely drawn, detailed statute pre-empts more general remedies." *Brown v. GSA*, 425 U.S. 820, 834, 96 S. Ct. 1961, 48 L. Ed. 2d 402 (1976). Pre-emption is particularly apparent, we think, where, as here, Congress has adopted in the more detailed regulatory scheme a policy of exempting the defendant's actions from damages liability. n6 *Cf. Preiser v. Rodriguez*, 411 U.S. 475, 489-90, 36 L. Ed. 2d 439, 93 S. Ct. 1827 (1973).

-----Footnotes-----

n6 Section 414 of the Communications Act provides:

"Nothing in this Act contained any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such

remedies."

While we may concede that § 414 would not deprive anyone of an independent action under § 1983, any viable § 1983 action here would be based on property rights alleged to have been created under the Communications Act. As such, a § 1983 action would be no more than an additional remedy for a violation of a duty created by the Communications Act. Because we hold that Congress withheld a damages remedy under the Act against connecting carriers (and as our brother Coffin's dissent indicates the question is concededly not open and shut), we think it would make little sense to hold that a damages remedy exists against them under § 1983 for violations of the very same Act. The "existing" remedies Congress had in mind under § 414 would scarcely be remedies so closely dependent upon the Act itself; rather, we read § 414 as preserving causes of action for breaches of duties distinguishable from those created under the Act, as in the case of a contract claim. Cf. *Ivy Broadcasting Co. v. American Tel. & Tel. Co.*, 391 F.2d 486 (2d Cir. 1968); *Kaufman v. Western Union Tel. Co.*, 224 F.2d 723 (5th Cir. 1955), cert. denied, 350 U.S. 947, 100 L. Ed. 825, 76 S. Ct. 321 (1956); *O'Brien v. Western Union Tel. Co.*, 113 F.2d 539 (1st Cir. 1940).

-----End Footnotes----- [**18]

[*708] For these reasons we conclude that no damages remedy is available to Comtronics.

Affirmed.

[*709contd] [EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published documents.]

In its petition for rehearing and for clarification, Comtronics argues first that our assumption that PRTC is a "connecting carrier" is premature inasmuch as discovery is necessary to determine whether PRTC is exempted from all but §§ 201-05 as a

"carrier engaged in interstate . . . communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with such carrier". 47 U.S.C. § 152(b)(2).

But we do not think that the determinative question is whether the *facilities* through which interstate commerce is conducted are [*710] [EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published documents.] under common control. [**19] See Brief of Comtronics at 40; Petition for Rehearing and for Clarification at 3. The correct reading of § 152(b)(2) seems to be that the "not directly" language modifies "carrier", i.e. a connecting carrier is one which has a fully independent identity. If the language modified "facilities", then "facilities" would "control" another carrier - an incomprehensible construction. The focus of the section is not on the joint control of facilities but on joint control of carriers. Such a reading is consistent with the legislative history which indicates concern for exempting small, *independent* telephone companies from most of the Act's strictures. As Comtronics stated in its complaint that PRTC "is a wholly owned subsidiary of the Telephone Authority of Puerto Rico . . . which in turn is a corporate public instrumentality of the Commonwealth of Puerto Rico", we think it reasonable to assume that PRTC is a "connecting carrier" under § 152(b)(2).

This understanding is reinforced by the fact that the district court's opinion was expressly

based on the assumption that PRTC is a "connecting carrier", and Comtronics' argument on appeal accepted this premise with the exception of [**20] two passing sentences at the beginning of page 40 of its brief. The issue was never raised and addressed frontally on appeal. See also *Puerto Rico Telephone Co. v. FCC*, 553 F.2d 694 (1st Cir. 1977).

DISSENTBY: COFFIN

DISSENT: [*708contd] [EDITOR'S NOTE: The page numbers of this document may appear to be out of sequence; however, this pagination accurately reflects the pagination of the original published documents.]

COFFIN, Chief Judge, dissenting.

Were ours the first judicial effort to interpret these statutes, the court's opinion might well carry the day for me. But, on a close issue of interpretation, I admit to being influenced by the fact that the only authority on point, *Ward v. Northern Ohio Telephone Co.*, 300 F.2d 816 (6th Cir. 1962), is contrary. While I would not follow *Ward* to the extent of effectively implying a right of action for all violations of §§ 201-205, it seems to me that when we add its solitary and long-standing authority to the essentiality of a private damages action for the carrying out of the policies embodied in § 203, the consistency of such an action with the statutory scheme, and the opaqueness of the legislative history, the balance [**21] tips in favor of the action.

The consequences of the court's holding are illustrated by the facts of this case. Here, PRTC's tariff required that it permit the interconnection of privately owned telephonic equipment in accordance with a long-standing FCC policy. If PRTC had been disposed to comply with § 203 when it decided that this provision was too burdensome, it would have proposed a change in its tariff to the FCC at least thirty days before the effective date thereof. We may safely assume that the FCC would have denied this request sometime before the effective date. Companies like Comtronics would then have been spared the substantial financial losses they allegedly incurred, and the consumers of PRTC's services would not have been temporarily denied the benefits of the interconnection policy. It is easy to see that § 203 is a key feature of the regulatory scheme; it enables the FCC to secure continuous carrier compliance with critical FCC policies.

The court's holding today creates an incentive for connecting carriers to disregard the specified procedures for amending their tariffs. By ignoring § 203 and unilaterally amending its tariff to give itself a monopoly, PRTC [**22] bestowed an immense financial benefit on itself and caused enormous, perhaps irreparable, damage to its competitors. I have no difficulty assuming that the net financial advantage flowing to PRTC from the violation was greatly in excess of the maximum civil penalty which could be imposed, see § 203(b). I have no reason to doubt that other tariff violations will often be similarly profitable. Since the court refuses to imply a damages remedy, companies like PRTC will hereafter have a positive incentive to violate certain provisions of their tariffs. I cannot believe that Congress could have contemplated that the FCC's ability to secure continuous compliance with its tariffs was to depend on how lucrative the violations thereof were to be. n1

-----Footnotes-----

n1 The fact that Comtronics could have sought a cease and desist order from the FCC under § 205 does not alter the analysis. Because the FCC has limited resources and myriad of regulatory responsibilities, it is not likely that Comtronics could have secured instant relief. More significantly, it is quite possible that there will also be instances in which the likely financial advantage from the continuation of the violation will also exceed the maximum penalties for violating the cease and desist order.

-----End Footnotes----- [**23]

[*709] The court seems to recognize that the creation of a private damages remedy would eliminate the enforcement problem, but it believes that Congress has precluded the creation of such actions. Unlike the majority, I see no evidence of "an explicit [legislative] purpose to deny such cause of action." *Cort v. Ash*, 422 U.S. 66, 82, 45 L. Ed. 2d 26, 95 S. Ct. 2080 (1975), and I believe such a remedy would be consistent with the statutory scheme.

For present purposes, I am willing to assume that Congress intended that §§ 206-07 should not apply to connecting carriers. However, it does not follow that Congress specifically intended that connecting carriers should be immune from damages liability under *each and every* statutory provision. All that can reasonably be inferred from Congress' decision to exempt connecting carriers from §§ 206-07 is that Congress did not want to subject connecting carriers to the automatic, across-the-board damages liability of common carriers. Whether there is to be a private right of action under any of the specific provisions seemingly has been left to judicial determination. Since I see nothing in the legislative history which is to [****24**] the contrary n2 and can perceive no regulatory objective or substantial value which will be interfered with if private damages actions were allowed under § 203 alone, n3 I think the inferral of this damages remedy is consistent with the "evident legislative intent". Because this remedy, in my view, is necessary to protect the primary legislative objectives and since there are not other considerations counseling against the creation of such a remedial right, *see Cort v. Ash, supra* at 78, this is an appropriate case for the exercise of the very respectable judicial practice - evidenced by literally scores of cases - of implying a private right of action under a statute which does not expressly provide for one. I would reverse the judgment of the district court.

-Footnotes-

n2 The history the majority relies upon is less than compelling. Although Congress demonstrated solicitude for the financially weaker connecting carriers, it made them subject to §§ 201-05, and there is no indication that Congress felt that connecting carriers should be given a carte blanche to violate the procedures for having their tariffs amended. Representative Rayburn's statement during floor debate obviously recognizes the applicability of § 202(c) to connecting carriers. It also notes that such carriers are subject to §§ 201-05, but not to other provisions. But it is not addressed to the problem of what happens when such a carrier violates a key provision, like § 203, to which the carrier is subject. [****25**]

n3 Lest there be any doubt that I would take seriously the Congressional solicitude for the financially weaker connecting carriers, I would be strongly disinclined to imply a damages action under § 201 of the Act, which proscribes "unjust and unreasonable practices". Because any carrier practice can be so characterized, permitting such actions against connecting carriers could subject them to numerous lawsuits which would not arise from the carriers' intentional, unlawful conduct. The defense of these lawsuits would place an enormous strain on the connecting carriers even in instances in which the carriers' conduct was blameless, and for this reason my tentative feeling is that a damages remedy under § 201 would be inconsistent with the statutory scheme. In contrast, a connecting carrier can easily avoid subjecting itself to suit under § 203 simply by following the prescribed procedure.

-End Footnotes-

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501 U.S. 597, *; 111 S. Ct. 2476, **;
1991 U.S. LEXIS 3632, ***; 115 L. Ed. 2d 532

WISCONSIN PUBLIC INTERVENOR, ET AL., PETITIONERS v. RALPH MORTIER, ET AL.

No. 89-1905

SUPREME COURT OF THE UNITED STATES

501 U.S. 597; 111 S. Ct. 2476; 1991 U.S. LEXIS 3632; 115 L. Ed. 2d 532; 59 U.S.L.W.
4755; 33 ERC (BNA) 1265; 91 Cal. Daily Op. Service 4747; 91 Daily Journal DAR 7355; 21
ELR 21127

April 24, 1991, Argued
June 21, 1991, Decided

PRIOR HISTORY: [***1]

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

DISPOSITION: 154 Wis. 2d 18, 452 N. W. 2d 555, reversed and remanded.

CORE TERMS: pesticide, regulation, legislative history, ordinance, pre-emption, local regulation, labeling, pre-empted, localities, pre-empt, regulatory authority, local authorities, pre-emptive, authority to regulate, political subdivision, authorization, manifest, village, federal law, state law, impliedly, interstate commerce, statutory language, registration, inspection, ambiguous, expertise, cooperate, occupy, regulatory statute

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DECISION: Federal Insecticide, Fungicide, and Rodenticide Act (7 USCS 136-136y) held not to pre-empt regulation of pesticides by local governments.

SUMMARY: An ordinance adopted by a Wisconsin town, pursuant to the police power accorded under a Wisconsin statute, required a permit for the application of any pesticide to public lands, to private lands subject to public use, or for the aerial application of any pesticide to private lands. The town board had the authority, under the ordinance, to deny a requested permit, grant the permit, or grant the permit with any reasonable conditions related to the health, safety, and welfare of town residents. An individual who owned land in the town applied to the town board for a permit for aerial spraying of a portion of his land with pesticides. The town granted the individual a permit, but precluded any aerial spraying and restricted the lands on which ground spraying would be allowed. In response, the individual, in conjunction with a coalition of pesticide users, brought a declaratory judgment action against the town in a Wisconsin trial court, in which action it was claimed that the town's ordinance was pre-empted both by Wisconsin statutes and by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y). The state court, after admitting as a party defendant the Wisconsin Public Intervenor--an assistant attorney general charged under state law with the protection of environmental public rights--ruled that the ordinance was pre-empted both by Wisconsin statutes and by FIFRA. On appeal, the Supreme Court of Wisconsin, affirming, (1) expressed the view that FIFRA preempted the ordinance because FIFRA's text and legislative history demonstrated a clearly manifest congressional intent to prohibit any regulation of pesticides by local units of government, and (2) declined to address the issue of state-law pre-emption (154 Wis 2d 18, 452 NW2d 555).

On certiorari, the United States Supreme Court reversed and remanded. In an opinion by White, J., joined by Rehnquist, Ch. J., and Marshall, Blackmun, Stevens, O'Connor, Kennedy,

and Souter, JJ., it was held that FIFRA did not pre-empt the regulation of pesticides by local governments, and hence did not pre-empt the town ordinance, because (1) the language of FIFRA did not explicitly pre-empt the local regulation of pesticide use; (2) the legislative history of FIFRA, standing alone, was at best ambiguous and did not suffice to show Congress' intent to pre-empt local regulation of pesticides, where such history indicated that (a) the two principal congressional committees responsible for a bill which eventually was enacted as a comprehensive revision of FIFRA disagreed over whether FIFRA pre-empted pesticide regulations by political subdivisions, and (b) none of three congressional committees which had jurisdiction over the bill asserted that FIFRA pre-empted the field of pesticide regulation; (3) FIFRA failed to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly; and (4) there was no actual conflict either between FIFRA and the ordinance, or between FIFRA and local regulation generally.

Scalia, J., concurring in the judgment, (1) agreed that FIFRA did not pre-empt local regulation of pesticides, but (2) expressed the view that such a conclusion was proper, notwithstanding his construction of the legislative history as demonstrating that the congressional committees were in agreement that the FIFRA amendment bill pre-empted local regulation, because the practice of using legislative history to discover the meaning of the language of a statute passed by Congress was objectionable.

LEXIS HEADNOTES - Classified to U.S. Digest Lawyers' Edition:

COMMERCE §143

ENVIRONMENTAL LAW §6

STATES, TERRITORIES, AND POSSESSIONS §36

STATUTES §102

Federal Insecticide, Fungicide, and Rodenticide Act -- pre-emption -- local regulation of pesticide use -- interstate commerce --

Headnote: [1A] [1B] [1C] [1D] [1E] [1F] [1G]

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y) does not pre-empt the regulation of pesticides by local governments--and hence FIFRA does not pre-empt a town ordinance, adopted pursuant to the town's police power under state law, which requires a permit for the application of any pesticide to public lands, to private lands subject to public use, or for the aerial application of any pesticide to private lands--because (1) the language of FIFRA does not explicitly pre-empt the local regulation of pesticide use; (2) the legislative history of FIFRA, standing alone, is at best ambiguous and does not suffice to show Congress' intent to pre-empt local regulation of pesticides, where such history indicates that (a) the two principal congressional committees responsible for a bill which eventually was enacted as a comprehensive revision of FIFRA disagreed over whether FIFRA pre-empted pesticide regulations by political subdivisions, and (b) none of three congressional committees which had jurisdiction over the bill asserted that FIFRA pre-empted the field of pesticide regulation; (3) FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly; and (4) there is no actual conflict either between FIFRA and the town ordinance, or between FIFRA and local regulation generally, since (a) compliance with the ordinance and FIFRA is not a physical impossibility, (b) FIFRA does not suggest a goal of regulatory coordination solely on the federal and state levels, but rather implies a regulatory partnership between federal, state, and local governments, and (c) FIFRA provides even less indication that local ordinances must yield to statutory purposes of promoting technical expertise or maintaining unfettered interstate commerce. (Scalia, J., dissented in part from this holding.)

STATES, TERRITORIES, AND POSSESSIONS §21
supremacy clause --

Headnote: [2]

Under the Federal Constitution's supremacy clause (Art VI, cl 2), state laws that interfere with, or are contrary to, the laws of Congress, made in pursuance of the Constitution, are invalid.

STATES, TERRITORIES, AND POSSESSIONS §22
supremacy clause -- pre-emption of state law -- congressional intent --

Headnote: [3]

The pre-emption of state law by federal law, under the Federal Constitution's supremacy clause (Art VI, cl 2), turns in the first instance on congressional intent; Congress' intent to supplant state authority in a particular field may be express in the terms of the statute; absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if (1) a scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it, (2) the act of Congress touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject, or (3) the goals sought to be obtained and the obligations imposed reveal a purpose to preclude state authority.

STATES, TERRITORIES, AND POSSESSIONS §33
supremacy clause -- pre-emption of state law -- police powers --

Headnote: [4]

In considering whether federal law pre-empts state law, under the Federal Constitution's supremacy clause (Art VI, cl 2), a court starts with the assumption that the historic police powers of the states are not to be superseded by a federal act unless such is the clear and manifest purpose of Congress.

STATES, TERRITORIES, AND POSSESSIONS §22
supremacy clause -- pre-emption of state law -- test for conflict with federal law --

Headnote: [5]

Even when Congress has not chosen to occupy a particular field, pre-emption of state law by federal law, under the Federal Constitution's supremacy clause (Art VI, cl 2), may occur to the extent that state and federal law actually conflict; such a conflict arises when compliance with both federal and state regulations is a physical impossibility, or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

STATES, TERRITORIES, AND POSSESSIONS §21
supremacy clause -- local ordinances --

Headnote: [6]

For purposes of the Federal Constitution's supremacy clause (Art VI, cl 2), the constitutionality of local ordinances is analyzed in the same way as that of statewide laws.

ENVIRONMENTAL LAW §6

EVIDENCE §167

MUNICIPAL CORPORATIONS §17

STATES, TERRITORIES, AND POSSESSIONS §33.5

STATUTES §164

Federal Insecticide, Fungicide, and Rodenticide Act -- local regulation of pesticide use -- pre-emption --

Headnote: [7A] [7B] [7C]

The language of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y) does not demonstrate a congressional intent to pre-empt the local regulation of pesticides, because (1) 7 USCS 136v plainly authorizes the "States" to regulate pesticides and just as plainly is silent with reference to local governments, and mere silence in this context cannot suffice to establish a clear and manifest purpose to pre-empt local authority; (2) even if the express grant of regulatory authority to states under 136v cannot be read as applying to municipalities, it does not follow that municipalities are left with no regulatory authority, but rather this means that localities, while not being able to claim the regulatory authority explicitly conferred upon the states that might otherwise have been pre-empted through actual conflicts with federal law, at a minimum are still free to regulate subject to the usual principles of pre-emption; (3) the exclusion of political subdivisions cannot be inferred from the express authorization to states under 136v, because (a) political subdivisions are components of the very entity which FIFRA empowers, and (b) a more plausible reading of such authorization leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the option of leaving local regulation of pesticides in the hands of local authorities; and (4) no other textual basis for pre-emption exists in FIFRA, and the contention that Congress made a clear distinction in FIFRA between nonregulatory authority--which Congress delegated to the states or their political subdivisions--and regulatory authority--which Congress expressly delegated to the states alone, while impliedly excluding political subdivisions--is undercut by (a) 7 USCS 136t(b), which mandates that the Administrator of the Environmental Protection Agency (EPA) cooperate with any appropriate agency of any state or any political subdivision thereof in carrying out the provisions of FIFRA, but which does not limit the political subdivisions to nonregulatory provisions, and (b) the fact that 7 USCS 136f(b) requires manufacturers to produce records upon the request of any employee of the EPA or of any state or political subdivision designated by the Administrator, while 7 USCS 136u(a)(1) authorizes the Administrator to delegate to only any state the authority to cooperate in the enforcement of FIFRA.

STATES, TERRITORIES, AND POSSESSIONS §4
delegation of powers --

Headnote: [8]

Local governmental units are created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them in the state's absolute discretion.

STATUTES §145
legislative history --

Headnote: [9A] [9B]

Legislative history materials are not generally so misleading that jurists should never employ them in a good-faith effort to discern legislative intent. (Scalia, J., dissented from this holding.)

ENVIRONMENTAL LAW §6

STATES, TERRITORIES, AND POSSESSIONS §33.5

STATUTES §110

Federal Insecticide, Fungicide, and Rodenticide Act -- local regulation of pesticide use -- by town -- implied pre-emption --

Headnote: [10A] [10B]

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 USCS 136-136y), as amended in 1972, does not impliedly pre-empt the field of pesticide regulation, either by occupying the field of pesticide regulation in general, or by closing such field to a state's political subdivisions, because (1) 7 USCS 136v(a), which delegates authority to regulate pesticides to states, can be read to contemplate the states' redelegation of such authority to their political subdivisions, either specifically or by leaving undisturbed the states' existing statutes that would otherwise provide local government with ample authority to regulate; (2) field pre-emption cannot be inferred in view of 7 USCS 136v(b), which, by declaring that a state shall not impose any labeling or packaging requirements in addition to or different from those required under FIFRA, would be surplusage if Congress had intended to occupy the entire field of pesticide regulation; (3) FIFRA does not otherwise imply field pre-emption, since it leaves ample room for states and localities to supplement federal efforts even absent the express regulatory authorization of 136v(a); (4) although FIFRA addresses numerous aspects of pesticide control in considerable detail, such as registration and labeling requirements, FIFRA does not equate such requirements with a general approval to apply pesticides throughout the nation without regard to regional and local factors like climate, population, geography, and water supply, and it leaves substantial portions of the field vacant, including the area of an affirmative permit scheme for the actual use of pesticides; and (5) in contrast to other implicitly pre-empted fields, FIFRA does not require that the use of pesticides can occur by only federal permission, subject to federal inspection, in the hands of federally certified personnel, and under an intricate system of federal commands, and thus the specific grant of authority to states in 136v(a), under the 1972 amendments, does not serve to hand back to the states powers that FIFRA had impliedly usurped, but rather such authority acts to insure that states can continue to regulate pesticide use and sales even where a narrow pre-emptive overlap might occur, such as with regard to the banning of mislabeled pesticides under 7 USCS 136k.

SYLLABUS: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or Act), 7 U. S. C. § 136 *et seq.*, was primarily a pesticide licensing and labeling law until 1972, when it was transformed by Congress into a comprehensive regulatory statute. Among other things, the 1972 amendments significantly strengthened the pre-existing registration and labeling standards, specified that FIFRA regulates pesticide use as well as sales and labeling, and granted increased enforcement authority to the Environmental Protection Agency (EPA). Regarding state and local authorities, FIFRA, as amended, includes provisions requiring pesticide manufacturers to produce records for inspection "upon request of any officer or employee . . . of any State or political subdivision," § 136f(b); directing the EPA to cooperate with "any appropriate agency of any State or any political subdivision thereof . . . in securing uniformity of regulations," § 136t(b); and specifying that "[a] State" may [***2] regulate pesticide sale or use so long as such regulation does not permit a sale or use prohibited by the Act, § 136v(a). Pursuant to its statutory police power, petitioner town adopted an ordinance that, *inter alia*, requires a permit for certain applications of pesticides to private lands. After the town issued a decision unfavorable to respondent Mortier on his application for a permit to spray a portion of his land, he brought a declaratory judgment action in county court, claiming, among other things, that the ordinance was pre-empted by FIFRA. The court granted summary judgment for Mortier, and the Wisconsin Supreme Court affirmed, finding pre-emption on the ground that the Act's text and legislative history

demonstrate a clearly manifest congressional intent to prohibit any regulation of pesticides by local governmental units.

Held: FIFRA does not pre-empt local governmental regulation of pesticide use. Pp. 604-616.

(a) When considering pre-emption, this Court starts with the assumption that the States' historic powers are not superseded by federal law unless that is the clear and manifest purpose of Congress. That purpose may be expressed in the terms of the statute itself.

[***3] Absent explicit pre-emptive language, congressional intent to supersede state law may nonetheless be implicit if, for example, the federal Act touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Even where Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict, as when compliance with both is a physical impossibility, or when the state law stands as an obstacle to the accomplishment of Congress' purposes and objectives. Pp. 604-605.

(b) FIFRA nowhere expressly supersedes local regulation. Neither the Act's language nor the legislative history relied on by the court below, whether read together or separately, suffices to establish pre-emption. The fact that § 136v(a) expressly refers only to "[a] State" as having the authority to regulate pesticide use, and the Act's failure to include political subdivisions in its § 136(aa) definition of "State," are wholly inadequate to demonstrate the requisite clear and manifest congressional intent. Mere silence is insufficient in this context. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146. And the exclusion of local governments cannot be inferred from the express authorization to "State[s]" because that term is not self-limiting; political subdivisions are merely subordinate components of the very entity the statute empowers. Cf., e. g., *Sailors v. Board of Ed. of Kent Cty.*, 387 U.S. 105, 108, 18 L. Ed. 2d 650, 87 S. Ct. 1549. Indeed, the more plausible reading of the express authorization leaves the allocation of regulatory authority to the absolute discretion of the States themselves, including the options of specific redelegation or leaving local regulation of pesticides in the hands of local authorities under existing state laws. Nor is there any merit to Mortier's contention that the express references in §§ 136t(b) and 136f(b) to "political subdivision[s]" show that Congress made a clear distinction between nonregulatory authority, which may be exercised by such subdivisions, and the regulatory authority reserved to the "State[s]" in § 136v(a). Furthermore, the legislative history is at best ambiguous, reflecting a disagreement between the responsible congressional committees as to whether the provision that would become § 136v pre-empted local regulation. [***5] Pp. 606-610.

(c) FIFRA also fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly. The argument that the 1972 amendments transformed the Act into a comprehensive statute that occupied the entire pesticide regulation field, and that certain provisions, including § 136v(a), reopened certain portions of the field to the States but not to political subdivisions, is unpersuasive. Section 136v itself undercuts any inference of field pre-emption, since § 136v(b) prohibits States from enacting or imposing labeling or packaging requirements that conflict with those required under FIFRA. This language would be pure surplusage if Congress had already occupied the entire field. Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned the Act into a comprehensive regulatory statute, substantial portions of the field are still left vacant, including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides or to occupy the field of local use permitting. Thus, the specific grant of authority in § 136v(a) must be read not as an exclusion [***6] of municipalities but as an act ensuring that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur. Pp. 611-614.

(d) There is no actual conflict either between FIFRA or the ordinance at issue or between the

Act and local regulation generally. Compliance with both the ordinance and FIFRA is not a physical impossibility. Moreover, Mortier's assertions that the ordinance stands as an obstacle to the Act's goals of promoting pesticide regulation that is coordinated solely at the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce are based on little more than snippets of legislative history and policy speculations and are unpersuasive. As is evidenced by § 136t(b), FIFRA implies a regulatory partnership between federal, state, and local governments. There is no indication that any coordination which the statute seeks to promote extends beyond the matters with which it expressly deals, or does so strongly enough to compel the conclusion that an independently enacted ordinance that falls outside the [***7] statute's reach frustrates its purpose. Nor is there any indication in FIFRA that Congress felt that local ordinances necessarily rest on insufficient expertise and burden commerce. Pp. 614-616.

COUNSEL: Thomas J. Dawson, Assistant Attorney General of Wisconsin, argued the cause for petitioners. With him on the briefs was Linda K. Monroe.

Deputy Solicitor General Wallace argued the cause for the United States as amicus curiae urging reversal. With him on the brief were Solicitor General Starr, Assistant Attorney General Stewart, Clifford M. Sloan, and David C. Shilton.

Paul G. Kent argued the cause for respondents. With him on the brief was Richard J. Lewandowski. *

* Briefs of amici curiae urging reversal were filed for the State of Hawaii et al. by Warren Price III, Attorney General of Hawaii, and Girard D. Lau and Steven S. Michaels, Deputy Attorneys General, James H. Evans, Attorney General of Alabama, Roland W. Burris, Attorney General of Illinois, Robert T. Stephan, Attorney General of Kansas, Michael E. Carpenter, Attorney General of Maine, Frank J. Kelley, Attorney General of Michigan, William L. Webster, Attorney General of Missouri, Frankie Sue Del Papa, Attorney General of Nevada, Ernest Preate, Jr., Attorney General of Pennsylvania, Paul Van Dam, Attorney General of Utah, and Jeffrey L. Amestoy, Attorney General of Vermont; for the Conservation Law Foundation of New England, Inc., et al. by E. Susan Garsh, Robert E. McDonnell, and Maris L. Abbene; for the National Institute of Municipal Law Officers et al. by Robert J. Alfton, William I. Thornton, Jr., and Analeslie Muncy; for the Village of Milford, Michigan, et al. by Patti A. Goldman, Alan B. Morrison, and Brian Wolfman.

Briefs of amici curiae urging affirmance were filed for the State of California et al. by Daniel E. Lungren, Attorney General of California, Roderick E. Walston, Chief Assistant Attorney General, R. H. Connett, Assistant Attorney General, and Charles W. Getz III, Deputy Attorney General, and by the Attorneys General for their respective States as follows: Grant Woods of Arizona, Linley E. Pearson of Indiana, J. Joseph Curran, Jr., of Maryland, Robert J. Del Tufo of New Jersey, and Kenneth O. Eikenberry of Washington; for the American Association of Nurserymen et al. by Frederick A. Provorny and Robert A. Kirshner; for the American Farm Bureau Federation by John J. Rademacher and Richard L. Krause; for the Green Industry Council by Stephen S. Ostrach; for the Professional Lawn Care Association of America by Joseph D. Lonardo; for the National Pest Control Association et al. by Lawrence S. Ebner; and for the Washington Legal Foundation by Daniel J. Popeo, Paul D. Kamemar, and John C. Scully.

JUDGES: WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and MARSHALL, BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, post, p. 616.

OPINIONBY: WHITE

OPINION: [*600] [**2479] JUSTICE WHITE delivered the opinion of the Court. This case requires us to consider whether the Federal Insecticide, Fungicide, and Rodenticide Act

(FIFRA or Act), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et seq.*, pre-empts the regulation of pesticides by local governments. We hold that it does not.

[*601] I

A

FIFRA was enacted in 1947 to replace the Federal Government's first effort at pesticide regulation, the Insecticide Act of 1910, 36 Stat. 331. 61 Stat. 163. Like its predecessor, FIFRA as originally adopted "was primarily a licensing and labeling statute." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991, 81 L. Ed. 2d 815, 104 S. Ct. 2862 (1984). In 1972, growing environmental and safety concerns led Congress to undertake a comprehensive revision of FIFRA [***8] through the Federal Environmental Pesticide Control Act. 86 Stat. 973. The 1972 amendments significantly strengthened FIFRA's registration and labeling standards. 7 U. S. C. § 136a. To help make certain that pesticides would be applied in accordance with these standards, the revisions further insured that FIFRA "regulated the use, as well as the sale and labeling, of pesticides; regulated pesticides produced and sold in both intrastate and interstate commerce; [and] provided [**2480] for review, cancellation, and suspension of registration." *Ruckelshaus, supra*, at 991-992. An additional change was the grant of increased enforcement authority to the Environmental Protection Agency (EPA), which had been charged with federal oversight of pesticides since 1970. See Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15623 (1970), 5 U. S. C. App., p. 1343. In this fashion, the 1972 amendments "transformed FIFRA from a labeling law into a comprehensive regulatory statute." 467 U.S. at 991.

As amended, FIFRA specifies several roles for state and local authorities. The statute, for example, authorizes the EPA Administrator to enter into cooperative agreements with the States to enforce FIFRA provisions. [***9] 7 U. S. C. §§ 136u, 136w-1. As part of the enforcement scheme, FIFRA requires manufacturers to produce records for inspection "upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator." § 136f(b). [*602] FIFRA further directs the EPA Administrator to cooperate with "any appropriate agency of any State or any political subdivision thereof." § 136t(b). Of particular relevance to this case, § 24(a) specifies that States may regulate the sale or use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Act. § 136v(a).

B

Petitioner, the town of Casey, is a small rural community located in Washburn County, Wisconsin, several miles northwest of Spooner, on the road to Superior. n1 In 1985, the town adopted Ordinance 85-1, which regulates the use of pesticides. The ordinance expressly borrows statutory definitions from both Wisconsin laws and FIFRA, and was enacted under Wis. Stat. §§ 61.34(1), (5) (1989-1990), which accord village boards general police, health, and taxing powers. n2

-----Footnotes-----

n1 The town has a population of from 400 to 500 persons, large enough to enact the ordinance at issue in this case. See *Washburn County Directory 1982-83*, cited in Brief for Respondents 4, n. 4; Tr. of Oral Arg. 12.

n2 Section 61.34(1) provides:

"Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare and convenience of the public, and

may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language."

Section 61.34(5) provides:

"For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of article XI, section 3, of the [Wisconsin] constitution it is hereby declared that this chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof."

-----End Footnotes-----

[**10] [**11] The ordinance requires a permit for the application of any pesticide to public lands, to private lands subject to public [*603] use, or for the aerial application of any pesticide to private lands. § 1.2, 2 App. to Pet. for Cert. 6. A permit applicant must file a form including information about the proposed pesticide use not less than 60 days before the desired use. § 1.3(2), *id.*, at 7. The town board may "deny the permit, grant the permit, or grant the permit with . . . any reasonable conditions on a permitted application related to the protection of the health, safety and welfare of the residents of the Town of Casey." § 1.3(3), *id.*, at 11-12. After an initial decision, the applicant or any town resident may obtain a hearing to provide additional information regarding the proposed application. §§ 1.3(4), (5), *id.*, at 12-14. When a permit is granted, or granted with conditions, the ordinance further requires the permittee to post placards giving notice of the pesticide [**2481] use and of any label information prescribing a safe reentry time. § 1.3(7), *id.*, at 14-16. Persons found guilty of violating the ordinance are subject to fines of up to \$ 5,000 for each violation. [**12] § 1.3(7)(c), *id.*, at 16.

Respondent Ralph Mortier applied for a permit for aerial spraying of a portion of his land. The town granted him a permit, but precluded any aerial spraying and restricted the lands on which ground spraying would be allowed. Mortier, in conjunction with respondent Wisconsin Forestry/Rights-of-Way/Turf Coalition, n3 brought a declaratory judgment action in the Circuit Court for Washburn County against the town of Casey and named board members, claiming that the town of Casey's ordinance is pre-empted by state and federal law. The Wisconsin Public Intervenor, an assistant attorney general charged under state law with the protection of environmental public rights, Wis. Stat. §§ 165.07, 165.075 (1989-1990), was admitted without objection as a party defendant. On cross-motions for summary judgment, the Circuit Court ruled in favor of Mortier, holding that the town's [*604] ordinance was pre-empted both by FIFRA and by state statute, §§ 94.67-94.71; 2 App. to Pet. for Cert. 14.

-----Footnotes-----

n3 The coalition is an unincorporated, nonprofit association of individual businesses and other associations whose members use pesticides.

-----End Footnotes-----

[**13] The Supreme Court of Wisconsin affirmed in a 4-to-3 decision. *Mortier v. Casey*, 154 Wis. 2d 18, 452 N.W.2d 555 (1990). Declining to address the issue of state-law pre-emption, the court concluded that FIFRA pre-empted the town of Casey's ordinance because the statute's text and legislative history demonstrated a clearly manifest congressional intent to prohibit "any regulation of pesticides by local units of government." *Id.*, at 20, n. 2, and 30, 452 N.W.2d at 555, n. 2, and 560. The court's decision accorded with the judgments of two Federal Courts of Appeals. *Professional Lawn Care Association v. Milford*, 909 F.2d 929 (CA6 1990); *Maryland Pest Control Association v. Montgomery County*, 822 F.2d 55 (CA4

1987), summarily aff'g 646 F. Supp. 109 (Md. 1986). Two separate dissents concluded that neither FIFRA's language nor its legislative history expressed an intent to pre-empt local regulation. *Casey, supra*, at 33, 452 N.W.2d at 561 (Abrahamson, J., dissenting); 154 Wis. 2d at 45, 452 N.W.2d at 566 (Steinmetz, J., dissenting). The dissenters' conclusion in part relied on decisions reached by two State Supreme Courts. *Central Maine Power Co. v. Lebanon*, 571 A.2d 1189 (Me. 1990); *People ex rel. Deukmejian v. County of Mendocino*, 36 Cal. 3d 476, 683 P.2d 1150, 204 Cal. Rptr. 897 (1984). Given the importance of the issue and the conflict of authority, we granted certiorari. 498 U.S. 1045 (1991). We now reverse.

II Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1, 211, 6 L. Ed. 23 (1824) (Marshall, C. J.). The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 112 L. Ed. 2d 474, 111 S. Ct. 478 (1990). Congress' intent to supplant state authority in a [*605] particular field may be express in the terms of the statute. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 51 L. Ed. 2d 604, 97 S. Ct. 1305 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," if "the Act of Congress . . . touch[es] [***15] a field in which the federal interest is so dominant that [**2482] the federal system will be assumed to preclude enforcement of state laws on the same subject," or if the goals "sought to be obtained" and the "obligations imposed" reveal a purpose to preclude state authority. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 91 L. Ed. 1447, 67 S. Ct. 1146 (1947). See *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U.S. 190, 203-204, 75 L. Ed. 2d 752, 103 S. Ct. 1713 (1983). When considering pre-emption, "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice, supra*, at 230. Even when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 10 L. Ed. 2d 248, 83 S. Ct. 1210 (1963), or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, [***16] 312 U.S. 52, 85 L. Ed. 581, 61 S. Ct. 399 (1941). It is, finally, axiomatic that "for the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws." *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713, 85 L. Ed. 2d 714, 105 S. Ct. 2371 (1985). See, e. g., *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 36 L. Ed. 2d 547, 93 S. Ct. 1854 (1973).

[*606] III Applying these principles, we conclude that FIFRA does not pre-empt the town's ordinance either explicitly or implicitly or by virtue of an actual conflict.

A

As the Wisconsin Supreme Court recognized, FIFRA nowhere expressly supersedes local regulation of pesticide use. The court, however, purported to find statutory language "which is indicative" of pre-emptive intent in the statute's provision delineating the "Authority of States." 7 U. S. C. § 136v. The key portions of that provision state:

"(a) . . . A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

"(b) . . . Such State shall not impose or continue in effect any requirements for labeling or packaging in [***17] addition to or different from those required under this subchapter."

Also significant, in the court's eyes, was FIFRA's failure to specify political subdivisions in defining "State" as "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa." § 136 (aa).

It was not clear to the State Supreme Court, however, "that the statutory language [§§ 136v and 136(aa)] alone evinced congress' manifest intent to deprive political subdivisions of authority to regulate pesticides." *Casey*, 154 Wis. 2d at 25, 452 N.W.2d at 557-558. It was nevertheless "possible" to infer from the statutory language alone that pesticide regulation by local entities was pre-empted; and when coupled with its legislative history, that language "unmistakably demonstrates the intent of Congress to pre-empt local ordinances such as that adopted by the Town of Casey." *Id.*, at 28, 452 N.W.2d at 559. The court's holding thus [*607] rested on both §§ 136v and 136(aa) and their legislative history; neither the language nor the legislative history would have sufficed alone. There was no suggestion that absent [***18] the two critical sections, FIFRA was a sufficiently comprehensive statute to justify [**2483] an inference that Congress had occupied the field to the exclusion of the States. Nor have the respondents argued in this Court to that effect. On the other hand, it is sufficiently clear that under the opinion announced by the court below, the State would have been precluded from permitting local authorities to regulate pesticides. We agree that neither the language of the statute nor its legislative history, standing alone, would suffice to pre-empt local regulation. But it is also our view that, even when considered together, the language and the legislative materials relied on below are insufficient to demonstrate the necessary congressional intent to pre-empt. As for the statutory language, it is wholly inadequate to convey an express pre-emptive intent on its own. Section 136v plainly authorizes the "States" to regulate pesticides and just as plainly is silent with reference to local governments. Mere silence, in this context, cannot suffice to establish a "clear and manifest purpose" to pre-empt local authority. *Rice, supra*, at 230. Even if FIFRA's express grant of regulatory authority to [***19] the States could not be read as applying to municipalities, it would not follow that municipalities were left with no regulatory authority. Rather, it would mean that localities could not claim the regulatory authority explicitly conferred upon the States that might otherwise have been pre-empted through actual conflicts with federal law. At a minimum, localities would still be free to regulate subject to the usual principles of pre-emption. Properly read, the statutory language tilts in favor of local regulation. The principle is well settled that local "governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be [*608] entrusted to them" . . . in [its] absolute discretion." *Sailors v. Board of Ed. of Kent Cty.*, 387 U.S. 105, 108, 18 L. Ed. 2d 650, 87 S. Ct. 1549 (1967), quoting *Reynolds v. Sims*, 377 U.S. 533, 575, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964), quoting *Hunter v. Pittsburgh*, 207 U.S. 161, 178, 52 L. Ed. 151, 28 S. Ct. 40 (1907). The exclusion of political subdivisions cannot be inferred from the express authorization to the "State[s]" because political subdivisions are components of the very entity the statute empowers. Indeed, the more plausible reading of FIFRA's authorization [***20] to the States leaves the allocation of regulatory authority to the "absolute discretion" of the States themselves, including the option of leaving local regulation of pesticides in the hands of local authorities. Certainly no other textual basis for pre-emption exists. Mortier, building upon the decision below, contends that other provisions show that Congress made a clear distinction between nonregulatory authority, which it delegated to the States or their political subdivisions, and regulatory authority, which it expressly delegated to the "State[s]" alone. The provisions on which he relies, however, undercut his contention. Section 136t(b), for example, mandates that the EPA Administrator cooperate with "any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this subchapter." As an initial

matter, the section does not limit "the provisions of the subchapter" which localities are authorized to carry out to "nonregulatory" provisions. Moreover, to read this provision as pre-empting localities would also require the anomalous result of pre-empting the actions of any agency to the extent it exercised state-delegated powers that included [***21] pesticide regulation. Likewise, § 136f(b) requires manufacturers to produce records for the inspection upon the request of any employee of the EPA "or of any State or political subdivision, duly designated by the Administrator." Section 136u(a)(1), however, authorizes the Administrator to "delegate to any State . . . the authority to cooperate in the enforcement of this [Act] through the use of its personnel." If the use of "State" [*609] in FIFRA impliedly excludes subdivisions, it is unclear why the one provision would allow [**2484] the designation of local officials for enforcement purposes while the other would prohibit local enforcement authority altogether. Mortier, like the court below and other courts that have found pre-emption, attempts to compensate for the statute's textual inadequacies by stressing the legislative history. *Casey*, 154 Wis. 2d at 25-28, 452 N.W.2d at 558-559; *Professional Lawn Care Association*, 909 F.2d at 933-934. The evidence from this source, which centers on the meaning of what would become § 136v, is at best ambiguous. The House Agriculture Committee Report accompanying the proposed FIFRA amendments stated that it had "rejected a proposal which would [***22] have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions." H. R. Rep. No. 92-511, p. 16 (1971). While this statement indicates an unwillingness by Congress to grant political subdivisions regulatory authority, it does not demonstrate an intent to prevent the States from delegating such authority to its subdivisions, and still less does it show a desire to prohibit local regulation altogether. At least one other statement, however, concededly goes further. The Senate Committee on Agriculture and Forestry Report states outright that it "considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives." S. Rep. No. 92-838, p. 16 (1972).

But other Members of Congress clearly disagreed. The Senate Commerce Committee, which also had jurisdiction over the bill, observed that "while the [Senate] Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, [***23] the report of that committee states explicitly that local governments cannot regulate [*610] pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators." S. Rep. No. 92-970, p. 27 (1972). To counter the language in the Agriculture and Forestry Committee Report, the Commerce Committee proposed an amendment expressly authorizing local regulation among numerous other, unrelated proposals. This amendment was rejected after negotiations between the two Committees. See 118 Cong. Rec. 32251 (1972); H. R. Conf. Rep. No. 92-1540, p. 33 (1972). As a result, matters were left with the two principal Committees responsible for the bill in disagreement over whether it pre-empted pesticide regulation by political subdivisions. It is important to note, moreover, that even this disagreement was confined to the pre-emptive effect of FIFRA's authorization of regulatory power to the States in § 136v. None of the Committees mentioned asserted that FIFRA pre-empted the field of pesticide regulation. Like FIFRA's text, the legislative history thus falls far short of establishing [***24] that pre-emption of local pesticide regulation was the "clear and manifest purpose of Congress." *Rice*, 331 U.S. at 230. We thus agree with the submission in the *amicus* brief of the United States expressing the views of the EPA, the agency charged with enforcing FIFRA. n4

-----Footnotes-----

n4 JUSTICE SCALIA's foray into legislative history runs into several problems. For one, his concurrence argues that the House Agriculture Committee made it clear that it wanted localities "out of the picture" because its Report specifies as grounds for rejecting a proposal *permitting* the localities to regulate pesticides the observation that the Federal Government and the 50 States provided an adequate number of regulatory jurisdictions. *Post*, at 617. But

the only way to infer that the Committee opposed not only a direct grant of regulatory authority upon localities but also state delegation of authority to regulate would be to suppose that the term "regulatory jurisdictions" meant regulatory for the purposes of exercising any authority at all as opposed to exercising authority derived from a direct federal grant. H. R. Rep. No. 92-511, p. 16 (1971). The language of the Report does not answer this question one way or another.

The concurrence further contends that the Senate Agriculture Committee unequivocally expressed its view that § 136v should be read to deprive localities of regulatory authority over pesticide. This may be true, but it is hardly dispositive. Even if § 136v were sufficiently ambiguous to justify reliance on legislative history, the meaning a committee puts forward must at a minimum be within the realm of meanings that the provision, fairly read, could bear. Here the Report clearly states that § 136v should be read as a prohibition, but it is just as clear that the provision is written exclusively in terms of a grant. No matter how clearly its report purports to do so, a committee of Congress cannot take language that could only cover "flies" or "mosquitoes," and tell the courts that it really covers "ducks."

Finally, the concurrence suggests that the Senate Commerce Committee Report reconfirmed the views of the two Agriculture Committees that § 136v prohibited local pesticide regulation. *Post*, at 618-620. But the Commerce Committee at no point states, clearly or otherwise, that it *agrees* that the section before it does this. Rather, the Report states that "while the Agriculture Committee *bill* does not specifically prohibit local governments from regulating pesticides, *the report of that committee* states explicitly that local governments cannot regulate pesticides in any manner." S. Rep. No. 92-970, p. 27 (1972) (emphasis added). The Commerce Committee, indeed, went on to assert its policy differences with its Agriculture counterpart. It did this by attempting to strike at the root of the problem through changing the language of the provision itself. Far from showing agreement with its rival, the Commerce Committee's words and actions show a body that, first, conceded *no* ground on the meaning of the disputed language and then, second, raised the stakes by seeking to insure that the language could go only *its* way. On both the existence and the desirability of a prohibition on local regulation, there can be no doubt that the Commerce and Agriculture Committees stood on the opposite sides of the Senate debate. As for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it. As Chief Justice Marshall put it, "where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived." *United States v. Fisher*, 6 U.S. 358, 2 Cranch 358, 386, 2 L. Ed. 304 (1805). Legislative history materials are not generally so misleading that jurists should never employ them in a good-faith effort to discern legislative intent. Our precedents demonstrate that the Court's practice of utilizing legislative history reaches well into its past. See, e. g., *Wallace v. Parker*, 6 Pet. 680, 687-690 (1832). We suspect that the practice will likewise reach well into the future.

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[*611] [***25] [**2485] B Likewise, FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority [*612] over pesticide regulation impliedly. In particular, we reject the position of some courts, but not the court below, that the 1972 amendments transformed FIFRA into a comprehensive statute that occupied the field of pesticide regulation, and that certain provisions opened specific portions of the field to state regulation and much smaller portions to local regulation. See *Professional Lawn Care*, 909 F.2d at 933-934; *Maryland Pest Control*, 646 F. Supp., at 110-111; see also Brief for National Pest Control Association et al. as *Amici Curiae* 6-16; Brief for Washington Legal Foundation as *Amicus Curiae* 5-18. On this assumption, it has been argued, § 136v(a) could be viewed as opening the field of general pesticide regulation to the States yet leaving it closed to political subdivisions. This reasoning is unpersuasive. As an initial matter, it would still have to be shown under ordinary canons of construction that FIFRA's delegation of authority to "State[s]" would not therefore allow the States in turn to redelegate some of this authority to their political [***26] subdivisions either specifically or by leaving undisturbed

their existing statutes that would otherwise provide local government with ample authority to regulate. We have already noted that § 136v(a) can be plausibly read to contemplate precisely such redelegation. The term "State" is not self-limiting since political subdivisions are merely subordinate components of the whole. The scattered mention of political subdivisions elsewhere in FIFRA does not require their exclusion here. The legislative history is complex and ambiguous.

[**2486] More importantly, field pre-emption cannot be inferred. In the first place, § 136v itself undercuts such an inference. [*613] The provision immediately following the statute's grant of regulatory authority to the States declares that "such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required under" FIFRA. § 136v(b). This language would be pure surplusage if Congress had intended to occupy the entire field of pesticide regulation. Taking such pre-emption as the premise, § 136v(a) would thus grant States the authority to regulate the "sale or use" of pesticides, while § 136v(b) [***27] would superfluously add that States did not have the authority to regulate "labeling or packaging," an addition that would have been doubly superfluous given FIFRA's historic focus on labeling to begin with. See *Monsanto*, 467 U.S. at 991.

Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned FIFRA into a "comprehensive regulatory statute," *Monsanto, supra*, at 991, the resulting scheme was not "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice, supra*, at 230. To the contrary, the statute leaves ample room for States and localities to supplement federal efforts even absent the express regulatory authorization of § 136v(a). FIFRA addresses numerous aspects of pesticide control in considerable detail, in particular: registration and classification, § 136a; applicator certification, § 136b; inspection of pesticide production facilities, §§ 136e and 136g; and the possible ban and seizure of pesticides that are misbranded or otherwise fail to meet federal requirements, § 136k. These provisions reflect the general goal of the 1972 amendments to strengthen existing labeling requirements [***28] and ensure that these requirements were followed in practice. § 136k. See *Monsanto, supra*, at 991-992. FIFRA nonetheless leaves substantial portions of the field vacant, including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides. It certainly does not equate registration [*614] and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors like climate, population, geography, and water supply. Whatever else FIFRA may supplant, it does not occupy the field of pesticide regulation in general or the area of local use permitting in particular.

In contrast to other implicitly pre-empted fields, the 1972 enhancement of FIFRA does not mean that the use of pesticides can occur "only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands." *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. at 634, quoting *Northwest Airlines v. Minnesota*, 322 U.S. 292, 303, 88 L. Ed. 1283, 64 S. Ct. 950 (1944) (Jackson, J., concurring). The specific grant of authority in § 136v(a) [***29] consequently does not serve to hand back to the States powers that the statute had impliedly usurped. Rather, it acts to ensure that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur. As noted in our discussion of express pre-emption, it is doubtful that Congress intended to exclude localities from the scope of § 136v(a)'s authorization, but however this may be, the type of local regulation at issue here would not fall within any impliedly pre-empted field.

C Finally, like the EPA, we discern no actual conflict either between FIFRA and the ordinance before us or between FIFRA and local regulation generally. Mortier does not rely, nor could he, on the theory that compliance with the ordinance and FIFRA is a "physical impossibility." *Florida Lime & [**2487] Avocado Growers*, 373 U.S. at 142-143. Instead, he urges that the