itly contained in its structure and purpose." [16] Because preemption cases, when the statute contains no express provision, theoretically turn on statutory construction, generalizations about them can carry one only so far. Each case must construe a different federal statute with a distinct legislative history. If the statute and the legislative history are silent or unclear, the Supreme Court has developed general criteria which it purports to use in determining the preemptive reach.

"Absent explicit pre-emptive language, we have recognized at least two types of implied pre-emption: field pre-emption, where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it, . . . and conflict pre-emption, where compliance with both federal and state regulations is a physical impossibility, . . . or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [17] However, "federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matters permits no other conclusion, or that the Congress has unmistakably so ordained." [18] At the same time, "[t]he relative importance to the State

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sion of Federal Aviation Administration Authorization Act of 1994 regulating activities of motor carriers "with respect to transportation of property" held not to preempt state laws on the disposal of towed vehicles by towing companies).

[16] Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977); FMC Corp. v. Holliday, 498 U.S. 52 (1990); Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 604–605 (1991).

[17] Gade v. National Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992) (internal quotation marks and case citations omitted). The same or similar language is used throughout the preemption cases. *E.g.*, Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992); id. at 532–33 (Justice Blackmun concurring and dissenting); id. at 545 (Justice Scalia concurring and dissenting); Wisconsin Public Intervenor v. Mortier, 501 U.S. 597, 604–05 (1991); English v. General Electric Co., 496 U.S. 72, 78–80 (1990); Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984); Pacific Gas & Elec. Co. v. State Energy Resources Comm'n, 461 U.S. 190, 203–04 (1983); Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153 (1982); Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142 (1963); Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[18] Florida Lime & Avocado Growers v. Paul, 373 U.S. 132, 142 (1963); Chicago & Northwestern Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 317 (1981). Where Congress legislates in a field traditionally occupied by the States, courts should "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." Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm., 461 U.S. 190, 206 (1983) (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). Nonetheless, this assumption may go only so far. *See, e.g.*, Pliva, Inc. v. Mensing, 564 U.S. ___, No. 09–993, slip op. at 15 (2011) (Thomas, J., plural-