of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." [19]

In the final analysis, "the generalities" that may be drawn from the cases do not decide them. Rather, "the fate of state legislation in these cases has not been determined by these generalities but by the weight of the circumstances and the practical and experienced judgment in applying these generalities to the particular instances." [20]

The Standards Applied.—As might be expected from the *caveat* just quoted, any overview of the Court's preemption decisions can only make the field seem tangled, and to some extent it is. But some threads may be extracted.

Express Preemption. Of course, it is possible for Congress to write preemptive language that clearly and cleanly prescribes or does not prescribe displacement of state laws in an area.[21] Provisions governing preemption can be relatively interpretation free.[22] For example, a prohibition of state taxes on carriage of air passengers "or

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ity opinion) ("[T]he text of the Clause—that federal law shall be supreme, 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding'—plainly contemplates conflict pre-emption by describing federal law as effectively repealing contrary state law.").

[19] Free v. Bland, 369 U.S. 663 (1962).

[20] Union Brokerage Co. v. Jensen, 322 U.S. 202, 211 (1944) (per Justice Frankfurter).

[21] Regulations as well as statutes can preempt. Agency regulations, when Congress has expressly or implied empowered these bodies to preempt, are "the supreme law of the land" and can displace state law. *E.g.*, Smiley v. Citibank, 517 U.S. 735 (1996); City of New York v. FCC, 486 U.S. 57, 63–64 (1988); Louisiana Public Service Comm'n v. FCC, 476 U.S. 355 (1986); Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691 (1984); Fidelity Fed. Savings & Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982). Federal common law, *i.e.*, law applied by the courts in the absence of explicit statutory directive, and respecting uniquely federal interests, can also displace state law. *See* Boyle v. United Technologies Corp., 487 U.S. 500 (1988) (Supreme Court promulgated common-law rule creating government-contractor defense in tort liability suits, despite Congress's having considered and failed to enact bills doing precisely this); Westfall v. Erwin, 484 U.S. 292 (1988) (civil liability of federal officials for actions taken in the course of their duty). Finally, ordinances of local governments are subject to preemption under the same standards as state law. Hillsborough County v. Automated Medical Laboratories, 471 U.S. 707 (1985).

[22] Thus, § 408 of the Federal Meat Inspection Act, as amended by the Wholesome Meat Act, 21 U.S.C. § 678, provides that "[m]arking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any state . . . ." *See* Jones v. Rath Packing Co., 430 U.S. 519, 528–32 (1977). *See also* National Meat Ass'n v. Harris, 565 U.S. ___, No. 10–224, slip op. (2012) (broad preemption of all state laws on slaughterhouse activities). Similarly, much state action is saved by the Securities Exchange Act of 1934, 15 U.S.C. § 78bb(a), which states that "[n]othing in this chapter shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder."