

09-152 BRUESEWITZ V. WYETH

DECISION BELOW: 561 F.3d 233

LOWER COURT CASE NUMBER: 07-3794

QUESTION PRESENTED:

Section 22(b)(1) of the National Childhood Vaccine Injury Act of 1986 ["the Act"] expressly preempts certain design defect claims against vaccine manufacturers "if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings." 42 U.S.C. § 300aa-22(b)(1). A-104.

The Question Presented is

Whether the Third Circuit erred in holding that, contrary to its plain text and the decisions of this Court and others, Section 22(b)(1) preempts all vaccine design defect claims, whether the vaccine's side effects were unavoidable or not?¹

¹ Whether Section 22(b)(1) of the Act encompasses both negligent and strict liability design defect claims is not at issue in this petition. Both the Ferrari court and the court below found that it encompasses both claims. See A-35; *Am. Home Prods. Corp. v. Ferrari*, 668 S.E.2d 236, 242 (Ga. 2008).

CHIEF JUSTICE ROBERTS TOOK NO PART; HEARD ARGUMENT
JUSTICE KAGAN TOOK NO PART

CERT. GRANTED 3/8/2010