

No. 21-_____

IN THE
Supreme Court of the United States

JOHNSON & JOHNSON AND JOHNSON & JOHNSON
CONSUMER COMPANIES, INC.,

Petitioners,

v.

LYNN FITCH, Attorney General of the State of
Mississippi, ex rel. THE STATE OF MISSISSIPPI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MISSISSIPPI SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Puerto Rico v. Franklin California Tax-Free Trust*, this Court held that courts should “not invoke any presumption against pre-emption” when a “statute ‘contains an express pre-emption clause.’” 136 S. Ct. 1938, 1946 (2016). Obeying that command, four circuits and a state supreme court no longer apply any such presumption to express pre-emption clauses. Four state supreme courts (now including the Mississippi Supreme Court) and two circuits, however, continue to apply the presumption to pre-emption provisions that they find ambiguous, or that touch on a state’s historic police powers, or both.

Did the Mississippi Supreme Court err in narrowly construing an express preemption clause on the ground that a presumption against pre-emption applies here because it considered the pre-emption provision ambiguous and because the provision touches on historic state police powers?

2. The lower courts are divided over what types of agency actions can pre-empt state law. One circuit and the Mississippi Supreme Court hold that only notice-and-comment rulemaking qualifies as pre-emptive. In contrast, seven circuits and a state supreme court reject that line, giving pre-emptive force to final administrative actions that warrant *Chevron* deference or to any final agency action with the force of law.

Did the Mississippi Supreme Court err in holding that only notice-and-comment rulemaking can pre-empt state law?

PARTIES TO THE PROCEEDINGS

Petitioners Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. (now known as Johnson & Johnson Consumer Inc.) were defendants-appellants below.

Respondent Lynn Fitch, Attorney General of the State of Mississippi, ex rel. the State of Mississippi, was plaintiff-appellee below.

CORPORATE DISCLOSURE STATEMENT

1. Johnson & Johnson is a publicly held company. It has no parent corporation, and no publicly held company owns 10% or more of Johnson & Johnson's stock.

2. Johnson & Johnson Consumer Companies, Inc. (now known as Johnson & Johnson Consumer Inc.) is wholly owned by Janssen Pharmaceuticals, Inc. Janssen Pharmaceuticals, Inc. is wholly owned by DePuy Synthes, Inc. DePuy Synthes, Inc. is wholly owned by Johnson & Johnson International. Johnson & Johnson International is wholly owned by Johnson & Johnson.

RELATED PROCEEDINGS

Supreme Court of Mississippi:

Johnson & Johnson et al. v. Fitch ex rel. Mississippi, No. 2019-IA-00033-SCT (Miss. April 1, 2021)

Chancery Court of Hinds County:

State of Mississippi, ex rel. Jim Hood v. Johnson & Johnson et al., No. G-2014-1207 (Miss. Ch. Ct., Hinds Cty. Dec. 18, 2018)

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