

A PRIMER ON THE RELATIONSHIP BETWEEN AN INTERSTATE COMPACT AND STATE LAW

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This primer reviews the state of the law in this area, citing the majority views, and poking a little fun at the minority views. This is not intended to be a complete discussion on the issue.

Fundamental Cases

The relationship between interstate compacts and state law has been analyzed in terms of contracts, federal supremacy, and statutory construction. The early cases tended toward a contractual analysis. Two early cases are especially noteworthy:

Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823): 1789 boundary compact creating Kentucky. Compact provided in relevant part, “that all private rights and interests of lands, which [Kentucky] derived from the laws of Virginia, prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in [Virginia].” Kentucky subsequently enacted laws concerning occupying claimants of land. At issue was whether the Kentucky laws were unconstitutional as impairing the obligation of the compact between Virginia and Kentucky.

The Supreme Court found the laws to be unconstitutional as impairing contractual obligations under the Contracts Clause. U.S. Const. art. 1, § 10, cl. 1. Some excerpts:

Can the government fly from this agreement, acceded to by the people in their sovereign capacity, because it involves a principle which might be inconvenient,

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or even pernicious to the state, in some other respect? The court cannot perceive how this proposition could be maintained. *Green v. Biddle*, 21 U.S. at 89.

We now come to the consideration of the question, whether this court has authority to declare the act in question unconstitutional and void, upon the ground, that it impairs the obligation of the compact? This is denied for the following reasons: It is insisted, in the first place, that this court has no such authority, where the objection to the validity of the law is founded upon its opposition to the constitution of Kentucky, as it was, in part in this case. It will be a sufficient answer to this observation, that our opinion is founded exclusively upon the constitution of the United States. *Id.* at 90.

Having thus endeavored to clear the question of these preliminary objections, we have only to add, by way of conclusion, that the duty, no less than the power of this court, as well as of every other court in the Union, to declare a law unconstitutional, which impairs the obligations of contracts, whoever may be the parties to them, is too clearly enjoyed by the constitution itself, and too firmly established by decisions of this and other courts, to be now shaken; and those decisions entirely cover the present case. *Id.* at 91–92.

If we attend to the definition of a contract, which is the agreement of two or more parties, to do or not to do, certain acts, it must be obvious, that the propositions offered, and agreed to by Virginia, being accepted and ratified by Kentucky are a contract. In fact, the terms compact and contract are synonymous. *Id.* at 92.

[A] state has no more power to impair an obligation into which she herself has entered than she can the contracts of individuals. Kentucky, therefore, being a party to the compact which guarantied to claimants of land lying in that state, under titles derived from Virginia, their rights, as they existed under the laws of Virginia, was incompetent to violate that contract, by passing any law which rendered those rights less valid and secure. *Id.* at 92–93.

***West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951):** Ohio River Valley

Water Sanitation Compact, managing water pollution.² Article X of the compact provided that the states agreed “to appropriate for salaries, office and other administrative expenses, their proper proportion of the annual budget as determined by the Commission and approved by the Governors of the signatory states, . . .” In 1939, West Virginia ratified and approved the compact. In its 1949 session, the West Virginia Legislature

² Interestingly, the Supreme Court noted, “Controls of pollution in interstate streams might, on occasion be an appropriate subject for national legislation.” 341 U.S. at 26. This case obviously long predated the Clean Water Act.

appropriated its contribution; however, Sims, the state auditor, refused to pay it. The West Virginia members of the Compact Commission and the West Virginia State Water Commission sought direct relief in the West Virginia Supreme Court.

The West Virginia Supreme Court found the Act ratifying the compact invalid under the West Virginia constitution because it: (1) delegated West Virginia's police powers to other states and the federal government; (2) bound future legislatures to make appropriations for the compact; and (3) violated West Virginia's constitutional debt limitation provision. The U.S. Supreme Court reversed. Some excerpts:

But a compact is after all a legal document. Though the circumstances of its drafting are likely to assure great care and deliberation, all avoidance of disputes as to scope and meaning is not within human gift. Just as this Court has power to settle disputes between States where there is no compact, it must have final power to pass upon the meaning and validity of compacts. It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified or given final meaning by an organ of one of the contracting States. A State cannot be its own ultimate judge in a controversy within a sister State. *West Virginia ex rel. Dyer v. Sims*, 341 U.S. at 28.

Since the Constitution provided the compact for adjusting interstate relations, compacts may be enforced despite otherwise valid state restrictions on state action. *Id.* at 34 (Reed, J. concurring).

West Virginia officials induced sister States to contract with her and Congress to consent to the Compact. She now attempts to read herself out of this interstate Compact by reading into her Constitution a limitation upon the powers of her Governor and Legislature to contract.

West Virginia, for internal affairs, is free to interpret her own Constitution as she will. But if the compact system is to have vitality and integrity, she may not raise an issue of *ultra vires*, decide it, and release herself from an interstate obligation. The legal consequence which flow from the formal participation in a compact consented to by Congress is a federal question for this Court. *Id.* at 35 (Jackson, J. concurring).

Whatever she now says her Constitution means, she may not apply retroactively that interpretation to place an unforeseeable construction upon what the other States to the Compact were entitled to believe was a fully authorized act. *Id.*

When Does State Law Apply to a Compact?

Courts tend toward two different analyses when determining when state law applies to a compact. Which analysis the court uses seems to depend on whether the compact authorizes modifying the compact through state legislation.

Compact Authorizes Modification by State Law

Many compacts specify that the compact may be modified by subsequent state law concurred in by the other state(s).³ Generally, in these cases, the courts look at two factors: (1) how similar are the two state laws, and (2) indication that the legislatures intended for the law to apply to the compact. Not surprisingly, courts are mixed on what it takes to modify a compact by state law.

Malverty v. Waterfront Comm'n of New York Harbor, 524 N.E. 2d 421, 71 N.Y.2d 977 (1988): *Malverty* involved a worker's claim that the Waterfront Commission ignored a provision of New York's Correction Law prohibiting discrimination against people previously convicted of crimes. The compact creating the Waterfront Commission, which received Congress' consent, specifically authorized the two states (NY and NJ) to amend and supplement the compact to implement legislation by one state that is concurred with by legislation in the other state. The court concluded that the New York law did not apply because it did not contain text or legislative history indicating that New York was modifying the compact. The court noted that it was not enough for New York and New Jersey to have the same or similar public policies concerning anti-discrimination against former inmates.

³ It is beyond the scope of this presentation to discuss whether and when modifications must be consented to by Congress.

Int'l Union of Operating Eng'rs, Local 542 v. Delaware River Joint Toll Bridge Comm'n, 311 F.3d 273 (3rd Cir. 2002): In this case, the compact did not specifically provide for modification of the compact, but the court gave a lengthy discussion of the differing court opinions about how similar must the states' laws be, and what level of intent is necessary.

Local 542 petitioned for a court order to compel the DRJTBC to comply with New Jersey's collective bargaining laws. The trial court held that neither the New Jersey nor the Pennsylvania laws applied because there was no clear intent to impose those laws on the Commission. Local 542 argued that states may amend the compact by passing substantially similar without an express statement of intent to apply the law to the compact. The Court disagreed. It noted that Local 542's argument is how New Jersey courts apply state law to a compact, that New York courts follow *Malverty*, and that federal courts are split. The Court concluded that it should look for an express statement of intent to apply new law to a compact.⁴ However, the Court primarily concluded that New Jersey's collective bargaining laws did not apply because the compact did not express any intent to allow modification of the compact by new state law.

Compact Does Not Authorize Modification by State Law/Pre-Compact State Law

Where a compact is silent about amendment of the compact, courts tend toward a contract analysis in evaluating whether a state law that pre-dated the compact applies to the compact. The *People v. South Lake Tahoe* case seems to be the first time this concept appears, but it is *Seattle Master Builders* that is most often cited. Some excerpts from these cases:

⁴ The Court did not discuss how similar the states' laws must be.

Even if the California legislature intended for the CEQA provisions to apply to TRPA, however, such application is precluded unless the Compact reserves to California the right to impose such requirements on the bi-state agency. The Compact was approved by Congress the year before the CEQA provisions were enacted, and thus it does not expressly refer to that legislation. But we conclude that California has the right to impose the CEQA provisions on TRPA projects under the authority of Article VI(a) of the Compact, which provides in relevant part:

Every such ordinance, rule or regulation (adopted by TRPA to effectuate its regional plan) shall establish a Minimum standard applicable throughout the basin, and any political subdivision may adopt and enforce an equal or higher standard applicable to the same subject of regulation in its territory.
People v. City of South Lake Tahoe, 466 F.Supp 527, 537 (E.D. Cal. 1978).

A state can impose state law on a compact organization only if the compact specifically reserves its right to do so. *Seattle Master Builders v. Pac. NW Elec. Power and Cons. Planning Council*, 786 F. 2d 1359, 1371 (9th Cir. 1986) (citing *People v. City of Lake Tahoe, supra*).

Compact Does Not Authorize Modification by State Law/Post-Compact State Law

The analysis for application of state laws enacted post-compact differs from the analysis for pre-compact state laws. In this situation, the courts tend toward a supremacy analysis. There are numerous cases that involve post-compact state law. A couple of excerpts give a sense of how the courts analyze this issue.

Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent state law. 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 the parties. *C.T. Hellmuth & Assoc. v. Washington Metro. Area Transit Auth.*, 414 F. Supp. 408 (D. Md. 1976).

[A compact] takes precedence over the subsequent statutes of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide *Aveline v. Penn. Bd. of Probation & Parole*, 729 A.2d 1254, 1257 n.10 (Pa. Commw. Ct. 1999) (citing Jill E. Hasday, *Interstate Compacts in a Democratic Society: The Problem of Permanence*, 49 Fla. L. Rev. 1 (1997));

“Creative” Application of State Law

While most courts tend away from applying state law, they often find state law to be applicable. Courts have applied state law through generally accepted principles of deference and conflict of laws, and through sheer determination to apply state law.

Consider these cases:

Deference to state court decisions may have unanticipated consequences.

“Though state law is not binding, federal courts show deference to prior state adjudications and rulings in construing an interstate compact.” *Pievsky v. Ridge*, **98 F.3d 730, 738 (3d Cir. 1996)**.

(With the result that the federal courts are essentially applying state law)

Conflicts of law may sometimes be resolve by applying both states’ laws . . .

Here, given DRPA’s unique position as a bi-state agency, the Court will consider whether Pennsylvania or New Jersey law creates a legitimate claim of entitlement in receiving a public contract for which a party is the low bidder. *Allied Painting, Inc. v. Delaware River Port Authority*, **2004 U.S. Dist. LEXIS 13994, at *6 (E.D. Penn. July 20, 2004)**.

(. . . and hope there’s no conflict)

But if there is a conflict . . .

‘Congress did no more than incorporate the agreement of the two parties into the body of federal law; it did not make applicable the entire panoply of federal administrative and substantive standards.’ We therefore must look to the laws of Nevada and California to resolve the question before us. If there were a conflict between California and Nevada law on the question of vested rights, this case would be more difficult. We would have to decide whether to apply the law of the jurisdiction where the land is situated and the permit was granted or whether to apply some other principle to resolve the conflict. *Lakeview Development Corp. v. City of South Lake Tahoe*, **915 F.2d 1290, 1295 (9th Cir. 1990)**.

(. . . difficult, indeed!)

Ignore the state’s own failure to implement the compact.

Absent published procedural rules,[fn1] therefore, we apply the Washington Administrative Procedure Act, *chapter 34.05 RCW*. *Id.* [fn1: The Commission has

not complied with the statutory requirement to publish its rules. *RCW 43.97.015, art.I(g); RCW 34.05.210(1)*. The rules are published in the Oregon Administrative Rules, but not in the Washington Administrative Code. An unofficial Web site is not a publication source upon which this court can rely.] *Friends of the Columbia Gorge v. Columbia River Gorge Comm'n*, 126 Wash. App. 363, 108 P.3d 134, *as modified on reconsideration*, 2005 Wash. App. LEXIS 968 at *1 (May 5, 2005).

(In fact, the Washington Code Reviser refuses to include the Commission's administrative rules in the Washington Administrative Code compilation).

Perhaps the greatest of the sheer determination cases is *Skamania County v. Woodall*, 104 Wash. App. 525, 16 P. 3d 701, (2001) Consider these statements:

Congress's decision not to make the Commission a federal agency suggests it wanted the Commission to apply state law. *Id.* at 533–34.

Congress's decision to give state courts almost exclusive jurisdiction over appeals from Commission action suggests Congress intended the Commission to apply state law. *Id.* at 534.

If courts were to review Commission actions under federal law, this would raise the specter of federal zoning. Moreover, there is no federal law zoning, so it is unclear what the court's would apply. *Id.*

Congress approved the Compact knowing it expressly provided that the provisions of [the Columbia River Gorge Compact] hereby are declared to be the law of this state. *Id.* at 535.

Congress's decision not to dictate that federal law apply suggests it intended the Commission to apply state law. When Congress placed jurisdiction almost exclusively in the state courts, it did not command the state courts to apply federal law. *Id.*

Nothing in the Compact or Act can be interpreted as a clearly expressed intention of the Legislature to give the Commission the authority to ignore Washington common law when interpreting a Washington State county ordinance. *Id.*

**WHAT IS THE STATUS OF A COMPACT'S
ADMINISTRATIVE RULES**

If we start with the presumption that a compact, which has received the consent of Congress and is a subject that is proper for federal legislation, is federal law, then what is the status of the administrative rules that the compact entity adopts? Should these rules be considered federal law? The author has found few cases addressing this question.

***Stephans v. Tahoe Regional Planning Agency*, 697 F.Supp. 1149 (D. Nev. 1988)**: Takings claim against TRPA was dismissed to the extent it was based on state constitution rather than US Constitution because the Regional Plan preempts state law and state constitutional provisions. The court specifically stated:

As federal law, the 1987 Regional Plan adopted by TRPA preempts state law and state constitutional provisions. *Id.* at 1152.

***Klickitat County v. Columbia River Gorge Comm'n*, 862 P.2d 629, 634, 71 Wn. App. 760, 767 (1993)**: Denial of declaratory judgment claim that the State of Washington was liable for inverse condemnation claims resulting from Management Plan adopted by the Columbia River Gorge Commission. After noting that the Columbia River Gorge Compact was federal law and that state law does not apply to the compact unless specifically preserved, the court concluded:

* * * once two states enter into a compact with congressional approval, the compact is considered an instrument of federal law. The [Columbia River Gorge] Commission's land management plan and the [Columbia River Gorge National Scenic Area Act's] provisions relative to the plan are federally mandated and do not constitute a state program.