FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLMS MANAGEMENT SERVICES LIMITED PARTNERSHIP; ROUNDHILL I, LP, *Plaintiffs-Appellants*, v. AMWINS BROKERAGE OF GEORGIA, LLC; AMRISC, LLC; CJW & ASSOCIATES, INC.; CERTAIN UNDERWRITERS AT LLOYD'S, *Defendants-Appellees*.	No. 20-35428 D.C. No. 3:19-cv-05785-RBL OPINION

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Argued and Submitted April 15, 2021
Seattle, Washington

Filed August 12, 2021

Before: Michael Daly Hawkins, M. Margaret McKeown, and Morgan Christen, Circuit Judges.

Opinion by Judge Christen

SUMMARY*

Arbitration / McCarran-Ferguson Act

The panel affirmed the district court's order granting a motion to compel arbitration in plaintiffs' diversity insurance coverage action.

The insurers filed a motion to compel arbitration, arguing that the policy issued to plaintiffs had an arbitration provision that fell within the scope of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a multilateral treaty. Plaintiffs argued that the arbitration provision was unenforceable because Washington law prohibited the enforcement of arbitration clauses in insurance contracts and the McCarran-Ferguson Act operated to reverse-preempt the Convention, such that Washington law controlled.

The panel held that the text of Article II, Section 3 of the Convention and the Convention's relevant drafting and negotiation history led to the conclusion that Article II, Section 3 was self-executing, and it required enforcement of the parties' arbitration agreement. The panel further concluded that the Convention was not reverse-preempted by Wash. Rev. Code § 48.18.200. Because the Convention was not an "Act of Congress" subject to reverse-preemption by the McCarran-Ferguson Act, the district court correctly granted defendants' motion to compel arbitration.

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

COUNSEL

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OPINION

CHRISTEN, Circuit Judge:

This appeal presents an issue of first impression in this circuit that lies at the intersection of international, federal, and state law: whether the McCarran-Ferguson Act, 15 U.S.C. §§ 1011–15, allows a Washington statute to reverse-preempt the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a multilateral treaty. We conclude that the relevant provision of the Convention is self-executing, and therefore not an "Act of Congress" subject to reverse-preemption by the McCarran-Ferguson Act. Accordingly, we affirm the district court's order compelling arbitration.

I

In 2016, Plaintiffs CLMS Management Services Limited Partnership (CLMS) and Roundhill I, LP, domestic entities, entered into an insurance contract (the Policy) through defendant Amrisc, LLC. The Policy provided coverage for a townhome complex in Texas that Roundhill owns and CLMS operates. The relevant portion of the Policy was underwritten by defendants Certain Underwriters at Lloyd's London (Lloyd's), members of a foreign organization, and it contains a mandatory arbitration provision:

> All matters in difference between the Insured and the Companies (hereinafter referred to as "the parties") in relation to this insurance, including its formation and validity, and whether arising during or after the period of this insurance, shall be referred to an Arbitration Tribunal in the matter hereinafter set out . . . .
>
> The seat of the Arbitration shall be in New York and the Arbitration Tribunal shall apply the law of New York as the proper law of this insurance. . . .
>
> The award of the Arbitration Tribunal shall be in writing and binding upon the parties who covenant to carry out the same. If either of the parties should fail to carry out any award the other may apply for its enforcement to a court of competent jurisdiction in any territory in which the party in default is domiciled or has assets or carries on business.

In August 2017, Hurricane Harvey caused an estimated $5,660,000 in damages to the townhome complex. Plaintiffs submitted a claim under the Policy, but in May 2018 defendant CJW & Associates (CJW), a third-party claims administrator for Lloyd's, responded that the Policy's deductible was $3,600,000.

Plaintiffs filed a complaint in the Western District of Washington asserting three claims: breach of contract, failure to communicate policy changes, and unfair claims handling practices in violation of Washington law.[1] The primary allegation underlying plaintiffs' claims is that "[u]nder the Policy, the deductible should be $600,000, not $3,600,000."

Lloyd's and CJW filed a motion to compel arbitration and stay proceedings in the district court. The motion argued that the Policy's arbitration provision falls within the scope of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention), by which the United States committed to enforce arbitration agreements between foreign and domestic entities. Lloyd's and CJW argued that the Convention required the district court to refer plaintiffs' claims to arbitration.

Plaintiffs did not contest that the arbitration provision falls within the Convention's scope, but argued the provision is unenforceable because Washington law specifically prohibits the enforcement of arbitration clauses in insurance contracts and the McCarran-Ferguson Act operates to reverse-preempt the Convention, such that Washington law

[1] For purposes of this appeal, the parties do not dispute that Washington law applies to the merits of these claims.

controls. Therefore, plaintiffs argued, the arbitration provision is unenforceable.

The district court granted Lloyd's and CJW's motion. The court reasoned that Article II, Section 3 of the Convention is self-executing, and therefore is not an "Act of Congress" subject to reverse-preemption pursuant to the McCarran-Ferguson Act. The district court held that it was required to enforce the arbitration provision pursuant to the Convention.

The court recognized that the parties' dispute presents a question of first impression in this circuit, and certified its order for interlocutory review. A motions panel of our court granted plaintiffs' petition for permission to appeal. We have jurisdiction pursuant to 28 U.S.C. § 1292(b).

II

We review de novo a district court's order compelling arbitration. *Bushley v. Credit Suisse First Boston*, 360 F.3d 1149, 1152 (9th Cir. 2004). The district court explained that enforcement of the arbitration clause turns on a clash between two sources of law: a Washington statute that prohibits mandatory pre-dispute arbitration clauses in insurance contracts, and Article II, Section 3 of the Convention, which, with few exceptions, requires United States courts to enforce written arbitration agreements like the one at issue here, between foreign and domestic entities.

As the district court aptly observed, the McCarran-Ferguson Act lies "[a]t the fulcrum" of Washington law and the Convention. In most instances, the Supremacy Clause mandates that a state law gives way to conflicting federal law,

but the McCarran-Ferguson Act "provides that state insurance law preempts conflicting federal law." Thus, the question central to this appeal is whether Washington law, by operation of the McCarran-Ferguson Act, reverse-preempts the Convention.

Wash. Rev. Code § 48.18.200 provides:

> (1) . . . [N]o insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement . . .
>
> (b) depriving the courts of this state of the jurisdiction of action against the insurer . . . .
>
> (2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract.

The Washington Supreme Court has interpreted § 48.18.200 to "prohibit[] binding arbitration agreements in insurance contracts," and held that pre-dispute binding arbitration provisions in insurance contracts are unenforceable. *State, Dep't of Transp. v. James River Ins. Co.*, 292 P.3d 118, 123 (Wash. 2013). We are bound by the Washington Supreme Court's interpretation of § 48.18.200. *See Ticknor v. Choice Hotels Int'l, Inc.*, 265 F.3d 931, 939 (9th Cir. 2001) ("[F]ederal courts are bound by the pronouncements of the state's highest court on applicable state law.").

The Convention is a multilateral treaty crafted during a 1958 United Nations conference. *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 381 (4th Cir. 2012). The United States participated in the Convention's drafting, but did not accede to the Convention until 1970. *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1644 (2020). Article II of the Convention provides in full:

> 1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
>
> 2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
>
> **3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration**, unless it finds that the

> said agreement is null and void, inoperative or incapable of being performed.[2]

The Convention art. II, June 10, 1958, 21 U.S.T. 2517 (emphasis added). "The Convention obligates signatories (1) to recognize and enforce written agreements to submit disputes to foreign arbitration and (2) to enforce arbitral awards issued in foreign nations." *ESAB Group*, 685 F.3d at 381.

Congress amended Title 9 of the U.S. Code to accommodate implementation of the Convention. The Convention Act, 9 U.S.C. § 201 *et seq.*, states that the Convention "shall be enforced in United States courts in accordance with this chapter." 9 U.S.C. § 201. As the Supreme Court has explained, the Convention Act also "grants federal courts jurisdiction over actions governed by the Convention, § 203; establishes venue for such actions, § 204; authorizes removal from state court, § 205; and empowers courts to compel arbitration, § 206." *GE Energy*, 140 S. Ct. at 1644. If the Convention and Washington state law were the only provisions in play, the parties agree that Washington's law would be preempted pursuant to ordinary Supremacy Clause principles. U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; *and all Treaties made, or which shall be made, under the Authority of the United States*, shall be the supreme Law of the Land." (emphasis added)).

[2] The exception that arbitration agreements need not be enforced if they are "null and void, inoperative or incapable of being performed" is not at issue here.

But in response to the Supreme Court's decision in *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533, 552–53 (1944), that insurance is subject to federal regulation under the Commerce Clause, Congress enacted the McCarran-Ferguson Act, 15 U.S.C. §§ 1011–15. *U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 499 (1993). The McCarran-Ferguson Act first 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 the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." 15 U.S.C. § 1011. The portion of the Act at the center of this appeal provides that "[n]o 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." 15 U.S.C. § 1012(b).

Thus, the McCarran-Ferguson Act "transformed the legal landscape by overturning the normal rules of pre-emption." *Fabe*, 508 U.S. at 507. "The first clause of [§ 1012(b)] reverses [the normal preemption rules] by imposing what is, in effect, a clear-statement rule, a rule that state laws enacted 'for the purpose of regulating the business of insurance' do not yield to conflicting federal statutes unless a federal statute specifically requires otherwise." *Id.*

III

We begin by considering whether it is the Convention or the Convention Act that compels enforcement of the arbitration agreement. Defendants argue that Article II, Section 3 of the Convention is self-executing, and it is therefore the Convention that compels enforcement. More

specifically, they contend that because a self-executing multilateral treaty is not an "Act of Congress," the Convention preempts Washington state law. Plaintiffs counter that the Convention is not self-executing, and argue it is enforceable as domestic law only through the Convention Act. From there, plaintiffs rely on the McCarran-Ferguson Act to argue that because the Convention Act does not specifically relate to the business of insurance, it is reverse-preempted by Wash. Rev. Code § 48.18.200, and the parties' arbitration agreement is unenforceable.

The Supreme Court has "long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law." *Medellin v. Texas*, 552 U.S. 491, 504 (2008). A treaty is self-executing and has automatic force as domestic law "when it 'operates of itself without the aid of any legislative provision.'" *Id.* at 505 (quoting *Foster v. Neilson*, 27 U.S. 253, 254 (1829), *overruled on other grounds by United States v. Percheman*, 32 U.S. 51 (1833)). "When, in contrast, '[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect.'" *Id.* (alteration in original) (quoting *Whitney v. Robertson*, 124 U.S. 190, 194 (1888)). We have said that, "[a]t its core, the question of self-execution addresses whether a treaty provision is directly enforceable in domestic courts." *Republic of Marshall Islands v. United States*, 865 F.3d 1187, 1193 (9th Cir. 2017).

"The interpretation of a treaty, like the interpretation of a statute, begins with its text," *Medellin*, 552 U.S. at 506, and "[s]ome treaties reveal their self-execution by expressly calling for direct judicial enforcement," *Marshall Islands*,

865 F.3d at 1194. Applying this "time-honored textual approach," *Medellin*, 552 U.S. at 514, we conclude Article II, Section 3 of the Convention is self-executing.[3]

In *Medellin*, the Supreme Court considered whether a judgment of the International Court of Justice (ICJ) was directly enforceable as domestic law. 552 U.S. at 498. The Court explained that "[t]he obligation on the part of signatory nations to comply with ICJ judgments derives . . . from Article 94 of the United Nations Charter," which provides that "[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party." *Id.* at 508 (alterations in second quotation in original) (emphasis omitted) (quoting 59 Stat. 1051). The Court concluded Article 94 is non-self-executing, and therefore ICJ decisions are not automatically enforceable, because Article 94 "is not a directive to domestic courts" and "does not provide that the United States 'shall' or 'must' comply with an ICJ decision, nor indicate that the Senate that ratified the U.N. Charter intended to vest ICJ decisions with immediate legal effect in domestic courts." *Id.* Instead, the Court explained that Article 94 "call[s] upon governments to take certain action" and "reads like 'a compact between independent nations' that 'depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it.'" *Id.* at 508–09 (quoting *Comm. of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929,

[3] Treaties may contain both self-executing and non-self-executing provisions. *Lidas, Inc. v. United States*, 238 F.3d 1076, 1080 (9th Cir. 2001); Restatement (Third) Foreign Relations Law of the United States § 111 cmt. h (1987) ("Some provisions of an international agreement may be self-executing and others non-self-executing.").

938 (D.C. Cir. 1988); *Edye v. Robertson*, 112 U.S. 580, 598 (1884)).

Our court has relied on similar textual clues to conclude that Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons is non-self-executing. *Marshall Islands*, 865 F.3d at 1193–99. That treaty provision states that the signatories "undertake[] to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." Treaty on the Non-Proliferation of Nuclear Weapons art. VI, July 1, 1968, 21 U.S.T. 483. The court in *Marshall Islands* reasoned that Article VI is non-self-executing in part because it is neither directed to domestic courts nor calls for immediate judicial enforcement. 865 F.3d at 1195. Rather, the text of Article VI is a "prime example of language that offers no 'directive to domestic courts' and instead calls for future action by a political branch." *Id.* (quoting *Medellin*, 552 U.S. at 508).

Plaintiffs argue that, like the provisions at issue in *Medellin* and *Marshall Islands*, Article II, Section 3 is merely a "general proclamation" that "provides no additional guidance as to the mechanism for enforcing [] an agreement to arbitrate." We disagree. Article II, Section 3 of the Convention stands in stark contrast to the treaty provisions at issue in *Medellin* and *Marshall Islands*. Rather than speaking in broad, aspirational terms, it provides that "*[t]he court of a Contracting State*, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, *shall*, at the request of one of the parties, *refer the parties to arbitration* . . . ." 21 U.S.T. 2517 (emphases added). This provision is addressed directly to

domestic courts, mandates that domestic courts "shall" enforce arbitration agreements, and "leaves no discretion to the political branches of the federal government whether to make enforceable the agreement-enforcing rule it prescribes." *Safety Nat'l Cas. Corp. v. Certain Underwriters at Lloyd's, London*, 587 F.3d 714, 735 (5th Cir. 2009) (en banc) (Clement, J., concurring). A straightforward application of the textual analysis outlined in *Medellin* compels the conclusion that Article II, Section 3 is self-executing; it is plainly unlike the types of "general proclamations" at issue in *Medellin* and *Marshall Islands*.

Though the text of Article II, Section 3 leaves little doubt that the provision is self-executing, "it is our responsibility to give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties." *Air France v. Saks*, 470 U.S. 392, 399 (1985). Accordingly, we also "look to the executive branch's interpretation . . . , the views of other contracting states, and the treaty's negotiation and drafting history in order to ensure that [our] interpretation of the text is not contradicted by other evidence of intent." *Patterson v. Wagner*, 785 F.3d 1277, 1282 (9th Cir. 2015) (citing *Abbott v. Abbott*, 560 U.S. 1, 15–20 (2010)).

Prior to the United States' accession to the Convention, President Lyndon Baines Johnson transmitted the Convention to the Senate for its advice and consent. Message from the President of the United States Transmitting the Convention, S. Exec. Doc. E 90-2 (Apr. 24, 1968).[4] President Johnson explained that the Convention would "facilitate the recognition and enforcement by foreign courts of arbitral

[4] Available at https://cdn.arbitration-icca.org/s3fs-public/document/media_document/038.pdf.

awards granted in the United States as well as similar action by our courts with respect to foreign arbitral awards." *Id.* at 1. President Johnson further explained that before the United States would accede to the Convention, "[c]hanges in Title 9 (Arbitration) of the United States Code will be required," *id.*, and at Senate hearings addressing the Convention "the witness from the Department [of State] informed the Foreign Relations Committee that deposit of the U.S. Instrument of Accession would be deferred until Congress enacted the necessary implementing legislation," H.R. Rep. No. 91-1181, at 3603 (1970).

This historical record shows that the executive believed some changes in federal law were necessary to accommodate and implement at least some portions of the Convention, but plaintiffs point to no evidence that the Convention's drafters and negotiators believed Article II, Section 3, specifically, was not self-executing. Indeed, the Convention Act's other provisions largely address procedural and logistical matters, such as federal courts' jurisdiction to hear claims arising under the Convention and the proper venue for such claims. *See GE Energy*, 140 S. Ct. at 1644; Gary B. Born, *The New York Convention: A Self-Executing Treaty*, 40 Mich. J. Int'l L. 115, 147 (2018) (arguing the enactment of the Convention Act shows "only that Congress wanted to ensure the effective and efficient enforcement of the Convention's self-executing substantive terms in U.S. courts" by providing "procedural and ancillary mechanisms" that "could not sensibly" be addressed by a multilateral treaty with 159 Contracting States). The Supreme Court has "never provided a full explanation of the basis for [its] practice of giving weight to the Executive's interpretation of a treaty" or "delineated the limitations of this practice, if any," *GE Energy*, 140 S. Ct. at 1647, and President Johnson's message is, at best,

inconclusive regarding whether Article II, Section 3 is self-executing. We conclude that President Johnson's message does not override the plain text of the Convention.

Moreover, in a brief to the Supreme Court, the Solicitor General has more recently expressed the view that Article II, Section 3 of the Convention is self-executing. In *Safety National*, the Fifth Circuit, sitting en banc, concluded that the McCarran-Ferguson Act does not reverse-preempt Article II, Section 3 of the Convention but did not decide whether that provision is self-executing. *See* 587 F.3d at 731 ("[W]e conclude that implemented treaty provisions, self-executing or not, are not reverse-preempted by state law pursuant to the McCarran-Ferguson Act."). The *Safety National* plaintiffs petitioned for certiorari, and the Supreme Court called for the Solicitor General's views. The Solicitor argued that Article II, Section 3 of the Convention contains "precisely the elements" the Supreme Court was looking for in *Medellin*, namely, mandatory language directed to courts rather than aspirational language directed to the political branches. Brief for the United States as Amicus Curiae, *La. Safety Ass'n of Timbermen - Self Insurers Fund v. Certain Underwriters at Lloyd's, London*, No. 09-945, 2010 WL 3375626 at *8–9 (2010). The Solicitor General argued "the fact that domestic legislation may have been necessary to clarify jurisdiction- and venue-related issues pertaining to the implementation of the Convention does not contradict the conclusion that Article II[, Section 3] is self-executing." *Id.* at *11.

Plaintiffs argue that the Supreme Court has identified the Convention as an example of a non-self-executing treaty. But for support, plaintiffs point only to the Supreme Court's passing reference to the Convention Act in *Medellin* as an

example of a statute that implements a treaty. The dicta plaintiffs rely upon states:

> Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes . . . The judgments of a number of international tribunals enjoy a different status because of implementing legislation enacted by Congress. *See, e.g.*, 22 U.S.C. § 1650a(a) . . . ; 9 U.S.C. §§ 201–208 ("The [U.N.] Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter," § 201). Such language demonstrates that Congress knows how to accord domestic effect to international obligations when it desires such a result.

Medellin, 552 U.S. at 521–22. Taken in context, the Court's citation to the Convention Act, which includes procedural and logistical provisions pertaining to subjects like venue and federal court jurisdiction, does not undermine the self-executing language of Article II, Section 3. *See Safety National*, 587 F.3d at 736 (Clement, J., concurring) (arguing that *Medellin*'s "dictum offers little support for the view that the Convention is non-self-executing in all respects"). Unlike Article II, the remaining provisions of the Convention do not impose direct obligations upon domestic courts. *See generally* 21 U.S.T. 2517. *Medellin* does not suggest that all provisions within the Convention are non-self-executing, and it makes no mention of Article II, Section 3 at all. Indeed, relying on *Medellin*'s passing reference to the Convention

Act to conclude that Article II, Section 3 is non-self-executing would contradict *Medellin*'s own clear direction that "[t]he interpretation of a treaty . . . begins with its text," not the existence of legislation enacted to implement various treaty provisions. *Medellin*, 552 U.S. at 506.

The plain text of Article II, Section 3 and the Convention's relevant drafting and negotiation history lead us to conclude that Article II, Section 3 is self-executing. We therefore conclude it is the Convention itself that requires enforcement of the parties' arbitration agreement.

IV

Plaintiffs point to the Second Circuit's decision in *Stephens v. American International Insurance Co.*, 66 F.3d 41 (2d Cir. 1995), to caution that the conclusion that Article II, Section 3 is self-executing creates a circuit split. With respect, we disagree with the Second Circuit's interpretation of the Convention. *Stephens* was decided more than twenty-five years ago, before the Supreme Court issued *Medellin*. Without the benefit of *Medellin*'s guidance, the Second Circuit concluded that the Convention is non-self-executing but it did not undertake an analysis of the Convention's text, drafting and negotiation history, or the views of the executive. *Stephens*, 66 F.3d at 45; *cf. Medellin*, 552 U.S. at 506–07. Rather, *Stephens* seemed to rely exclusively on the existence of the Convention Act to conclude the Convention is non-self-executing. *Stephens*, 66 F.3d at 45.

Our conclusion that Article II, Section 3 is self-executing finds support in the reasoning of the Fourth and Fifth Circuits. *See ESAB Group*, 685 F.3d at 387 (acknowledging there is "much to recommend" the position that Article II,

Section 3 is self-executing); *Safety National*, 587 F.3d at 722 (applying the reasoning of *Medellin* and explaining that "[t]he Convention expressly states that domestic courts 'shall' compel arbitration when requested by a party to an international arbitration agreement"). Both the Fourth Circuit and the Fifth Circuit en banc majority stopped short of deciding whether Article II, Section 3 is self-executing because they relied on other grounds to conclude the Convention required enforcement of the arbitration provisions at issue, but both circuits recognized that Article II, Section 3 is a mandatory directive to domestic courts, and this is an essential characteristic of self-executing treaties. *ESAB Group*, 685 F.3d at 387; *Safety National*, 587 F.3d at 722. The conclusions reached in *ESAB Group* and *Safety National* align with our ultimate conclusion: state laws prohibiting arbitration provisions in insurance contracts do not reverse-preempt the Convention's command that domestic courts are obligated to enforce international arbitration agreements unless such agreements are null and void, inoperative, or incapable of being performed. 21 U.S.T. 2517.

V

Having concluded Article II, Section 3 of the Convention is self-executing and that it alone requires enforcement of the parties' arbitration agreement, we must decide whether it is reverse-preempted by Wash. Rev. Code § 48.18.200, which renders pre-dispute arbitration agreements in insurance contracts unenforceable. We conclude the Convention is not reverse-preempted.

The McCarran-Ferguson Act broadly provides that "[n]o 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." 15 U.S.C. § 1012(b). This imposes a clear-statement rule that "state laws enacted for the purpose of regulating the business of insurance do not yield to conflicting federal statutes unless a federal statute specifically requires otherwise." *Fabe*, 508 U.S. at 507 (internal quotation marks and citation omitted).

The parties do not expressly dispute that a multilateral treaty entered into by the United States, on its own, is not an "Act of Congress" for purposes of the McCarran-Ferguson Act, and we agree with the Fifth Circuit that "[t]he commonly understood meaning of an 'Act of Congress' does not include a 'treaty.'" *Safety National*, 587 F.3d at 723. Congress consists of both the Senate and House of Representatives. U.S. Const. art. I, § 1. Because treaties require only the approval of the Senate, U.S. Const. art. II, § 2, cl. 2, a treaty is more accurately described as an exercise of executive power constrained by the Constitution, not as an "Act of Congress." Indeed, the Supremacy Clause itself distinguishes between "the Laws of the United States," which must comport with the bicameralism and presentment requirements, *see I.N.S. v. Chadha*, 462 U.S. 919, 948–49 (1983), and "Treaties," which need not, U.S. Const. art. II, § 2.

The legislative history of the McCarran-Ferguson Act is consistent with our conclusion that Congress did not intend the McCarran-Ferguson Act to apply to treaties. In a Senate debate prior to passage of the Act, Senator Homer Ferguson, one of the Act's co-sponsors, explained:

> the purpose of [§ 1012(b)] is very clear, that Congress did not want at the present time to take upon itself the responsibility of interfering with the taxation of insurance or the regulation of insurance by the States. . . . If there is on the books of the United States a *legislative act* which relates to interstate commerce, if the act does not specifically relate to insurance, it would not apply at the present time. Having passed the bill now before the Senate, if Congress should tomorrow pass a law relating to interstate commerce, and should not specifically apply the law to the business of insurance, it would not be an implied repeal of this bill, and this bill would not be affected, because Congress had not, under [§ 1012(b)], said that the new law specifically applied to insurance.

91 Cong. Rec. 481 (1945). This legislative history reinforces what the text makes clear: an "Act of Congress" within the meaning of the McCarran-Ferguson Act is a "legislative act" passed by both houses of Congress. *Id.*; *see Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 428 (2003) (explaining that "a federal statute directed to implied preemption by domestic commerce legislation cannot sensibly be construed to address preemption by executive conduct in foreign affairs").

Moreover, as the Fourth Circuit observed, construing the McCarran-Ferguson Act to permit state laws to reverse-preempt multilateral treaties would frustrate the federal government's ability to "speak with one voice when regulating commercial relations with foreign governments." *ESAB Group*, 685 F.3d at 390 (quoting *Michelin Tire Corp.*

v. Wages, 423 U.S. 276, 285 (1976)). By acceding to the Convention, "the government has opted to use this voice to articulate a uniform policy in favor of enforcing agreements to arbitrate internationally, even when 'a contrary result would be forthcoming in a domestic context.'" *Id.* (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629 (1985)). "If the United States is to be able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors, its courts should be most cautious before interpreting its domestic legislation in such a manner as to violate international agreements." *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 539 (1995). We do not interpret the McCarran-Ferguson Act to reverse-preempt Article II, Section 3 of the Convention.

VI

Article II, Section 3 of the Convention on Recognition and Enforcement of Foreign Arbitral Awards is self-executing, and it requires enforcement of the parties' arbitration agreement. Because the Convention is not an "Act of Congress" subject to reverse-preemption by the McCarran-Ferguson Act, the district court correctly granted defendants' motion to compel arbitration.

AFFIRMED.