NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES NATIONAL BANK OF OREGON *v.* INDEPENDENT INSURANCE AGENTS OF AMERICA, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 92–484. Argued April 19, 1993—Decided June 7, 1993[1]

The Act of Sept. 7, 1916, 39 Stat. 753 (1916 Act), among other things, authorized any national bank doing business in a community with a population not exceeding 5,000 to act as the agent for any insurance company. Although early editions of the United States Code included this provision as section 92 of title 12 (section 92), the 1952 Code and subsequent editions omitted section 92 with a note indicating that Congress had repealed it in 1918. Nevertheless, interpreting section 92 to permit banks located in small communities to sell insurance outside those communities, petitioner Comptroller of the Currency ruled in 1986 that petitioner national bank could sell insurance through its branch in a small Oregon town to customers nationwide. Respondents, various trade organizations representing insurance agents, brought this suit challenging the Comptroller's decision as inconsistent with section 92's terms. The District Court disagreed with that assertion and granted summary judgment for petitioners, noting that section 92 apparently was inadvertently repealed in 1918, but expressing the view that the provision exists ``in proprio vigore.'' Respondents did not challenge section 92's validity in the District Court or the Court of Appeals, despite the latter court's invitation to do so at oral argument. Only after that court ordered supplemental briefing on the issue did

[1]Together with No. 92–507, *Ludwig, Comptroller of the Currency, et al.* v. *Independent Insurance Agents of America, Inc., et al.,* also on certiorari to the same court.

respondents even urge the court to resolve the question, while still taking no position on the merits. In reversing and remanding with instructions to enter judgment for respondents, the Court of Appeals found first that, though the parties had not on their own questioned section 92's validity, the court had a duty to do so, and, second, that the relevant statutes, traditionally construed, demonstrated that section 92 was repealed in 1918.

NATIONAL BANK OF ORE. *v.* INSURANCE AGENTS

Syllabus

Held:

1. The Court of Appeals had discretion to consider the validity of section 92, and under the circumstances did not abuse it. There is no doubt that the court had before it an Article III case or controversy involving section 92's status. Though the parties did not lock horns over that issue, they did clash over whether the Comptroller properly relied on section 92 as authority for his ruling. A court properly presented with an issue is not limited to the particular legal theories advanced by the parties, but retains the independent power to identify and apply the proper construction of governing law, *Kamen* v. *Kemper Financial Services, Inc.,* 500 U. S. ___, ___, even where that construction is that a law does not govern because it is not in force, cf. *Cohens* v. *Virginia,* 6 Wheat. 264, 405 (Marshall, C. J.). Nor did prudence oblige the court below to treat the unasserted argument that section 92 had been repealed as having been waived, since a court may consider an issue antecedent to and ultimately dispositive of the dispute before it, even if the parties fail to identify and brief the issue. *Arcadia* v. *Ohio Power Co.,* 498 U. S. 73, 77. The court was asked to construe a statutory provision that the Code's keepers had suggested was no longer in force, on appeal from a District Court justifying its reliance on the law by the logic that, despite its ``inadverten[t] repea[l],'' section 92 remained in effect of its own force. After giving the parties ample opportunity to address the issue, the court acted without any impropriety in refusing to accept what in effect was a stipulation on the question of law as to section 92's validity. Pp. 5–8.

2. Section 92 was not repealed in 1918. Despite its omission from the Code, section 92 must remain on the books if the Statutes at Large, which provides ``the legal evidence of laws'' under 1 U. S. C. §112, so dictates. Viewed in isolation, the deployment of certain quotation marks in the 1916 Act appears to support the argument, adopted by the Court of Appeals and pressed by respondents, that the Act places section 92 in Rev. Stat. §5202, and that section 92 was subsequently repealed when the War Finance Corporation Act, ch. 45, 40 Stat. 506 (1918 Act), eliminated the relevant portion of §5202. An examination of the structure, language, and subject matter of the relevant statutes, however, provides overwhelming evidence that, despite the placement of the quotation marks in question, the 1916 Act placed section 92 not in Rev. Stat. §5202, but in §13 of the Federal Reserve Act. Since the 1918 Act did not touch §13, it did not affect, much less repeal, section 92. It would appear that the misplacement of the quotation marks in the 1916 Act was a simple scrivener's error

Syllabus

by someone unfamiliar with the law's object and design. Courts should disregard punctuation, or repunctuate, if necessary to render the true meaning of a statute. *Hammock* v. *Loan and Trust Co.,* 105 U. S. 77, 84–85. Pp. 8–24.

293 U. S. App. D. C. 403, 955 F. 2d 731, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court.