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 Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES DEPARTMENT OF TREASURY ET AL. *v.* FABE, SUPERINTENDENT OF INSURANCE OF OHIO

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

No. 91–1513. Argued December 8, 1992—Decided June 11, 1993

In proceedings under Ohio law to liquidate an insolvent insurance company, the United States asserted that its claims as obligee on various of the company's surety bonds were entitled to first priority under 31 U. S. C. §3713(a)(1)(A)(iii). Respondent Fabe, the liquidator appointed by the state court, brought a declaratory judgment action in the Federal District Court to establish that priority in such proceedings is governed by an Ohio statute that ranks governmental claims behind (1) administrative expenses, (2) specified wage claims, (3) policyholders' claims, and (4) general creditors' claims. Fabe argued that the federal priority statute does not pre-empt the Ohio law because the latter falls within §2(b) of the McCarran-Ferguson Act, which provides, *inter alia:* ``No Act of Congress shall be construed to . . . supersede any law enacted by any state for the purpose of regulating the business of insurance . . . .'' The court granted summary judgment for the United States on the ground that the state statute does not involve the ``business of insurance'' under the tripartite standard articulated in *Union Labor Life Ins. Co.* v. *Pireno,* 458 U. S. 119, 129. The Court of Appeals disagreed and, in reversing, held that the Ohio scheme regulates the ``business of insurance'' because it protects the interests of the insured.

Held: The Ohio priority statute escapes federal pre-emption to the extent that it protects policyholders, but it is not a law enacted for the purpose of regulating the business of insurance to the extent that it is designed to further the interests of creditors other than policyholders. Pp. 7–18.

(a) The McCarran-Ferguson Act's primary purpose was to restore to the States broad authority to tax and regulate the

insurance industry in response to *United States* v. *South-Eastern Underwriters Assn.,* 322 U. S. 533. Pp. 7–8.

DEPARTMENT OF TREASURY *v.* FABE

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(b) The Ohio statute, to the extent that it regulates policyholders, is a law enacted ``for the purpose of regulating the business of insurance.'' Because that phrase refers to statutes aimed at protecting or regulating, directly or indirectly, the relationship between the insurance company and its policyholders, *SEC* v. *National Securities, Inc.,* 393 U. S. 453, 460, the federal priority statute must yield to the conflicting Ohio statute to the extent that the latter furthers policyholders' interests. *Pireno* does not support petitioner's argument to the contrary, since the actual performance of an insurance contract satisfies each prong of the Pireno test: performance of the terms of an insurance policy (1) facilitates the transfer of risk from the insured to the insurer; (2) is central to the policy relationship between the insurer and the insured; and (3) is confined entirely to entities within the insurance industry. Thus, such actual performance is an essential part of the ``business of insurance.'' Because the Ohio statute is integrally related to the performance of insurance contracts after bankruptcy, it is a law ``enacted . . . for the purpose of regulating the business of insurance'' within the meaning of §2(b). This plain reading of the McCarran-Ferguson Act comports with the statute's purpose. Pp. 8–14.

(c) Petitioner's contrary interpretation based on the legislative history is at odds with §2(b)'s plain language and unravels upon close inspection. Pp. 14–16.

(d) The preference accorded by Ohio to the expenses of administering the insolvency proceeding is reasonably necessary to further the goal of protecting policyholders, since liquidation could not even commence without payment of administrative costs. The preferences conferred upon employees and other general creditors, however, do not escape pre-emption because their connection to the ultimate aim of insurance is too tenuous. Pp. 17–18.

939 F. 2d 341, affirmed in part, reversed in part, and remanded.

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