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TURNING THE SUPREMACY CLAUSE ON ITS HEAD: BELL ATLANTIC MARYLAND, INC. V. PRINCE GEORGE'S COUNTY

Steven M. Warshawsky*

I. INTRODUCTION

A fundamental principle of federal judicial review is that courts should avoid deciding cases on constitutional grounds when a non-constitutional basis for decision is available.1 In Bell Atlantic Maryland, Inc. v. Prince George's County,2 the United States Court of Appeals for the Fourth Circuit invoked this venerable principle—commonly referred to as the "avoidance doctrine"3—to hold that the district court committed reversible error when it resolved the plaintiff's federal statutory preemption challenge to a local telecommunications ordinance before it addressed the plaintiff's alternative state law claims.4

The Fourth Circuit's spare, three-page opinion in Bell Atlantic Maryland belies the complexity of the issues raised by its decision and masks a basic error in the court's reasoning that led it to the wrong outcome. Specifically, the court's assumption that the avoidance

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1. See, e.g., Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101, 105 (1944) ("If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable.").
2. 212 F.3d 863 (4th Cir. 2000).
3. See, e.g., Lisa A. Kloppenberg, Avoiding Constitutional Questions, 35 B.C. L. REV. 1003, 1004 (1994). Another term used to describe this principle is the "last resort rule." Id.
4. 212 F.3d at 865-66.
doctrine applies to federal preemption claims is incorrect. The avoidance doctrine only applies to constitutional decision-making, not statute-based rulings. In making this assumption, the Fourth Circuit relied on inapposite case law and completely ignored well-established Supreme Court precedent to the contrary. The Fourth Circuit also appears to have been motivated by strong anti-nationalist impulses. By requiring district courts to exhaust all possible state law grounds for a decision before addressing any federal preemption claims, the court's ruling effectively inverts the supremacy of federal over state law. Under the Fourth Circuit's approach, implementing Congress' express statutory commands becomes secondary to deciding cases on state law grounds.

This article closely examines the Fourth Circuit's decision in Bell Atlantic Maryland and explains why the court's reasoning is fatally flawed. Part II sets out the basic facts, issues, and holdings of the case. Part III demonstrates that the Fourth Circuit's application of the avoidance doctrine to the plaintiff's federal preemption claim is not supported by the cases cited in the court's opinion and is contrary to Supreme Court precedent directly on point. Part IV discusses how the Fourth Circuit's decision not only misapplies the avoidance doctrine, but completely misconstrues the nature of the Supremacy Clause. Part V concludes with a brief summary of the main points.

II. THE BELL ATLANTIC MARYLAND CASE

In October 1998, Prince George's County, Maryland^5 enacted its first comprehensive telecommunications law. The law established a complex regulatory scheme governing the use of public rights-of-way by telecommunications companies doing business in the County. The law applied to telephone service companies, cable television providers, Internet access providers, and all other businesses whose "cables and wires cross public land." County Executive Wayne K. Curry explained

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5. Prince George's County (P.G. County) is the second most populous county in Maryland (after Montgomery County) and is situated due east of Washington, D.C. See Maryland Electronic Capital: Maryland Counties, available at http://www.state.md.us/meccount.html (last visited Aug. 31, 2001).


8. See Jackie Spinner, Pr. George's Loses Lawsuit on Phone Fee, WASH. POST, June
the rationale for the law thusly: “Every time [a telecommunications company] lays new wire, there is damage to public roads and property... as more and more people want to cut, the useful life of the road reduces. Taxpayers have the right to expect that private companies will pay for their use of this valuable asset.”

P.G. County's telecommunications law, “the first of its kind in the region,” required any telecommunications company desiring to “construct, operate, replace, reconstruct or maintain a telecommunications system on, over, or under any public rights-of-way” to obtain a special license, called a “franchise,” from the County. The first step in obtaining a franchise was to submit a “lengthy and detailed application form, along with a $5,000 application fee.” The application form required specific information about the applicant’s proposed telecommunications system and construction plans, as well as general information about the applicant’s finances and business operations outside the County. The application was then subjected to a multi-layered review process, at each stage in which the County “exercise[d] complete discretion over whether to grant or deny” the franchise.

The final step in the application process was entering into a “franchise agreement” with the County Executive. The franchise agreement set forth the terms and conditions of the applicant’s authorization (i.e., its “franchise”) to use the County's rights-of-way. The terms and conditions of a telecommunications company's franchise included, inter alia, various record keeping and reporting requirements, the provision of


Prior to the passage of the Telecommunications Franchise Law, companies wishing to install cable and other facilities on P.G. County’s public rights-of-way had to obtain construction permits from the Public Works Department pursuant to the County’s “Roads and Sidewalks” ordinance. *See Bell Atl. Maryland*, 49 F. Supp. 2d at 816 n.25; *see also* Jackie Spinner, *County Mulls Appeal of Ruling on Phone Fee; Officials Seek to Keep Regulating Companies*, WASH. POST, June 23, 1999, at M3. Since many of the regulatory functions served by the franchise law were already provided for under the “Roads and Sidewalks” ordinance, the franchise law faced opposition as a hidden tax measure from some business and consumer interests. *See* Mizejewski, *supra* note 6, at B8-B9.
10. Spinner, *supra* note 9, at B5.
11. *Bell Atl. Maryland*, 49 F. Supp. 2d at 808 (quoting Telecommunications Franchise Law § 5A-151(a)).
12. *Id.* at 814.
13. *Id.* at 808.
14. *Id.* at 808-09, 814.
15. *Id.* at 809.
16. *Id.*
free telecommunications services to the County, a prohibition on corporate control transactions without the County’s prior approval, and payment of a three percent “right-of-way charge” levied on the franchisee’s annual gross revenues. Failure to obtain a franchise or to abide by the terms and conditions of a franchise agreement subjected a telecommunications company to the immediate revocation of its existing County-issued licenses and permits and authorized the County to order the company to remove all of the company’s lines and facilities from public property within sixty days.

Less than two months after the Telecommunications Franchise Law was enacted, Bell Atlantic Maryland, Inc., filed suit in federal district court in Baltimore seeking to enjoin the law’s enforcement. Bell Atlantic was the incumbent local exchange carrier for P.G. County, and its extensive network of telephone lines and related facilities on the County’s public rights-of-way was subject to the law’s requirements. In its complaint, Bell Atlantic contended that the law violated numerous provisions of federal and state law, including the Commerce, Contract, and Due Process Clauses of the United States Constitution, the Federal Communications Act of 1934, the Federal Telecommunications Act of 1996, the Maryland Declaration of Rights, the Maryland Public Utilities Companies Article, and Maryland common law. The district court denied Bell Atlantic’s motion for a preliminary injunction as moot.

17. Id. at 810-11.
18. Id. at 808, 811.
19. Id. at 811-12. AT&T Communications, Inc., and Sprint Communications Co. filed similar lawsuits shortly thereafter. See id. at 812 n.21. Both companies participated as amici curiae in Bell Atlantic’s lawsuit. Id.

Bell Atlantic opposed the law from its inception, maintaining in particular that the County lacked “the legal or constitutional authority to impose [the three percent right-of-way charge] . . . .” Bazelon, supra note 9 (quoting John W. Dillon, Bell Atlantic’s Vice-President of External Affairs). Bell Atlantic publicly claimed that it was “more than happy to reimburse” the County for costs associated with the installation of telecommunications equipment on public property, but objected that the franchise law was intended “to generate revenue as opposed to . . . recoup the costs.” Spinner, supra note 9, at B5.

21. U.S. CONST. art. I, § 8; U.S. CONST. art. I, § 10; U.S. CONST. amend. XIV, § 1, respectively.
24. MD. CONST., Declaration of Rights.
after the parties agreed to maintain the *status quo ante* pending the outcome of the litigation.27

Following extensive briefing and a full hearing on the merits, the district court issued a decision striking down the franchise law and permanently enjoining its enforcement.28 In reaching its decision, the district court expressly declined to address Bell Atlantic’s constitutional claims, “[i]n keeping with the court’s ‘duty to avoid deciding constitutional questions presented unless essential to a proper disposition of a case.’”29 Instead, the court rested its decision on federal preemption grounds, finding that P.G. County’s franchise law was preempted by the Federal Telecommunications Act of 1996 (“FTA” or “Act”).30

The FTA, which at the time was described as “the largest overhaul of telecommunications laws in 62 years,”31 was enacted “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”32 Congress intended for market competition, not state or local regulation, to decide which companies would provide the telecommunications services demanded by consumers.33 Thus, section 253(a) of the Act,
entitled "Removal of barriers to entry," expressly provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." The only exceptions to the Act's strict preemption rule are (1) state laws designed to preserve universal telephone service and protect consumer rights and public safety, and (2) state and local laws designed "to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers... for use of public rights-of-way."

The two issues before the district court in Bell Atlantic Maryland were whether P.G. County's franchise law ran afoul of the FTA's sweeping preemption provision and, if so, whether it was saved by either of the Act's two "safe harbor" provisions. The district court answered the first question in the affirmative, finding that the law's numerous application, approval, reporting, fee, and oversight requirements "create a substantial and unlawful barrier to entry into the Prince George's County telecommunications market." The court then turned to the second question: whether one of the statute's saving provisions applied to the law. The court addressed only the local rights-of-way power preserved by section 253(c) of the Act because the County did not contend that the franchise law fell within the state's broad regulatory authority under section 253(b) of the Act.

After extensive analysis, the district court found that the franchise law exceeded the County's legitimate rights-of-way authority under the FTA. First, the court found that the law's application and approval process unlawfully vested the County with complete discretion to approve or deny a telecommunications company's franchise application based on a "wide-ranging set of factors that... relate to regulatory issues that go well beyond the bounds of legitimate local governmental

38. Id. at 815.
39. Id.
40. Id. at 815 & n.23.
41. Id. at 815-20.
regulation.” Second, the court found that the law’s three percent charge on a franchisee’s gross revenues was not “reasonably calculated” to reimburse the County for the actual cost of maintaining and improving the public rights-of-way, but instead, improperly functioned as a general revenue-raising measure. The district court concluded that the franchise law “must be struck down on federal preemption grounds.” In basing its decision on preemption grounds, the district court expressly avoided ruling on Bell Atlantic’s constitutional claims because consideration was “both unnecessary and improper.” The court also declined to resolve the “complex and important” state law claims raised in Bell Atlantic’s lawsuit. As the district court explained, regardless of the outcome of the plaintiff’s state law claims, “the ordinance still must be struck down on the grounds that it fatally conflicts with the terms and goals of the FTA.”

On appeal, a three-judge panel of the United States Court of Appeals for the Fourth Circuit reversed the district court’s decision. Rather, invoking the avoidance doctrine, the Fourth Circuit held that the district court “committed reversible error” when it resolved the plaintiff’s claims.

42. Id. at 817.
43. Id. at 817-18. In addition, the district court disapproved of the County’s decision to impose its franchise requirement on telecommunications companies that used lines and facilities owned, installed, and maintained by other companies. Id. at 819. The court reasoned that the scope of local regulatory authority under the FTA did not extend to companies or services that did not physically impact the public rights-of-way. Id. at 819-20.
44. Id. at 821. The district court further determined that “given the number and variety of provisions of the County’s telecommunications franchise law that are preempted by the FTA,” it was not possible to sever the invalid provisions from the valid provisions. Id.
45. Id. at 821 n.29.
46. Id. at 822. Bell Atlantic had argued that (1) P.G. County’s franchise law was preempted under state laws delegating to the Maryland Public Service Commission the authority to determine which telecommunications companies were qualified to do business in the state; (2) the law exceeded the scope of the County’s powers under its charter; (3) the law violated the terms of Bell Atlantic’s perpetual, statewide franchise allegedly granted by the Maryland legislature in 1884; and (4) the law violated the terms of Bell Atlantic’s perpetual local telephone services contract allegedly granted by the County in 1904. Id. at 821.
47. Id. at 822.
49. See id. at 866 (“express[jing] no opinion” on the merits of the dispute).
FTA preemption claim "in advance of considering the state law questions upon which the case might have been disposed."\textsuperscript{50} According to the Fourth Circuit, "determining whether a federal statute preempts a state statute[] is a constitutional question."\textsuperscript{51} Based on this assumption, the court held that "[i]n deciding the constitutional question of preemption rather than first considering the state law questions, the district court violated the second and fourth rules of \textit{Ashwander v. Tennessee Valley Authority}."\textsuperscript{52}

The Fourth Circuit was referring to Justice Brandeis' famous concurrence in \textit{Ashwander}, in which he set forth seven basic principles for the avoidance of constitutional questions.\textsuperscript{53} The second and fourth of these principles are:

2. The Court will not anticipate a question of constitutional law in advance of the necessity of deciding it . . . .

4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.\textsuperscript{55}

In overturning the district court's decision in \textit{Bell Atlantic Maryland},

\textsuperscript{50} Id.  
\textsuperscript{51} Id. at 865 (citing Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 317 (1981)).  
\textsuperscript{52} Id.  
\textsuperscript{53} See \textit{Ashwander v. Tennessee Valley Auth.}, 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring). Justice Brandeis' seven \textit{Ashwander} principles are:

(1) The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary, proceeding . . . .  
(2) The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it . . . ."  
(3) The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."  
(4) The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of . . . .  
(5) The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation . . . .  
(6) The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.  
(7) "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

\textit{Id.} (footnotes and internal citations omitted). For a comprehensive discussion of Justice Brandeis' \textit{Ashwander} concurrence, see Kloppenberg, \textit{supra} note 4, at 1012-27.

\textsuperscript{54} \textit{Ashwander}, 297 U.S. at 346-47 (Brandeis, J., concurring) (internal quotation marks and citations omitted).
the Fourth Circuit found that the district court violated these two principles when it resolved the plaintiff’s federal statutory preemption claim before addressing the plaintiff’s alternative state law claims. In the Fourth Circuit’s view, the district court should have exhausted all potentially dispositive state law grounds for decision before deciding whether the FTA preempted P.G. County’s franchise law. As this article explains, the Fourth Circuit’s ruling in Bell Atlantic Maryland was erroneous because the avoidance doctrine does not apply to federal preemption claims.

III. THE AVOIDANCE DOCTRINE AND FEDERAL PREEMPTION CLAIMS

The avoidance doctrine may be defined as the jurisprudential principle by which a “federal court should refuse to rule on a constitutional issue if the case can be resolved on a nonconstitutional basis.” The Supreme Court’s decision in Harmon v. Brucker illustrates the typical application of the avoidance doctrine. The issue in Harmon was whether two military draftees could be issued less-than-honorable discharges based upon their pre-induction conduct. The particular pre-induction conduct the draftees were charged with included participating in various communist-controlled groups and activities. The draftees’ actual military service, on the other hand, was considered “excellent.” The plaintiffs argued that, in setting their level of discharge, the Secretary of the Army was not authorized by Congress to consider the plaintiffs’ non-military records. The plaintiffs further argued that the Secretary’s decision to issue them less-than-honorable discharges violated their rights to due process of law under the Fifth Amendment and to a judicial trial under the Sixth Amendment.

Finding the issue presented to be “peculiarly military” in nature, the

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56. Id. at 865.
57. Kloppenberg, supra note 3, at 1004 (referring to the avoidance doctrine as the “last resort rule”).
59. Id. at 580-81.
61. Id. at 617.
63. Id. at 581.
district court deferred to the Secretary’s discretion and dismissed the plaintiffs’ lawsuit for lack of jurisdiction, and the court of appeals affirmed. The plaintiffs then appealed their case to the Supreme Court, which reversed. Applying the avoidance doctrine, the Court “look[ed] first to petitioners’ nonconstitutional claim that [the Secretary of the Army] acted in excess of powers granted him by Congress.” The Court made short shrift of the government’s jurisdictional defense, asserting that “judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers.” The Court then addressed the merits of the plaintiffs’ statutory claim, agreeing with the plaintiffs that the statute governing military discharges required the Secretary to base his discharge decisions solely on the plaintiffs’ military records. The Court explicitly avoided the plaintiffs’ constitutional arguments.

Harmon presented the Supreme Court with the jurisprudential choice of deciding the case on statutory grounds or on constitutional grounds. In this situation, the avoidance doctrine provides that a case should be decided on statutory grounds. In Rescue Army v. Municipal Court, the Supreme Court explained that the avoidance doctrine is rooted in the separation of powers among the three branches of government and embodies the Court’s recognition of the “delicacy” and “comparative finality” of its constitutional decision-making. In other words, through the avoidance doctrine, the Court is acknowledging that a Constitution-based decision is more prone to reflect a judge’s personal and political predilections than is a statute-based decision. At the same time, a

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65. Harmon, 355 U.S. at 579.
66. Id. at 581.
67. Id. at 581-82.
68. Id. at 583.
69. Id. at 581.
70. See id.
71. See, e.g., Blum v. Bacon, 457 U.S. 132, 137 (1982) (“Where a party raises both statutory and constitutional arguments in support of a judgment, ordinarily we first address the statutory argument in order to avoid unnecessary resolution of the constitutional issue.”); Ashwander v. Tennessee Valley Auth., 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (stating that “if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter”).
73. Id. at 571.
74. See U.S. CONST. art. V. Article Five provides, in relevant part:
   The Congress, whenever two thirds of both Houses shall deem it necessary, shall
Constitution-based decision cannot be rescinded by Congress, or the American people, except through the difficult amendment process as the second Justice Harlan once observed, “we possess this awesome power of judicial review, this duty to bind coordinate branches of the federal system with our view of what the Constitution dictates.”

Faced with the responsibility of exercising this “awesome power,” the Court has adopted a policy of “judicial restraint” when confronted with constitutional issues.

In *Bell Atlantic Maryland*, the district court explicitly applied this policy of judicial restraint when it decided the case on federal preemption grounds, rather than on the grounds that P.G. County’s Telecommunications Franchise Law violated the plaintiff’s constitutional rights. The Fourth Circuit held, however, that the district court committed reversible because the plaintiff’s FTA claim itself raised a “constitutional question” within the meaning of the avoidance doctrine that should not have been addressed until after all of the plaintiff’s state law claims had been resolved.

The Fourth Circuit’s holding in *Bell Atlantic Maryland* is unprecedented. No other federal court has applied the avoidance doctrine in the preemption context. The Fourth Circuit’s decision is

propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress ....

Id. More than 10,000 constitutional amendments have been proposed in Congress since 1791, but only twenty-seven have been adopted by the states. Robert Longley, *Amending the Constitution*, at http://usgovinfo.miningco.com/library/blconstamend.htm (last visited Aug. 29, 2001).


It is beyond the scope of this article to evaluate the wisdom of this policy. For a critical discussion of the avoidance doctrine, see, e.g., William K. Kelley, *Avoiding Constitutional Questions as a Three-Branch Problem*, 86 CORNELL L. REV. 831 (2001); Frederick Schauer, *Ashwander Revisited*, 1995 SUP. CT. REV. 71 (1996).


Bell Atl. Maryland v. Prince George’s County, 212 F.3d 863, 865-66 (4th Cir. 2000).

The author’s research revealed no other cases in which a federal court of appeals reversed a district court’s decision declaring a state or local statute preempted by federal law on the grounds that the avoidance doctrine precluded the district court from
also wrong, since the avoidance doctrine does not apply to federal preemption claims. None of the cases cited by the Fourth Circuit in its opinion supports a contrary view. Moreover, the Fourth Circuit ignored Supreme Court precedent directly on point that conclusively establishes that federal preemption claims do not raise "constitutional questions" for purposes of applying the avoidance doctrine. Rather, the Supreme Court treats preemption claims like any other statutory cause of action for which judicial deference to state law is not required.

A. Ashwander and Kalo Brick.

In support of its decision in Bell Atlantic Maryland, the Fourth Circuit relied on two cases: Ashwander v. Tennessee Valley Authority and Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co. Neither of these cases holds that the avoidance doctrine applies to a party's federal preemption claims; nor do they hold that all potentially dispositive state law claims must be resolved before any federal preemption claims may be addressed.

The issue in Ashwander was whether the Tennessee Valley Authority (TVA) exceeded the federal government's constitutional authority when it entered into a contract with a local power company to purchase property and transmission facilities owned by the company and to sell the company surplus power generated by the TVA's hydroelectric power plant located at the Wilson Dam. Justice Brandeis, joined by three other Justices, argued that the constitutional question in Ashwander should be avoided and that the case should be decided on the grounds addressing the plaintiff's federal preemption claim until after it had resolved all of the plaintiff's state law claims. See, e.g., Fed'n of Adver. Indus. Representatives, Inc. v. City of Chicago, 12 F. Supp. 2d 844 (N.D. Ill. 1998) (FAIR), aff'd in part & rev'd in part, 189 F.3d 633 (7th Cir. 1999); Gustafson v. Lake Angelus, 856 F. Supp. 320 (E.D. Mich. 1993), aff'd in part & rev'd in part, 76 F.3d 778 (6th Cir. 1996). In FAIR and Gustafson, the plaintiffs contended, inter alia, that a city ordinance was preempted under both state and federal law. FAIR, 189 F.3d at 634; Gustafson, 856 F. Supp. at 323. In each case, the district court resolved the plaintiff's federal law preemption claim, but did not address the plaintiff's state law preemption claim. FAIR, 12 F. Supp. 2d at 845; Gustafson, 856 F. Supp. at 326. In neither case did the court of appeals suggest that the district court committed reversible error when it failed to resolve the plaintiff's state law claim. Indeed, the supplemental jurisdiction statute, 28 U.S.C. § 1367(c), expressly authorizes federal district courts exercising original jurisdiction over a party's federal law claims to decline to rule upon related state law claims joined to the party's action. See, e.g., City of Chicago v. Int'l College of Surgeons, 522 U.S. 156 (1997).

82. Ashwander, 297 U.S. at 315-16, 326. The Wilson Dam is located on the Tennessee River in northern Alabama. Id. at 315-16.
that the plaintiffs, who were shareholders in the local power company, lacked standing to maintain the suit. A majority of the Court disagreed with Justice Brandeis' argument regarding the standing issue. Reaching the merits of the dispute, the Court affirmed the constitutionality of the contract, a result which Justice Brandeis joined.

_Ashwander_ is plainly inapposite to the issues raised in _Bell Atlantic Maryland_. In addition to the fact that _Ashwander_ did not involve a federal preemption question, the Supreme Court's decision in _Ashwander_ did not turn on the application of Justice Brandeis' seven avoidance principles. Indeed, the Court squarely addressed the constitutional issues presented in the case. Certainly, neither the majority opinion nor Justice Brandeis' concurrence in _Ashwander_ stands for the proposition that a federal preemption claim raises a "constitutional question" within the meaning of the avoidance doctrine, or that a plaintiff's federal preemption challenge to a state or local ordinance must be deferred until all possible state law grounds for decision have been resolved.

_Chicago & Northwestern Transportation Co. v. Kalo Brick & Tile Co._ likewise did not hold that the avoidance doctrine applies to federal preemption claims, or that a party's state law claims must be fully resolved before any federal preemption claims may be considered by the court. In fact, in _Kalo Brick_, the Supreme Court reached the merits of the federal preemption issue presented in the case, despite the

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83. _Id._ at 341 (Brandeis, J., concurring). Justices Stone, Roberts, and Cardozo joined Justice Brandeis' concurrence. _Id._ at 356. Justice Brandeis' standing argument was not based on the plaintiffs' presumed lack of injury, but on the fact that under Alabama law, stockholders had no right to interfere with the business activities of a corporation. _Id._ at 341-43 (Brandeis, J., concurring).

84. _Id._ at 323. Chief Justice Hughes, writing for three other Justices, found that the plaintiffs "have made a sufficient showing to entitle them to bring suit and that a constitutional question is properly presented and should be decided." _Id._ Justice McReynolds, the lone dissenter, agreed that the plaintiffs "have presented a justiciable controversy which we must decide." _Id._ at 356 (McReynolds, J., dissenting).

85. _Id._ at 341 (Brandeis, J., concurring). In upholding the constitutionality of the contract, the Court first found that the federal government possessed the constitutional authority to construct both the Wilson Dam and the dam's hydroelectric power plant. _Id._ at 330. The Court then found that the electricity generated by the power plant constituted federal property that the government could dispose of pursuant to Article IV, section 3 of the Constitution. _Id._. Finally, the Court found that the TVA's purchase of the property and transmission lines from the local power company and its sale to the company of surplus power were "appropriate means of disposition" for the electricity it generated. _Id._ at 338.

86. _Id._ at 326-40.

availability of a potentially dispositive state law basis for decision. 88

The plaintiff in Kalo Brick was a brick manufacturer located near Kalo, Iowa. 90 A railroad branch line operated by the Chicago and Northwestern Transportation Company (C&N) serviced the plaintiff's plant. 91 Following the destruction of the branch line in 1967 by a mudslide, C&N leased part of a parallel branch line to connect the plaintiff's plant to market. 92 When, a few years later, the leased line was also damaged by a mudslide, C&N decided not to repair it and informed the plaintiff that rail service would no longer be available to or from the plaintiff's plant. 93 C&N subsequently filed an application with the Interstate Commerce Commission (ICC) for a certificate of public convenience and necessity permitting it to abandon the line. 94

While C&N's abandonment application was pending before the ICC, the plaintiff filed a lawsuit in Iowa state court seeking damages from the railroad under Iowa law for C&N's decision to discontinue rail service on the branch line. 95 The plaintiff asserted causes of action for state statutory violations, common law negligence, and tortious interference with the plaintiff's business relations. 96 Without reaching the merits of the plaintiff's state law claims—an adverse ruling on which could have ended the case—the trial court dismissed the lawsuit on the grounds that the Interstate Commerce Act (ICA) "wholly pre-empted state law as to the matters in contention." 97 The Iowa Court of Appeals reversed, finding that the ICA did not preempt state law, which, according to the appellate court, provided a "complimentary [sic], alternative means of relief for injured parties." 98 After the Iowa Supreme Court declined the railroad's application for review, the United States Supreme Court granted certiorari to decide whether the plaintiff's state law claims were

88. Id. at 323-27.
89. Id. at 313. Kalo is located approximately sixty-five miles northwest of Des Moines. Bali Online, Distance Result, at http://www.indo.com/cgi-bin/dist?place1=kalo%2C+iowa&place2=des+moines%2Ciowa (last visited Sept. 27, 2001).
90. Kalo Brick, 450 U.S. at 313.
91. Id. at 314.
92. Id.
93. Id. at 315.
94. Id. at 315.
95. Id. The plaintiff's principal cause of action arose under Iowa Code Ann. §§ 479.3 and 479.122 (1971), which together "create[d] a state-court damages action for failure to provide proper [rail] service." Id. at 315 n.5.
96. Id. at 315-16.
97. Id. at 316 (quoting Kalo Brick & Tile Co. v. Chicago & N.W. Transp. Co., 295 N.W.2d 467, 469 (Iowa Ct. App. 1979), rev'd, 450 U.S. 311 (1981)).
preempted by the ICA. 98

The Court began its analysis by acknowledging that federal preempted by the ICA.98

preemption of state law "is not favored." 99 Nevertheless, the Court explained that "when Congress has chosen to legislate pursuant to its constitutional powers, then a court must find local law pre-empted by federal regulation whenever the challenged state statute stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." 100 In Kalo Brick, the Court found that through the ICA, "Congress granted to the [Interstate Commerce] Commission plenary authority to regulate . . . rail carriers' cessations of service on their lines." 101 The Court further found that "at least as to abandonments, this authority is exclusive." 102

The Iowa appellate court had found, however, that under Iowa law, a railroad could be held liable for failing to provide rail service despite the ICC's approval of the abandonment.103 Confronted with this conflict between federal and state law, the Court held that the plaintiff's state law causes of action were preempted by the ICA.104 Contrary to the Fourth Circuit's approach in Bell Atlantic Maryland, the Court in Kalo Brick did not hold that the conflict should be avoided by first addressing the plaintiff's state law claims to determine if they were viable.

The Fourth Circuit cited Kalo Brick for a single passage in which the Supreme Court describes federal preemption analysis as involving "essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question of whether they are in conflict." 105 It was from this passage that the Fourth Circuit erroneously concluded that Bell Atlantic's FTA preemption claim raised a "constitutional question" within the meaning of the avoidance doctrine.106 This passage from Kalo Brick, however, simply acknowledges that federal preemption claims ultimately depend upon the Supremacy Clause for their force.107 The passage does not address the jurisprudential point for which it was cited by the Fourth Circuit, namely, that federal preemption claims are subject to the avoidance

98. Id. at 313, 317.
99. Id. at 317.
100. Id. (internal quotation marks and citations omitted).
101. Id. at 323.
102. Id.
103. Id. at 323-24.
104. Id. at 327.
106. Id. at 865.
107. Id.
Indeed, the Supreme Court's holding in *Kalo Brick* does not support the Fourth Circuit's position. Despite the presence of a potentially dispositive state law question—i.e., whether the plaintiff's state law claims had merit, a negative answer to which could have ended the case—the Supreme Court resolved the case on federal preemption grounds. Under the Fourth Circuit's literal reading of Justice Brandeis' avoidance principles, however, the Supreme Court should not have ruled upon the ICA preemption issue in *Kalo Brick* until after the plaintiff's various state law claims had been resolved. The Court could have avoided the federal preemption claim had the plaintiff's state law claims been rejected on the merits. Nevertheless, the Supreme Court reached the preemption issue and decided the case on federal law grounds. The Supreme Court's decision in *Kalo Brick* thus offers no support for the Fourth Circuit's application of the avoidance doctrine in *Bell Atlantic Maryland*.

B. Douglas and Blum

The Fourth Circuit's misguided reliance on the *Kalo Brick* passage quoted above blinded it to the existence of other Supreme Court cases in which the Court expressly states that federal preemption claims are to be treated as statutory claims, not constitutional claims, for purposes of applying the avoidance doctrine. The two leading cases are *Douglas v. Seacoast Products, Inc.*,[111] which the Supreme Court decided four years before *Kalo Brick*, and *Blum v. Bacon,*[112] which the Court decided a year after *Kalo Brick*.

In *Douglas*, the plaintiff challenged two Virginia statutes that purported to limit the rights of nonresidents and aliens to catch fish in Virginia's territorial waters.[113] The plaintiff, a British-owned commercial fishing company that did not operate any processing plants in Virginia, sued the state in federal district court seeking to have the statutes enjoined on the grounds that they were preempted by federal fishing

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108. See *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 107 (1989) (finding that the Supremacy Clause is not a source of substantive rights; it simply serves as a trumping principle that enforces existing federal rights whenever there is a conflict with state or local law).
110. *Id*.
laws. The plaintiff also claimed that the statutes violated both the Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment. After a three-judge district court panel ruled in the plaintiff's favor, the state appealed the case directly to the Supreme Court, which affirmed. The Court held that the two Virginia statutes "must fall under the Supremacy Clause" because the laws violated the plaintiff's rights under federal law to engage in fishing activities on the same terms as Virginia residents.

In basing its decision on federal preemption grounds, the Douglas Court expressly declined to "reach the constitutional issues raised by the parties." With respect to the "constitutional" status of the preemption claim itself, the Court explained that "[a]lthough the claim is basically constitutional in nature, deriving its force from the operation of the Supremacy Clause, it is treated as 'statutory' for purposes of our practice of deciding statutory claims first to avoid unnecessary constitutional adjudications." The Douglas Court thus drew a clear distinction between substantive constitutional claims—such as the plaintiff's Commerce Clause and equal protection claims—and statute-based preemption claims.

The Douglas Court further noted that, despite their ultimate source in the Supremacy Clause, federal preemption claims are "of course, statutory in the sense that [they] depend[] on interpretation of an Act of Congress, and like any other statutory decision, . . . [they are] subject to

114. Id. at 271.
115. Id. at 271 & n.5.
116. Id. at 270-71.
117. Id. at 283, 286-87. The federal statute that preempted the Virginia fishing laws was the Enrollment and Licensing Act, 46 U.S.C. § 12 (repealed). Id. at 286.
118. Id. at 272.
119. Id. at 271-72 (internal citation omitted). See also City of Philadelphia v. New Jersey, 430 U.S. 141, 142 (1977) (per curiam). In City of Philadelphia, the Court stated: While federal pre-emption of state statutes is, of course, ultimately a question under the Supremacy Clause, analysis of pre-emption issues depends primarily on statutory and not constitutional interpretation. Therefore, it is appropriate that the federal pre-emption issue be resolved before the constitutional issue of alleged discrimination against or undue burden on interstate commerce is addressed.

120. S. Candice Hoke, Transcending Conventional Supremacy: A Reconstruction of the Supremacy Clause, 24 CONN. L. REV. 829, 886-87 (1992) (explaining that substantive constitutional claims "require a court to construe and apply a substantive heading of the federal Constitution," whereas federal preemptions claims arise under specific federal laws and require a court "to determine whether a state law provision is contrary to, or in conflict with, federal law") (footnotes omitted).
legislative overruling.” In other words, preemption claims are not subject to the avoidance doctrine because they do not raise the same concerns as substantive constitutional claims about the “delicacy” and “comparative finality” of judicial decision-making.

The Supreme Court drew the same distinction between substantive constitutional claims and statutory preemption claims in *Blum v. Bacon.* In *Blum,* the plaintiffs bought a class action lawsuit in federal district court challenging the validity of a New York statute that prohibited recipients of Aid to Families with Dependent Children (AFDC), a federal welfare program, from participating in the state’s emergency assistance program. The plaintiffs argued that the state law conflicted with federal regulations that required the inclusion of AFDC recipients in any state emergency assistance program, like New York’s program, that received federal funding. The plaintiffs additionally argued that the law violated the Fourteenth Amendment’s Equal Protection Clause, by singling out AFDC recipients for adverse treatment. The district court rejected the plaintiffs’ preemption claim, but held part of the law unconstitutional on equal protection grounds. On appeal, the Second Circuit declared the entire law unconstitutional.

The Supreme Court affirmed the Second Circuit’s ruling in *Blum,* but on statutory grounds, not constitutional grounds. The Court began its analysis by reiterating the basic avoidance doctrine principle: “Where a party raises both statutory and constitutional arguments in support of a judgment, ordinarily we first address the statutory argument in order to avoid unnecessary resolution of the constitutional issue.” Finding that “this case may be resolved on statutory grounds,” the Court held that the New York statute conflicted with federal regulations proscribing inequitable treatment in a state’s emergency assistance program and, consequently, was “invalid under the Supremacy Clause.”

124. *Id.* at 133.
125. *Id.* at 135, 138, 140.
126. *Id.* at 135.
127. *Id.* at 137.
128. *Id.*
129. *Id.* at 137-38.
130. *Id.* at 137.
131. *Id.* at 137-38, 141, 145-46.
132. *Id.* at 146.
In both *Douglas* and *Blum*, the Supreme Court explicitly differentiated between substantive constitutional claims and statutory preemption claims when applying the avoidance doctrine. Contrary to the Fourth Circuit's assumption in *Bell Atlantic Maryland*, federal preemption claims thus do not raise constitutional questions within the meaning of the avoidance doctrine. The avoidance doctrine, therefore, did not apply to the plaintiff's claim that P.G. County's telecommunications ordinance violated the FTA, and the district court did not commit reversible error when it resolved the plaintiff's federal preemption claim without first addressing the plaintiff's alternative state law claims.

C. *Swift & Co. v. Wickham*

Additional support for the distinction between substantive constitutional claims and statutory preemption claims is found in the Supreme Court's opinion in *Swift & Co. v. Wickham*, which involved a similar analytical issue.

The issue in *Swift* was whether a three-judge district court panel was required to be convened under § 2281 of Title 28 in the U.S. Code, which formerly provided for a three-judge tribunal whenever a plaintiff sought to enjoin a state law "upon the ground of the unconstitutionality of the statute." The plaintiffs in *Swift* were two frozen turkey manufacturers who filed suit in federal district court in New York seeking to enjoin certain state-mandated food labeling requirements. The plaintiffs argued that the labeling requirements violated the Commerce Clause and the Fourteenth Amendment and were also preempted by the federal Poultry Products Inspection Act of 1957. The plaintiffs requested a three-judge district court panel pursuant to § 2281. The district court, unsure of its jurisdiction, dismissed the lawsuit acting in both a single-judge and three-judge capacity. The plaintiffs then appealed the district court's single-judge ruling to the Second Circuit, and the district court's three-judge ruling to the Supreme Court.

In *Swift*, the Supreme Court agreed with the district court that the plaintiffs' Commerce Clause and Fourteenth Amendment claims were

133. 382 U.S. 111 (1965).
134. Id. at 114.
135. Id. at 113-14.
136. Id. at 112, 114.
137. Id. at 114.
138. Id.
139. Id.
“too insubstantial to support the jurisdiction of a three-judge court.”  
This meant that unless the plaintiffs’ preemption claim raised a  
constitutional challenge within the meaning of § 2281, the Court would  
be without jurisdiction to hear the appeal.  
The Court concluded that § 2281 did not apply in the circumstances presented in Swift.  
The Court reasoned that, although preemption claims are “of course grounded in  
the Supremacy Clause of the Constitution,” the “basic question”  
involved in such cases “is never one of interpretation of the Federal  
Constitution but inevitably one of comparing two statutes.”  
The Court further reasoned that, in contrast to substantive constitutional claims,  
preemption claims “involve[] more confining legal analysis and can  
hardly be thought to raise the worrisome possibilities that economic or  
political predilections will find their way into a judgment.”  
Accordingly, the Court dismissed the plaintiffs’ appeal for lack of  
jurisdiction.

Justice Douglas, joined by Justices Black and Clark, vigorously  
dissented in Swift, arguing that there was “no difference between a  
charge of ‘unconstitutionality’ of a state statute whether the conflict be  
between it and the Constitution or between it and a federal law.”  
Justice Douglas’ view, which is essentially the Fourth Circuit’s view in  
Bell Atlantic Maryland, was squarely rejected by the Court.

The three-judge statute (now repealed), analyzed in Swift and the  
avoidance doctrine analyzed in Douglas and Blum share a common  
purpose: to prevent unnecessary constitutional decision-making.  
This shared purpose is driven by the same underlying concern, namely, that  
the personal and political beliefs of individual judges will influence their  
interpretation of what the Constitution’s broadly worded provisions  
require.  

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See also Blum v. Bacon, 457 U.S. 132, 137 (1982); Douglas v. Seacoast, 431  
U.S. 265, 272 (1977). As the Supreme Court explained in Swift, the three-judge statute  
originally was enacted to restrain federal district courts from invalidating state laws on  
substantive due process grounds, by “[r]quiring the collective judgment of three judges  
and accelerating appeals to [the Supreme] Court.” Swift, 382 U.S. at 127.

See Swift, 382 U.S. at 127.
because statutory interpretation is not as subjective as constitutional interpretation, and unlike Constitution-based decisions, statute-based decisions are readily subject to legislative overruling. Consequently, the Court’s holding in *Swift* that federal preemption claims do not raise constitutional challenges within the meaning of § 2281 directly supports its conclusion in *Douglas* and *Blum* that federal preemption claims do not raise constitutional questions within the meaning of the avoidance doctrine.\textsuperscript{150}

**IV. TURNING THE SUPREMACY CLAUSE ON ITS HEAD**

The Supremacy Clause provides that “the Laws of the United States... shall be the supreme Law of the Land;... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”\textsuperscript{151} The seminal case regarding the Supremacy Clause is *Gibbons v. Ogden.*\textsuperscript{152} In *Gibbons*, Chief Justice Marshall delivered the still-definitive interpretation of the Supremacy Clause.\textsuperscript{153} The issue in *Gibbons* was whether the state of New York could bar a federally licensed steamboat operator (Gibbons) from operating in New York’s territorial waters based on the state’s earlier decision to grant a monopoly on the trade to another steamboat operator (Ogden).\textsuperscript{154} After first determining that Congress’s interstate commerce power extended to the matter in dispute,\textsuperscript{155} and that New York possessed the concurrent power to regulate its internal economy,\textsuperscript{156} Chief Justice Marshall turned to the ultimate question in the case: what happens when a state law “come[s] into collision with an act of Congress”?\textsuperscript{157} In that situation, Chief Justice Marshall declared, the state law “must yield to the law of Congress.”\textsuperscript{158}

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  \item \textsuperscript{150} See also Int’l Bhd. of Elec. Workers v. Public Serv. Comm’n, 614 F.2d 206, 209-11 (9th Cir. 1980) (holding that federal preemption claims do not raise constitutional questions for purposes of depriving federal district courts of jurisdiction under Johnson Act over challenges to local utility rates); Aluminum Co. of Am. v. Utils. Comm’n, 713 F.2d 1024, 1027-28 (4th Cir. 1983) (same); Knudsen Corp. v. Nevada State Dairy Comm’n, 676 F.2d 374, 377-78 (9th Cir. 1982) (holding that federal preemption claims do not raise constitutional questions for purposes of requiring federal district courts to abstain under the *Pullman* doctrine); Fed. Home Loan Bank Bd. v. Empie, 778 F.2d 1447, 1451 & n.4 (10th Cir. 1985) (same) (citing cases).
  \item \textsuperscript{151} U.S. CONST. art. VI, § 2.
  \item \textsuperscript{152} 22 U.S. 1 (1824).
  \item \textsuperscript{153} Id. at 184.
  \item \textsuperscript{154} Id. at 2-3.
  \item \textsuperscript{155} Id. at 197.
  \item \textsuperscript{156} Id. at 209-10.
  \item \textsuperscript{157} Id. at 210.
  \item \textsuperscript{158} Id.
\end{itemize}
In *Gibbons*, Chief Justice Marshall explained that when a state law conflicts with a federal law, it is “immaterial” whether the state law was validly enacted pursuant to the state’s own powers. Through the Supremacy Clause, the “act of Congress . . . is supreme,” and the state law becomes a “nullity.” Thus, as a constitutional matter, the Supremacy Clause invalidates any state or local law that conflicts with a federal statute. Courts confronted with federal preemption claims, therefore, are required to determine whether the federal and state laws conflict and, if they do, to declare the state laws preempted. As the Supreme Court explained in *Kalo Brick*, “when Congress has chosen to legislate pursuant to its constitutional powers, then a court must find local law preempted by federal regulation whenever the challenged state statute stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” In such a situation, federal preemption of state law “is compelled.” Only if the state or local law survives the preemption analysis should the court address any state law claims.

Accordingly, determining whether a federal statute preempts state or local law is a mandatory, not discretionary, judicial exercise. Contrary

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159. Id.
160. Id. at 210-11.
161. Rose v. Arkansas State Police, 479 U.S. 1, 3 (1986) (per curiam) (“There can be no dispute that the Supremacy Clause invalidates all state laws that conflict or interfere with an Act of Congress.”).
163. Id. at 317 (emphasis added) (internal quotation marks and citations omitted).
164. See Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977); see also Gade v. Nat’l Solid Wastes Mgmt. Ass’n, 505 U.S. 88, 98 (1992) (plurality opinion) (quoting *Jones*); Brown v. Hotel & Rest. Employees & Bartenders Int’l Union, 468 U.S. 491, 503 (1984) (“If the state law regulates conduct that is actually protected by federal law . . . preemption follows . . . as a matter of substantive right. Where, as here, the issue is one of an asserted substantive conflict with a federal enactment, . . . the Framers of our Constitution provided that the federal law must prevail.”) (internal quotation marks omitted).
166. In sharp contrast, the avoidance doctrine is only a “prudential rule” that is applied on a case-by-case basis. Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1, 7-8 (1993); see also Rescue Army v. Mun. Court, 331 U.S. 549, 574 (1947) (explaining that “the policy’s applicability can be determined only by an exercise of judgment relative to the particular presentation”). “The fact that there may be buried in the record a nonconstitutional ground for decision is not by itself enough to invoke this rule.” *Zobrest*, 509 U.S. at 8. Compare, e.g., Chandler v. Miller, 520 U.S. 305 (1997) (holding that Georgia statute requiring drug testing of candidates for state political office violated candidates’ rights under Fourth Amendment; neither the Supreme Court nor the court of appeals addressed the candidates’ alternative argument that the statute violated their rights under Georgia’s Constitution). For an analysis of the avoidance doctrine issue presented in *Zobrest*, see Kloppenberg, *supra* note 3, at 1006-11.
to the Fourth Circuit’s ruling in *Bell Atlantic Maryland*, it would have been *improper* for the district court in that case to disregard the express preemption clause contained in the FTA. Through the FTA, Congress has declared national policy in the telecommunications arena. It was the district court’s obligation to apply and enforce that policy in the face of a potentially conflicting local ordinance. Whether P.G. County’s Telecommunications Franchise Law could have been invalidated under state law was therefore wholly “immaterial” to the preemption analysis. Indeed, as the district court recognized, even if the ordinance had passed muster under state law, it still would have been preempted under federal law.\(^ {167}\)

*Gibbons* clearly establishes that the supremacy of federal law is not merely a background or last resort principle.\(^ {168}\) Rather, it is the fundamental premise of our constitutional structure. Through the Supremacy Clause, all state and local laws that conflict with a duly authorized federal statute are rendered void *ab initio*.\(^ {169}\) The Fourth Circuit’s decision in *Bell Atlantic Maryland* thus turns the Supremacy Clause on its head because it makes a party’s federal preemption claim secondary to, and contingent upon, the outcome of any state law claims joined to the party’s action. Whatever anti-nationalist impulses may have motivated the Fourth Circuit in this case, its decision is contrary to Supreme Court precedent and unfaithful to the Constitution itself.

V. CONCLUSION

In *Bell Atlantic Maryland*, the Fourth Circuit held that the district court committed reversible error when it invalidated a local telecommunications ordinance on federal preemption grounds without first determining whether the ordinance was valid under state law. The Fourth Circuit’s ruling was based on an erroneous interpretation of the avoidance doctrine, which provides that federal courts should avoid deciding cases on constitutional grounds when a non-constitutional basis

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167. *Bell Atl. Maryland v. Prince George’s County*, 49 F. Supp. 2d 805, 822 (D. Md. 1999) (noting that state law questions need not be resolved because the ordinance is preempted by federal law); *see also supra* note 44 and accompanying text. Consequently, the state law decisions rendered by the district court on remand are improper advisory opinions, since the outcome of the case will necessarily remain unchanged. *See Bell Atl. Maryland v. Prince George’s County*, 155 F. Supp. 2d 465 (D. Md. 2001) (finding P.G. County’s Telecommunications Franchise law preempted under state law). Moreover, requiring the district court to engage in such a pointless state law exercise represents an extremely poor use of judicial resources.


169. *Id.*
for decision is available. The Fourth Circuit wrongly assumed that the avoidance doctrine applies to statutory preemption claims. In a series of cases completely overlooked by the Fourth Circuit, the Supreme Court has made clear that the avoidance doctrine does not apply to federal preemption claims. The doctrine only applies to claims rooted in one of the Constitution's substantive provisions. Moreover, under the preemption doctrine, courts are required to invalidate state or local laws that conflict with a federal statute. There simply is no support in the case law for the Fourth Circuit's decision in *Bell Atlantic Maryland* to require district courts to defer ruling on federal preemption claims until after all potentially dispositive state law claims have been resolved.\(^{170}\)

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\(^{170}\) The case has already established a precedent that other Fourth Circuit panels must follow. See, *e.g.*, MediaOne Group, Inc. v. County of Henrico, 257 F.3d 356, 361 (4th Cir. 2001). The Fourth Circuit should vacate the *Bell Atlantic Maryland* decision *en banc*. 