SUPREME COURT OF THE UNITED STATES

No. 02—722

AMERICAN INSURANCE ASSOCIATION, et al., PETITIONERS *v.* JOHN GARAMENDI, INSURANCE COMMISSIONER, STATE OF CALIFORNIA

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

[June 23, 2003]

Justice Souter delivered the opinion of the Court.

California's Holocaust Victim Insurance Relief Act of 1999 (HVIRA or Act), Cal. Ins. Code Ann. §§13800—13807 (West Cum. Supp. 2003), requires any insurer doing business in that State to disclose information about all policies sold in Europe between 1920 and 1945 by the company itself or any one "related" to it. The issue here is whether HVIRA interferes with the National Government's conduct of foreign relations. We hold that it does, with the consequence that the state statute is preempted.

I

A

The Nazi Government of Germany engaged not only in genocide and enslavement but theft of Jewish assets, including the value of insurance policies, and in particular policies of life insurance, a form of savings held by many Jews in Europe before the Second World War. *** Responsibility as between the government and insurance companies is disputed, but at the end of the day, the fact is that the value or proceeds of many insurance policies issued to Jews before and during the war were paid to the Reich or never paid at all. *** These suits generated much protest by the defendant companies and

their governments, to the point that the Government of the United States took action to try to resolve "the last great compensation related negotiation arising out of World War II." SER 940 (press briefing by Deputy Secretary of Treasury Eizenstat); see S. Eizenstat, Imperfect Justice 208—212 (2003). From the beginning, the Government's position, represented principally by Under Secretary of State (later Deputy Treasury Secretary) Stuart Eizenstat, stressed mediated settlement "as an alternative to endless litigation" promising little relief to aging Holocaust survivors. SER 953 (press conference by Secretary of State Albright). Ensuing negotiations at the national level produced the German Foundation Agreement, signed by President Clinton and German Chancellor Schröder in July 2000, in which Germany agreed to enact legislation establishing a foundation funded with 10 billion deutsch marks contributed equally by the German Government and German companies, to be used to compensate all those "who suffered at the hands of German companies during the National Socialist era." Agreement Concerning the Foundation "Remembrance, Responsibility and the Future," 39 Int'l Legal Materials 1298 (2000).*** The German Foundation pact has served as a model for similar agreements with Austria and France, and the United States Government continues to pursue comparable agreements with other countries. Reply Brief for Petitioners 6, n. 2.

B

While these international efforts were underway, California's Department of Insurance began its own enquiry into the issue of unpaid claims under Nazi-era insurance policies, prompting state legislation designed to force payment by defaulting insurers. ****

III

The principal argument for preemption made by petitioners and the United States as amicus curiae is that HVIRA interferes with foreign policy of the Executive Branch, as expressed principally in the executive agreements

with Germany, Austria, and France. The major premises of the argument, at least, are beyond dispute. There is, of course, no question that at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy, given the "concern for uniformity in this country's dealings with foreign nations" that animated the Constitution's allocation of the foreign relations power to the National Government in the first place. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 427, n. 25 (1964); see Crosby v. National Foreign Trade Council, 530 U.S. 363, 381—382, n. 16 (2000) (" '[T]he peace of the whole ought not to be left at the disposal of a part' " (quoting The Federalist No. 80, pp. 535—536 (J. Cooke ed. 1961) (A. Hamilton))); The Federalist No. 44, p. 299 (J. Madison) (emphasizing "the advantage of uniformity in all points which relate to foreign powers"); The Federalist No. 42, p. 279 (J. Madison) ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations"); see also First Nat. City Bank v. Banco Nacional de Cuba, 406 U.S. 759, 769 (1972) (plurality opinion) (act of state doctrine was "fashioned because of fear that adjudication would interfere with the conduct of foreign relations"); Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 449 (1979) (negative Foreign Commerce Clause protects the National Government's ability to speak with "one voice" in regulating commerce with foreign countries (internal quotation marks omitted)).

Nor is there any question generally that there is executive authority to decide what that policy should be. Although the source of the President's power to act in foreign affairs does not enjoy any textual detail, the historical gloss on the "executive Power" vested in Article II of the Constitution has recognized the President's "vast share of responsibility for the conduct of our foreign relations." Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 610—611 (1952) (Frankfurter, J., concurring). While Congress holds express authority to regulate public and private dealings with other nations in its war and foreign commerce powers, in foreign affairs the President has a degree of independent authority to act. See, e.g., Chicago & Southern Air Lines, Inc. v. Waterman S.S.

Corp., 333 U.S. 103, 109 (1948) ("The President … possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs"); Youngstown, supra, at 635—636, n. 2 (Jackson, J., concurring in judgment and opinion of Court) (the President can "act in external affairs without congressional authority" (citing United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936))); First Nat. City Bank v. Banco Nacional de Cuba, supra, at 767 (the President has "the lead role … in foreign policy" (citing Sabbatino, supra)); Sale v. Haitian Centers Council, Inc., 509 U.S. 155, 188 (1993) (the President has "unique responsibility" for the conduct of "foreign and military affairs").

At a more specific level, our cases have recognized that the President has authority to make "executive agreements" with other countries, requiring no ratification by the Senate or approval by Congress, this power having been exercised since the early years of the Republic. See Dames & Moore v. Regan, 453 U.S. 654, 679, 682—683 (1981); United States v. Pink, 315 U.S. 203, 223, 230 (1942); United States v. Belmont, 301 U.S. 324, 330—331 (1937); see also L. Henkin, Foreign Affairs and the United States Constitution 219, 496, n. 163 (2d ed. 1996) ("Presidents from Washington to Clinton have made many thousands of agreements … on matters running the gamut of U.S. foreign relations"). Making executive agreements to settle claims of American nationals against foreign governments is a particularly longstanding practice, the first example being as early as 1799, when the Washington administration settled demands against the Dutch Government by American citizens who lost their cargo when Dutch privateers overtook the schooner Wilmington Packet. See Dames & Moore, supra, at 679—680, and n. 8; 5 Dept. of State, Treaties and Other International Acts of the United States 1075, 1078—1079 (H. Miller ed. 1937). Given the fact that the practice goes back over 200 years to the first Presidential administration, and has received congressional acquiescence throughout its history, the conclusion "[t]hat the President's control of foreign relations includes the settlement of claims is indisputable." Pink, supra, at 240

(Frankfurter, J., concurring); see 315 U.S., at 223—225 (opinion of the Court); Belmont, supra, at 330—331; Dames & Moore, supra, at 682. ***

IV

A

*** California has taken a different tack of providing regulatory sanctions to compel disclosure and payment, supplemented by a new cause of action for Holocaust survivors if the other sanctions should fail. The situation created by the California legislation calls to mind the impact of the Massachusetts Burma law on the effective exercise of the President's power, as recounted in the statutory preemption case, Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000). 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. Id., at 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 policies on disclosure. "Quite simply, if the [California] law is enforceable the President has less to offer and less economic and diplomatic leverage as a consequence." Ibid. (citing Dames & Moore, 453 U.S., at 673). The law thus "compromise[s] the very capacity of the President to speak for the Nation with one voice in dealing with other governments" to resolve claims against European companies arising out of World War II. 530 U.S., at 381.