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**Supreme Court Ruling in *Wyeth v. Levine* a Rebuke of Backdoor Efforts to Deny
Citizens' Right to Hold Industry Accountable,
Says Center for Progressive Reform Scholar**

(Washington) -- Nina Mendelson, a Member Scholar of the Center for Progressive Reform (CPR) and a Professor of Law at the University of Michigan, issued the following statement today in response to the U.S. Supreme Court's decision in *Wyeth v. Levine*. In its ruling, the Court rejected the argument of pharmaceutical giant Wyeth that the FDA's approval of its label for Phenergan effectively "preempted" a tort suit brought against it by a patient claiming that the manufacturer failed to provide adequate warning about the dangers of the drug. The patient, Diana Levine, had the drug administered as part of treatment for a migraine, and ended up having her arm amputated after the drug reached an artery and killed tissue. Following are Professor Mendelson's remarks:

"Today's ruling is a critical victory not just for Diana Levine but for consumers across the nation. The case marks a setback for manufacturer's efforts to deny Americans the basic right to go to court when they suffer injuries from flawed products or inadequate warnings.

"The Court rightly recognized the importance of state tort law as a necessary complement to federal regulation in responsibly protecting consumers. The Court noted that lawsuits like Ms. Levine's reveal critical information about safety, give citizens an opportunity to be compensated for injury, and provide powerful incentives for manufacturers to continually improve the safety of their products and disclose safety risks.

"When Congress wrote the law that guides the FDA pharmaceutical regulation, it steered clear of explicitly preempting state tort laws. The message from today's ruling is that if Congress had wanted to preempt a state tort laws, it needed to say so. The Court rightly held that a federal agency like the FDA can't simply preempt a state law on the strength of its own assertion."

Mendelson is a professor of law at the University of Michigan. She is co-author with fellow CPR Member Scholars William Funk, Thomas McGarity, Nina Mendelson, Sidney Shapiro, David Vladeck, and CPR Policy Analyst Matthew Shultz, of several white papers focused on preemption issues. The Truth About Torts series is available at <http://www.progressivereform.org/torts.cfm>.

The Center for Progressive Reform (www.progressivereform.org) is a nonprofit research and educational organization dedicated to protecting health, safety, and the environment through analysis and commentary. For more information, media should contact Ben Somberg at 202-658-8129 or at bsomberg@progressivereform.org. Visit CPR on the web at www.progressivereform.org.

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