I. Interstate Compact Law, an historical perspective:

a. Compacts are rooted in the nation’s colonial past where agreements similar to modern compacts were utilized to resolve inter-colonial disputes, particularly boundary disputes. These boundary disputes arose from broad royal land charters that left colonial borders subject to constant adjustment. The colonies and crown employed a process by which colonial disputes would be negotiated and submitted to crown through the Privy Council for final resolution. This created a long tradition of resolving state disputes through negotiation followed by submission of the proposed resolution to a central authority for approval.

b. This “compact process” was formalized in the Articles of Confederation. Article VI provides, “No two or more states shall enter into any treaty, confederation or alliance whatever without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.”

c. The founders were so concerned over managing interstate relations and particularly the creation of powerful political and regional allegiances that they barred states from entering into “any treaty, confederation or alliance whatever” without the approval of Congress. The founders also constructed an elaborate scheme for resolving interstate disputes. Under Art. IX of the Articles of Confederation, Congress was to “be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other causes whatever[.]”

d. The concern over unregulated interstate cooperation resulted in the adoption of the “compact clause” in Article I, sect. 10, cl. 3 of the U.S. Constitution. That clause provides that “No state shall, without the consent of Congress * * * enter into any agreement or compact with another state, or with a foreign power[.]” In effect, the Constitution does not so much authorize states to enter into compacts as it bars states from entering into compacts absent congressional consent. Unlike the Articles of Confederation in which interstate disputes were resolved by Congress, the Constitution vests ultimate resolution of interstate disputes in the Supreme Court either under its original jurisdiction or through the appellate process. For a thorough discussion on the history of interstate compacts from their origins to the present, see generally, Michael L. Buenger & Richard L. Masters, The Interstate Compact on Adult Offender Supervision: Using Old Tools to Solve New Problems, 9 ROGER WILLIAMS U. L. REV. 71 (2003).
a. Interstate compacts are formal agreements between states that have the characteristics of both statutory law and contractual agreements. They are enacted by state legislatures adopting reciprocal laws that substantively mirror one another. Compacts are considered contracts because of the manner in which they are enacted. There is an offer (the presentation of a reciprocal law to state legislatures), acceptance (the actual enactment of the law) and consideration (the settlement of a dispute or creation of a regulatory scheme).

i. **Compacts are not uniform laws.** Unlike laws such as the Uniform Commercial Code, compacts are not subject to unilateral amendment. For example, in Nebraska v. Cent. Interstate Low-Level Radioactive Waste Comm’n, 207 F.3d 1021, 1026 (8th Cir. 2000), the court held that Nebraska did not have the unilateral right to exercise a veto over actions of an interstate commission created by a compact. Specifically the court held, “Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories.”

ii. **Compacts are not mere administrative agreements.** As contracts, compacts constitute solemn treaties between the states, which are acting as sovereigns within a constituent union when adopting a compact. Rhode Island v. Massachusetts, 37 U.S. 657, 725 (1838) (compacts operate with the same effect as treaties between sovereign powers). General Expressways, Inc. v. Iowa Reciprocity Board, 163 N.W.2d 413, 419 (Iowa 1968) (“We conclude the uniform compact herein was more than a mere administrative agreement and did constitute a valid and binding contract of the State of Iowa.”)

iii. Therefore, compacts have standing as both binding state law and a contract between the member states such that no one state can unilaterally act in conflict with the terms of the compact. Any state law in contradiction or conflict with the compact is unconstitutional, absent the reserve of power to the party states. The terms of the compact take precedence over state law even to the extent that a compact can trump a state constitutional provision. McComb v. Wambaugh, 934 F.2d 474, 479 (3d Cir. 1991) (“Having entered into a contract, a participant state may not unilaterally change its terms. A Compact also takes precedence over statutory law in member states.”); Wash. Metro. Area Transit Auth. v. One Parcel of Land, 706 F.2d 1312, 1319 (4th Cir. 1983) (explaining the WMATA’s “quick take” condemnation powers under the compact are superior to the Maryland Constitution, which prohibited “quick take” condemnations). In effect, by entering a compact, the party states have contractually agreed that the terms and conditions of the compact supersede state considerations to the extent authorized by the compact relative to any conflicting laws or principles.

iv. An unusual feature of an interstate compact does not make it invalid; the combined legislative powers of Congress and of the several states permit a wide
range of permutations and combinations for governmental action. Seattle Master Builders v. Northwest Power Planning Council, 786 F.2d 1359 (9th Cir.1986). The subject matter of an interstate compact is not, therefore, limited by any specific constitutional restrictions; rather as with any “contract,” the subject matter is largely left to the discretion of the parties, in this case the party states and Congress in the exercise if its consent authority.


III. Types of Interstate Compacts: Although there are many types of interstate compacts, compacts can generally be divided into three camps:

a. **Border Compacts:** Those agreements between two or more states that alter the boundaries of a state. Once adopted by the states and approved by Congress, such compacts permanently alter the boundaries of the state and can only be undone by a subsequent compact approved by Congress or the repeal of the compact with Congress’s approval. Examples of such compacts include the Virginia-Tennessee Boundary Agreement of 1803, Arizona-California Boundary Compact of 1963, the Missouri-Nebraska Compact of 1990, and the Virginia-West Virginia Boundary Compact of 1998.

b. **Advisory Compacts:** Those agreements between two or more states that create study commissions. The purpose of the commission is to examine a problem and report back to the respective states on their findings. Such compacts do not result in any change in the state’s boundaries nor do they create ongoing administrative agencies with regulatory authority. They do not require congressional consent because they do not alter the political balance of power between the states and federal government or intrude on a congressional power. An example of such a compact is the Delmarva Peninsula Advisory Council Compact, 29 Del. C. § 11101 (2003); Va. Code Ann. § 2.2-5800 (2003).

c. **Regulatory Compacts:** The broadest and largest category of interstate compacts may be called “regulatory” or “administrative” compacts. Such compacts are a development of the twentieth century and embrace wideranging topics including regional planning and development, crime control, agriculture, flood control, water resource management, education, mental health, juvenile delinquency, child support, and so forth. Examples of such compacts include the Southern Dairy Compact (regulate and provide price support for dairy), the Interstate Compact on Adult Offender Supervision (regulate the movement of adult offenders across state lines), the Midwest Radioactive Waste Disposal Compact (regulate radioactive waste disposal), the Columbia River Gorge Compact (zoning regulation, planning and development), the Interstate Mining compact (establish a commission to promote conversation, standards for land restoration, and promote natural resource development), the Washington Metropolitan Area Transit Regulation Compact (regulates passenger transportation by private carrier), and the Ohio
River Valley Sanitation Compact (regulates water quality and sewage discharge in the Ohio River basin). Perhaps the best known “regulatory” compact is the 1921 Port Authority of New York-New Jersey compact that provides joint agency regulation of transportation, terminal and commerce/trade facilities in the New York metropolitan area. Regulatory compacts create ongoing administrative agencies whose rules and regulations may be binding on the states to the extent authorized by the compact. Many regulatory compacts require congressional consent to be effective as they regulate in areas that impact one of congress’s enumerated powers, e.g., interstate commerce, navigable streams, extradition.

IV. Congressional Consent Requirement

a. Although compact clause appears to require congressional consent in every case, the Supreme Court has determined that the clause is activated only by those agreements that would alter the balance of political power between the states and federal government or intrude on a power reserved to Congress. Virginia v. Tennessee, 148 U.S. 503 (1893). Thus, where an interstate agreement accomplishes nothing more than what the states are otherwise empowered to do unilaterally, the compact does not intrude on federal interests requiring congressional consent. U.S. Steel Corp. v. Multistate Tax Comm’n, 434 U.S. 452 (1978). In this circumstance, the compact continues to be a contract between the states, the meaning of which may be subject to the Supreme Court’s original jurisdiction over disputes between the states. The compact is not, however, “federalized” for purposes of enforcement and interpretation.

b. However, where congressional consent is required because the compact intrudes on federal interests, the lack of congressional consent renders the agreement void as between the states. By contrast, where the compact does not intrude on federal interests, the agreement is not invalid for lack of congressional consent. New Hampshire v. Maine, 426 U.S. 363 (1976).

c. Even where congressional consent is given, the mere act of consent is not dispositive of whether the compact actually required consent. U.S. Steel Corp., supra, 470-71 (“The mere form of the interstate agreement cannot be dispositive . . . . The relevant inquiry must be one of impact on our federal structure.”).

d. Congressional consent is given in one of three ways:

i. Consent can be implied after the fact when actions by the states and federal government indicate that congress has granted its consent even in the absence of a specific legislative act. Virginia v. Tennessee, supra.

ii. Consent can be explicitly given after the fact, as in the case of border compacts, by enacting legislation that specifically recognizes and consents to the compact.
iii. Consent can be given preemptively by congress passing legislation encouraging states to adopt compacts to solve particular problems. Thus, the Interstate Compact on Adult Offender Supervision (ICAOS) is based on congressional consent granted under the Crime Control Act of 1934, 4 U.S.C.A. § 112(a), which provides, “The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.” This was the consent relied upon in the adoption of the Interstate Juvenile Compact and the ICAOS’s precursor, the Interstate Compact on Probation and Parole.

e. Considerations in obtaining consent:

i. In giving consent, Congress is not required to accept a compact as presented nor is Congress constrained in imposing limitations or conditions on the party states as a condition precedent to the acceptance of a compact. Congress is fully within its authority to impose limitations on compacts, both in terms of their duration and substance. See, e.g., 16 U.S.C § 544 et seq, concerning the Columbia River Gorge Commission.

ii. Although the states may negotiate a compact and obtain near universal assent to the instrument, Congress retains full authority to alter, amend, or set conditions on the compact as part of granting its consent. See, Columbia River Gorge United-Protecting People & Property v. Yeutter, 960 F.2d 110 (Cir. 9th 1992); Seattle Master Builders v. Pacific N.W. Elec. Power, 786 F.2d 1359, 1364 (9th Cir. 1986), cert. denied, 479 U.S. 1059, 107 S. Ct. 939 (1987). Other conditions that Congress can impose include the waiver of Eleventh Amendment immunity to compact commissions and agencies, (See, Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959)) and jurisdictional selection for litigation of disputes, (See, 42 U.S. 14616). Because of the purely gratuitous nature of consent, Congress may extract as part of its consent to an interstate compact conditions that it might not otherwise extract in other contexts. Pennsylvania v. Union Gas Co., 491 U.S. 1, 43 (1988).

iii. States that adopt an interstate compact to which congress has attached conditions – even after the fact – are deemed to have acceded to those conditions as a part of the compact. See, Petty v. Tennessee-Missouri Bridge Commission, supra. (congressionally mandated provisions regarding suability of bridge commission were binding on states because Congress was within its authority to impose conditions as part of its consent and the states acceded to those conditions by enacting the compact.)

iv. Congress does not pass upon a compact in the manner as a court of law deciding a question of constitutionality. The requirement that Congress approve a
compact is an act of political judgment about the compact’s potential impact on national interests and, if approved, to impose any conditions necessary to ensure that those national interests are not harmed by the compact. In short, the Congressional consent requirement is an exercise of political judgment as to the appropriateness of the compact vis-à-vis national concerns, not a legal judgment as to the correctness of the form and substance of the compact. As a rule, there are virtually no limitations on Congress’s substantive right to grant, withhold, or condition the granting of its consent, save perhaps a finding that the compact itself somehow violated constitutional principles.

f. Interaction of Congress’s Legislative Authority with the Compact Clause:

i. Courts have been reluctant to recognize any implied constitutional power vested in Congress to amend, withdraw, or repeal its consent. However, there are apparently no limitations on Congress’s legislative action that may impact the substance of a compact. The granting of congressional consent in no way limits Congress’s ability to exercise its legislative prerogatives, even to the extent that such an exercise significantly impacts or impairs the workings of an interstate compact. See, Arizona v. California, 373 U.S. 546, 565 (1963) (Congress was well within its authority to create a comprehensive scheme for managing the Colorado River notwithstanding its consent to the Colorado River Compact.)

ii. While adoption of an interstate compact effectively binds all future state legislatures and restricts the ability of states to act in contravention of a compact (either unilaterally or collectively), no such restriction is imposed upon Congress. Congress can utilize its legislative power – concurrently with or subsequent to granting consent – to significantly alter the purpose or regulatory authority of a compact. Therefore, a compact is not immune from subsequent or alternative federal legislation that may alter the landscape in which the compact operates or even render the compact a nullity in practice, if not under the law. As between congress and the states, compacts are not afforded a special status different than that to which the states were otherwise entitled.

iii. The general view is that the legislative act of granting consent can result in changing the application of federal law to the states or entities subject to the compact. For example, In McKenna v. Washington Metropolitan Area Transit Authority, 829 F.2d 186 (D.C. Cir. 1987), the U.S. Court of Appeals for the District of Columbia held that congress’s consent to the WMATA Compact altered the application of the Federal Employers’ Liability Act (FELA) to the WMATA and exempted it from liability under that act.

g. Once Congressional consent is granted and appropriate, the nature of the compact changes radically. It no longer stands as an agreement between the states but is transformed into the “law of the United States” under the law of the union doctrine. Cuyler v. Adams, 449 U.S. 433, 440 (1981). Therefore, Congressional consent “transforms the States’ agreement into federal law under the Compact Clause.” Thus, for
example, the Interstate Agreement on Detainers is considered a law of the United States whose violation is grounds for habeas corpus relief under 28 U.S.C. § 2254. See, Bush v. Muncy, 659 F.2d 402, 407 (4 Cir. 1981), cert. denied, 455 U.S. 910 (1982).

h. One consequence of the “transformational” rationale articulated by the Court in Cuyler is that Congressional consent places the interpretation and enforcement of interstate compacts squarely within the purview of the federal judiciary. League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency, 507 F.2d 517 (9th Cir. 1974) “[A] congressionally sanctioned interstate compact within the Compact Clause is a federal law subject to federal construction.” Carchman v. Nash, 473 U.S. 716, 719 (1985). See, also, West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 28 (1951) holding that, “A state cannot be its own ultimate judge in a controversy with a sister state. To determine the nature and scope of obligations as between states, whether they arise through the legislative means of compact or the ‘federal common law’ governing interstate controversies, is the function and duty of the Supreme Court of the Nation.”

i. This is not to suggest that every dispute arising under an interstate compact must be litigated in the federal courts. Under the Supremacy Clause, state courts have the same obligation to give force and effect to the provisions of a compact as do the federal courts. It is, however, ultimately the United States Supreme Court that retains the final word on the interpretation and application of congressionally approved compacts given their now federalized nature. Delaware River Comm’n v. Colburn, 310 U.S. 419, 427 (1940) (“[T]he construction of such a [bi-state] compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal ‘title, right, privilege or immunity,’ which when ‘specially set up and claimed’ in a state court may be reviewed here on certiorari under § 237(b) of the Judicial Code.”).

j. In interpreting and enforcing compacts, the courts are constrained to effectuate the terms of the compacts (as binding contracts) so long as those terms do not conflict with Constitutional principles. Once a compact between states has been approved, it is the law of the case binding on the states and its citizens. Thus, “Unless the compact . . . is somehow unconstitutional, no court may order relief inconsistent with its express terms, no matter what the equities of the circumstances might otherwise invite.” New York State Dairy Foods v. Northeast Dairy Compact Comm’n, 26 F. Supp. 2d 249, 260 (D. Mass. 1998), aff’d, 198 F.3d 1 (1st Cir. 1999), cert. denied, 529 U.S. 1098 (2000). For example, in Texas v. New Mexico, 462 U.S. 554, 564 (1983) the Supreme Court sustained exceptions to a special master’s recommendation to enlarge the Pecos River Compact Commission, ruling that one consequence of a compact becoming “a law of the United States” is that “no court may order relief inconsistent with its express terms.” Although, congressional consent may change the venue in which compact disputes are ultimately litigated.

k. Limitations on Congressional Consent: Once congress grants consent to a compact, the general principle is that consent cannot be withdrawn nor additional conditions added subsequent to the granting of consent. Although the matter has never been finally determined by the U.S. Supreme Court, at least two lower courts have held
that congressional consent, once given, is not subject to alteration. See, Tobin v. United States, 306 F.2d 270, 273 (D.C. Cir. 1962); Mineo v. Port Authority of New York and New Jersey, 779 F.2d 939 (3rd Cir. 1985).

I. Federal enforcement of interstate compacts:

i. Because congressional consent places the interpretation of an interstate compact squarely in the federal courts, those same courts have the authority to enforce the terms and conditions of the compact. No court can order relief inconsistent with the purpose of the compact. See, New York State Dairy Foods v. Northeast Dairy Compact Comm'n, 26 F. Supp. 2d 249, affirmed, 198 F.3d 1, 1999 (1st Cir. Mass. 1999), cert. denied 529 U.S. 1098 (2000) (once compact between states is approved, it is the law of the case binding on the states and its citizens and, absent constitutional defect, no court may order relief inconsistent with its express terms no matter what the equities of the circumstances might otherwise invite). However, where the compact does not articulate its enforceability, courts have wide latitude to fashion remedies that are consistent with the ultimate purpose of the compact. These remedies can include granting injunctive relief or awarding damages. The US Supreme Court addressed this matter when it observed, “That there may be difficulties in enforcing judgments against States[’] counsel caution, but does not undermine our authority to enter judgments against defendant States in cases over which the Court has undoubted jurisdiction, authority that is attested to by the fact that almost invariably the ‘States against which judgments were rendered, conformably to their duty under the Constitution, voluntarily respected and gave effect to the same.’” Texas v. New Mexico, 482 U.S. 124,130, 131 (1987). “By ratifying the Constitution, the States gave this Court complete judicial power to adjudicate disputes among them . . . and this power includes the capacity to provide one State a remedy for the breach of another.” Id. at 128.

ii. Remedies may include imposing monetary penalties on the breaching state. South Dakota v. North Carolina, 192 U.S. 286, 320-21 (1904); see also Texas v. New Mexico, 482 U.S. at 130 (“The Court has recognized the propriety of money judgments against a State in an original action, and specifically in a case involving a compact. In proper original actions, the Eleventh Amendment is no barrier, for by its terms, it applies only to suits by citizens against a State.”). The Eleventh Amendment provides no protection to states. Kansas v. Colorado, 533 U.S. 1, 7 (2001) (“Colorado contends, however, that the Eleventh Amendment precludes any such recovery based on losses sustained by individual water users in Kansas. It is firmly established, and undisputed in this litigation, that the text of the Eleventh Amendment would bar a direct action against Colorado by citizens of Kansas.”)

m. Delegation of state authority to an interstate commission:
i. One of the axioms of modern government is the ability of a state legislature to delegate to an administrative body the power to make rules and decide particular cases. This delegation of authority extends to the creation of interstate commission through the vehicle of an interstate compact. West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 30 (1951).

ii. It has been held that the states may validly agree by interstate compact with other states to delegate to interstate commissions or agencies legislative and administrative powers and duties. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938); Dutton v. Tawes, 171 A.2d 688 (Md. 1961); Application of Waterfront Commission of New York Harbor, 120 A. 2d 504, 509 (N. J. Super. 1956). Obligations imposed by a duly authorized interstate commission are enforceable on the states. West Virginia ex rel. Dyer v. Sims, supra.

iii. The delegation of state authority to an interstate commission does not ensconce upon that commission the status of a state agency for purposes of Eleventh Amendment immunity from suit in federal court. Such an agency is under the control of special interests or gubernatorially appointed representatives. It is two or more steps removed from popular control or even of control by a local government. Bi-state entities created by compact are not subject to the unilateral control of any one of the states that compose the federal system. Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30 (1994) (Port Authority is financially self-sufficient; it generates its own revenues, and it pays its own debts. Requiring the Port Authority to answer in a federal court to injured railroad workers who assert a federal statutory right, under the Federal Employers’ Liability Act to recover damages does not touch the concerns, the states’ solvency and dignity, that underpin the Eleventh Amendment.) As such they cannot be considered sovereign within the meaning of the constitution.

V. Judicial interpretation of interstate compacts:

a. As noted, a compact is a contract and must be enforced with the terms and conditions of the compact. No court has authority to provide relief that is inconsistent with the compact. Texas v. New Mexico, 462 U.S. 554 (1983). However, in interpreting a compact, courts have latitude in attempting to discern the purposes of the agreement. In interpreting a “federalized” interstate compact, federal courts must address disputes just as if a court were addressing a federal statute. The first and last order of business of a court addressing an approved interstate compact “is interpreting the compact.” Texas v. New Mexico, 462 U.S. at 567, 568. Absent a federal statute making state statutory or decisional law applicable, the controlling law is federal law; and, absent federal statutory guidance, the governing rule of decision would be fashioned by the federal court in the mode of the common law. Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 674-679, (1974).
b. Although courts have acknowledged that interstate compacts are contracts to the extent they are a binding legal document between party states that set forth certain terms and conditions that must be construed and applied in accordance with the intent of the agreement, the courts have also recognized the unique features and functions of compacts. Though a contract, an interstate compact represents a political compromise between “constituent elements of the Union,” as opposed to a commercial transaction. Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 40 (1994). Such an agreement is made to “address interests and problems that do not coincide nicely either with the national boundaries or with State lines—interests that may be badly served or not served at all by the ordinary channels of National or State political action.” Id. Consequently, with regards to congressionally approved compacts, the right to sue for breach of the compact differs from a right created by a commercial contract; it does not arise from state common law but from federal law. While contract principles may inform the interpretation of a compact and the remedies available in the event of a breach, the underlying action is not like a contract action at common law as heard in the English law courts of the late Eighteenth Century.

c. Courts may look to extrinsic evidence, when appropriate, to determine the intent of the parties and to effectuate the desired result of the compact. Extrinsic evidence such as a compact’s legislative history or the negotiation history may be examined in interpreting an ambiguous provision of a compact. Arizona v. California, 292 U.S. 341 (1934); Green v. Bock Laundry Machine Co., 490 U.S. 504 (1989); Pierce v. Underwood, 487 U.S. 552, (1988); Blum v. Stenson, 465 U.S. 886 (1984). Thus, unlike standard contract disputes where principles of such as the parole evidence rule may restrict in the influence of outside evidence in interpreting a contract provision, resort to extrinsic evidence of the compact negotiations is entirely appropriate. Oklahoma v. New Mexico, 501 U.S. 221 (1991). The use of extrinsic evidence to interpret and enforce a compact arises from the dual nature of such agreements as both statutory and contractual in nature.

VI. The Advantages and Disadvantages of Interstate Compacts

a. Advantages of compacts as governing mechanisms:

i. Experience of recent years where complex regional or national problems have shown little respect for the dual lines of federalism or the geographical boundaries of states have encouraged the reemergence of interstate compacts not only as devices for adjusting interstate relations but also for governing the nation. The practicalities of governing a large, multi-faceted, federally designed nation frequently blurs distinction between what is distinctly “national” in scope and what is distinctly “local” in scope. See, e.g., New York v. New Jersey, 256 U.S. 296, 313 (1921) The emergence of broad public policy issues that ignore state boundaries and the principles of federalism have presented new governing challenges to both state and federal authorities.
ii. Interstate compacts provide an effective solution that respects fundamental principles of federalism, recognizing the supremacy of the federal government regarding national issues while allowing the states to take appropriate collective action in addressing suprastate problems. Compacts enable the states — in their sovereign capacity — to act jointly and collectively, generally outside the confines of the federal legislative or regulatory process while concomitantly respecting the view of Congress on the appropriateness of joint action. The interstate compacts can effectively preempt federal interference into matters that are traditionally within the purview of the states and yet which have regional or national implications.

iii. Unlike federal actions that impose unilateral, rigid mandates, compacts afford states the opportunity to develop dynamic, self-regulatory systems over which the party states can maintain control through a coordinated legislative and administrative process. The very nature of an interstate compact makes it an ideal tool to meet the need of cooperative state action in developing and enforcing standards upon the party states. Compacts also enable the states to develop adaptive structures that can evolve to meet new and increased challenges that naturally arise over time. See, Colorado v. Kansas, 320 U.S. 383, 392 (1943). In short, through the compact device, states acting jointly can control not only the solution to a problem but also shape the future agenda as the problem changes.

iv. Interstate compacts can be structured to respect the balance of power among federal, state, and local interests. While many regulatory compacts provide power to regulate cross-border problems, they can be structured to do so in a manner that preserves national interests. To a large extent, the Compact Clause requiring congressional consent to compacts that impact federal interests ensures that federal concerns are at the forefront of compact construction while simultaneously enabling states to maintain functional and regulatory control over an issue. Approval by Congress provides states with the authority to regulate in an area which would otherwise be unavailable to the state.

v. Interstate compacts can broaden a state’s parochial focus by allowing states to act collectively and jointly to address regional and national problems. Making decisions based on the state line boundaries can be problematic because boundaries do not necessarily reflect natural or logical divisions to supra-state problems. State legislatures and state regulators generally do not make decisions that are likely to restrict their own citizens’ activities based on the need to protect a neighboring state’s interests. Consequently, an interstate compact provides the opportunity to make decisions across state boundaries without resorting to federalization, which has limitations in resolving cross-boundary problems.

vi. Interstate compacts provide party states with a predictable, stable and enforceable instrument of policy control. The contractual nature of compacts ensures their enforceability on the party states. The fact that compacts cannot be unilaterally amended ensures that party states will have predictable and stable
policy platform for resolving problems. By entering into an interstate compact, each party state acquires the legal right to require the other states to perform under the terms and conditions of the compact.

b. Disadvantages of interstate compacts. The principle disadvantage of compacts may be characterized as twofold:

i. The long negotiations and arduous course they must run before becoming effective; and

ii. The ceding of traditional state sovereignty, particularly as required by several modern administrative compacts. The very purpose of an interstate compact is to provide for the collective allocation of governing authority between party states, which does not allow much room for individualism. The requirement of substantive “sameness” prevents party states from passing dissimilar enactments notwithstanding, perhaps, pressing state differences with respect to particular matters within the compact. To the extent that a compact is used as a governing tool, they require, even in the boundary compact context, that party states cede some portion of their sovereignty. The matter of state sovereignty can be particularly problematic when interstate compacts create ongoing administrative bodies that possess substantial governing power. Such compacts are truly a creation of the twentieth century as an out-growth of creating the modern administrative state.