Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

AMERICAN INSURANCE ASSOCIATION ET AL. *v.* GARAMENDI, INSURANCE COMMISSIONER, STATE OF CALIFORNIA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02–722. Argued April 23, 2003—Decided June 23, 2003

The Nazi Government of Germany confiscated the value or proceeds of many Jewish life insurance policies issued before and during the Second World War. After the war, even a policy that had escaped confiscation was likely to be dishonored, whether because insurers denied its existence or claimed it had lapsed from unpaid premiums, or because the German Government would not provide heirs with documentation of the policyholder's death. Responsibility as between the government and insurance companies is disputed, but the fact is that the proceeds of many insurance policies issued to Jews before and during the war were paid to the Third Reich or never paid at all. These confiscations and frustrations of claims fell within the subject of reparations, which became a principal object of Allied diplomacy after the war. Ultimately, the western allies placed the obligation to provide restitution to victims of Nazi persecution on the new West German Government, which enacted restitution laws and signed agreements with other countries for the compensation of their nationals. Despite a payout of more than 100 billion deutsch marks as of 2000, however, these measures left out many claimants and certain types of claims. After German reunification, class actions for restitution poured into United States courts against companies doing business in Germany during the Nazi era. Protests by defendant companies and their governments prompted the United States Government to take action to try to resolve the matter. Negotiations at the national level produced the German Foundation Agreement, in which Germany agreed to establish a foundation funded with 10 billion deutsch marks contributed equally by the German Government

and German companies to compensate the companies' victims during the Nazi era. The President agreed that whenever a German company was sued on a Holocaust-era claim in an American court, the Government would (1) submit a statement that it would be in this country's foreign policy interests for the foundation to be the exclusive forum and remedy for such claims, and (2) try to get state and local governments to respect the foundation as the exclusive mechanism. As for insurance claims in particular, both countries agreed that the German Foundation would work with the International Commission on Holocaust Era Insurance Claims (ICHEIC), a voluntary organization whose mission is to negotiate with European insurers to provide information about and settlement of unpaid insurance policies, and which has set up procedures to that end. The German agreement has served as a model for similar agreements with Austria and France.

Meanwhile, California began its own enquiry into the issue, prompting state legislation designed to force payment by defaulting insurers. Among other laws, California's Holocaust Victim Insurance Relief Act of 1999 (HVIRA) requires any insurer doing business in the State to disclose information about all policies sold in Europe between 1920 and 1945 by the company or any one "related" to it upon penalty of loss of its state business license. After HVIRA was enacted, the State issued administrative subpoenas against several subsidiaries of European insurance companies participating in the ICHEIC. Immediately, the Federal Government informed California officials that HVIRA would damage the ICHEIC, the only effective means to process quickly and completely unpaid Holocaust era insurance claims, and that HVIRA would possibly derail the German Foundation Agreement. Nevertheless, the state insurance commissioner announced that he would enforce HVIRA to its fullest. Petitioner insurance entities then filed this suit challenging HVIRA's constitutionality. The District Court issued a preliminary injunction against enforcing HVIRA and later granted petitioners summary judgment. The Ninth Circuit reversed, holding, *inter alia*, that HVIRA did not violate the federal foreign affairs power.

Held: California's HVIRA interferes with the President's conduct of the Nation's foreign policy and is therefore preempted. Pp. 14–31.

(a) There is no question that at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy or that generally there is executive authority to decide what that policy should be. In foreign policymaking, the President, not Congress, has the "lead role." *First Nat. City Bank* v. *Banco Nacional de Cuba,* 406 U. S. 759, 767. Specifically, the President has authority to make "executive agreements" with other countries,

requiring no ratification by the Senate or approval by Congress. See, *e.g., Dames & Moore* v. *Regan,* 453 U. S. 654, 679, 682–683. Making such agreements to settle claims of American nationals against foreign governments is a particularly longstanding practice. Although the executive agreements with Germany, Austria, and France at issue differ from past agreements in that they address claims associated with formerly belligerent states, but against corporations, not the foreign governments, the distinction does not matter. Insisting on a sharp line between public and private acts in defining the legitimate scope of the Executive's international negotiations would hamstring the President in settling international controversies. Generally, then, valid executive agreements are fit to preempt state law, and if the agreements here had expressly preempted laws like HVIRA, the issue would be straightforward. But since these agreements include no preemption clause, petitioners' preemption claim rests on the asserted interference with Presidential foreign policy that the agreements embody. The principal support for this claim of preemption is *Zschernig* v. *Miller,* 389 U. S. 429. In invalidating an Oregon statute, the *Zschernig* majority relied on statements in previous cases that are open to the reading that state action with more than incidental effect on foreign affairs is preempted, even absent any affirmative federal activity in the subject area of the state law, and hence without any showing of conflict. See, *e.g., id.*, at 432. Justice Harlan, concurring in the result, disagreed on this point, arguing that its implication of preemption of the entire foreign affairs field was at odds with other cases suggesting that, absent positive federal action, States may legislate in areas of their traditional competence even though their statutes may have an incidental effect on foreign relations. *Id.,* at 459. Whether respect for the executive foreign relations power requires a categorical choice between the contrasting theories of field and conflict preemption evident in *Zschernig* requires no answer here, for even on Justice Harlan's view, shared by the majority, the likelihood that state legislation will produce something more than incidental effect in conflict with the National Government's express foreign policy would require preemption of the state law. See also *United States* v. *Pink,* 315 U. S. 203, 230–231. And since on his view it is legislation within "areas of . . . traditional competence" that gives a State any claim to prevail, 389 U. S., at 459, it is reasonable to consider the strength of the state interest, judged by standards of traditional practice, when deciding how serious a conflict must be shown before declaring the state law preempted. Pp. 14–21.

(b) There is a sufficiently clear conflict between HVIRA and the President's foreign policy, as expressed both in the executive agree-

ments with Germany, Austria, and France, and in statements by high-level Executive Branch officials, to require preemption here even without any consideration of the State's interest. The account of negotiations toward those agreements shows that the consistent Presidential foreign policy has been to encourage European governments and companies to volunteer settlement funds and disclosure of policy information, in preference to litigation or coercive sanctions. California has taken a different tack: HVIRA's economic compulsion to make public disclosure, of far more information about far more policies than ICHEIC rules require, employs "a different, state system of economic pressure," and in doing so undercuts the President's diplomatic discretion and the choice he has made exercising it. *Crosby* v. *National Foreign Trade Council,* 530 U. S. 363, 376. Whereas the President's authority to provide for settling claims in winding up international hostilities requires flexibility in wielding "the coercive power of the national economy" as a tool of diplomacy, *id.*, at 377, HVIRA denies this, by making exclusion from a large sector of the American insurance market the automatic sanction for noncompliance with the State's own disclosure policies. HVIRA thus compromises the President's very capacity to speak for the Nation with one voice in dealing with other governments to resolve claims arising out of World War II. Although the HVIRA disclosure requirement's goal of obtaining compensation for Holocaust victims is also espoused by the National Government, the fact of a common end hardly neutralizes conflicting means. The express federal policy and the clear conflict raised by the state statute are alone enough to require state law to yield. Pp. 21–26.

(c) If any doubt about the clarity of the conflict remained, it would have to be resolved in the National Government's favor, given the weakness of the State's interest, when evaluated in terms of traditional state legislative subject matter, in regulating disclosure of European Holocaust-era insurance policies in the manner of HVIRA. Even if California's underlying concern for its several thousand Holocaust survivors is recognized as a powerful one, the same objective dignifies the National Government's interest in devising its chosen mechanism for voluntary settlements, there being approximately 100,000 survivors in the country, only a small fraction of them in California. As against the federal responsibility, the humanity underlying the state statute could not give the State the benefit of any doubt in resolving the conflict with national policy. Pp. 27–28.

(d) California seeks to use an iron fist where the President has consistently chosen kid gloves. The efficacy of the one approach versus the other is beside the point, since preemption turns not on the wisdom of the National Government's policy but on the evidence of con-

flict. Here, the evidence is more than sufficient to demonstrate that HVIRA stands in the way of the President's diplomatic objectives. P. 28.

(e) The Court rejects the State's submission that even if HVIRA does interfere with Executive Branch foreign policy, Congress authorized state law of this sort in the McCarran-Ferguson Act and the U. S. Holocaust Assets Commission Act of 1998. To begin with, the effect of any congressional authorization on the preemption enquiry is far from clear, but in any event neither statute does the job the State ascribes to it. McCarran-Ferguson's purpose was to limit congressional preemption of state insurance laws under the commerce power, whether dormant or exercised, see, *e.g., Department of Treasury* v. *Fabe,* 508 U. S. 491, 499–500, and it cannot plausibly be read to address preemption by executive conduct in foreign affairs. Nor is HVIRA authorized by the Holocaust Commission Act, which set up a Presidential Commission to study Holocaust-era assets that came into the Government's control, §3(a)(1), and directed the Commission to encourage state insurance commissioners to prepare a report on the Holocaust-related claims practices of all insurance companies doing business in this country after January 30, 1933, §3(a)(4)(A). The Commission's focus was limited to assets held by the Government, and the Act's reference to the state insurance commissioners' report was expressly limited "to the degree the information is available," §3(a)(4)(B), which can hardly be read to condone state sanctions interfering with federal efforts to resolve claims. Finally, Congress has done nothing to express disapproval of the President's policy. Given the President's considerable independent authority in this area, Congress's silence cannot be equated with disapproval. Pp. 29–31.

296 F. 3d 832, reversed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and BREYER, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SCALIA, and THOMAS, JJ., joined.