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THE McCARRAN-FERGUSON ACT AND REVERSE PREEMPTION

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"What is important is to spread confusion, not eliminate it." – Salvador Dalí

This paper discusses the McCarran-Ferguson Act generally, the Federal Arbitration Act (the "FAA") generally, and the reverse preemption of the FAA via the McCarran-Ferguson Act specifically. Reverse preemption of the FAA via the McCarran-Ferguson Act sounds facially confusing at the outset. In order to better understand and flesh-out reverse preemption of the FAA via the McCarran-Ferguson Act, two case studies are presented, namely: one case study finding reverse preemption of the FAA via the McCarran-Ferguson Act and one case study not finding reverse preemption of the FAA via the McCarran-Ferguson Act. These two case studies, when read together, present an important principle.

Moreover, this paper addresses current issues surrounding the McCarran-Ferguson Act. Specifically, the possible implications that may be drawn from the recent enactment of the Patient Protection and Affordable Care Act ("PPACA").

The McCarran-Ferguson Act

Under the United States Constitution, Congress has the power to regulate interstate commerce.[1] In 1868, in *Paul v. Virginia*,[2] the Supreme Court held that the Commerce Clause did not preclude the states' power to tax and regulate the insurance industry within their respective borders. In 1944, however, in *United States v. South-Eastern Underwriters Association*,[3] the Supreme Court held that the insurance industry involved interstate commerce and was, therefore, also subject to regulation by Congress under the Commerce Clause.[4]

The result of *South-Eastern*—that the insurance industry was subject to regulation by Congress under the Commerce Clause—was highly controversial in its time. Many individuals criticized *South-Eastern* as threatening the states' power to tax and regulate the insurance industry within their respective borders.[5] Immediately after the *South-Eastern* decision, there was a growing demand for congressional intervention, and, in response to such demand, Senators McCarran and Ferguson proposed legislation[6] to limit the application of *South-Eastern*—legislation that reaffirmed the states' unadulterated right[7] to tax and regulate the insurance industry within their respective borders absent specific

[1] U.S. CONST. art. I, § 8, cl. 3 [hereinafter Commerce Clause] ("The Congress shall have Power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.").
[2] 75 U.S. 168 (1868).
[3] 322 U.S. 533 (1944).
[4] 15 U.S.C. § 1013 (2013).
[5] U.S. Dep't of Treasury v. Fabe, 508 U.S. 491, 499-500 (1993).
[6] 59 Stat. 33 (1945).
[7] *Fabe*, 508 U.S. at 500; Prudential Prop. & Cas. Ins. Co. v. Bannon, No. 1994 Conn. Super. LEXIS 3399, *9 (Conn. Super. Ct. Mar. 9, 1994).

congressional intent to the contrary. Shortly thereafter, in 1945, Congress enacted the McCarran-Ferguson Act.[8]

The legislative history surrounding the McCarran-Ferguson Act evidences the Act's justification. Congress noted, the "enactment of this bill will (1) remove existing doubts as to the right of the States to regulate and tax the business of insurance, and (2) secure more adequate regulation of such business."[9] During the congressional hearings that surrounded the McCarran-Ferguson Act, President Franklin D. Roosevelt stated, "the responsibility for the regulation of the business of insurance has been left with the States; and I can assure you that this administration is not sponsoring Federal legislation to regulate insurance or to interfere with the continued regulation and taxation by the States of the business of insurance."[10] The significance of enacting the McCarran-Ferguson Act was also evidenced within the senate reports, where Congress stated, "from its beginning the business of insurance has been regarded as a local matter, to be subject to and regulated by the laws of the several states."[11]

In 1945, the McCarran-Ferguson Act was signed into law. The McCarran-Ferguson Act provides the following in its preamble:

> The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states.[12]

To add substance to the Act, the Act further provides:

> (a) State regulation. The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> (b) Federal regulation. No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance . . . .[13]

Shortly after the McCarran-Ferguson Act was signed into law, the Supreme Court analyzed Congress' intent in passing the Act. "Obviously Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance."[14] Congress achieved this purpose in two separate and distinct ways. The first way was by "removing obstructions which might . . . flow from its own power . . . ."[15] Essentially, Congress exempted the insurance industry from federal legislation that did not specifically contemplate the regulation of the insurance industry. The second way was by "declaring expressly and affirmatively that continued state regulation and taxation of this business is in the public interest and that the business and all who engage in it shall be

[8] 15 U.S.C. §§ 1011-15 (2013).
[9] S. REP. NO. 79-20, at 3 (1945).
[10] 91 CONG. REC. 1479 (1945).
[11] S. REP. NO. 79-20, at 1 (1945).
[12] 15 U.S.C. § 1011 (2013).
[13] *Id.* § 1012.
[14] Prudential v. Benjamin, 328 U.S. 408, 429 (1946).
[15] *Id.*

subject to the laws of the several states."[16] The enactment of the McCarran-Ferguson Act in response to *South-Eastern,* coupled with the Act's stated purpose, the Act's legislative history, and the case law interpreting the Act, establish that Congress undoubtedly meant for the states to tax and regulate the insurance industry within their respective borders without federal intervention, absent specific congressional intent to the contrary.

The Federal Arbitration Act

Arbitration in the United States, in some shape or form, has been around since the early 20th century.[17] Incorporating both statutory law and common law, arbitration in the early 1900s was described by one individual as "robust and active," with most states having adopted arbitration statutes by this period.[18]

Before 1914, arbitration laws varied dramatically from state to state.[19] During this period, the federal courts generally applied federal arbitration law, rather than state arbitration law, even though "no distinctive body of federal arbitration law existed [during this period]."[20] Moreover, at this time, courts generally expressed hostility toward arbitration agreements and refused to enforce them for a variety of reasons.[21]

By the 1920s, advocates for expanding and strengthening arbitration laws had made significant strides in compelling the acceptance of state and federal arbitration statutes.[22] As a result of these advocates' efforts, the United States Arbitration Act ("USAA") was passed in 1925 to place arbitration agreements upon the same footing as other contractual agreements, thereby ensuring the enforcement of agreements to arbitrate.[23]

Nonetheless, the USAA had its share of critics. These critics voiced general concern "about the adhesive aspects of arbitration contracts."[24] One such critic, remarked, "We all know from a practical experience that the fine type of contracts whilst entirely binding, is seldom read, and we do feel that it is a giving up [of] rights" that belong to American citizens.[25] Still other critics were concerned about the potential "long-arm" effect of arbitration statutes, which would require parties to arbitration agreements to travel "from coast to coast to participate involuntarily in arbitrations."[26]

The modern arbitration act, the FAA,[27] includes three key, statutory provisions.[28] Section 2 of the FAA provides that a written arbitration agreement "in any maritime transaction or a contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the

[16] *Id.* at 430.
[17] IAN R. MACNEIL, AMERICAN ARBITRATION LAW, 15 (1992).
[18] *Id.*
[19] *Id.* at 21.
[20] *Id.* at 22.
[21] Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991).
[22] IAN R. MACNEIL, AMERICAN ARBITRATION LAW, 25-47 (1992).
[23] *Id.* at 47; *Gilmer*, 500 U.S. at 24.
[24] IAN R. MACNEIL, AMERICAN ARBITRATION LAW, 50-51 (1992).
[25] *Id.* at 51.
[26] *See id.* at 51-52.
[27] 9 U.S.C. §§ 1-16 (2013).
[28] 9 U.S.C. §§ 2-4 (2013).

revocation of any contract."[29] Section 3 provides that a federal court, in which suit has been brought, "upon any issue referable to arbitration under an agreement in writing for such arbitration[,]" stay the court action pending arbitration once it has concluded that the issue before it is arbitrable under the parties' arbitration agreement.[30] Finally, Section 4 furnishes a remedy for a party "aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration" by mandating the federal court order arbitration once it has concluded that a valid arbitration agreement exists and that the agreement was not adhered to.[31]

Reverse Preemption and the McCarran-Ferguson Act

As prior discussion suggests, a mechanism for avoiding the preemptive effect of the FAA on state insurance law is found in the McCarran-Ferguson Act, which provides for reverse preemption of federal law by state insurance law in the following manner:

> No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance . . . .[32]

In other words, in a formulaic manner, reverse preemption occurs where: (1) the federal statute at issue does not specifically relate to the business of insurance; (2) the state law was enacted for the purpose of regulating the business of insurance; and (3) application of the federal statute will invalidate, impair, or supersede the state law.[33]

According to the foregoing test, it appears obvious that state statutes that prohibit or restrict mandatory arbitration in the context of insurance disputes reverse preempt the FAA. Applying the first prong, the FAA does not specifically relate to the business of insurance—the FAA applies to the enforcement of arbitration agreements generally. Therefore, any state statute enacted for the purpose of regulating the business of insurance under the second prong, which would be impaired or invalidated by application of the FAA under the third prong, reverse preempts the FAA via the McCarran-Ferguson Act.

Courts across the country have addressed whether a state statute that prohibits or restricts mandatory insurance arbitration was enacted for the purpose of regulating the business of insurance, under the second prong, in one of two ways. The majority of courts pay close attention to whether the state statute at issue regulates the relationship between a policyholder and his or her insurer.[34] In *SEC v. National Securities, Inc.*,[35] the Supreme Court described the insured-insurer relationship as of central importance in defining the business of insurance:

> The relationship between insurer and insured, the type of policy which could be issued, its reliability, interpretation, and enforcement—these were the core of the 'business of insurance.' Undoubtedly, other activities of insurance companies relate so closely to their status as reliable insurers that they too

[29] 9 U.S.C. § 2 (2013).
[30] 9 U.S.C. § 3 (2013).
[31] 9 U.S.C. § 4(2013).
[32] 15 U.S.C. § 1012(b) (2013).
[33] *Fabe*, 508 U.S. at 500-01.
[34] *See, e.g.,* Nat'l Home Ins. Co. v. King, 291 F. Supp. 2d 518 (E.D. Ky. 2003).
[35] 393 U.S. 453 (1969).

> must be placed in the same class. But whatever the exact scope of the statutory term, it is clear where the focus was—it was on the relationship between the insurance company and the policyholder.[36]

Other courts, however, have used an alternative test advanced by the Supreme Court in *Group Life & Health Insurance Co. v. Royal Drug Co.*[37] and *Union Labor Life Insurance Co. v. Pireno*.[38] In *Group Life* and *Union Labor*, the Supreme Court identified three relevant factors in establishing whether a particular practice is part of the "business of insurance" for purposes of the second prong. These factors are, none of which are individually determinative:

> 1. Whether the practice has the effect of transferring or spreading a policyholder's risk;
> 2. Whether the practice is an integral part of the policy relationship between the insurer and the insured; and
> 3. Whether the practice is limited to entities within the insurance industry.[39]

Where a state statute expressly prohibits the enforcement of mandatory arbitration provisions in insurance policies, or restricts the use of arbitration in the context of insurance disputes, the statute appears to regulate the "business of insurance" for purposes of the second prong under each of the above tests.[40] Moreover, state statutes that prohibit or restrict the arbitration of insurance disputes facially appear to constitute the regulation of insurance. These state statutes concern an important aspect of the insurance relationship—namely, how disputes are to be resolved—and are directed exclusively at insurance policies. A handful of courts have specifically held that prohibiting or restricting mandatory arbitration in the context of insurance disputes satisfies the first factor in the *Group Life* and *Union Labor* test.[41] The second factor in the *Group Life* and *Union Labor* test, which many courts have placed emphasis on, is plainly satisfied. The dispute resolution process is a fundamental part of the insured-insurer relationship.[42]

Additionally, the third prong, that the application of the federal statute will invalidate, impair, or supersede the state law, is plainly satisfied. Enforcement of the FAA in the context of insurance policies where state law prohibits mandatory arbitration of insurance disputes, or restricts the use of arbitration in the context of insurance disputes, would necessarily invalidate or supersede such state statutes. Therefore, state laws that prohibit or restrict mandatory arbitration in the context of insurance disputes reverse preempt the FAA via the McCarran-Ferguson Act.

The lack of congressional action in this area is telling: although Congress generally values the enforcement of contracts and arbitration agreements, a state's choice to prohibit

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[36] *Id.* at 460.
[37] 440 U.S. 205 (1979).
[38] 458 U.S. 119 (1982).
[39] These factors were developed in *Group Life*, 440 U.S. 205 and *Union Labor*, 458 U.S. 189.
[40] Mut. Reinsurance Bureau v. Great Plains Mut. Ins. Co., 969 F.2d 931, 932 (10th Cir. 1992); Friday v. Trinity Universal of Kan., 939 P.2d 869, 872 (Kan. 1997); Smith v. Pacificare Behavioral Health of Cal., Inc., 113 Cal. Rptr. 2d 140, 151 (Cal. App. Dep't Super. Ct. 2001).
[41] *See, e.g.,* McKnight v. Chi. Title Ins. Co., 358 F.3d 854, 858 (11th Cir. 2004); Standard Sec. Life Ins. Co. v. West, 267 F.3d 821, 824 (8th Cir. 2001); *Mut. Reinsurance Bureau*, 969 F.2d at 933; Cont'l Ins. Co. v. Equity Residential Props. Trust, 565 S.E.2d 603, 605 (Ga. Ct. App. 2002).
[42] *See, e.g.*, *Standard Sec. Life Ins. Co*., 267 F.3d at 824; *Mut. Reinsurance Bureau*, 969 F.2d at 933.

or restrict mandatory arbitration in the context of insurance disputes takes precedence. If Congress did not possess the foregoing value-hierarchy, it would surely have carved-out the FAA from the McCarran-Ferguson Act's application at some point. I was unable to locate any authority that suggests such a carve-out has ever been contemplated.

Case Studies

American Bankers Insurance Company v. Inman

In *Am. Bankers Ins. Co. v. Inman*,[43] the Fifth Circuit was asked to determine whether MISS. CODE ANN. § 83-11-109 (2013)[44] reverse preempts the FAA. Ultimately, the court held that MISS. CODE ANN. § 83-11-109 (2013) does in fact reverse preempt the FAA.[45]

The appellant argued that MISS. CODE ANN. § 83-11-109 (2013) did not reverse preempt the FAA via the McCarran-Ferguson Act.[46] Specifically, the appellant argued that MISS. CODE ANN. § 83-11-109 (2013) does not "regulat[e] the business of insurance," as the second prong of the Act requires.[47]

The Fifth Circuit began its discussion by articulating the McCarran-Ferguson Act's test for reverse preemption, namely: "(1) [whether] the federal statute does not specifically relate to the 'business of insurance;' (2) [whether] the state law was enacted for the 'purpose of regulating the business of insurance;' and (3) [whether] the federal statute operates to 'invalidate, impair, or supercede' the state law."[48]

The court quickly dismissed the first and third prongs. In doing so, the court provided the following explanation:

> '[T]here is no question that the FAA does not relate specifically to the business of insurance[]'; thus, the first requirement of the McCarran-Ferguson Act is satisfied. Additionally, the application of the FAA to enforce the arbitration provision would invalidate [MISS. CODE ANN. § 83-11-109 (2013)]; accordingly, the third requirement of the Act is also satisfied.[49]

In evaluating the second prong, the court announced its adherence to the *Group Life* and *Union Labor* test, namely adopting the following three factors as relevant:[50] "(1) 'whether the practice in question has the effect of transferring or spreading a policyholder's risk;' (2) 'whether the practice is an integral part of the policy relationship between the insurer and the insured;' and (3) 'whether the practice is limited to entities

[43] 436 F.3d 490 (5th Cir. 2006).
[44] Miss. Code Ann. § 83-11-109 (2013) provides that "[insurance policy] shall [not] contain a provision requiring arbitration of any claim arising under any such [insurance policy]. The insured shall not be restricted or prevented in any manner from employing legal counsel or instituting or prosecuting to judgment legal proceedings . . . "
[45] *Am. Bankers*, 436 F.3d at 494.
[46] *See id.*
[47] *Id.*
[48] *Id.* at 493.
[49] *Id.* at 493 (internal citations omitted).
[50] Remember, no single factor is dispositive. *Group Life*, 440 U.S. 205; *Union Labor*, 458 U.S. 189.

within the insurance industry.'"[51] Because the appellant did not dispute the satisfaction of the third factor, the court confined its analysis to the first two enumerated factors.[52]

In evaluating the first factor, the court noted that MISS. CODE ANN. § 83-11-109 (2013) is written into every uninsured/underinsured motorist insurance policy.[53] As such, the court explained that MISS. CODE ANN. § 83-11-109 (2013) regulates risk by subjecting all policy disputes regarding uninsured/underinsured motorist coverage to the possibility of a jury trial.[54], The court concluded that the first factor was satisfied because the enactment of MISS. CODE ANN. § 83-11-109 (2013) was a determination by the Mississippi legislature to control the risks and harms caused by uninsured and underinsured motorists.[55]

In evaluating the second factor, the court noted that MISS. CODE ANN. § 83-11-109 (2013) is an integral part of the insured-insurer relationship because it controls how disputes regarding uninsured/underinsured motorist coverage will be resolved.[56] As such, the court concluded that the second factor was satisfied.[57]

Because the court found all three factors of the *Group Life* and *Union Labor* test were satisfied, the court held that the second prong of the McCarran-Ferguson Act was in turn satisfied, and, therefore, that MISS. CODE ANN. § 83-11-109 (2013) reverse preempts the FAA via the McCarran-Ferguson Act.[58]

Little v. Allstate Insurance Company

In *Little v. Allstate Ins. Co.*,[59] the Supreme Court of Vermont was asked to determine whether VT. STAT. ANN. tit. 12 § 5653 (2013)[60] reverse preempts the FAA. Ultimately, the court held that VT. STAT. ANN. tit. 12 § 5653 (2013) does not reverse preempt the FAA.[61]

The Supreme Court of Vermont began its discussion by announcing the purpose of the McCarran-Ferguson Act, namely: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance."[62]

The court then provided: "Since the FAA does not specifically relate to the business of insurance, [VT. STAT. ANN. tit. 12 § 5653 (2013)] prevents the FAA from preempting the exclusion of the VAA if that exclusion, or the underlying common law, was enacted 'for the purpose of regulating the business of insurance.'"[63]

In evaluating whether VT. STAT. ANN. tit. 12 § 5653 (2013) involves the business of insurance, the court declared its adherence to the *Group Life* and *Union Labor* test, namely

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[51] *Am. Bankers*, 436 F.3d at 493 (internal citations omitted).
[52] *Id.* at 493-94.
[53] *Id.* at 494.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Am. Bankers*, 436 F.3d at 494.
[58] *Id.*
[59] 705 A.2d 538 (Vt. 1997).
[60] VT. STAT. ANN. tit. 12 § 5653(a) (2013) prohibits insurance disputes from proceeding to arbitration under the Vermont Arbitration Act.
[61] *Little*, 705 A.2d at 541.
[62] *Id.* at 540.
[63] *Id.*

adopting the following three factors as relevant:[64] (1) whether the practice in question has the effect of transferring or spreading a policyholder's risk; (2) whether the practice is an integral part of the policy relationship between the insurer and the insured; and (3) whether the practice is limited to entities within the insurance industry.[65] The court concluded, without further discussion, that all three factors were satisfied, and, therefore that VT. STAT. ANN. tit. 12 § 5653 (2013) involves the business of insurance.[66]

However, the court proceeded by parsing out "regulating" from "regulating the business of insurance."[67] In Vermont, a common-law rule provides that arbitration agreements are revocable up to the time of award.[68] As such, the court reasoned that VT. STAT. ANN. tit. 12 § 5653 (2013) simply allows insurance arbitration agreements to continue to be governed by the common-law rule.[69] Thus, the court held, because VT. STAT. ANN. tit. 12 § 5653 (2013) does not evidence intent of the Vermont legislature to regulate the business of insurance, VT. STAT. ANN. tit. 12 § 5653 (2013) does not reverse preempt the FAA via the McCarran-Ferguson Act.[70]

Am. Bank and Little

Am. Bank and *Little* illustrate the outer limits of the second prong of the McCarran-Ferguson Act—whether the state law was enacted for the purpose of regulating the business of insurance. As previously stated, when evaluating whether a state law that prohibits or restricts mandatory arbitration in the context of insurance disputes reverse preempts the FAA via the McCarran-Ferguson Act, the second prong is oftentimes determinative. *Am. Bank* discusses a state statute that affirmatively prohibits mandatory arbitration in the context of insurance disputes. On the other hand, *Little* discusses a state statute that only does so indirectly. Read together, *Am. Bank* and *Little* suggest that only state statutes that affirmatively prohibit or restrict mandatory arbitration in the context of insurance disputes satisfy the second prong of the McCarran-Ferguson Act.

Current Issues Surrounding the McCarran-Ferguson Act

In 2010, the PPACA was signed into law.[71] The PPACA was enacted with the goals of increasing the quality and affordability of health insurance, lowering the uninsured rate by expanding public and private insurance coverage, and reducing the costs of healthcare for individuals and the government.[72] The PPACA marks the first federal law to

[64] Remember, no single factor is dispositive. *Group Life*, 440 U.S. 205; *Union Labor*, 458 U.S. 189.
[65] *Little*, 705 A.2d at 540.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] Public Law 111-148 (2010).
[72] *See Id.*

comprehensively regulate the business of insurance since the enactment of the McCarran-Ferguson Act in 1945.[73]

The first prong of the McCarran-Ferguson Act—whether the federal statute at issue does not specifically relate to the business of insurance—makes it clear that the PPACA does not interfere with the McCarran-Ferguson Act—the PPACA specifically relates to the business of insurance.[74] Prior case law supports the above conclusion.[75]

The PPACA suggests, at a minimum, that the federal government is now willing to comprehensively regulate the business of insurance. As such, the McCarran-Ferguson Act and the states' ability to regulate the insurance industry without federal intervention well may be on their way to becoming relics of the past. Of course, this is an extreme end of the spectrum of possibilities. The PPACA may very well be a one-time comprehensive regulation of the business of insurance by the federal government. Only time will tell.

Conclusion

The McCarran-Ferguson Act was passed to ensure that the states alone had the power to tax and regulate the insurance industry within their respective borders, absent specific congressional intent to the contrary. The FAA, on the other hand, was passed to place arbitration agreements upon the same footing as other contractual agreements, thereby ensuring the enforceability of agreements to arbitrate. However, the McCarran-Ferguson Act allows states to avoid the FAA's application to insurance disputes. So long as a state adopts a statute that affirmatively prohibits or restricts mandatory arbitration in the context of insurance disputes, the state statute almost certainly reverse preempts the FAA via the McCarran-Ferguson Act.

Nonetheless, by enacting the PPACA, the federal government has recently displayed a willingness to comprehensively regulate the business of insurance. As such, the McCarran-Ferguson Act and the states' ability to tax and regulate the insurance industry within their respective borders without federal intervention may very well be on their way to becoming relics of the past. The times they are a-changin'.

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[73] Fox Rothschild LLP, *Patient Protection and Affordable Care Act* (May 2010), http://www.foxrothschild.com/newspubs/newspubsArticle.aspx?id=14608.

[74] *See* Public Law 111-148.

[75] *See* Pallozi v. Allstate Life Insurance Co., 198 F.3d 28 (2nd Cir. 1999) (refusing to apply the McCarran-Ferguson Act to invalidate a provision of the Americans with Disabilities Act that limits the underwriting power of insurance companies in regards to policies drafted for individuals with HIV or AIDS). *See also* Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012) (failing to address the McCarran-Ferguson Act in upholding the PPACA).