SB

379

(2) "cost" means the lesser of the following:

(A) the actual charge for the treatment received for mental or nervous condition; or

(B) the usual, customary and reasonable charge for the treatment;

(3) "health insurance policy" means a hospital or medical expense policy, or a nonprofit health care corporation plan;

(4) "inpatient treatment" means continuous treatment during a 24-hour period in the psychiatric unit of a general hospital licensed under AS 18.20, a psychiatric hospital that is licensed under AS 18.20, or a hospital in the state that is specifically exempt under AS 18.20.020 from the licensing requirements of the state;

(5) "mental or nervous condition" means a mental disorder identified in

(A) the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) published by the American Psychiatric Association; or

(B) the ICD-9-CM (First Edition) published by the Commission on Professional and Hospital Activities;

(6) "outpatient treatment" means treatment that is not inpatient treatment and that is provided by one or more of the following, or by a person who is under the direct supervision of one or more of the following, has a master's or doctorate degree in psychology, nursing, or social work, and is employed by the same health care facility as the person or persons providing the direct supervision,

(A) a psychiatrist who is licensed as a physician in the state and certified, or eligible for certification, in psychiatry by the American Board of Psychiatry and Neurology;

(B) a physician who is employed by the federal

government in the state and certified or eligible for certification in psychiatry by the American Board of Psychiatry and Neurology; or

(C) a psychologist licensed under AS 08.86.

* Sec. 2. AS 21.36.090(d) is amended to read:

(d) Except to the extent necessary to comply with AS 21.42.365, a [A] person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, or nurse midwife.

* Sec. 3. AS 21.87.340 is amended to read:

Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the provisions contained or referred to previously in this chapter, the following chapters and provisions of this title also apply with respect to service corporations to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications of the express provisions, and for the purposes of the application the corporations shall be considered to be mutual "insurers":

(1) AS 21.03

(2) AS 21.06

(3) AS 21.09, except AS 21.09.090

(4) AS 21.18.010

(5) AS 21.18.030

(6) AS 21.18.040

(7) AS 21.18.120

(8) AS 21.21.321

(9) AS 21.36

(10) AS 21.69.400

(11) AS 21.69.520

(12) AS 21.69.600, 21.69.620, and 21.69.630

(13) AS 21.78

(14) AS 21.90

(15) AS 21.42.345 - 21.42.365 [AND 21.42.355]

(16) AS 21.89.040

(17) AS 21.89.060.

CHAIRMAN'S INFORMATION: SB 379

1) BILL TITLE: "An act relating to the premium tax for domestic insurers"

a) Introduced: By Governor

b) Co-sponsors:

2) INTENT: Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while non domestic are required to pay 3%. A recent US Supreme Court case raised consitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

FISCAL NOTE: 0 operating; FY87 1,142.3 generated in revenue

N.B. NO EFFECTIVE DATE CLAUSE

3) ADDITIONAL REFERRALS: Finance, Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?
b) Assign to sub committee for further review?
c) Move from committee?
d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?
b) CS adoption?

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73 (Marshall, J.,

METROPOLITAN LIFE INSURANCE COMPANY, et al., Appellants

v

W. G. WARD, Jr., et al.

470 US —, 84 L Ed 2d 751, 106 S Ct —

[No. 83-1274]

Argued October 31, 1984. Decided March 26, 1985.

Decision: State statute taxing out-of-state insurance companies at a higher rate than domestic insurance companies held not to have legitimate state purpose for purposes of equal protection clause.

SUMMARY

A group of foreign insurance companies filed claims with Alabama state insurance authorities contending that an Alabama statute imposing a substantially higher gross premiums tax on out-of-state insurance companies than on domestic companies, and allowing the out-of-state companies to reduce their tax rate by investing certain percentages of their total assets in specified state assets and securities, violated the equal protection clause as applied to them. The Circuit Court for Montgomery County, Alabama, upheld the denial of these claims, ruling that the statute was rationally related to the legitimate state purposes of encouraging the formation of new domestic insurance companies and encouraging capital investment in the state by foreign insurance companies. The Court of Civil Appeals of Alabama affirmed as to the legitimacy of these purposes but remanded for an evidentiary hearing on the issue of rational relationship. The insurance companies waived their right to such a hearing and appealed as to the legitimacy of the stated legislative purposes. The Supreme Court of Alabama denied certiorari, and judgment was subsequently entered in favor of the state and the intervenor domestic companies.

On appeal, the United States Supreme Court reversed and remanded. In an opinion by POWELL, J., joined by BURGER, Ch. J., and WHITE, BLACKMUN, and STEVENS, JJ., the court held that the Alabama statute could not be sustained under the equal protection clause ruling that the promotion of domestic business within a state by discriminating against foreign corpora-

tions that wish to compete by doing business there is not a legitimate state purpose, and that the encouragement of capital investment in state assets and securities also is not a legitimate state purpose when furthered by discrimination.

O'CONNOR, J., joined by BRENNAN, MARSHALL, and REHNQUIST, JJ., dissented, expressing the view that the majority opinion was unsupported by precedent and distorted the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 369; Insurance § 6 — equal protection — foreign corporations — insurance companies — illegitimacy of purposes of discriminatory tax law

1a–1f. A state law imposing a higher premiums tax on foreign insurance companies than on domestic insurance companies, and allowing foreign companies to reduce but not eliminate the disparity in tax rates by investing certain proportions of their assets in state assets and securities, cannot be justified under the equal protection clause by its asserted purpose of promoting domestic business within the state, which is not a legitimate state purpose for purposes of the equal protection clause where it is accomplished by discriminating against foreign corporations that wish to compete by doing business in the state, or by its asserted purpose of encouraging investment in state assets, which is also not a legitimate state purpose when furthered by discrimination. (O'Connor, J., and Brennan, Marshall, and Rehnquist, JJ., dissented from this holding.)

Constitutional Law § 349 — equal protection — state discrimination against nonresidents

2. The equal protection clause forbids a state to discriminate in favor of its own residents solely by burdening the residents of other state members of the federation.

Constitutional Law § 369; Insurance § 6 — equal protection — insurance companies — McCarran-Ferguson Act

3. Although the McCarran-Ferguson Act, 15 USCS §§ 1011–1015, exempts the insurance industry from commerce clause restrictions, it does not purport to limit in any way the applicability of the equal protection clause.

Commerce § 144; Constitutional Law § 313 — commerce clause and equal protection clause — comparison of tests governing validity of state laws

4. Under commerce clause analysis, the state's interest served by a state law, if legitimate, is weighed against the burden the state law would impose on interstate commerce; in the equal protection context, however, if the state's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose.

SYLLABUS BY REPORTER OF DECISIONS

An Alabama statute imposes a substantially lower gross premiums tax rate on domestic insurance companies than on out-of-state (foreign) insurance companies. The statute permits foreign companies to reduce but not to eliminate the differential by investing in Alabama assets and securities. Appellant foreign insurance companies filed claims for refunds of taxes paid, contending that the statute, as applied to them, violated the Equal Protection Clause. The State Commissioner of Insurance denied the claims. On consolidated appeals to a county Circuit Court, in which several domestic

companies intervened, the statute was upheld on summary judgment. The court ruled that the statute did not violate the Equal Protection Clause because, in addition to raising revenue, it served the legitimate state purposes of encouraging the formation of new insurance companies in Alabama and capital investment by foreign insurance companies in Alabama assets and securities, and that the distinction between foreign and domestic companies was rationally related to those purposes. The Alabama Court of Civil Appeals affirmed the finding as to legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship. On certiorari to the Alabama Supreme Court, appellants waived their rights to such an evidentiary hearing, and the court entered judgment for the State and the intervenors on appellants' equal protection challenge to the statute.

Held: The Alabama domestic preference tax statute violates the Equal Protection Clause as applied to appellants.

(a) Under the circumstances of this case, promotion of domestic business by discriminating against nonresidents is not a legitimate state purpose. Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070, distinguished. Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. A State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit the applicability of the Equal Protection Clause. Equal protection restraints are applicable even though the *effect* of the discrimination is similar to the type of burden with which the Commerce Clause also would be concerned. Pp 6–12.

(b) Nor is the encouragement of the investment in Alabama assets and securities a legitimate state purpose. Domestic insurers remain entitled to the more favorable tax rate regardless of whether they invest in Alabama assets. Moreover, since the investment incentive provision does not enable foreign insurers to eliminate the statute's discriminatory effect, it does not cure but reaffirms the impermissible classification based solely on residence.

—— So 2d ——, reversed and remanded.

Powell, J., delivered the opinion of the Court, in which Burger, C. J., and White, Blackmun, and Stevens, JJ., joined. O'Connor, J., filed a dissenting opinion, in which Brennan, Marshall, and Rehnquist, JJ., joined.

APPEARANCES OF COUNSEL

Matthew J. Zinn argued the cause for appellants.

Warren B. Lightfoot argued the cause for appellees.

Justice Powell delivered the opinion of the Court.

[1a] This case presents the question whether Alabama's domestic preference tax statute, Ala Code §§ 27-4-4 and 27-4-5 (1975), that taxes out-of-state insurance companies at a higher rate than domestic insurance companies, violates the Equal Protection Clause.

I

Since 1955,[1] the State of Alabama has granted a preference to its domestic insurance companies by imposing a substantially lower gross premiums tax rate on them than on out-of-state (foreign) companies.[2] Under the current statutory provisions, foreign life insurance companies pay a tax on their gross premiums received from business conducted in Alabama at a rate of 3 percent, and foreign companies selling other types of insurance pay at a rate of 4 percent. Ala Code § 27-4-4(a) (1975). All domestic insurance companies, in contrast, pay at a rate of only 1 percent on all types of insurance premiums. § 27-4-5(a).[3] As a result, a foreign insurance company doing the same type and volume of business in Alabama as a domestic company generally will pay three to four times as much in gross premiums taxes as its domestic competitor.

Alabama's domestic preference tax statute does provide that foreign companies may reduce the differential in gross premiums taxes by investing prescribed percentages of their worldwide assets in specified Alabama assets and securities. § 27-4-4(b). By investing 10 percent or more of its total assets in Alabama investments, for example, a foreign life insurer may reduce its gross premiums tax rate from 3 to 2 percent. Similarly, a foreign property and casualty insurer may reduce its tax rate from 4 to 3 percent. Smaller tax reductions are available based on investment of smaller percentages of a company's assets. Ibid. Regardless of how much of its total assets a foreign company places in Alabama investments, it can never reduce its gross premiums tax rate to the same level paid by comparable domestic companies. These are entitled to the 1 percent tax rate even if they have no investments in the State. Thus, the investment pro-

1. The origins of Alabama's domestic preference tax statute date back to 1849, when the first tax on premiums earned by insurance companies doing business in the State was limited to companies not chartered by the State. Act No. 1, 1849 Ala Acts 5. A domestic preference tax was imposed on and off throughout the years until 1945, when the State restored equality in taxation of insurance companies in response to this Court's decision in United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944). Act No. 156, 1945 Ala Acts 196–197. In 1955, the tax was reinstated, Act No. 77, 1955 Ala Acts 193 (2d Sp Sess), and with minor amendments, has remained in effect until the present.

2. For domestic preference tax purposes, Alabama defines a domestic insurer as a company that both is incorporated in Alabama and has its principal office and chief place of business within the State. Ala Code § 27-4-1(3) (1975). A corporation that does not meet both of these criteria is characterized as a foreign insurer. § 27-4-1(2).

3. There are two exceptions to these general rules concerning the rates of taxation of insurance companies. For annuities, the tax rate is one percent for both foreign and domestic insurers, Ala Code § 27-4-4(a) (1975), and for wet marine and transportation insurance, the rate is three-quarters of one percent for both foreign and domestic insurance companies, § 27-4-6(a).

vision permits foreign insurance companies to reduce, but never to eliminate, the discrimination inherent in the domestic preference tax statute.

II

Appellants, a group of insurance companies incorporated outside of the State of Alabama, filed claims with the Alabama Department of Insurance in 1981, contending that the domestic preference tax statute, as applied to them, violated the Equal Protection Clause. They sought refunds of taxes paid for the tax years 1977 through 1980. The Commissioner of Insurance denied all of their claims on July 8, 1981.

Appellants appealed to the Circuit Court for Montgomery County, seeking a judgment declaring the statute to be unconstitutional and requiring the Commissioner to make the appropriate refunds. Several domestic companies intervened, and the court consolidated all of the appeals, selecting two claims as lead cases[4] to be tried and binding on all claimants. On cross-motions for summary judgment, the court ruled on May 17, 1982, that the statute was constitutional. Relying on this Court's opinion in Western & Southern Life Ins. Co. v State Board of Equalization of California, 451 US 648, 68 L Ed 2d 514, 101 S Ct 2070 (1981), the court ruled that the Alabama statute did not violate the Equal Protection Clause because it served "at least two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a. The court also found that the distinction the statute created between foreign and domestic companies was rationally related to those two purposes and that the Alabama Legislature reasonably could have believed that the classification would have promoted those purposes. Id., at 21a.

After their motion for a new trial was denied, appellants appealed to the Court of Civil Appeals. It affirmed the Circuit Court's rulings as to the existence of the two legitimate state purposes, but remanded for an evidentiary hearing on the issue of rational relationship, concluding that summary judgment was inappropriate on that question because the evidence was in conflict. 437 So 2d 535 (1983). Appellants petitioned the Supreme Court of Alabama for certiorari on the affirmance of the legitimate state purpose issue, and the State and the intervenors petitioned for review of the remand order. Appellants then waived their right to an evidentiary hearing on the issue whether the statute's classification bore a rational relationship to the two purposes found by the Circuit Court to be legitimate, and they requested a final determination of the legal issues with respect to their equal protection challenge to the statute. The Supreme Court denied certiorari on all claims. Appellants again waived their rights to an evidentiary hearing on the rational relationship issue and filed a joint motion with the

4. Metropolitan Life Insurance Co., a New York corporation, was chosen to represent the life insurance claimants, and Prudential Property and Casualty Co., a New Jersey corporation, was chosen as representative of the nonlife claimants. See App 314-315.

other parties seeking rehearing and entry of a final judgment. The motion was granted, and judgment was entered for the State and the intervenors. This appeal followed, and we noted probable jurisdiction. 466 US ——, 80 L Ed 2d 455, 104 S Ct 1905 (1984). We now reverse.

III

Prior to our decision in Western & Southern Life Ins. Co. v State Board of Equalization of California, supra, the jurisprudence of the applicability of the Equal Protection Clause to discriminatory tax statutes had a somewhat checkered history. Lincoln National Life Ins. Co. v Read, 325 US 673, 89 L Ed 1861, 65 S Ct 1220 (1945), held that so-called "privilege" taxes, required to be paid by a foreign corporation before it would be permitted to do business within a State, were immune from equal protection challenge. That case stood in stark contrast, however, to the Court's prior decisions in Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910), and Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), as well as to later decisions, in which the Court had recognized that the Equal Protection Clause placed limits on other forms of discriminatory taxation imposed on out-of-state corporations solely because of their residence. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949).

In Western & Southern, supra, we reviewed all of these cases for the purpose of deciding whether to permit an equal protection challenge to a California statute imposing a retaliatory tax on foreign insurance companies doing business within the State, when the home States of those companies imposed a similar tax on California insurers entering their borders. We concluded that Lincoln was no more than "a surprising throwback" to the days before enactment of the Fourteenth Amendment and in which incorporation of a domestic corporation or entry of a foreign one had been granted only as a matter of privilege by the State in its unfettered discretion. 451 US, at 665, 68 L Ed 2d 514, 101 S Ct 2070. We therefore rejected the longstanding but "anachronistic" rule of Lincoln and explicitly held that the Equal Protection Clause imposes limits upon a State's power to condition the right of a foreign corporation to do business within its borders. Id., at 667, 68 L Ed 2d 514, 101 S Ct 2070. We held that "[w]e consider it now established that, whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose." Id., at 667–668, 68 L Ed 2d 514, 101 S Ct 2070.

[1b] Because appellants waived their right to an evidentiary hearing on the issue whether the classification in the Alabama domestic preference tax statute bears a rational relation to the two purposes upheld

by the Circuit Court, the only question before us is whether those purposes are legitimate.[5]

A

(1)

The first of the purposes found by the trial court to be a 'egitimate reason for the statute's classification between foreign and domestic corporations is that it encourages the formation of new domestic insurance companies in Alabama. The State, agreeing with the Court of Civil Appeals, contends that this Court has long held that the promotion of domestic industry, in and of itself, is a legitimate state purpose that will survive equal protection scrutiny. In so contending, it relies on a series of cases, including Western & Southern, that are said to have upheld discriminatory taxes. See Bacchus Imports, Ltd. v Dias, 468 US ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Pike v Bruce Church, Inc., 397 US 137, 25 L Ed 2d 174, 90 S Ct 844 (1970); Allied Stores of Ohio, Inc. v Bowers, supra; Parker v Brown, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943); Carmichael v Southern Coal & Coke Co. 301 US 495, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937); Board of Education v Illinois, 203 US 553, 51 L Ed 314, 27 S Ct 171 (1906).

The cases cited lend little or no support to the State's contention. In Western & Southern, the case principally relied upon, we did not hold as a general rule that promotion of domestic industry is a legitimate state purpose under equal protection analysis.[6] Rather, we held that Cali-

5. The State and the intervenors advanced some 15 additional purposes in support of the Alabama statute. As neither the Circuit Court nor the Court of Civil Appeals ruled on the legitimacy of those purposes, that question is not before us, and we express no view as to it. On remand, the State will be free to advance again its arguments relating to the legitimacy of those purposes.

As the dissent finds our failure to resolve whether Alabama may continue to collect its tax "baffling," post, at 4, we reemphasize the procedural posture of the case: it arose on a motion for summary judgment. The Court of Civil Appeals upheld the Circuit Court's ruling that the two purposes identified by it were legitimate, but the appellate court remanded on the issue of rational relationship as to those purposes because it found the evidence in conflict. In order to obtain an expedited ruling, appellants waived their right to an evidentiary hearing only as to the purposes "which the lower courts have determined to be legitimate." App to Juris St, at 2a. Thus, for this Court to resolve whether Alabama may continue to collect the tax, it would have to decide de novo whether any of the other purposes was legitimate, and also whether the statute's classification bore a rational relationship to any of these purposes—all this, on a record that the Court of Civil Appeals deemed inadequate.

6. We find the other cases on which the State relies also to be inapposite to this inquiry. Bacchus Imports, Pike, and Parker discussed whether promotion of local industry is a valid state purpose under the Commerce Clause. The Commerce Clause, unlike the Equal Protection Clause, is integrally concerned with whether a state purpose implicates local or national interests. The Equal Protection Clause, in contrast, is concerned with whether a state purpose is impermissibly discriminatory; whether the discrimination involves local or other interests is not central to the inquiry to be made. Thus, the fact that promotion of local industry is a legitimate state interest in the Commerce Clause context says nothing about its validity under equal protection analysis. See infra, at ——-——, 84 L Ed 2d 760–761.

Moreover, neither Bacchus nor Pike ruled that a State's ability to promote domestic industry was unlimited, even under the Commerce Clause. Thus, in Bacchus, although we observed as a general matter that "a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry," 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984), we held

taxes. See Bacchus Dias, 468 US ——, 82 104 S Ct 3049 (1984); Church, Inc., 397 US 2d 174, 90 S Ct 844 Stores of Ohio, Inc. v Parker v Brown, 317 Ed 315, 63 S Ct 307 hael v Southern Coal 01 US 495, 81 L Ed : 868, 109 ALR 1327 of Education v Illinois, 51 L Ed 314, 27 S Ct

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fornia's purpose in enacting the retaliatory tax—to promote the *interstate* business of domestic insurers by deterring other States from enacting discriminatory or excessive taxes—was a legitimate one. 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070. In contrast, Alabama asks us to approve its purpose of promoting the business of its domestic insurers in Alabama by penalizing foreign insurers who also want to do business in the State. Alabama has made no attempt, as California did, to influence the policies of other States in order to enhance its domestic companies' ability to operate interstate; rather, it has erected barriers to foreign companies who wish to do interstate business in order to improve its domestic insurers' ability to compete at home.

[2] The crucial distinction between the two cases lies in the fact that Alabama's aim to promote domestic industry is purely and completely discriminatory, designed only to favor domestic industry within the State, no matter what the cost to foreign corporations also seeking to do business there. Alabama's purpose, contrary to California's, constitutes the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent. As Justice Brennan, joined by Justice Harlan, observed in his concurrence in Allied Stores of Ohio, Inc. v Bowers, 358 US 522, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), this Court always has held that the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening "the residents of other state members of our federation." Id., at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Unlike the retaliatory tax involved in Western & Southern, which only burdens residents of a State that imposes its own discriminatory tax on outsiders, the domestic preference tax gives the "home team" an advantage by burdening *all* foreign corporations seeking to do business within the State, no matter what they or their States do.

The validity of the view that a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence is confirmed by a long line of this Court's cases so holding. WHYY, Inc v Glassboro, 393 US, at 119–120, 21 L Ed 2d 242, 89 S Ct 286; Wheeling Steel Corp. v Glander, 337 US, at 571, 93 L Ed 1544, 69 S Ct 1291, 40

that in so doing, a State may not constitutionally impose a discriminatory burden upon the business of other States, merely to protect and promote local business, id., at ——, 82 L Ed 2d 200, 104 S Ct 3049. Accord Armco Inc. v Hardesty, 467 US ——, ——, 81 L Ed 2d 540, 104 S Ct 2620 (1984). Likewise, in Pike, the Court held that the state statute promoting a legitimate local interest must "regulat[e] evenhandedly." 397 US, at 142, 25 L Ed 2d 174, 90 S Ct 844.

Other cases cited by the State are simply irrelevant to the legitimacy of promoting local business at all. Carmichael relates primarily to the validity of a state unemployment compensation scheme, and Board of Education deals with the State's ability to regulate matters relating to probate. Bowers is the only one of the State's cases that involves the validity under the Equal Protection Clause of a tax that discriminates on the basis of residence of domestic *versus* foreign corporations. That case does little, however, to support the State's contention that promotion of domestic business is a legitimate state purpose. It was concerned with encouraging nonresidents—who are not competitors of residents—to build warehouses within the State. See infra, at ——-——, 84 L Ed 2d 760.

Ohio Ops 101, 55 Ohio L Abs 305; Hanover Fire Ins. Co. v Harding, 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713; Southern R. Co. v Greene, 216 US, at 417, 54 L Ed 536, 30 S Ct 287. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965) (per curiam). As the Court stated in Hanover Fire Ins. Co., with respect to general tax burdens on business, "the foreign corporation stands equal, and is to be classified with domestic corporations of the same kind." 272 US, at 511, 71 L Ed 372, 47 S Ct 179, 49 ALR 713. In all of these cases, the discriminatory tax was imposed by the State on foreign corporations doing business within the State solely because of their residence, presumably to promote domestic industry within the State.[7] In relying on these cases and rejecting Lincoln in Western & Southern, we reaffirmed the continuing viability of the Equal Protection Clause as a means of challenging a statute that seeks to benefit domestic industry within the State only by grossly discriminating against foreign competitors.

The State contends that Allied Stores of Ohio, Inc. v Bowers, supra, shows that this principle has not always held true. In that case, a domestic merchandiser challenged on equal protection grounds an Ohio statute that exempted foreign corporations from a tax on the value of merchandise held for storage within the State. The Court upheld the tax, finding that the purpose of encouraging foreign companies to build warehouses within Ohio was a legitimate state purpose. The State contends that this case shows that promotion of domestic business is a legitimate state purpose under equal protection analysis.

[1c] We disagree with the State's interpretation of Allied Stores and find that the case is not inconsistent with the other cases on which we rely. We agree with the holding of Allied Stores that a State's goal of bringing in new business is legitimate and often admirable. Allied Stores does not, however, hold that promotion of domestic business by *discriminating* against foreign corporations is legitimate. The case involves instead a statute that *encourages nonresidents*—who are not competitors of residents—to build warehouses within the State. The discriminatory tax involved did not favor residents by burdening outsiders; rather, it granted the nonresident businesses an exemption that residents did not share. Since the foreign and domestic companies involved were not competing to provide warehousing services, granting the former an exemption did not even directly affect adversely the domestic companies subject to the tax. On its facts, then, Allied Stores is not inconsistent with our holding here that promotion of domestic business within a State, by discriminating against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose. See 358 US, at 532–533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (Brennan, J., concurring).

(2)

[3] The State argues nonetheless

7. Although the promotion of domestic business was not a purpose advanced by the States in support of their taxes in these cases, such promotion is logically the primary reason for enacting discriminatory taxes such as those at issue there.

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that it is impermissible to view a discriminatory tax such as the one at issue here as violative of the Equal Protection Clause. This approach, it contends, amounts to no more than "Commerce Clause rhetoric in equal protection clothing." Brief for Appellee Ward 22. The State maintains that because Congress, in enacting the McCarran-Ferguson Act, 15 USC §§ 1011–1015 [15 USCS §§ 1011–1015], intended to authorize States to impose taxes that burden interstate commerce in the insurance field, the tax at issue here must stand. Our concerns are much more fundamental than as characterized by the State. Although the McCarran-Ferguson Act exempts the insurance industry from Commerce Clause restrictions, it does not purport to limit in any way the applicability of the Equal Protection Clause. As noted above, our opinion in Western & Southern expressly reaffirmed the viability of equal protection restraints on discriminatory taxes in the insurance context.[8]

[4] Moreover, the State's view ignores the differences between Commerce Clause and equal protection analysis and the consequent different purposes those two constitutional provisions serve. Under Commerce Clause analysis, the State's interest, if legitimate, is weighed against the burden the state law would impose on interstate commerce. In the equal protection context, however, if the State's purpose is found to be legitimate, the state law stands as long as the burden it imposes is found to be rationally related to that purpose, a relationship that is not difficult to establish. See Western & Southern, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070 (if purpose is legitimate, equal protection challenge may not prevail so long as the question of rational relationship is "'at least debatable'" (quoting United States v Carolene Products Co. 304 US 144, 154, 82 L Ed 1234, 58 S Ct 778 (1938)).

The two constitutional provisions perform different functions in the analysis of the permissible scope of a State's power—one protects interstate commerce, and the other protects persons[9] from unconstitutional discrimination by the States. See Bethlehem Motors Corp. v Flynt, 256 US 421, 423–424, 65 L Ed 1029, 41 S Ct 571 (1921). The effect of the statute at issue here is to place a discriminatory tax burden on foreign insurers who desire to do business within the State, thereby also incidentally placing a burden on interstate commerce. Equal protection restraints are applicable even though the *effect* of the discrimination in this case is similar to the type of burden with which the Commerce Clause also would be concerned. We reaffirmed the importance of the Equal Protection Clause in the in-

8. In fact, as we noted in Western & Southern, the legislative history of the McCarran-Ferguson Act reveals that the Act was Congress's response only to United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162 (1944), and that Congress did not intend thereby to give the States any power to tax or regulate the insurance industry other than what they had previously possessed. Thus Congress expressly left undisturbed this Court's decisions holding that the Equal Protection Clause places limits on a State's ability to tax out-of-state corporations. See 451 US, at 655, n 6, 68 L Ed 2d 514, 101 S Ct 2070.

9. It is well established that a corporation is a "person" within the meaning of the Fourteenth Amendment. E.g., Western & Southern, supra, at 660, n 12, 68 L Ed 2d 514, 101 S Ct 2070.

surance context in Western & Southern and see no reason now for reassessing that view.

[1d] In whatever light the State's position is cast, acceptance of its contention that promotion of domestic industry is always a legitimate state purpose under equal protection analysis would eviscerate the Equal Protection Clause in this context. A State's natural inclination frequently would be to prefer domestic business over foreign. If we accept the State's view here, then any discriminatory tax would be valid if the State could show it reasonably was intended to benefit domestic business.[10] A discriminatory tax would stand or fall depending primarily on how a State framed its purpose—as benefiting one group or as harming another. This is a distinction without a difference, and one that we rejected last term in an analogous context arising under the Commerce Clause. Bacchus Imports, Ltd. v Dias, 468 US, at ——, 82 L Ed 2d 200, 104 S Ct 3049. See n 6, supra. We hold that under the circumstances of this case, promotion of domestic business by discriminating against nonresident competitors is not a legitimate state purpose.

B

[1e] The second purpose found by the courts below to be legitimate was the encouragement of capital investment in the Alabama assets and governmental securities specified in the statute. We do not agree that this is a legitimate state purpose when furthered by discrimination. Domestic insurers remain entitled to the more favorable rate of tax regardless of whether they invest in Alabama assets. Moreover, the investment incentive provision of the Alabama statute does not enable foreign insurance companies to eliminate the discriminatory effect of the statute. No matter how much of their assets they invest in Alabama, foreign insurance companies are still required to pay a higher gross premiums tax than domestic companies. The State's investment incentive provision therefore does not cure, but reaffirms, the statute's impermissible classification based solely on residence. We hold that encouraging investment in Alabama assets and securities in this plainly discriminatory manner serves no legitimate state purpose.

IV

[1f] We conclude that neither of the two purposes furthered by the Alabama domestic preference tax statute and addressed by the Circuit Court for Montgomery County, see supra, at 3, is legitimate under the Equal Protection Clause to justify the imposition of the discriminatory tax at issue here. The judgment of the Alabama Supreme Court accordingly is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

10. Indeed, under the State's analysis, *any* discrimination subject to the rational relation level of scrutiny could be justified simply on the ground that it favored one group at the expense of another. This case does not involve or question, as the dissent suggests, post, at ——, 84 L Ed 2d 774, the broad authority of a State to promote and regulate its own economy. We hold only that such regulation may not be accomplished by imposing discriminatorily higher taxes on nonresident corporations solely because they are nonresidents.

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Justice **O'Connor,** with whom Justice Brennan, Justice Marshall and Justice **Rehnquist** join, dissenting.

This case presents a simple question: Is it legitimate for a state to use its taxing power to promote a domestic insurance industry and to encourage capital investment within its borders? In a holding that can only be characterized as astonishing, the Court determines that these purposes are illegitimate. This holding is unsupported by precedent and subtly distorts the constitutional balance, threatening the freedom of both state and federal legislative bodies to fashion appropriate classifications in economic legislation. Because I disagree with both the Court's method of analysis and its conclusion, I respectfully dissent.

I

Alabama's legislature has chosen to impose a higher tax on out-of-state insurance companies and insurance companies incorporated in Alabama that do not maintain their principal place of business or invest assets within the State. Ala Code § 27-4-4 et seq. (1975). This tax seeks to promote both a domestic insurance industry and capital investment in Alabama. App to Juris Statement 20a-21a. Metropolitan Life Insurance Company, joined by many other out-of-state insurers, alleges that this discrimination violates its rights under the Equal Protection Clause of the Fourteenth Amendment, which provides that a State shall not "deny to any person within its jurisdiction the equal protection of the laws." Appellants rely on the Equal Protection Clause because, as corporations, they are not "citizens" protected by the privileges and immunities clauses of the Constitution. Hemphill v Orloff, 277 US 537, 548–550, 72 L Ed 978, 48 S Ct 577 (1928). Similarly, they cannot claim Commerce Clause protection because Congress in the McCarran-Ferguson Act, 59 Stat 33, 15 USC § 1011 et seq. [15 USCS §§ 1011 et seq.], explicitly suspended Commerce Clause restraints on state taxation of insurance and placed insurance regulation firmly within the purview of the several States. Western & Southern Life Ins. Co. v State Board of Equalization, 451 US 648, 655, 68 L Ed 2d 514, 101 S Ct 2070 (1981).

Our precedents impose a heavy burden on those who challenge local economic regulation solely on Equal Protection Clause grounds. In this context, our long-established jurisprudence requires us to defer to a legislature's judgment if the classification is rationally related to a legitimate state purpose. Yet the Court evades this careful framework for analysis, melding the proper two-step inquiry regarding the State's purpose and the classification's relationship to that purpose into a single unarticulated judgment. This tactic enables the Court to characterize State goals that have been legitimated by Congress itself as improper solely because it disagrees with the concededly rational means of differential taxation selected by the legislature. This unorthodox approach leads to further error. The Court gives only the most cursory attention to the factual and legal bases supporting the State's purposes and ignores both precedent and significant evidence in the record establishing their legitimacy. Most trou-

bling, the Court discovers in the Equal Protection Clause an implied prohibition against classifications whose purpose is to give the "home team" an advantage over interstate competitors even where Congress has authorized such advantages. Ante, at ——, 84 L Ed 2d 759.

The Court overlooks the unequivocal language of our prior decisions. "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." New Orleans v Dukes, 427 US 297, 303, 49 L Ed 2d 511, 96 S Ct 2513 (1976). See, e.g., Lehnhausen v Lake Shore Auto Parts Co. 410 US 356, 35 L Ed 2d 351, 93 S Ct 1001 (1973). Judicial deference is strongest where a tax classification is alleged to infringe the right to equal protection. "[I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification." Madden v Kentucky, 309 US 83, 88, 84 L Ed 590, 60 S Ct 406, 125 ALR 1383 (1940). "Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one or to restrict or suppress the other." Carmichael v Southern Coal & Coke Co. 301 US 495, 512, 81 L Ed 1245, 57 S Ct 868, 109 ALR 1327 (1937) (citations omitted). As the Court emphatically noted in Allied Stores of Ohio, Inc. v Bowers:

> "[I]t has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment. Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary or violative of the Equal Protection Clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it." 358 US 522, 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959) (citations omitted).

See also Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 674, 68 L Ed 2d 514, 101 S Ct 2070; Minnesota v Clover Leaf Creamery Co. 449 US 456, 464, 66 L Ed 2d 659, 101 S Ct 715 (1981).

Appellants waived their right to an evidentiary hearing and conceded that Alabama's classification was rationally related to its purposes of encouraging the formation of domestic insurance companies and bringing needed services and capital to the State. Thus the only issue in dispute is the legitimacy of these purposes. Yet it is obviously legitimate for a State to seek to promote local business and attract capital investment, and surely those purposes animate a wide range of legislation in all 50 States.

The majority evades the obvious by refusing to acknowledge the factual background bearing on the legitimacy of the State's purpose or to address the many collateral public benefits advanced by Alabama. Instead, the Court dismisses the

State's arguments by merely stating that they were not ruled on by the courts below. Ante, at ——, n 5, 84 L Ed 2d 758. In point of fact, the full range of purposes documented before this Court was also argued and documented before the Alabama Circuit Court. See Record, Vols VI, VII, VIII. That court found *"at least* two purposes, in addition to raising revenue: (1) encouraging the formation of new insurance companies in Alabama, and (2) encouraging capital investment by foreign insurance companies in the Alabama assets and governmental securities set forth in the statute." App to Juris Statement 20a-21a (emphasis added). As appellants concede, these purposes are simply a step in achieving the "larger set of purposes [whose] premise . . . is that domestic insurance companies, on the whole, benefit the state in ways which foreign companies do not." Brief for Appellants 31.

In any event, it is settled law that the appellee may assert any argument in support of the judgment in his favor, regardless of whether it was relied upon by the court below. Dandridge v Williams, 397 US 471, 475, n 6, 25 L Ed 2d 491, 90 S Ct 1153 (1970). The Court's failure actually to resolve whether Alabama may continue to collect its tax, see ante, at ——, n 10, 84 L Ed 2d 762, is all the more baffling, since appellants took the exceptional step of conceding the factual issues to assure a speedy resolution of numerous pending lawsuits disruptive of industry stability. See Brief for State of Alaska et al. as Amici Curiae 1–2. Our precedents do not condone such a miserly approach to review of statutes adjusting economic burdens. See, e.g. Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312; McGowan v Maryland, 366 US 420, 425, 6 L Ed 2d 393, 81 S Ct 1101, 17 Ohio Ops 2d 151 (1961); United States v Carolene Products Co. 304 US 144, 152–153, 82 L Ed 1234, 58 S Ct 778 (1938); Borden's Farm Products Co. v Baldwin, 293 US 194, 209, 79 L Ed 281, 55 S Ct 187 (1934). The Court had consistently reviewed the validity of such statutes based on whatever "may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso." Allied Stores of Ohio, Inc. v Bowers, supra, at 528–529, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. It is to that inquiry that I now turn.

Alabama claims that its insurance tax, in addition to raising revenue and promoting investment, promotes the formation of new domestic insurance companies and enables them to compete with the many large multistate insurers that currently occupy some 75% to 85% of the Alabama insurance market. App 80. Economic studies submitted by the State document differences between the two classes of insurers that are directly relevant to the well-being of Alabama's citizens. See id., at 46–129. Foreign insurers typically concentrate on affluent, high volume, urban markets and offer standardized national policies. In contrast, domestic insurers such as intervenors American Educators Life Insurance Company and Booker T. Washington Life Insurance Company are more likely to serve Alabama's rural areas, and to write low-cost industrial and burial policies not offered by the larger

national companies.[1] Additionally, Alabama argues persuasively that it can more readily regulate domestic insurers and more effectively safeguard their solvency than that of insurers domiciled and having their principal places of business in other states.

Ignoring these policy considerations, the Court insists that Alabama seeks only to benefit local business, a purpose the Court labels invidious. Yet if the classification chosen by the State can be shown *actually* to promote the public welfare, this is strong evidence of a legitimate State purpose. See Note, Taxing Out-of-State Corporations After Western & Southern: An Equal Protection Analysis, 34 Stan L Rev 877, 896 (1982). In this regard, Justice Frankfurter wisely observed that:

> "[T]he great divide in the [equal protection] decisions lies in the difference between emphasizing the actualities or the abstractions of legislation.
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> "To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." Morey v Doud, 354 US 457, 472, 1 L Ed 2d 1485, 77 S Ct 1344 (1957) (Frankfurter, J., dissenting).

A thoughtful look at the "actualities of [this] legislation" compels the conclusion that the State's goals are legitimate by any test.

II

The policy of favoring local concerns in State regulation and taxation of insurance, which the majority condemns as illegitimate, is not merely a recent invention of the States. The States initiated regulation of the business of insurance as early as 1851. See Report of the Comptroller General, Issues and Needed Improvements in State Regulation of the Insurance Business, GAO Report B-192813, p 5 (Oct. 9, 1979) (GAO Report). In 1944, however, this Court overruled a long line of cases holding that the business of insurance was an intrastate activity beyond the scope of the Commerce Clause. United States v South-Eastern Underwriters Assn. 322 US 533, 88 L Ed 1440, 64 S Ct 1162. "The decision provoked widespread concern that the States would no longer be able to engage in taxation and effective regulation of the insurance industry. Congress moved quickly, enacting the McCarran-Ferguson Act within a year of the decision in South-Eastern Underwriters." St. Paul Fire & Marine Insurance Co. v Barry, 438 US 531, 539, 57 L Ed 2d 932, 98 S Ct 2923 (1978). See H R Rep No 143, 79th Cong, 1st Sess, 2 (1945); 91 Cong Rec 479–480 (1945) (remarks of Sen. Ferguson); id., at 487 (remarks of Sen. Ellender).

The drafters of the Act were sensitive to the same concerns Alabama now vainly seeks to bring to this Court's attention: the greater responsiveness of local insurance com-

1. "Industrial insurance" is the trade term for a low face-value policy typically sold door-to-door and maintained through home collection of monthly or weekly premiums. Alabama currently has more industrial insurance in force than any other State. Burial insurance is another form of insurance popular in rural Alabama that is offered exclusively by local insurers. By contrast, Metropolitan Life, like many multistate insurers, has discontinued writing even whole-life policies with face values below $15,000. App 173–176.

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panies to local conditions, the different insurance needs of rural and industrial states, the special advantages and constraints of state-by-state regulation, and the importance of insurance license fees and taxes as a major source of State revenues. See, e.g., Hearings on S 1362 before the Senate Subcommittee on the Judiciary, 78th Cong, 1st Sess, 3, 10, 16–17 (1943) (letter of Gov. Sharpe of South Dakota stressing role of domestic insurers that provide "poor man" and rural policies adapted to farming concerns); 90 Cong Rec 6564 (1944) (remarks of Rep Vorhis). "As this Court observed shortly afterward, '[o]bviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance.' Prudential Insurance Co. v Benjamin, 328 US 408, 429 [90 L Ed 1342, 66 S Ct 1142, 164 ALR 476] (1946)." St. Paul Fire & Marine Insurance Co. v Barry, supra, at 539, 57 L Ed 2d 932, 98 S Ct 2923.

The majority opinion correctly notes that Congress did not intend the McCarran-Ferguson Act to give the States any power to tax or regulate the insurance industry other than they already possessed. But the legislative history cited by the majority, ante, at ——, n 7, 84 L Ed 2d 760, relates not to differential taxation but to decisions of this Court that had invalidated State taxes on contracts of insurance entered into outside the State's jurisdiction. See H R Rep No. 143, 79th Cong, 1st Sess, 3 (1945). The Court fails to mention that at the time the Act was under consideration the taxing schemes of Alabama, Arizona, Arkansas, Illinois, Kansas, Kentucky, Maine, Michigan, Mississippi, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Washington, and Wisconsin all incorporated tax differentials favoring domestic insurers. See App 377–379.

Any doubt that Congress' intent encompassed taxes that discriminate in favor of local insurers was dispelled in Prudential Insurance Co. v Benjamin. Cf. Note, Congressional Consent to Discriminatory State Legislation, 45 Colum L Rev 927 (1945) (discussing the issues of constitutional power posed by the Act). There a foreign insurer challenged a tax on annual gross premiums imposed on foreign but not domestic insurers as a condition for renewal of its license to do business. Congress, the foreign insurer argued, was powerless to sanction the tax at issue because "the commerce clause 'by its own force' forbids discriminatory state taxation." Prudential Insurance Co. v Benjamin, 328 US 408, 426, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946). A unanimous Court rejected the argument that exacting a 3% gross premium tax from foreign insurers was invalid as "somehow technically of an inherently discriminatory character." Id., at 432, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. The Court concluded that the McCarran-Ferguson Act's effect was "clearly to sustain the exaction and that this can be done without violating *any* constitutional provision." Id., at 427, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (emphasis added).

Benjamin expressly noted that nothing in the Equal Protection Clause forbade the State to enact a law such as the tax at issue. Id., at 438, and n 50, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. In this regard the Court relied in part on Hanover Fire Ins. Co. v Harding, 272 US 494,

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71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926), a decision that explicitly recognized that differential taxation of revenues of foreign corporations may not be arbitrary or without reasonable basis. See Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 664, n 17, 68 L Ed 2d 514, 101 S Ct 2070. The Commerce Clause, Benjamin emphasized, is not a "one way street" but encompasses congressional power "to discriminate against interstate commerce and in favor of local trade," "subject only to the restrictions placed upon its authority by other constitutional provisions." 328 US, at 434, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476. Where the States and Congress have acted in concert to effect a policy favoring local concerns, their action must be upheld unless it unequivocally exceeds "some explicit and compelling limitation imposed by a constitutional provision or provisions designed and intended to outlaw the action taken entirely from our constitutional framework." Id., at 435–436, 90 L Ed 2d 1342, 66 S Ct 1142, 164 ALR 476.

Our more recent decision in Western & Southern in no way undermines the force of the analysis in Benjamin. Western & Southern confirms that differential premium taxes are not immune from review as "privilege" taxes, but it also teaches that the Constitution requires only that discrimination between domestic and foreign corporations bear a rational relationship to a legitimate state purpose. Benjamin clearly recognized that differentially taxing foreign insurers to promote a local insurance industry was a legitimate State purpose completely consonant with Congress' purpose in the McCarran-Ferguson Act.

The contemporary realities of insurance regulation and taxation continue to justify a uniquely local perspective. Insurance regulation and taxation must serve local social policies including assuring the solvency and reliability of companies doing business in the State and providing special protection for those who might be denied insurance in a free market, such as the urban poor, small businesses and family farms. GAO Report 10–13; State Insurance Regulation, Hearing before the Subcommittee on Antitrust, Monopoly and Business Rights of the Senate Committee on the Judiciary, 96th Cong, 1st Sess, 19–21 (1979) (hereinafter Insurance Regulation). Currently at least 28 of the 50 States employ a combination of investment incentives and differential premium taxes favoring domestic insurers to encourage local investment of policyholders' premiums and to partially shelter smaller domestic insurers from competition with the large multistate companies. App 66.

State insurance commissions vary widely in manpower and expertise. GAO Report 14. In practice, the State of incorporation exercises primary oversight of the solvency of its insurers. Id., at 36–38. See generally Dunne, Risk, Reality, and Reason in Financial Services Deregulation: A State Legislative Perspective, 2 J Ins Reg 342 (1984) (prepared by the Conference of Insurance Legislators). See, e.g. Ala Code § 27-2-21 (Supp 1984); Ill Rev Stat, ch 73, ¶ 745 (1983); (power to examine books of domestic insurers); Ala Code § 27-32-1 et seq. (1975); Ill Rev Stat, ch 73, ¶¶ 799, 800 (1983) (commissioner's authority to assume control to prevent insolvency); see generally Wis Stat Ann, ch 620, Prefatory Commit-

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tee Comment—1971, pp 536, 546 (1980) (noting lesser control over nondomestic's financial operations). Even the State-of-incorporation's efforts to regulate a multistate insurer may be seriously hampered by the difficulty of gaining access to records and assets in forty-nine other States. Dunne, supra, at 356. Thus the security of Alabama's citizens who purchase insurance from out-of-state companies may depend in part on the diligence of another State's insurance commissioner, over whom Alabama has no authority and limited influence. In the event of financial failure of a foreign insurer the State may have difficulty levying on out-of-state assets. See, e.g., South Carolina ex rel Phoenix Life Ins. Co. v McMaster, 237 US 63, 73, 59 L Ed 839, 35 S Ct 504 (1915). Since each State maintains its own insurance guarantee fund, the domestic insurers of the States where a multistate insurer is admitted to do business may ultimately be forced to absorb local policyholders' losses. Dunne, supra, at 372–373.

Many have sharply criticized this piecemeal system, see, e.g., GAO Report i-iii; Schmalz, The Insurance Exemption: Can it be Modified Successfully?, 48 ABA Antitrust L J 579 (1979), but Congress has resisted suggestions that it modify the McCarran-Ferguson Act to permit greater federal intervention. See GAO Report 1; Insurance Regulation, supra. This Court cannot ignore the exigencies of contemporary insurance regulation outlined above simply because it might prefer uniform federal regulation. Given the distinctions in ease of regulation and services rendered by foreign and domestic insurers, we cannot dismiss as illegitimate the State's goal of promoting a healthy local insurance industry sensitive to regional differences and composed of companies that agree to subordinate themselves to the Alabama Commissioner's control and to maintain a principal place of business within Alabama's borders. Though economists might dispute the efficacy of Alabama's tax, "[p]arties challenging legislation under the Equal Protection Clause cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Western & Southern Life Ins. Co. v State Board of Equalization, 451 US, at 674, 68 L Ed 2d 514, 101 S Ct 2070, quoting United States v Carolene Products Co. 304 US, at 154, 82 L Ed 1234, 58 S Ct 778. Moreover, appellants waived their right to challenge the tax measure's effectiveness.

III

Despite abundant evidence of a legitimate state purpose, the majority condemns Alabama's tax as "purely and completely discriminatory" and "the very sort of parochial discrimination that the Equal Protection Clause was intended to prevent." Ante, at ——, 84 L Ed 2d 759. Apparently, the majority views any favoritism of domestic commercial entities as inherently suspect. The majority ignores a long line of our decisions. In the past this Court has not hesitated to apply the rational basis test to regulatory classifications that distinguish between domestic and out-of-state corporations or burden foreign interests to protect local concerns. The Court has always recognized that there are certain legitimate restrictions or policies in which, "[b]y definition, dis-

crimination against nonresidents would inhere." Arlington County Board v Richards, 434 US 5, 7, 54 L Ed 2d 4, 98 S Ct 24 (1977) (per curiam). For example, where state of incorporation or principal place of business affect the State's ability to regulate or exercise its jurisdiction, a State may validly discriminate between foreign and domestic entities. See G. D. Searle & Co. v Cohn, 455 US 404, 71 L Ed 2d 250, 102 S Ct 1137 (1982) (difficulty of obtaining jurisdiction over nonresident corporation provides a rational basis for excepting such corporations from statute of limitations); Metropolitan Casualty Ins. Co. v Brownell, 294 US 580, 79 L Ed 1070, 55 S Ct 538 (1935) (domicile of insurer relevant to statute of limitations as foreign insurers offices and funds generally located outside state); Board of Education v Illinois, 203 US 553, 562, 51 L Ed 314, 27 S Ct 171 (1906) (State's greater control over domestic than foreign nonprofit corporations justifies discriminatory tax).

A State may use its taxing power to entice useful foreign industry, see Allied Stores of Ohio, Inc. v Bowers, 358 US, at 528, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312, or to make residence within its boundaries more attractive, see Zobel v Williams, 457 US 55, 67-68, 72 L Ed 2d 672, 102 S Ct 2309 (1982) (Brennan, J., concurring). Though such measures might run afoul of the Commerce Clause, "[n]o one disputes that a State may enact laws pursuant to its police powers that have the purpose and effect of encouraging domestic industry." Bacchus Imports, Ltd. v Dias, 468 US ——, ——, 82 L Ed 2d 200, 104 S Ct 3049 (1984); Western & Southern Life Ins. Co. v State Board of Equalization, supra, at 668, 68 L Ed 2d 514, 101 S Ct 2070. Cf. Edgar v MITE Corp. 457 US 624, 646, 73 L Ed 2d 269, 102 S Ct 2629 (1982) (Powell, J. concurring in part) (noting State's interest in protecting regionally based corporations from acquisition by foreign corporations).

Moreover, the Court has held in the dormant commerce clause context that a State may provide subsidies or rebates to domestic but not to foreign enterprises if it rationally believes that the former contribute to the State's welfare in ways that the latter do not. Hughes v Alexandria Scrap Corp. 426 US 794, 49 L Ed 2d 220, 96 S Ct 2488 (1976). Although the Court has divided on the circumstances in which the dormant Commerce Clause allows such measures, see id., at 817, 49 L Ed 2d 220, 96 S Ct 2488 (Brennan, J., dissenting), surely there can be no dispute that they are constitutionally permitted where Congress itself has affirmatively authorized the States to promote local business concerns free of Commerce Clause constraints. Neither the Commerce Clause nor the Equal Protection Clause bars Congress from enacting or authorizing the States to enact legislation to protect industry in one State "from disadvantageous competition" with less stringently regulated businesses in other States. Hodel v Indiana, 452 US 314, 329, 69 L Ed 2d 40, 101 S Ct 2376 (1981). See also Western & Southern, supra, at 669, 68 L Ed 2d 514, 101 S Ct 2070 (with congressional approval, States may promote domestic insurers by seeking to deter other States from enacting discriminatory or excessive taxes).

The majority's attempts to distinguish these precedents are unconvincing. First the majority suggests

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that a State purpose might be legitimate for purposes of the Commerce Clause but somehow illegitimate for purposes of the Equal Protection Clause. No basis is advanced for this theory because no basis exists. The test of a legitimate State purpose must be whether it addresses valid State concerns. To suggest that the purpose's legitimacy, chameleon-like, changes according to the constitutional clause cited in the complaint is merely another pretext to escape the clear message of this Court's precedents.

Next the majority asserts that "a State may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence," citing cases that rejected discriminatory ad valorem property taxes, defended as taxes on the "privilege" of doing business. Ante, at ——, 84 L Ed 2d 759–760. See, e.g., WHYY, Inc. v Glassboro, 393 US 117, 21 L Ed 2d 242, 89 S Ct 286 (1968); Wheeling Steel Corp. v Glander, 337 US 562, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 (1949); Hanover Fire Ins. Co. v Harding, 272 US 494, 71 L Ed 372, 47 S Ct 179, 49 ALR 713 (1926); Southern R. Co. v Greene, 216 US 400, 54 L Ed 536, 30 S Ct 287 (1910). These decisions were addressed in Western & Southern, and the classifications were characterized as impermissibly discriminatory because they did not "'rest on differences pertinent to the subject in respect of which the classification is made.'" 451 US, at 668, 68 L Ed 2d 514, 101 S Ct 2070, quoting Power Manufacturing Co. v Saunders, 274 US 490, 494, 71 L Ed 1165, 47 S Ct 678 (1927). As the majority concedes, none of these decisions intimates that the tax statutes at issue in the decisions rested on relevant differences between domestic and foreign corporations or had purposes other than the raising of revenue at the out-of-state corporations' expense.

In fact, the Court noted in several of these opinions that foreign corporations *may* validly be taxed at a higher rate if the classification is based on some relevant distinction. No such distinction, however, had been demonstrated or even alleged. See WHYY, Inc. v Glassboro, supra, at 120, 21 L Ed 2d 242, 89 S Ct 286 ("This is not a case in which the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as do domestic nonprofit corporations"); Wheeling Steel Corp. v Glander, 337 US, at 572, 93 L Ed 1544, 69 S Ct 1291, 40 Ohio Ops 101, 55 Ohio L Abs 305 ("the inequality is not because of the slightest difference in Ohio's relation to the decisive transaction"); Southern R. Co. v Greene, 216 US, at 416–417, 54 L Ed 536, 30 S Ct 287 (parties conceded that the business of the foreign and domestic corporations was precisely the same).[2] Lack-

2. The only cited authority that arguably addressed the issue raised in the instant case is a per curiam reversal and remand without opinion of a decision upholding a discriminatory ad valorem tax on a foreign insurer's fixtures and other tangible property. See Reserve Life Ins. Co. v Bowers, 380 US 258, 13 L Ed 2d 959, 85 S Ct 951 (1965). A reversal and remand is more enigmatic even than a summary affirmance, which has precedential value only as to "the precise issues necessarily presented and necessarily decided." Mandel v Bradley, 432 US 173, 176, 53 L Ed 2d 199, 97 S Ct 2238 (1977). Decisions without opinion may not be equated with "an opinion by this Court treating the question on the merits." See Edelman v Jordan, 415 US 651, 670–671, 39 L Ed 2d 662, 94 S Ct 1347 (1974).

ing the threshhold requirement of an articulated distinction relevant to an asserted purpose, the classifications at issue in these decisions could never have survived rational basis scrutiny and no such analysis was even attempted. These precedents do not answer the question posed by this case: whether a legislature may adopt differential tax treatment of domestic and foreign insurers not simply to raise additional revenue but with the purpose of affecting the market as an "instrument of economic and social engineering"? P. Hartman, Federal Limitations on State and Local Taxation § 3:2 (1981). The majority's suggestion that these cases necessarily decided the issue before us, as promotion of domestic business is "logically the primary reason for enacting discriminatory taxes such as those at issue [in the cited cases]," is mere speculation. See ante, at ——, n 6, 84 L Ed 2d ——.

In treating these cases as apposite authority, the majority again closes its eyes to the facts. Alabama does *not* tax at a higher rate solely on the basis of residence; it taxes insurers, domestic as well as foreign, who do not maintain a principal place of business or substantial assets in Alabama, based on conceded distinctions in the contributions of these insurers *as a class* to the State's insurance objectives. The majority obscures the issue by observing that a given "foreign insurance company doing the same type and volume of business in Alabama as a domestic company" will pay a higher tax. Ante, at ——, 84 L Ed 2d 755. Under our precedents, tax classifications need merely "res[t] upon some reasonable consideration of difference or policy." Allied Stores of Ohio, Inc. v Bowers, supra, at 527, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Rational basis scrutiny does not require that the classification be mathematically precise or that *every* foreign insurer or *every* domestic company fit to perfection the general profile on which the classification is based. "[T]he Equal Protection Clause does not demand a surveyor's precision" in fashioning classifications. Hughes v Alexandria Scrap Corp, 426 US at 814, 49 L Ed 2d 220, 96 S Ct 2488.

IV

Because Alabama's classification bears a rational relationship to a legitimate purpose, our precedents demand that it be sustained. The Court avoids this clear directive by a remarkable evasive tactic. It simply declares that the ends of promoting a domestic insurance industry and attracting investments to the State *when accomplished through the means of discriminatory taxation* are not legitimate state purposes. This bold assertion marks a drastic and unfortunate departure from established equal protection doctrine. By collapsing the two prongs of the rational basis test into one, the Court arrives at the ultimate issue—whether the *means* are constitution—without ever engaging in the deferential inquiry we have adopted as a brake on judicial impeachment of legislative policy choices. In addition to unleashing an undisciplined form

"Indeed, upon fuller consideration of an issue under plenary review, the Court has not hesitated to discard a rule which a line of summary affirmances may appear to have established." Fusari v Steinberg, 419 US 379, 392, 42 L Ed 2d 521, 95 S Ct 533 (Burger, C. J., concurring) (1975).

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of Equal Protection Clause scrutiny, the Court's approach today has serious implications for the authority of Congress under the Commerce Clause. Groping for some basis for this radical departure from equal protection analysis, the Court draws heavily on Justice Brennan's concurring opinion in Allied Stores v Bowers, 358 US 522, 530, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959), as support for its argument that 'the Equal Protection Clause forbids a State to discriminate in favor of its own residents solely by burdening 'the residents of other states' members of our federation.'" Ante, at ——, 84 L Ed 2d 759, quoting 358 US, at 533, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312.

As noted in Western & Southern, Justice Brennan's interpretation has not been adopted by the Court, "which has subsequently required no more than a rational basis for discrimination by States against out-of-state interests in the context of equal protection litigation." 451 US, at 667, n 21, 68 L Ed 2d 514, 101 S Ct 2070. More importantly, to the extent the Court today purports to find in the Equal Protection Clause an instrument of federalism, it entirely misses the point of Justice Brennan's analysis. Justice Brennan reasoned that "[t]he Constitution furnishes the structure for the operation of the States with respect to the National Government and with respect to each other" and that "the Equal Protection Clause, among its other roles, operates to maintain this principle of federalism." 358 US, at 532, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312. Favoring local business as an end in itself might be "rational" but would be antithetical to federalism. Accepting arguendo this interpretation, we have shown that the measure at issue here does not benefit local business as an end in itself but serves important ulterior goals. Moreover, any federalism component of equal protection is fully vindicated where Congress has explicitly validated a parochial focus. Surely the Equal Protection Clause was not intended to supplant the Commerce Clause, foiling Congress' decision under its commerce powers to "affirmatively permit [some measure of] parochial favoritism" when necessary to a healthy federation. White v Massachusetts Council of Construction Employers, 460 US 204, ——, 75 L Ed 2d 1, 103 S Ct 1042, (1983). Such a view of the Equal Protection Clause cannot be reconciled with the McCarran-Ferguson Act and our decisions in Western & Southern and Benjamin.

Western & Southern established that a state may validly tax out-of-state corporations at a higher rate if its goal is to promote the ability of its domestic businesses to compete in *interstate* markets. Nevertheless, the Court today concludes that the converse policy is forbidden, striking down legislation whose purpose is to encourage the *intrastate* activities of local business concerns by permitting them to compete effectively on their home turf. In essence, the Court declares "We will excuse an unequal burden on foreign insurers if the State's purpose is to foster its domestic insurers activities in *other* States, but the same unequal burden will be unconstitutional when employed to further a policy that places a higher social value on the domestic insurer's *homestate* than interstate activities." This conclusion is

not drawn from the Commerce Clause, the textual source of constitutional restrictions on State interference with interstate competition. Reliance on the Commerce Clause would, of course, be unavailing here in view of the McCarran-Ferguson Act. Instead the Court engrafts its own economic values on the Equal Protection Clause. Beyond guarding against arbitrary or irrational discrimination, as interpreted by the Court today this Clause now prohibits the effectuation of economic policies, even where sanctioned by Congress, that elevate local concerns over interstate competition. Ante, at ——, 84 L Ed 2d ——. "But a constitution is not intended to embody a particular economic theory . . . . It is made for people of fundamentally differing views." Lochner v New York, 198 US 45, 75–76, 49 L Ed 937, 25 S Ct 539 (1905) (Holmes, J., dissenting). In the heyday of economic due process, Justice Holmes warned:

> "Courts should be careful not to extend [the express] prohibitions [of the Constitution] beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain." Tyson & Brother v Banton, 273 US 418, 445–446, 71 L Ed 718, 47 S Ct 426, 58 ALR 1236 (1927) (Holmes, J., dissenting, joined by Brandeis, J.) (emphasis added).

Ignoring the wisdom of this observation, the Court fashions its own brand of economic equal protection. In so doing, it supplants a legislative policy endorsed by both Congress and the individual States that explicitly sanctioned the very parochialism in regulation and taxation of insurance that the Court's decision holds illegitimate. This newly unveiled power of the Equal Protection Clause would come as a surprise to the Congress that passed the McCarran-Ferguson Act and the Court that sustained the Act against constitutional attack. In the McCarran-Ferguson Act, Congress expressly sanctioned such economic parochialism in the context of state regulation and taxation of insurance.

The doctrine adopted by the majority threatens the freedom not only of the States but also of the Federal Government to formulate economic policy. The dangers in discerning in the Equal Protection Clause a prohibition against barriers to interstate business irrespective of the Commerce Clause should be self-evident. The Commerce Clause is a flexible tool of economic policy that Congress may use as it sees fit, letting it lie dormant or invoking it to limit as well as promote the free flow of commerce. Doctrines of equal protection are constitutional limits that constrain the acts of federal and state legislatures alike. See, e.g., Califano v Webster, 430 US 313, 51 L Ed 2d 360, 97 S Ct 1192 (1977); Cohen, Congressional Power to Validate Unconstitutional State Laws: A Forgotten Solution to an Old Enigma, 35 Stan L Rev 387, 400–413 (1983). The Court's analysis casts a shadow over numerous congressional enactments that adopted as federal policy "the type of parochial favoritism" the Court today finds unconstitutional. White v Massachusetts Council of Construction Employers, 460 US, at ——, 75 L Ed 2d 1, 103 S Ct 1042. Contrary to the reasoning in Benjamin, the Court today indicates the Equal Protection Clause stands as an independent barrier if

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courts should determine that either Congress or a State has ventured the "wrong" direction down what has become, by judicial fiat, the one-way street of the Commerce Clause. Nothing in the Constitution or our past decisions supports forcing such an economic straight-jacket on the federal system.

V

Today's opinion charts an ominous course. I can only hope this unfortunate adventure away from the safety of our precedents will be an isolated episode. I had thought the Court had finally accepted that

> "the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines; in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment. New Orleans v Dukes, 427 US, at 303–304, 49 L Ed 2d 511, 96 S Ct 2513 (citations omitted).

Because I believe that the Alabama law at issue here serves legitimate State purposes through concededly rational means, and thus is neither invidious nor arbitrary, I would affirm the court below. I respectfully dissent.

Introduced: 1/31/86
Referred: Labor and Commerce
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

IN THE SENATE

SENATE BILL NO. 379

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the premium tax for domestic insurers."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 21.09.210(b) is amended to read:

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policy holders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are [SHALL] not [BE] included in the direct premium income and are [SHALL] not [BE] subject to tax. The tax must [SHALL] be paid to the director annually before April 1, and, except as provided in AS 21.69.390(c), is computed at the rate of

(1) [FOR DOMESTIC COMPANIES, 1 PER CENT;]

(2) for hospital and medical service corporations, 6 percent of their gross premiums, less claims paid;

(3) for companies other than [DOMESTIC AND] hospital and

medical service corporations, 3 percent.

* Sec. 2. This Act applies to the tax due by April 1, 1987 for the tax year beginning January 1, 1986 and to the tax due for subsequent tax years.

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

SB 379: Summary

Current law provides that domestic insurers pay a 1.5% premium tax on gross premiums, while nondomestic companies are required to pay 3%. A recent US Supreme Court case raised constitutional questions concerning the differential rate of these tax structures, and the Department of Law estimates that the state is exposed to a potential liability of approximately $14.5 million if this statute is not corrected.

BILL SUMMARY

Department of Commerce & Economic Development / POSITION PAPER

SB 379: "An Act relating to premium tax for domestic insurers."

This legislation eliminates the the tax preference currently granted to domestic insurance companies by standardizing the rate for domestic and nondomestic insurance companies.

AS 21.09.210(b) provides that domestic insurance companies pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, U.S., 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning constitutionality of the differential rate structure. This bill is proposed to correct the problem and not jeopardize our premium tax law. The bill has the further benefit of raising the total amount of premium tax collected. We are in favor of the legislation.

Loren H. Lounsbury, Commissioner
Department of Commerce & Economic Development

Date: 2/21/86

John L. George, Director of Insurance

Date:

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST SB 375

Bill/Resolution No. : 377-069-86
Title : Premium tax for domestic insurers.

Sponsor : _____
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev.
BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	1,142.3	1,200.4	1,260.0	1,323.4	1,389.6

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George
Division : Insurance
Phone : 465-2515
Date : 11/27/85

Approved by Commissioner : _____
Date : _____
Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS
ESTIMATED REFUNDS
1974 - 1984

	FOREIGN LIFE 3%	REFUND 1 - 1/2	P & C 3% Paid	REFUND 1 - 1/2	COMBINED TOTAL REFUND
1984					
1983	4,438,315	2,219,158	8,818,990	4,409,495	6,628,653
1982	3,707,727	1,853,864	7,729,096	3,864,548	5,718,412
1981	3,360,555	1,680,278	6,018,707	3,009,353	4,689,631
1980	3,178,322	1,589,161	4,843,581	2,421,790	4,010,951
1979	2,921,795	1,460,898	4,999,852	2,499,926	3,960,824
1978	2,912,980	1,456,490	5,050,350	2,525,175	3,981,665
1977	2,897,452	1,448,726	4,736,774	2,368,387	3,817,113
1976	2,329,917	1,164,958	3,910,087	1,955,043	3,120,001
1975	2,049,788	1,024,879	2,818,755	1,409,378	2,434,257
1974	1,586,349	793,175	2,235,308	1,117,604	1,910,779
	29,383,200	14,691,585	51,161,400	25,580,699	40,272,284
PLUS					
1984 Revised 2/24/86	4,861,829	2,430,914	9,644,148	4,822,074	7,252,988
	GRAND TOTAL				47,525,272

1RefundLGJOBS2/25/86a

REQUEST FOR REFUNDS RECEIVED TO DATE
FEBRUARY 1986

	YEAR(S)	TOTAL REQUEST
Horace Mann Insurance Company	1981	20,611
Horace Mann Life Insurance Company	1981	2,913
Union Mutual Stock Life	1984	8,500
	1983	5,006
States West Life Insurance Company	1982, 1983, 1984	13,380
Northern Life Insurance Company	1980 - 1985	27,198
Dairyland Insurance Company	1982 - 1984	8,294
Mutual Protective Insurance Company	1980 - 1984	1,138
Physicians Mutual Insurance Company	1980 - 1984	45,857
Medico Life Insurance Company	1979 - 1984	347
Motors Insurance Company	1979 - 1984	80,395
MIC Life Insurance Company	1983 - 1984	1,684
CIM Insurance Corporation	1979 - 1984	3,774
Philadelphia Life	1983 - 1984	809
Philadelphia American Life	1983 - 1984	386
American Bankers Insurance Company	1982	1,383
American Bankers Life Insurance Company	1982	13,201
Cudis Insurance	1982, 1983, 1984	28,692
CUNA Mutual Insurance Society	1982, 1983, 1984	40,463
Union Mutual Life Insurance Company	1983, 1984	1,118
Mutual Life Insurance Company of New York*	1984	84,170
Combined Insurance Company of America	1974 - 1984	112,380
Ranger Insurance	1982 and 1984	9,201
Industrial Indemnity	1981	70,472
Atlantic International Insurance Company	1984	3,249
Provident Mutual Life Insurance Company	1981 - 1984	2,547
Phoenix Mutual Life	1981	1,153
26 Companies - TOTAL		588,321

* Also Party to Suit

Total 3%

Foreign Premium Tax Paid for 1984 Premium Tax	14,505,977
1 - 1/2% Refund	7,252,988

2RefundLGJOBS2/25/86a

TAX CASE 1JV-81 CIV
1JV-83 616 CIV

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	COMPANY TOTAL
Equitable Life Assurance	53,257	69,938	77,232	111,053	126,228	167,917	180,448	140,897	151,959	175,413	145,314	1,399,656
John Hancock Mutual Life	19,741	21,945	26,172	30,303	30,698	42,025	45,757	55,155	60,886	58,426	55,144	446,252
Metropolitan Life	91,777	119,376	139,195	206,468	215,247	207,039	228,356	152,843	73,428	54,020	52,191	1,539,940
Mutual Life Insurance Co. of NY	75,274	88,935	95,935	102,149	117,873	115,665	116,697	126,447	131,829	154,141	168,340	1,293,285
New York Life Insurance Company	170,823	177,683	218,659	241,937	272,951	290,766	310,683	362,120	418,880	533,434	619,912	3,617,848
Prudential Insurance Company	83,940	59,309	64,797	75,964	136,627	139,440	124,976	174,767	190,130	188,765	185,030	1,423,745
Travelers Insurance Co. - Life	60,575	79,380	126,850	169,402	190,928	164,736	167,953	190,193	178,529	209,098	261,946	1,799,590
Accident Department	14,954	37,110	28,450	60,601	62,617	32,973	17,430	98,462	38,566	140,358	105,352	636,873
Travelers Indemnity	14,994	29,460	26,958	16,872	41,890	21,622	52,619	25,328	55,335	122,366	129,339	536,789
Aetna Life & Annuity Corp.	-	-	281	153	32	32	24	559	1,885	4,685	22,509	30,160
Aetna Casualty & Surety	10,253	25,930	46,798	90,325	79,928	29,921	43,816	79,686	92,797	102,665	76,768	678,887
Aetna Life Insurance Company	188,875	231,309	259,582	354,978	343,980	393,051	460,910	523,186	564,299	904,663	773,698	4,998,531
Standard Fire Insurance Co.	7,209	5,565	5,260	15,628	20,743	5,323	6,683	6,040	21,876	108,512	78,362	281,201
Automobile Ins. Co. of Hartford	-	-	29	17	-	-	-	-	-	11	968	1,025
Accidential Life Ins. Co. (Transamerica)	55,590	51,432	53,948	60,968	66,284	82,365	98,332	97,674	104,026	124,586	90,071	885,276
Massachusetts Mutual Life Insurance Company	9,399	13,108	15,421	16,345	18,887	22,489	23,004	24,720	25,063	19,948	22,372	210,756
Connecticut Mutual Life Insurance Company	5,291	6,528	7,860	9,631	11,567	13,426	16,270	19,063	17,753	17,201	16,656	141,246
3% TAX PAID	846,958	987,548	1,166,469	1,545,922	1,694,600	1,707,168	1,841,339	2,051,812	2,071,906	2,795,926	2,674,633	19,384,281
GRAND TOTAL	861,952	1,017,008	1,193,427	1,562,794	1,736,496	1,728,790	1,893,958	2,077,140	2,127,241	2,918,292	2,803,972	19,921,070
REFUND @ 1 1/2% (domestic rate)	430,796	508,504	596,713	781,397	868,248	864,395	946,979	1,038,570	1,063,620	1,459,146	1,401,986	9,960,534

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BILL SHEFFIELD
GOVERNOR

d379

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 31, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the premium tax paid by domestic insurers.

Under present law, AS 21.09.210(b) provides that domestic insurers pay premium tax at the rate of one and one-half percent of gross premiums, while nondomestic companies pay three percent of gross premiums. A recent U.S. Supreme Court case, Metropolitan Life Insurance Co. v. Ward, ___ U.S. ___, 53 U.S.L.W. 4699 (June 10, 1985), raises serious questions concerning the constitutionality of the differential rate structure. In order to correct this problem and not jeopardize our premium tax laws, this bill will eliminate the preference for domestic insurers by standardizing the rate at three percent for both categories of insurance companies. The bill has the further benefit of raising the total amount of premium taxes collected. I urge your support of this bill.

Sincerely,

Bill Sheffield
Governor

TRANSMITTAL LETTER

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
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ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 7, 1986

The Honorable Fred Zharoff
Chair, Senate Labor and Commerce
Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 379 (Premium tax for domestic insurers)

Dear Chairman Zharoff:

As indicated in the governor's transmittal letter dated January 31, 1986, this bill is necessary due to a recent United States Supreme Court case, Metropolitan Life Insurance Co., v. Ward, 105 S.Ct. 1676 (1985), which calls into serious doubt the constitutionally of the present Alaska premium tax law.

Enclosed is a chart prepared from data compiled by the division of insurance, Department of Commerce and Economic Development, showing the amount of premium taxes collected by the state from foreign insurance companies between 1974 and 1984. As you can see, the state collected approximately $14.5 million in 1985, for the 1984 tax year.

We can assume this figure is a good indication of the premium amount the state will collect in future years. Foreign insurance companies, claiming the entire tax is unconstitutional, are now making their entire tax payments under protest. Thus, the state is currently exposed to possible liability in excess of $14.5 million per year until the statute is corrected. 1/

1/ A good argument can be made that if a refund is required, it should be only one-half of all taxes paid, or approximately $7.25 million annually. This represents the difference between the amount paid by the companies (three percent) and the amount they would have paid, were they domestic companies (one and one-half percent).

Given the state's declining revenues, it is very important that this bill be passed this year, to prevent possible future state losses of $7 - 14 million per year.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jeffrey W. Bush
Assistant Attorney General

HMB:JWB:cck

Enclosure

cc w/ enc.:

Jim Ayres, Director
Legislative Relations
Office of the Governor

Art Peterson
Legislation/Regulations Attorney
Department of Law

John George, Director
Division of Insurance
Department of Commerce
and Economic Development

ALASKA FOREIGN INSURANCE COMPANY TAX PAYMENTS

1974 - 1984

TAX YEAR	FOREIGN LIFE (3%)	PROP & CAS (3%)	TOTAL TAX PAID	AMT. WOULD HAVE PAID AT DOM. RATE
1984	4,861,829	9,644,148	14,505,977	7,252,989
1983	4,438,315	8,818,990	13,257,305	6,628,653
1982	3,707,727	7,729,096	11,436,823	5,718,412
1981	3,360,555	6,018,707	9,379,262	4,689,631
1980	3,178,322	4,843,581	8,021,903	4,010,952
1979	2,921,795	4,999,852	7,921,647	3,960,824
1978	2,912,980	5,050,350	7,963,330	3,981,665
1977	2,897,452	4,736,774	7,634,226	3,817,113
1976	2,329,917	3,910,087	6,240,004	3,120,002
1975	2,049,788	2,818,755	4,868,543	2,434,272
1974	1,586,349	2,235,308	3,821,657	1,910,829
	34,245,029	60,805,548	95,[illegible]0,577	47,525,288