No. 23-258

In the Supreme Court of the United States

DELAWARE DEPARTMENT OF INSURANCE,
PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether, under the McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.*, a state statute governing the confidentiality of information provided by companies applying for insurance licenses can reverse preempt the federal laws governing the Internal Revenue Service's authority to issue a summons to aid in the enforcement of the federal tax laws.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-40) is reported at 66 F.4th 114. The memorandum opinion of the district court adopting the report and recommendation of the magistrate judge (Pet. App. 43-68) is unreported but is available at 2021 WL 4453606. The report and recommendation of the magistrate judge (Pet. App. 70-114) is unreported but is available at 2021 WL 3012728.

JURISDICTION

The judgment of the court of appeals was entered on April 21, 2023 (Pet. App. 41-42). A petition for rehearing and rehearing en banc was denied on June 16, 2023 (Pet. App. 115-116). The petition for a writ of certiorari was filed on September 14, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Supremacy Clause makes "the Laws of the United States * * * the supreme Law of the Land," mandating that federal law preempts conflicting state enactments. U.S. Const. Art. VI, Cl. 2. The McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.*, establishes a narrow exception under which state laws enacted "for the purpose of regulating the business of insurance" may reverse preempt federal laws that do not "specifically relate[] to the business of insurance." 15 U.S.C. 1012(b). The Act's central provision, 15 U.S.C. 1012, contains two subsections. The first, titled "State regulation," provides that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 U.S.C. 1012(a) (emphasis omitted). The second, titled "Federal regulation," has two clauses. 15 U.S.C. 1012(b) (emphasis omitted). The first clause of Section 1012(b) provides that no federal law "shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." The second clause contains a proviso specifying that the Sherman Act, 15 U.S.C. 1 *et seq.*, the Clayton Act, 15 U.S.C. 12 *et seq.*, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, "shall be applicable to the business of insurance to the extent that such business is not regulated by State law." 15 U.S.C. 1012(b).

The McCarran-Ferguson Act does not define the phrase "business of insurance," but this Court has held that the Act does not "purport to make the States supreme in regulating all the activities of insurance *com-*

panies." *Securities & Exchange Comm'n* v. *National Sec., Inc.*, 393 U.S. 453, 459 (1969). Rather, it preserves States' regulations of the "core of the 'business of insurance,'" which is the "relationship between insurer and insured, the type of policy which [may] be issued, its reliability, interpretation, and enforcement," as well as regulations of the "other activities of insurance companies" that are "so closely" related to "their status as reliable insurers" to warrant similar treatment. *Id.* at 460.

2. In 2017, the Internal Revenue Service (IRS) served an administrative summons on petitioner, the Delaware Department of Insurance. Pet. App. 13. The IRS was investigating two companies that promote and facilitate the creation of "micro-captive" insurance companies—Artex Risk Solutions, Inc., and Tribeca Strategic Advisors, LLC—to determine whether the companies were liable for penalties under 26 U.S.C. 6700 for promoting abusive tax shelters. Pet. App. 12-13. From the responses to two summonses against Artex itself, the IRS had learned of emails suggesting that petitioner possessed emails, information, and documents that were relevant to the IRS's investigation. *Id.* at 12.

By delegation from the Secretary of the Treasury, the IRS has authority to investigate potential tax violations in general and has "broad latitude to issue summonses" in particular. *Polselli* v. *IRS*, 598 U.S. 432, 434 (2023) (citation omitted). "The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including * * * assessable penalties)" imposed by the Internal Revenue Code. 26 U.S.C. 6201(a). The Secretary is further authorized to "examine any books, papers, records, or other data which may be relevant or material" to such inquiries,

and to summon taxpayers and "any other person the Secretary may deem proper" to appear, produce documents, and testify. 26 U.S.C. 7602(a)(1) and (2). Congress has also enacted strong protections for the confidentiality of information and documents that the IRS obtains in the process of enforcing the Tax Code. See 26 U.S.C. 6103 (2018 & Supp. III 2021).

When the IRS exercised its authority under those statutes to serve its summons on petitioner for information and documents regarding Artex and Tribeca, petitioner failed to send a representative to testify and made only a partial, piecemeal production of documents. Pet. App. 13-14. Petitioner asserted, as relevant, that it was prohibited from fully complying with the summons by 18 Del. Code Ann. § 6920 (2022). Pet. App. 14, 55-56. That state law, entitled "Confidentiality," is a part of Delaware's Insurance Code that governs the confidentiality of all information and materials petitioner obtains in connection with a license application for a captive insurance company (*i.e.*, one that is wholly owned and controlled by its insureds, Pet. App. 6). 18 Del. Code Ann. § 6920. The law provides that "[a]ll portions of license applications reasonably designated confidential by" an applicant, as well as "all information and documents * * * produced or obtained by or submitted or disclosed" to the state insurance department as part of the application process "may not be made public by the [Insurance] Commissioner, and may not be provided or disclosed to any other person at any time. *Ibid.* It includes, however an exception that permits disclosure "[t]o a [state or federal] law-enforcement official or agency * * * so long as such official or agency agrees in writing to hold [the covered material] confidential

and in a manner consistent with this section." *Id.* § 6920(2).

Petitioner maintained that some of the information and documents that the IRS sought in its summons were covered by 18 Del. Code Ann. § 6920, such that petitioner could provide them only if the IRS agreed in writing to the state law's confidentiality requirements. Pet. App. 13. The IRS declined to agree to that condition. *Ibid.* While the confidentiality requirements imposed on the IRS under 26 U.S.C. 6103 are in some ways more rigorous than the Delaware law, the IRS objected to the State's insistence on the application of 18 Del. Code Ann. § 6920 because it could allow petitioner to dictate the extent to which the IRS could use the covered documents in an examination or any future court proceedings.

3. In 2020, the United States petitioned the district court to enforce the IRS's summons against petitioner. Pet. App. 52. Petitioner opposed the petition and moved to quash the summons. *Ibid.* Petitioner contended that under the McCarran-Ferguson Act, the state-law confidentiality provision reverse preempts the federal laws granting the IRS the authority to issue a summons to investigate violations of the Tax Code, making it permissible for petitioner to refuse to comply fully with the summons unless and until the IRS agrees to adhere to the state law's requirements. Pet. App. 14, 55-56.

A magistrate judge issued a report and recommendation concluding that the district court should grant the United States' petition to enforce the summons. Pet. App. 70-114. The magistrate judge determined that the McCarran-Ferguson Act did not apply because the case does not concern the "business of insurance," as that term has been construed by this Court. *Id.* at

103-110. The magistrate judge explained that the regulated conduct at stake is "fairly characterized as '[r]ecord maintenance or the dissemination of information, documents, and communications [maintained by the state],'" rather than the business of insurance. *Id.* at 102 (brackets in original; citation omitted).

The district court adopted the magistrate judge's report and recommendation. Pet. App. 43-68, 69. The court found "no error" in the magistrate judge's conclusion that the conduct at issue in this case is "record maintenance," rather than the "business of insurance," observing that this "characterization * * * flows directly from the language of Section 6920" of the Delaware Insurance Code, which "protects from disclosure broad swathes of information" provided by captive insurance companies, rather than just "application and licensing information." *Id.* at 63-64.

4. The court of appeals affirmed. Pet. App. 1-40. It explained that in *Sabo* v. *Metropolitan Life Ins. Co.*, 137 F.3d 185 (3d Cir. 1998), cert. denied, 525 U.S. 1129 (1999), it had set out a two-step process for determining whether, under the McCarran-Ferguson Act, a state statute has the power to reverse preempt federal law in light of the first clause of Section 1012(b). Pet. App. 18-19. The court's analysis begins with a "threshold inquiry" derived from Section 1012(a), *id.* at 19, the provision specifying that "[t]he business of insurance * * * shall be subject to the laws of the several States which relate to the regulation or taxation of such business." 15 U.S.C. 1012(a). The court asks "whether the challenged conduct broadly constitutes the 'business of insurance.'" Pet. App. 18 (quoting *Sabo*, 137 F.3d at 190). If it does, the court moves on to the second step, where it assesses whether the three requirements of Section

1012(b)'s first clause are satisfied, analyzing (i) whether the allegedly preempted federal law "specifically relate[s] to the business of insurance," such that it cannot be reverse preempted; (ii) whether the state law "was enacted for the purpose of regulating the business of insurance"; and (iii) whether "applying federal law would invalidate, impair, or supersede the state law." *Id.* at 19 (quoting *Sabo*, 137 F.3d at 189).

The court of appeals rejected petitioner's assertion that *Sabo*'s two-step inquiry is incompatible with this Court's decisions in *United States Department of Treasury* v. *Fabe*, 508 U.S. 491 (1993), and *Humana Inc.* v. *Forsyth*, 525 U.S. 299 (1999), and with decisions of other courts of appeals that have not recognized a need for the first step of the Third Circuit's analysis. Pet. App. 26. The court reasoned that its threshold inquiry is not inconsistent with *Fabe* and *Humana* because those precedents did not consider the role of Section 1012(a) in the reverse-preemption analysis, Pet. App 26-28, and that the same is true of all but one of the court of appeals decisions cited by petitioner, *id.* at 30-33. Moreover, the court stated that the lone court of appeals case that had "explicitly part[ed] ways with *Sabo*," *Autry* v. *Northwest Premium Servs., Inc.*, 144 F.3d 1037 (7th Cir. 1998), had done so based on the mistaken premise that *Sabo* had read an additional requirement into subsection (b) of Section 1012. Pet. App. 33. Further, the court clarified that it was not holding that the first step of the analysis needs to "be addressed in every case." *Id.* at 29 n.14. Rather, courts are free to "assume the threshold inquiry has been met" in order to "address other requirements for [McCarran-Ferguson Act] reverse preemption that may be more readily dispositive." *Ibid.*

The court of appeals then determined that petitioner failed to satisfy Section 1012(a)'s threshold inquiry in this case because petitioner's "refusal to provide documents and testimony" in response to the IRS summons "is plainly not the core of the business of insurance." Pet. App. 36 (citation and internal quotation marks omitted). In reaching that conclusion, the court refused to accept petitioner's invitation to "characterize the challenged conduct by asking, effectively, whether § 6920 was 'enacted for the purpose of regulating the business of insurance,'" explaining that would effectively collapse the threshold inquiry with the "purpose" inquiry under the first clause of Section 1012(b). *Id.* at 35 (ellipsis omitted).

The court of appeals also rejected petitioner's contention that the state agency's insistence that the IRS adhere to the dictates of 18 Del. Code Ann. § 6920 constitutes the "business of insurance" because the state law "deals with materials submitted in connection with the licensure of" captive insurers "'for the purpose of determining the solvency and safety of insurers, and for the protection of [their] policyholders.'" Pet. App. 37 (quoting petitioner's brief). The court recognized that petitioner was claiming that, without Section 6920, captive insurers will be "less forthcoming" in their applications, which "will indirectly endanger those who are insured." *Ibid.* But the court rejected petitioner's contention that a failure to enforce Section 6920's confidentiality restrictions against the IRS "would lead to a change in behavior by captive insurers (or their managers) that would reduce the reliability of captive insurers." *Ibid.* The court explained that, even without Section 6920, petitioner "has the authority to obtain documents it requires for licensures and subsequent exami-

nations and can impose consequences on companies that will not provide them." *Ibid.* (citing 18 Del. Code Ann. §§ 6903, 6908, 6909). And the court doubted that captive insurance companies would have the incentive to withhold information from petitioner for fear that it would be used against them in later tax investigations given the IRS's power to summons the information directly from captive insurers. *Id.* at 38-39.

ARGUMENT

Petitioner renews its contention (Pet. 18-23) that, under the McCarran-Ferguson Act, the "Confidentiality" provision in 18 Del. Code Ann. § 6920 reverse preempts the federal statutes governing the IRS's authority to issue a summons to obtain documents and information that the agency needs to investigate abusive tax practices. The court of appeals correctly determined that Section 6920 is not entitled to reverse-preemptive effect under the first clause of 15 U.S.C. 1012(b). While petitioner observes that the court of appeals' approach to the McCarran-Ferguson Act inquiry differs from that of the other circuits, that difference had no effect on the outcome of this case, nor has petitioner demonstrated that it will have any effect in other cases or lead to decisions conflicting with this Court's decisions. Certiorari review is therefore unwarranted.

1. a. In a pair of cases, this Court has addressed when the McCarran-Ferguson Act has allowed a state statute to reverse preempt federal law under the first clause of Section 1012(b).

In *Securities & Exchange Commission* v. *National Securities, Inc.*, 393 U.S. 453 (1969), this Court held that whether a state statute may be entitled to reverse-preemptive effect under Section 1012(b)'s first clause depends on the extent to which it protects the "relation-

ship between insurer and insured" that is central to the "business of insurance." *Id.* at 459-460. The Court explained that because the text of the McCarran-Ferguson Act focuses on "laws 'regulating the business of insurance,'" the statute does not "purport to make the States supreme in regulating all the activities of insurance companies." *Id.* at 459 (emphasis omitted). Rather, it is only when a state law concerns the "business of insurance" that the McCarran-Ferguson Act applies. *Id.* at 459-460. And while the Court declined to specify the precise contours of that term, it found it "clear" that the "core" of the "business of insurance" is "the relationship between the insurance company and the policyholder." *Id.* at 460.

The Court in *National Securities* found support for that understanding of Section 1012(b)'s scope in the statutory history. 393 U.S. at 458-459. The Court explained that the McCarran-Ferguson Act was enacted in response to *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944), in which this Court overruled its longstanding precedent holding that States had the exclusive authority to regulate their insurance markets because "[i]ssuing a policy of insurance" was not "a transaction of commerce" subject to federal regulation. *National Securities*, 393 U.S. at 458 (quoting *Paul* v. *Virginia*, 75 U.S. (8 Wall.) 168, 183 (1869)) (brackets in original). Congress sought to ensure that the States could continue to regulate their insurance markets, free from accidental federal intrusion through the preemptive force of generally applicable federal laws. *Ibid.* Accordingly, the McCarran-Ferguson Act is "concerned with the type of state regulation that centers around the contract of insurance"—in other words, with regulation of "[t]he relationship be-

tween insurer and insured, the type of policy which [may] be issued, its reliability, interpretation, and enforcement," as well as of "other activities of insurance companies [that] relate so closely to their status as reliable insurers that they too must be placed in the same class." *Id.* at 460.

Applying those principles, *National Securities* held that a provision of Arizona law requiring the Director of Insurance to approve insurance company mergers could not reverse preempt federal securities laws because it was intended to "protect the interests of insurance company stockholders," rather than policy holders. 393 U.S. at 461. The Court explained that even though "the state statute applie[d] only to insurance companies," its focus on stockholders' interests demonstrated that it was "not insurance regulation, but securities regulation." *Id.* at 460. And the Court contrasted the provision concerned with stockholder interests with another provision that was expressly focused on protecting the "security of and service to be rendered to policyholders." *Id.* at 462 (quoting Ariz. Rev. Stat. Ann. § 20-731.B.3 (Supp. 1969)). That provision, the Court held, represented the sort of state regulation governed by the McCarran-Ferguson Act, *ibid.*, although the Court ultimately held that even that provision did not reverse preempt a federal securities law because the state and federal laws could coexist, *id.* at 462-464.

More than 20 years later, in *United States Department of Treasury* v. *Fabe*, 508 U.S. 491 (1993), the Court again addressed when a state statute qualifies as a "law enacted for the purpose of regulating the business of insurance" under the first clause of Section 1012(b). *Id.* at 508. In *Fabe*, the Court considered an Ohio insurance law that established the priority in which the debts of a

bankrupt insurance company would be paid. *Id.* at 495-496. Relying on *National Securities'* holding that the "core of the 'business of insurance'" is the "relationship between the insurance company and the policy holder," *id.* at 507, the Court in *Fabe* held that the Ohio law should reverse preempt a federal law affording priority to the debts of the United States to the extent that the Ohio law prioritized the payment of the claims of the insurance company's policyholders and certain administrative expenses. *Id.* at 504, 508-509.

But the Court in *Fabe* further determined that the Ohio statute did *not* qualify as a "law enacted for the purpose of regulating the business of insurance" to the extent that it conferred preferences on the claims of the insurance company's employees or its "other general creditors," because that aspect of the law had not been enacted "for the purpose of regulating insurance." 508 U.S. at 508. The Court acknowledged that "every preference accorded to the creditors of an insolvent insurer ultimately may redound to the benefit of policyholders by enhancing the reliability of the insurance company." *Ibid.* Nevertheless, it explained that such "indirect effects" on policyholders are not sufficient to trigger reverse preemption under the first clause of Section 1012(b) because those effects have "too tenuous" a connection to the "ultimate aim of insurance." *Id.* at 509.

b. Under *National Securities* and *Fabe*, the "Confidentiality" requirements imposed under 18 Del. Code Ann. § 6920 do not reverse preempt the federal statutes granting the IRS the authority to summons documents necessary for an investigation into potential violations of the tax laws. In both cases, this Court held that portions of a State's insurance code could not be afforded reverse-preemptive effect under the first clause of Sec-

tion 1012(b) because they had "too tenuous" a connection to "'the core of the "business of insurance"'"—which is "'the relationship between the insurance company and the policyholder.'" *Fabe*, 508 U.S. at 501, 509 (quoting *National Securities*, 393 U.S. at 460). The Delaware confidentiality provision at issue in this case has no less tenuous a connection to the relationship between insurer and insured than the merger oversight protection for shareholders in *National Securities* and the statutory preferences for claims of insurance-company employees and general creditors in *Fabe*. Like those state statutes, Delaware's confidentiality provision is aimed at protecting a set of interests distinct from the relationship between insurer and insured. The statute does not regulate the interactions between insurance companies and their policyholders; instead it protects the privacy interests of captive insurance companies seeking to obtain or maintain licenses.

The court of appeals correctly rejected petitioner's effort to demonstrate a close connection between Delaware's confidentiality provision and the insurer-insured relationship that is at the center of the "business of insurance." Pet. App. 37-39. The court observed that petitioner's efforts to depict the confidentiality provision as protecting the interests of the insured depends on the assertion that, without the provision, insurance companies will be "less forthcoming," diminishing the efficacy of the licensing process, and "indirectly endanger[ing] those who are insured." Pet. App. 37. As this Court explained in *Fabe*, while "'every business decision made by an insurance company has some impact on its * * * status as a reliable insurer,'" "such indirect effects" on policyholders are not sufficient to trigger reverse preemption under the McCarran-Ferguson Act.

508 U.S. at 508-509 (citation omitted). Further, as the court of appeals recognized, petitioner's speculation about danger to "those who are insured" is based on the dubious premise that an applicant for a state insurance license would withhold required information in the absence of the confidentiality provision, even when withholding that information would violate other requirements of state law and would not obviously serve the purpose of protecting the information from the IRS's investigators, given the IRS's ability to serve a summons directly on a captive insurance company. Pet. App. 37; see *id.* at 37-39.

c. Petitioner contends (Pet. 18-23), however, that the court of appeals' decision was erroneous because the court conducted its analysis as part of a threshold inquiry derived from Section 1012(a), in which the Third Circuit asks whether the "conduct at issue broadly constitutes the 'business of insurance.'" Pet. 19. Petitioner observes that neither this Court nor the other courts of appeals conduct a similar threshold inquiry in determining whether a state statute may be entitled to preemptive force under the first clause of Section 1012(b). But whatever the merits of the Third Circuit's approach, it is irrelevant here because Section 6920's tenuous link to the protection of the insurer-insured relationship means that the state statute is not entitled to reverse-preemptive effect under a straightforward application of *National Securities* and *Fabe*. Petitioner does not contest the validity of those decades-old precedents of this Court, nor does petitioner explain how the Delaware confidentiality statute is distinct from the state statutes that *National Securities* and *Fabe* held were outside the scope of the McCarran-Ferguson Act be-

cause of their insufficiently direct connection to the protection of policyholder interests.

Petitioner instead asserts that, by analyzing this case through the lens of its threshold inquiry, the court of appeals improperly disregarded petitioner's argument that the Delaware statute "directly" regulates the business of insurance by "encourag[ing]" license applicants "to cooperate with the insurance department during an examination." Pet. 25 (brackets, citations, and internal quotation marks omitted). But the court of appeals did not ignore that argument; it held that it did not "hold water" because it was premised on the unconvincing assertion that insurance applicants would start unlawfully withholding information in the absence of the confidentiality provision. Pet. App. 37; see *id.* at 37-38. And petitioner has not pointed to any other cases in which the Third Circuit's approach has led it to reach a result at odds with the one dictated by the precedents of this Court.

Moreover, it is unclear that the Third Circuit's approach could ever be outcome determinative. The court of appeals explained that its threshold inquiry does not need to "be addressed in every case," Pet. App. 29 n.14, and when courts do consider it, the analysis is intended only to weed out cases in which the "contested activities are wholly unrelated to the insurance business." *Id.* at 21 (quoting *Sabo* v. *Metropolitan Life Ins.* Co., 137 F.3d 189, 190 (3d Cir. 1998), cert. denied, 525 U.S. 1129 (1999)). As *Sabo* explained, it is difficult to "imagine" how a state statute could be enacted "for the purpose of regulating the insurance business," as Section 1012(b) expressly requires, and yet give rise to a case in which the contested activity "does not relate to insurance." 137 F.3d at 190. It is therefore doubtful that a statute

that has been denied reverse-preemptive effect under the Third Circuit's first-step inquiry could ever be entitled to reverse-preemptive effect under a straightforward application of Section 1012(b)'s text. Petitioner has not cited any cases in which that has occurred in the quarter century since *Sabo* was decided.

In the absence of real-world examples, petitioner speculates (Pet. 25) that, without this Court's intervention, the Third Circuit's analysis could be used to bar state regulation of "what types of assets an insurer can hold," or "who can own insurers." But petitioner offers no reason to assume that, in a case involving such a statute, a court would necessarily find that the contested activity is "wholly unrelated to the business of insurance." Pet. 21. Nor, for that matter, does petitioner explain why such hypothetical statutes would necessarily be given reverse-preemptive effect under this Court's precedents. After all, *National Securities* held that a portion of a state statute requiring the approval of insurance company mergers was *not* entitled to reverse-preemptive because it was designed to benefit the insurance company's stockholders, rather than its policyholders. 393 U.S. at 460.

2. Petitioner contends (Pet. 10-14) that this Court should nevertheless grant review to resolve the division in the circuits regarding the propriety of the Third Circuit's threshold inquiry. But as petitioner observes, no other circuit currently applies the Third Circuit's approach. Pet. 11 n.5 (collecting cases). Given the lopsidedness of the disagreement and the fact that petitioner has not demonstrated that the Third Circuit's approach is ever outcome determinative, that division does not warrant this Court's intervention.

Petitioner also errs in contending (Pet. 17-18) that this Court should grant review to resolve alleged uncertainty in the circuits regarding whether it is *ever* appropriate to consider the nature of the contested activity as part of the reverse-preemption analysis under the first clause of Section 1012(b). Petitioner has not demonstrated that any such uncertainty exists. Petitioner correctly observes (Pet. 14 n.9, 17) that, while the Sixth Circuit has not endorsed the Third Circuit's threshold inquiry, it has considered whether the activity contested in a case constitutes the "business of insurance" to "inform" its analysis regarding whether the state statute was enacted "for the purpose of regulating the business of insurance." *Genord* v. *Blue Cross & Blue Shield of Michigan*, 440 F.3d 802, 806 (6th Cir.), cert. denied, 549 U.S. 1030 (2006). And petitioner observes (Pet. 14 n.9, 17) that the Eleventh Circuit has more generally considered the nature of the conduct that a state statute regulates in analyzing whether reverse preemption is appropriate under the first clause of Section 1012(b). See *Bailey* v. *Rocky Mountain Holdings, LLC*, 889 F.3d 1259, 1273 & n.30 (11th Cir. 2018). But those decisions are hardly remarkable because the nature of the regulated conduct is obviously relevant when evaluating whether a statute was enacted "for the purpose of regulating the business of insurance," 15 U.S.C. 1012(b), and petitioner does not identify any decisions suggesting the contrary.

Petitioner's insistence that the question presented is of "exceptional importance" is also unavailing. Pet. 23 (capitalization and emphasis omitted). While petitioner contends (Pet. 25) that the Third Circuit's approach will "jeopardize[] large portions of the direct regulation of insurance companies by state regulators," its failure to

cite any cases where the Third Circuit's approach has had that feared effect suggests that the concern is greatly exaggerated. And if petitioner's fears do materialize in a future case, this Court can intervene at that time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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