

# INTERSTATE COMPACT CASE LAW

## 1976-2000

INTERSTATE compacts ARE agreements between two or more states and ARE recognized as a tool for interstate cooperation on a national and regional basis. In 1920, only 36 compacts existed in the United States. Today, more than 190 compacts are in effect around the country. The extensive range of topics covered by interstate compacts includes environment and conservation, child welfare, water allocation, health, education, and corrections and crime control. While much of the recent research and state activity involves drafting compact language and administering compacts, compacts also are being litigated. In fact, the amount of litigation has steadily increased over the past twenty-five years.

The January 1976 Council of State Governments publication, *The Law and Use of Interstate Compacts*, by Frederick L. Zimmerman and Mitchell Wendell, presents an extensive overview of interstate compact law through 1975. Since then, federal and state courts have issued more than 200 opinions involving interstate compacts. In 2000 and 2001, CSG staff reviewed 100 of these more recent cases to identify those that broadly impact interstate compact law or could serve as examples to other courts even if the cases are not binding precedent. This publication highlights 26 THAT address one or more of the following issues:

- How States Enter Interstate Compacts
- Whether Congressional Consent Is Required
- How Congress Consents To Interstate Compacts
- The Effect Of Congressional Consent On Interstate Compacts
- United States Supreme Court, Federal Court and State Court Jurisdiction Over Interstate Compact Litigation
- Application Of State Law To An Interstate Compact Commission
- Sovereign Immunity And Interstate Compact Commissions
- Interpretation Of Interstate Compact Provisions And Interstate Compact Commission Ordinances
- The Standard Of Judicial Review Of Interstate Compact Commission Action
- Availability Of Remedies For Violation Of Interstate Compacts
- The Amendment And Modification Of Interstate Compacts

Readers should note that, in the advent of increased interstate compact litigation, many litigated compact disputes involve issues that are specific to the compact being litigated. For example, the severity of the penalty imposed upon potential adoptive parents for violating the Interstate Child Placement Compact has been a much litigated and controversial issue in recent years. While compact-specific LITIGATION IS IMPORTANT, this publication highlights cases from 1976 to the present that are of potential importance to all interstate compacts.

## **How States Enter Interstate Compacts**

A state enters into an enforceable and binding interstate compact when it follows the entry provisions set out in the compact. States should explicitly follow the procedures for entry that are stated in the compact language. If a state fails to comply with the terms of the compact regarding how the compact is to become effective, then litigation can arise over whether the compact is effective. Two recent cases highlight this issue.

In the 1998 decision, Sullivan v. Com., Dept. of Transp., Bureau of Driver Licensing, 708 A.2d 481 (Pa. 1998), the language of the Driver License Compact of 1961 specifically provided that the compact provisions ““enter into force and become effective as to any state when it has enacted the [Compact] into law.”” However, the Pennsylvania legislature did not enact the compact itself into law. Instead, the Pennsylvania legislature enacted legislation authorizing the Secretary of the Pennsylvania Department of Transportation to enter into the Driver License Compact and any other agreements that notify Pennsylvania of violations incurred by Pennsylvania residents.

The Pennsylvania Supreme Court held that the compact had not been properly enacted by the Pennsylvania legislature, and hence, was not in effect in Pennsylvania. CHARACTERIZING THE compact as “a contract between states” THE COURT relied on general state contract law, WHICH provides that courts cannot rewrite the provisions of a contract or interpret a contract provision to conflict with the language of the contract. IT ALSO DETERMINED THAT BECAUSE THE COMPACT’S WITHDRAWAL PROVISION REQUIRES WITHDRAWING MEMBER STATES TO ENACT A STATUTE REPEALING THE COMPACT, THE PENNSYLVANIA LEGISLATURE DID NOT INTEND TO CREATE SUCH A DISPARITY BETWEEN THE METHOD OF ENTRY INTO AND WITHDRAWAL FROM THE

COMPACT. IT ULTIMATELY FOUND THAT the compact could only be effective in Pennsylvania when the Pennsylvania legislature PASSED A STATUE ADOPTING THE COMPACT in accordance with the compact's entry provision.

Later in 1998, in Whitlatch v. Com., Dept. of Transp., Bureau of Driver Licensing, 715 A.2d 387 (Pa. 1998), the Pennsylvania Supreme Court addressed the validity of Pennsylvania's entry into the Nonresident Violator Compact of 1977. In reliance on the same authorization statute upon which the Secretary of the Pennsylvania Department of Transportation had relied in attempting to enter into the Driver License Compact, the Secretary entered into the Nonresident Violator Compact. THIS compact specifically provides that a state may enter into the compact "by resolution of ratification, executed by authorized officials of the applying jurisdiction." The Pennsylvania Supreme Court also addressed whether Pennsylvania's entry into the Nonresident Violator Compact was an unconstitutional delegation of the Pennsylvania legislature's lawmaking authority under the Pennsylvania Constitution.

The Pennsylvania Supreme Court held that Pennsylvania's entry into the Nonresident Violator Compact was valid and consistent with the Pennsylvania Constitution, DETERMINING THAT.

- Unlike the Driver License Compact, the language of the Nonresident Violator Compact provides that states may enter the compact by authorizing a state official to enter the compact.
- Under Pennsylvania law, the Pennsylvania legislature may delegate policymaking authority to agencies as long as the legislature "makes the 'basic policy choices'" and establishes standards for the exercise of the delegated authority; AND
- Pennsylvania's entry into the compact did not unconstitutionally delegate the Pennsylvania legislature's lawmaking authority, because the Pennsylvania legislature made a policy choice to enter the compact by passing the authorization statute allowing the Secretary to enter the compact and the authorization statute limited the discretion of the Secretary as to which types of compacts the Secretary could enter.

#### Proof of Entry into a Compact

When a legislature authorizes a state official to enter into an interstate compact, states SHOULD properly maintain a record of the state official's entry into the compact. For instance, in In re O.M., 565 A.2d 573 (D.C. 1989), Congress had passed legislation that authorized the Mayor of the District of Columbia to enter into the Interstate Compact on Juveniles and that stated the language of the compact. Since the District of Columbia prosecutors could not produce the original document signed by the Mayor that entered the District of Columbia into the compact, the juvenile defendant in that case argued that the copies of that document were not sufficient proof of the District of Columbia's entry into the compact. The Court of Appeals for the District of Columbia held that sufficient proof existed of the District of Columbia's entry into the compact BECAUSE:

- copies of documents signed by the Mayor entering into the compact and a Mayor's Order published in the District of Columbia Statutes at Large designating the Juvenile Compact Administrator for the District of Columbia were sufficient to establish that the District of Columbia is a member of the compact.
  - Under the common law and District of Columbia law, the publication of the Mayor's Order in the District of Columbia Statutes at Large stood as presumptive proof that the issuance of the Mayor's Order entering the compact was valid.
- AND
- NO evidence existed to contradict the presumed validity of the issuance of the Mayor's Order entering the compact.

IT is important to note that there is no authority requiring proof of the Mayor's entry into the compact. The Court of Appeals did not hold that that this proof requirement exists, but merely assumed, for purposes of this decision only, that such a requirement exists.

### **Whether Congressional Consent Is Required**

Article I, Section 10, Clause 3 of the United States Constitution provides that "No State shall, without the consent of Congress... enter into agreement or compact with another State or with a foreign power...". The broadness of the language of the "Compact Clause", when read literally, IMPLIES THAT all agreements between or among states would require the consent of Congress. However, in Virginia v. Tennessee, 148 U.S. 503, 13 S.Ct. 728, 37 L.Ed. 537 (1893), the United States Supreme Court held that, only those agreements which affect the power of the

national government or the “political balance” within the federal government require the consent of Congress. Under the Virginia v. Tennessee rule, just because an agreement by two or more states is called a “compact” that does not automatically MEAN THAT IT MUST OBTAIN CONGRESSIONAL CONSENT.

In 1976, the U.S. Supreme Court AFFIRMED THEIR RULING IN Virginia v. Tennessee THROUGH a CASE THAT INVOLVED A DISPUTE between New Hampshire and Maine. In New Hampshire v. Maine, 426 U.S. 363, 96 S.Ct. 2113, 48 L.Ed.2d 701 (1976), New Hampshire and Maine DISPUTED the location of the lateral marine boundary between the two states, AS SET BY A 1740 decree. During the course of the CASE, New Hampshire and Maine NEGOTIATED A SETTLEMENT ABOUT THE LOCATION OF THE BOUNDARY. HOWEVER, ONE OF THE STATES QUESTIONED whether the settlement agreement ITSELF was an interstate compact in need of Congressional consent. The U.S. Supreme Court held that the settlement agreement did not constitute an interstate compact that needed Congressional consent BECAUSE:

- THE settlement agreement DID NOT affect the power of the national government or the political balance within the federal government by establishing a boundary line between the two states; AND
- THE settlement agreement did not enhance the power of the states so as to threaten the supremacy of the national government.

THE COURTS APPLIED ITS RULING IN VIRGINIA TENNESSEE AGAIN IN 1978 IN United States Steel Corporation v. Multistate Tax Commission, 434 U.S. 452, 98 S.Ct. 799, 54 L.Ed.2d 682, (1978). IN THIS CASE, multistate corporate taxpayers brought a class action lawsuit against the Multistate Tax Commission (MTC) to avoid being audited by MTC. The taxpayers argued that the Multistate Tax Compact, which created MTC, fell within the Compact Clause. If this were the case, then the Multistate Tax Compact and MTC would be invalid, because the compact had not received Congressional consent. An invalid MTC could not audit the multistate taxpayers.

As part of its case, the taxpayers argued that the Compact Clause, when read literally, requires all agreements between states to receive Congressional consent in order to be valid.

BECAUSE THE Virginia v. Tennessee test limits the types of interstate agreements that fall within the parameters of the Compact Clause, THE taxpayers asked the U.S. Supreme Court to abandon the Virginia v. Tennessee test, apply the Compact Clause literally, and hold the Multistate Tax Compact invalid for a lack of Congressional consent. HOWEVER, The COURT HELD that, under the Virginia v. Tennessee test, the Multistate Tax Compact did not fall within the Compact Clause, and hence, was valid. IN THIS CASE, THE COURT:

- Affirmed that the Compact Clause only applies to agreements between states that tend to increase the political power of the states and may encroach upon the supremacy of the federal government.
- Stated that the Virginia v. Tennessee rule “states the proper balance between the federal and state power with respect to compacts and agreements among states”.
- DETERMINED THAT BECAUSE THE MTC can do nothing that the member states cannot do on their own, the Multistate Tax Compact does not increase state power to the detriment of the federal government.
- DIRECTED THAT WHEN Applying the Virginia v. Tennessee test, courts must consider the *potential* impact of the interstate agreement on the federal supremacy rather than the *actual* impact; AND.
- The number of states to an interstate agreement is irrelevant as long as the states’ power does not encroach upon the federal supremacy.

In 1985, the U.S. Supreme Court addressed whether reciprocal statutes passed by two states constituted an interstate compact within the meaning of the Compact Clause. In Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System, 472 U.S. 159, 105 S.Ct. 2545, 86 L.Ed.2d 112 (1985), Connecticut and Massachusetts had passed reciprocal statutes that provided that an out-of-state bank holding company, with its principal place of business in one of the other New England states, could acquire an in-state bank. The statutes also imposed a reciprocation requirement to be satisfied by the states in which the acquiring banks were located. Under this requirement, these states had to extend equivalent bank acquisition privileges to the state of the acquired bank. So, for example, if Maine were acquiring a Connecticut bank under the Connecticut statute, then Maine would have to give Connecticut bank acquisition privileges equivalent to those contained in the Connecticut statute. Because the statutes were reciprocal and imposed the regional limitation allowing only banks within the New England region to

acquire Connecticut and Massachusetts banks, the Federal Reserve argued that the statutes resembled an interstate compact under the Compact Clause. Since the Massachusetts and Connecticut statutes had not received Congressional consent, the statutes would be invalid if they were within the Compact Clause. The U.S. Supreme Court held that the statutes were valid and did not constitute an interstate compact within the meaning of the Compact Clause. THE COURT:

- STATED that the “classic indicia” of when an agreement or reciprocal legislation between two or more states has created an interstate compact are:
  - (1) a joint, regulatory organization or body
  - (2) statutes conditioned on action by the other states involved
  - (3) the states are not free to modify or repeal their laws unilaterally, and
  - (4) statutes requiring reciprocation of a regional limitation.
- DETERMINED THAT THE Massachusetts and Connecticut statutes DID NOT CREATE an interstate compact, because, most importantly, the statutes do not require the states of acquiring banks to impose regional limitations similar to those contained in the Connecticut and Massachusetts statutes.
- THE STATE statutes did not create a joint administrative commission,
- THE effect of the statutes was not conditioned upon the action of any other states, and
- THE states could unilaterally modify or repeal the statutes.

### **How Congress Consents To Interstate Compacts**

CASE LAW HAS HISTORICALLY HELD THAT IN ORDER TO GRANT ITS CONSENT TO AN INTERSTATE COMPACT, Congress must only pass an act or joint resolution stating that it consents. THIS IS STILL TRUE. IT IS ALSO TRUE THAT Congress may consent in advance to an interstate compact or it may give its express or implied approval after the states have formally entered into a compact. FOR example, in Cuyler v. Adams, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), a prisoner IN PENNSYLVANIA, claimed that he was entitled to a hearing under the Interstate Detainers Act (IDA). To address the prisoner’s claim, the U.S. Supreme Court had to FIRST determine whether THE IDA had received

Congressional consent BECAUSE Congress had not passed LEGISLATION THAT explicitly GRANTED CONSENT.

IN THIS CASE, THE COURT held THAT:

- Congress had given its consent in advance to THE IDA by passing the Crime Control Consent Act of 1934, which states that Congress consents to states forming 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
- THAT Congress intended the Crime Control Consent Act to be a grant of consent under the Compact Clause.

### **The Effect Of Congressional Consent On Interstate Compacts**

BEFORE 1981, Congressional consent had the effect of giving the federal courts the right to interpret a Congressionally approved interstate compact. HOWEVER, THE question remained as to whether Congressional consent actually transforms an interstate compact into a federal law.

In the AFOREMENTIONED 1981 case, Cuyler v. Adams, the U.S. Supreme Court held that Congressional consent has the power to transform an interstate compact into federal law. TWO OTHER cases following the Cuyler decision illustrate the significant impact on an interstate compact of attaining the status of federal law.

In Cuyler v. Adams, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), THE prisoner argued that he was constitutionally entitled to a hearing before he was transferred to a different state under the Interstate Detainers Act (IDA). While this case was on appeal before the Third Circuit U.S. Court of Appeals, a Pennsylvania state court decided in a different case that a prisoner does not have a constitutional right to a pre-transfer hearing under THE IDA. The Third Circuit Court of Appeals held that the Pennsylvania state court decision was not binding upon the federal courts, because THE IDA was a federal law by virtue of receiving Congressional consent. Thus, after this case was appealed to the U.S. Supreme Court, the U.S. Supreme Court had to decide whether Congressional consent transformed IDA into a federal law. The U.S. Supreme Court held that, because IDA received Congressional consent, THE IDA was a federal law. THE COURT:



- Acknowledged that there had been a question as to whether a Congressionally approved interstate compact is a federal law.
- Stated that “where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States’ agreement into federal law under the Compact Clause.”
- DETERMINED THAT Because Congress had consented to THE DA and crime control was an appropriate subject matter for Congressional legislation, IDA was a federal law.
- NOTED THAT BECAUSE THE IDA is a federal law, the Pennsylvania state court decision interpreting IDA does not set a binding precedent that federal courts must follow.

Later, in 1983, the Fourth Circuit U.S. Court of Appeals held that Congressional consent could, in some instances, delegate federal powers to an interstate compact commission. Washington Metropolitan Area Transit Authority v. One Parcel of Land in Montgomery County, Md., 706 F.2d 1312 (4th Cir. 1983), involved the Washington Metropolitan Area Transit Authority Compact, under which the Washington Metropolitan Area Transit Authority (WMATA) operates. WMATA had taken land under authority of the federal “quick-take” condemnation statute, 40 U.S.C. Section 258a. Using the U.S. Supreme Court’s test in Cuyler to determine if the WMATA compact was transformed into federal law, the Fourth Circuit Court of Appeals determined that WMATA is federal law, because Congress enacted legislation consenting to the WMATA Compact and because the subject matter of the compact was appropriate for legislation under the Commerce Clause of the U.S. Constitution.

The Fourth Circuit Court of Appeals discussed the U.S. Supreme Court’s rule, as stated in Cuyler v. Adams, that an interstate compact is federal law if Congress has consented to it and if the subject matter of the compact is appropriate for Congressional legislation. The Fourth Circuit Court of Appeals noted the following points regarding the Cuyler rule:

- Not every compact that is Congressionally approved out of an “excess of caution” will become federal law. Only those compacts whose subject matter is

appropriate for Congressional legislation, in addition to receiving Congressional consent, will become federal law.

- The “historical practice” of attempting to secure Congressional legislation for interstate compacts out of caution and convenience is not a controlling consideration in determining whether an interstate compact is federal law.
- Some compacts do not threaten the federal supremacy, and hence, do not require Congressional consent, but still deal with a subject matter that is appropriate for Congressional legislation. Within this category of compacts, the compacts that receive Congressional approval, anyway, will become federal law, while the other compacts that do not receive Congressional approval will not become federal law.
- To determine whether a compact needs Congressional approval under the Compact Clause, courts must look at whether the compact tends to increase the political power of the states at the expense of the federal government. On the other hand, to determine whether a compact is a federal law, courts must look at whether the compact is Congressionally approved and whether the subject matter of the compact is an appropriate area for Congressional legislation.

After determining that the WMATA compact constitutes federal law, the Fourth Circuit Court of Appeals held that the consent of Congress, in this case, acted as a delegation of federal authority for WMATA to use the federal quick-take condemnation statute. IN ADDITION, THE FOURTH CIRCUIT:

- NOTED that “no prior case goes so far as to hold that consent may constitute delegation of federal power to the authority created by the compact.”
- STATED that Congressionally sanctioned interstate compacts implicate federal and interstate interests and that federal remedies are available to protect such interests AND THAT courts could hold unenforceable state laws that are inconsistent with federal and interstate interests. (An example of one such remedy is the availability of federal habeas corpus relief to prisoners asserting claims under the Interstate Detainers Act. Prisoners may also seek relief under 42 U.S.C. Section 1983 for Interstate Detainers Act violations. 42 U.S.C. Section 1983 is a federal statute that grants relief to persons whose rights under the U.S.

Constitution have been violated by application of a state statute, ordinance or regulation).

- HELD that Congress' consent to the interstate compact delegated to the compact commission, the power to use the federal "quick-take" condemnation statute,
- There is a "clear federal and interstate interest" in the compact commission using the federal condemnation statute, because it furthers the "rapid and coordinated development of a mass transit system" and the compact language evinced the intent of Congress to delegate such a power to the compact commission; AND
- HELD THAT THE CONGRESS' CONSENT TO THE INTERSTATE COMPACT DELEGATED TO THE COMPACT COMMISSION, THE POWER TO USE THE FEDERAL "QUICK-TAKE" CONDEMNATION STATUTE BECAUSE THERE IS "A CLEAR FEDERAL AND INTERSTATE INTEREST" IN THE COMPACT COMMISSION USING THE FEDERAL CONDEMNATION STATUTE, BECAUSE IT FURTHERS THE "RAPID AND COORDINATED DEVELOPMENT OF A MASS TRANSIT SYSTEM" AND THE COMPACT LANGUAGE EVINCED THE INTENT OF CONGRESS TO DELEGATE SUCH A POWER TO THE COMPACT COMMISSION.

IN INTERSTATE COMPACT CASES, FEDERAL COURTS CAN ALSO GRANT INJUNCTIVE RELIEF AND REVIEW STATE COURT DECISIONS THAT HOLD AN INTERSTATE COMPACT INVALID ON STATE CONSTITUTIONAL GROUNDS. NOTE THAT, IN LITIGATION THAT DOES NOT INVOLVE AN INTERSTATE COMPACT, FEDERAL COURTS NORMALLY DO NOT HAVE THE POWER TO REVIEW STATE COURT DECISIONS THAT HOLD A STATUTE INVALID BECAUSE IT VIOLATES THE STATE CONSTITUTION.

Congressional CONSENT TO an interstate compact also can make an interstate compact commission immune from lawsuits alleging violations of the Commerce Clause of the U.S. Constitution. In Intake Water Co. v. Yellowstone River Compact Com'n, 769 F.2d 568 (9th Cir. 1985), a corporation, Intake Water Co. (Intake), sued the administrative compact commission of the Congressionally approved Yellowstone River Compact. Intake alleged that a provision of the compact violated the Commerce Clause of the U.S. Constitution, which gives Congress the

power to regulate interstate commerce. The compact provision under attack restricted the diversion of water from the Yellowstone River Basin without the unanimous consent of all of the signatory states to the compact. Intake sought to divert water outside of the Yellowstone River Basin. Intake argued that the restriction on water diversion placed an undue burden on interstate commerce, thereby violating the Commerce Clause. The Ninth Circuit Court of Appeals held that, by virtue of Congress' approval of the Yellowstone River Compact, the Yellowstone River Compact Commission was immune from a lawsuit alleging a violation of the Commerce Clause.

The Ninth Circuit Court of Appeals stated that, by approving the compact, “Congress was acting within its authority to immunize state law from some constitutional objections by converting it into federal law.” Since the compact, as a federal law, “authorizes those actions included within its provisions”, the Ninth Circuit Court of Appeals held that the interstate compact commission could not be subject to a Commerce Clause attack based upon its actions taken under the compact.

### **United States Supreme Court, Federal Court and State Court Jurisdiction Over Interstate Compact Litigation**

When a case involving an interstate compact is going to be litigated, the case will either be tried in state or federal court, or, rarely, before the U.S. Supreme Court. In cases in which one state sues another state in court, the U.S. Supreme Court can hear such cases by exercising its original jurisdiction. U.S. Supreme Court original jurisdiction allows the U.S. Supreme Court to hear a case without the lower trial courts or courts of appeal hearing the case first. Two cases since 1976 have helped to define when the U.S. Supreme Court will exercise its original jurisdiction to hear cases where one state sues another in an interstate compact dispute.

If a case involving an interstate compact does not qualify for U.S. Supreme Court original jurisdiction, then the question becomes one of whether the state or federal court system has jurisdiction. Case law before 1976 suggested that, where a compact has received Congressional approval and is a federal law, the federal courts have jurisdiction to take cases involving such compacts. The federal courts have the final say over state courts in those cases. THE U.S. Supreme Court has AFFIRMED this principle SINCE 1976.

However, state courts are not deprived of jurisdiction in cases where the federal courts have jurisdiction, unless the compact language prohibits state courts from deciding such cases.

Recent case law holds that federal court jurisdiction over a Congressionally approved interstate compact does not preclude state courts from also having jurisdiction.

### United States Supreme Court Original Jurisdiction

In Texas v. New Mexico, 462 U.S. 554, 103 S.Ct. 2558, 77 L.Ed.2d 1 (1983), the Pecos River Commission, a compact agency created by the Pecos River Compact, was deadlocked over a dispute between Texas and New Mexico over water allocation under the compact. The interstate compact did not specifically address the states' rights to seek relief before the U.S. Supreme Court; nor did it provide that the Pecos River Commission was the "sole arbiter" of disputes. In order to allow Texas a forum to seek judicial relief in this dispute, the U. S. Supreme Court exercised its original jurisdiction to decide the matter. IN THIS CASE, THE COURT:

- DETERMINED THAT IT has "substantial discretion" to make case-by-case judgments on whether to hear cases brought before it under its original jurisdiction. The U.S. Supreme Court exercises this discretion "with an eye to promoting the most effective functioning of this Court within the overall federal system."
- STATED THAT THE "model case" for the U.S. Supreme Court exercising its original jurisdiction is "a dispute between States of such seriousness that it would amount to casus belli if the States were fully sovereign". A dispute between two states regarding an interstate compact is not the typical situation where the U.S. Supreme Court exercises its original jurisdiction, because the level of seriousness that is present in the "model case" for original jurisdiction may not be present where two states litigate an interstate compact; AND.
- NOTED that, if two states actually reach an agreement within their Congressionally ratified powers under an interstate compact, then it would not exercise original jurisdiction if one state later tries to back out of the agreement and litigate the matter. If the Pecos River Commission had not been deadlocked over the matter, then a resolution by the Pecos River Commission would have been a "completely adequate means" for resolving the dispute.

Since TEXAS V. NEW MEXICO ESTABLISHED THAT disputes between two states involving an interstate compact do not fit the U.S. Supreme Court’s typical mold for the exercise of its original jurisdiction, THE COURT, in 1991, faced the question of whether it should use a dispute between Oklahoma and New Mexico involving the Canadian River Compact to set jurisdictional prerequisites and procedural guidelines for future interstate compact disputes. In Oklahoma v. New Mexico, 501 U.S. 221, 111 S.Ct. 2281, 115 L.Ed.2d 207 (1991), the U.S. Supreme Court explicitly declined to set any jurisdiction prerequisites or procedural guidelines concerning future interstate compact cases.

### Federal Court Jurisdiction

THE U.S. Supreme Court first held that an interstate compact constituted federal law in the 1852 case, Pennsylvania v. Wheeling & Belmont Bridge Co., 13 How. 518 (1852). The U.S. Supreme Court stated that the interstate compact in that case, the Virginia-Kentucky Compact of 1789, was “a law of the Union”, or a federal law, giving the federal courts jurisdiction. This principle is called the “law of the Union” doctrine.

Although several subsequent cases appeared to question the “law of the Union” doctrine, the U.S. Supreme Court held in A 1940 case, Delaware River Joint Toll Bridge Commission, Pennsylvania-New Jersey v. Colburn, 310 U.S. 419 (1940), that Congressionally approved interstate compacts involve issues of federal law, giving the federal courts the power to review state court decisions interpreting such compacts.

In Cuyler v. Adams, 449 U.S. 433, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), THE COURT : “reaffirmed the law-of-the-Union doctrine and the underlying principle that congressional consent transforms compacts into federal law,” HOLDING THAT Congressionally approved interstate compacts are federal law as long as the subject matter of the compact is appropriate for Congressional legislation AND THAT Federal courts have jurisdiction to INTERPRET COMPACTS that are federal law.

In some instances, federal courts may also have jurisdiction to interpret and enforce ordinances passed by interstate compact commissions. For example, in League to Save Lake Tahoe v. B.J.K. Corp., 547 F.2d 1072 (9th Cir. 1976), the Ninth Circuit Court of Appeals addressed the question of whether it had jurisdiction to hear a case that revolved around the

interpretation and enforcement of a land use ordinance passed by the Tahoe Regional Planning Agency (TRPA). THE TRPA is an interstate compact commission created by the Tahoe Regional Planning Compact, which has received Congressional approval. Under 28 U.S.C. Section 1331(a), federal courts have jurisdiction to hear cases that “directly” arise under the laws of the United States. Such cases present questions of federal law. Hence, this type of jurisdiction is called “federal question” jurisdiction. The issue in this case was whether interpretation and enforcement of the TRPA ordinance was a “federal question”. The Ninth Circuit Court of Appeals held that it had jurisdiction to interpret and enforce the ordinance passed by the interstate compact agency. IN THIS CASE THE NINTH CIRCUIT COURT

- stated that a Congressionally approved interstate compact is not "an ordinary federal statute" and an interstate compact commission ordinance is not "directly analogous" to a regular federal regulation over which federal courts have jurisdiction. Therefore, federal courts do not automatically have jurisdiction to interpret the ordinances of interstate compact commissions.
- DETERMINED THAT WHEN deciding whether an ordinance passed by an interstate compact commission is a question of federal law addressable by the federal courts, the most important considerations are “whether interstate conflicts in the interpretation and application of the Ordinance may arise that may substantially affect the effective functioning of the Compact and whether, absent a federal trial forum, existing judicial mechanisms supply a practical means for resolving such conflicts.” AND
- HELD that it had jurisdiction to interpret and enforce the TRPA ordinance, because the state courts of the compact’s member states would inevitably render conflicting interpretations.
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#### State Court Jurisdiction

A 1997 New Jersey Supreme Court decision, International Union of Operating Engineers, Local 68, AFL-CIO v. Delaware River and Bay Authority, 688 A.2d 569 (N.J. 1997), discusses when state courts have jurisdiction to decide cases involving the interpretation of interstate compacts. This case addressed whether New Jersey law required the Delaware River and Bay Authority (DRBA), a bi-state administrative compact agency, to negotiate in collective

bargaining with its employees. The plaintiff-union argued that the New Jersey state courts could interpret the interstate compact in deciding this issue. The New Jersey Supreme Court decided that the New Jersey state courts have the power to decide this issue, even though the federal courts have jurisdiction to decide this issue, too.

Finding that the federal courts did not have exclusive jurisdiction in this case, the New Jersey Supreme Court stated that “ unless a case involves a dispute between two states or an express statutory prohibition against the exercise of jurisdiction by the courts of either state, those courts may construe compacts concerning bi-state agencies.” IN OTHER WORDS, as long as the U.S. Supreme Court does not have original jurisdiction and a statute does not prohibit it, state court jurisdiction over a Congressionally approved interstate compact is concurrent with federal court jurisdiction. Concurrent jurisdiction means that both state and federal courts have jurisdiction to hear a case.

The New Jersey Supreme Court determined that the state courts had concurrent jurisdiction to decide this case. The case was not a dispute between two states, which would require U.S. Supreme Court original jurisdiction and a statute did not prohibit state court jurisdiction.

Once it has been established that state courts have concurrent jurisdiction to hear an interstate compact case, the question arises as to which state’s court will hear the case. The New Jersey Supreme Court DETERMINED THAT, BECAUSE one state may not unilaterally exercise jurisdiction over a compact commission, the compact must give a state court the power to hear a case involving the compact.

The language of the compact in this case specifically provided that “judicial proceedings to review any...action of the authority..., may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.” The New Jersey Supreme Court determined that this language supported its conclusion that the New Jersey state courts have concurrent jurisdiction with the federal courts to review any action taken by DRBA.



## **Application Of State Law To An Interstate Compact Commission**

Since an interstate compact commission results from an agreement between two or more states, the question arises as to whether the laws of the compact's member states apply to the compact commission. The long-standing rule regarding the application of state law to an interstate compact was stated in a 1949 Pennsylvania Supreme Court case, Henderson v. Delaware River Joint Toll Bridge Comm'n, 66 A.2d 843 (1949). The Pennsylvania Supreme Court stated that "[i]t is within the competency of a State, which is a party to a compact with another State, to legislate in respect of matters covered by the compact so long as such legislative action is in approbation and not in reprobation of the compact." This means that states can only make their laws apply to an interstate compact where the compact language approves in some way of the application of state laws. While a compact's member states may not unilaterally impose burdens on an interstate compact commission, member states are not entirely restricted from passing legislation that will impact an interstate compact commission. As with jurisdictional and compact-entry issues, the language of the compact is of great importance. In fact, courts look to the language of the compact for guidance as to whether the members intended to restrict each other from making an interstate compact commission subject to certain state laws. Moreover, if the states involved in a compact have similar laws on a particular topic, a state's law on that topic may in some cases apply to an interstate compact commission. Several cases since 1976 demonstrate how courts have dealt with these issues in recent years.

In Kansas City Area Transportation Authority v. State of Missouri, 640 F.2d 173 (8th Cir. 1981), Kansas City, Missouri, imposed a requirement upon transportation authorities, including the Kansas City Area Transportation Authority (KCATA), to provide space for advertising on the inside and outside of their mass transportation vehicles. If the transportation authorities failed to comply with this requirement, then they would lose a sales tax benefit provided to them by Kansas City. KCATA administers the Kansas City Area Transportation Compact, which received Congressional approval. KCATA argued that such a requirement would be an economic burden upon the compact. The Eighth Circuit Court of Appeals held that Kansas City could apply the requirement to KCATA.

- One state to an interstate compact may not enact legislation that would impose burdens upon an interstate compact commission without the agreement of the other states to the compact.
- The Eighth Circuit Court of Appeals held that the advertising requirement would not place a burden upon the interstate compact, because the requirement only applied to KCATA if it chose to utilize Kansas City's sales tax subsidy. Forgoing the tax subsidy would not deprive KCATA of all revenue, because the compact itself provided KCATA with other means of obtaining revenue.

State environmental regulations also may apply to interstate compacts. For instance, in People, By and Through California Dept. of Transp. v. City of South Lake Tahoe, 466 F.Supp. 527 (E.D.Cal. 1978), the California Department of Transportation filed a lawsuit against the Tahoe Regional Planning Agency (TRPA) to force TRPA to comply with the California Environmental Quality Act (CEQA). TRPA administers the Congressionally approved Tahoe Regional Planning Compact. CEQA applies to all "public agencies", which includes "any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision." CEQA imposes disclosure requirements upon public agencies. When undertaking a project that would have a significant impact upon the environment, public agencies under CEQA must submit reasons why they cannot take certain mitigation measures to protect the environment. As long as a public agency's reasons are supported by the final environmental impact report analyzing the consequences and alternatives to the proposed project, the agency can proceed with its respective projects. TRPA argued that, even if it could be considered a "public agency" under CEQA, CEQA could only apply to TRPA if the compact language reserved the right of California to impose such a requirement upon TRPA. Because Congress had approved TRPA the year before CEQA was enacted, the compact creating TRPA does not specifically refer to CEQA. The California federal district court held that California could require TRPA to comply with CEQA.

- The California federal district court determined that the definition of "public agency" in the CEQA statute was "sufficiently broad to encompass TRPA." An important factor in the California federal district court's decision was language in CEQA requiring that CEQA be interpreted "to afford the fullest possible

protection to the environment within the reasonable scope of the statutory language.”

- The California federal district court agreed with TRPA that it could only make TRPA apply with CEQA, if the compact language reserved California’s right to apply such requirements upon TRPA.
- The compact language provided that “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.” To further the compact’s intent to provide a unified solution to the Tahoe Basin’s land use problems, the California federal district court determined that the State of California is a “political subdivision” within the meaning of the compact.
- The California federal district court determined that CEQA does not unilaterally impose the will of California on TRPA, because CEQA merely imposes disclosure requirements and cannot make TRPA stop a proposed project as long as its failure to take environmental mitigation measures is supported by the final environmental impact report. Also, preparation of the CEQA disclosure statement is consistent with the timeframes of TRPA’s operations.

In International Union of Operating Engineers, Local 68 v. The Delaware River and Bay Authority, 688 A.2d 569 (1997), the New Jersey Supreme Court determined that the collective bargaining laws of New Jersey could be applied to the Delaware River and Bay Authority (DRBA).

- Interstate compact commissions may be subject to the parallel or complementary legislation of the compact’s member states as long as those state laws do not intrude on the mission of the interstate compact commission. The laws of two states are parallel or complementary if they are “substantially similar,” which means that the member states to the compact must “evidence some agreement in the laws involving and regulating a bi-state agency.”

- Even if there is not parallel legislation, an interstate compact commission still may implicitly consent to regulation by one member state to the compact if the commission voluntarily cooperates with that state law.
- The New Jersey Supreme Court found the language of the compact to be consistent with subjecting DRBA to parallel or complementary legislation. The compact itself provides that DRBA may be subject to additional obligations other than those specified in the compact and that such additional obligations may not be imposed on DRBA without the authorization of the New Jersey and Delaware legislatures.
- The New Jersey Supreme Court held that the New Jersey and Delaware state labor laws are “substantially similar” to one another, because both states have enacted laws to prevent labor disputes, to allow public employees to join unions and negotiate collectively, and to prevent employers from interfering with the exercise of these employee rights.
- Although the New Jersey and Delaware state legislatures in effect modified the interstate compact by enacting such legislation, the New Jersey Supreme Court found that this legislation did not interfere with the purpose of the compact to advance the economic development of New Jersey and Delaware and improve the flow of traffic between the two member states.

### **Sovereign Immunity And Interstate Compact Commissions**

The Eleventh Amendment to the U.S. Constitution provides that “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The Eleventh Amendment has been interpreted to shield states from lawsuits in federal court without a state’s consent. The theory behind this “sovereign immunity”, as it has been termed, is to protect the sovereignty of states and state treasuries. Since interstate compact commissions are created by a group of two or more states, courts have recognized that an interstate compact commission may be able to defend lawsuits against it by successfully claiming that it has the sovereign immunity of one of the compact member states. Whether or not an interstate compact can have the sovereign immunity of a compact member

state depends heavily upon the language of the compact, how the compact structured the agency, if Congress approved the compact, and whether Congress intended the interstate compact commission to be immune. At the time of *The Law and Use of Interstate Compacts* in 1976, the U.S. Supreme Court had yet to specifically address whether an administrative interstate compact agency could be immune from lawsuits under the Eleventh Amendment. In 1979, the U.S. Supreme Court addressed this very issue for the first time in Lake Country Estates v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979).

In Lake Country Estates v. Tahoe Regional Planning Agency, 440 U.S. 391, 99 S.Ct. 1171, 59 L.Ed.2d 401 (1979), owners of property in the Tahoe Basin brought suit against the Tahoe Regional Planning Agency (TRPA) alleging that TRPA had adopted a land use ordinance that destroyed the value of the owners' property. The property owners claimed that TRPA thereby violated their rights under the Fifth and Fourteenth Amendments by taking their property without due process of law and without just compensation. TRPA claimed that it was immune from the lawsuit under the Eleventh Amendment. As a bi-state compact administrative agency, TRPA argued that it should be entitled to the same sovereign immunity as the states that created it. The U.S. Supreme Court held that TRPA was not entitled to the states' cloak of sovereign immunity under the Eleventh Amendment.

- Since the language of the Eleventh Amendment states that sovereign immunity only applies to “one of the United States,” municipalities and counties that are within states cannot have sovereign immunity. If an interstate compact structures a compact commission as “comparable” to a municipality or county, then the interstate compact commission does not have immunity under the Eleventh Amendment.
- The U.S. Supreme Court stated the following rule for the application of Eleventh Amendment sovereign immunity to interstate compact agencies: “[u]nless there is good reason to believe that the member states structured the new agency to enable it to enjoy the special constitutional protection of the states themselves, and that Congress concurred in that purpose, there would appear to be no justification for reading additional meaning into the limited language of the Amendment.” This rule appears to limit the application of sovereign immunity but allows compact

members to structure a compact agency in a way that affords it sovereign immunity.

- The U.S. Supreme Court determined that TRPA is more like a county or municipality, and hence, was not structured by the compacting states to have Eleventh Amendment sovereign immunity. Counties appoint most of TRPA's governing officials and provide funding to TRPA. In its operations, TRPA deals with land use regulations, which traditionally are considered by courts to be "local in nature".
- Other important factors to the U.S. Supreme Court's determination were that TRPA's financial obligations are not binding upon the member states' treasuries and that the compact describes TRPA as its own "separate legal entity".
- The U.S. Supreme Court's decision reversed the Ninth Circuit Court of Appeals decision in this case. The Ninth Circuit Court of Appeals had held that, because TRPA serves the compacting states, it exercises "a specially aggregated slice of state power", and thus, has the same sovereign immunity as the compacting states. The U.S. Supreme Court rejected this broad construction of the Eleventh Amendment. The Ninth Circuit Court of Appeals decision would have made all interstate compact agencies and commissions immune from suit unless immunity had been waived by the compacting states.
- The property owners in this case also sued the individual employees of TRPA. Interestingly, the U.S. Supreme Court held that the TRPA employees themselves were immune from the lawsuit as long as they were "acting in a capacity comparable to that of members of a state's legislature." The U.S. Supreme Court applied to the TRPA employees the immunity that usually applies to legislators, because TRPA employees, like legislators, need immunity to ensure that they can carry out their duties for the "public good".

In 1994, the U.S. Supreme Court again addressed the issue of interstate compact commission sovereign immunity and further clarified when sovereign immunity applies to interstate compact commissions. Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 30, 115 S.Ct. 394, 130 L.Ed.2d 245 (1994), involved the Port Authority Trans-Hudson Corporation (PATH), a wholly-owned subsidiary of the Port Authority of New York and New Jersey, which

itself was created by the New York-New Jersey Port Authority Compact. Employees of PATH sued PATH for work-related injuries they had sustained. PATH argued that it was immune from the employees' lawsuits, because it was cloaked with Eleventh Amendment sovereign immunity just like the states that created it. The U.S. Supreme Court rejected this argument and held that PATH was not immune from suit.

- The U.S. Supreme Court clarified the test for the application of sovereign immunity in Lake Country Estates. The most important factor in deciding if Eleventh Amendment immunity applies to an interstate compact agency is whether a state's treasury would be made vulnerable if a lawsuit were lodged against the compact agency.
- The "proper focus" of the Lake Country Estates test is the compact agency's debts and losses, not how the compact agency uses its profits or surplus. Where a compact agency's expenditures exceed its receipts, as long as the compact member state is not obligated to pay the compact agency's debts, neither legally nor practically, then Eleventh Amendment sovereign immunity is not needed to protect the treasury of the compact member state.
- In difficult cases, where the factors a court must consider point in different directions, the U.S. Supreme Court directs courts to remember the Eleventh Amendment's "twin purposes", which are to protect state sovereignty and state treasuries.
- This was a difficult case for the U.S. Supreme Court in that some of the factors indicated that PATH should be immune while others indicated that it should not be immune. The liabilities of PATH were not the liabilities of the legislatures of the compact member states, indicating that PATH might not be immune. However, the states bear a small amount of financial responsibility in that the compacting states paid for a small category of administrative expenses and could make contributions to PATH of up to \$100,000 each.
- Because of the conflicting indicators in this case, the U.S. Supreme Court focused on whether Eleventh Amendment immunity was needed to protect the sovereignty and treasuries of the compact states. Since PATH was financially self-sufficient, generating its own revenues and paying its own debts, the U.S. Supreme Court

found that Eleventh Amendment immunity was not needed to protect the sovereignty and treasuries of the compacting states.

## **Interpretation Of Interstate Compact Provisions And Interstate Compact Commission Ordinances**

Interstate compacts are both statutes and contracts. They are statutes in that, to enact a compact, the compacting states normally pass legislation containing the compact. However, interstate compacts also are contractual agreements between the signatory states. States take on certain obligations as a result of entering an interstate compact and such obligations can be legally enforced. Given interstate compacts' dual statutory-contract nature, both the bodies of law on statutory interpretation and contract interpretation apply to interstate compacts. This was true at the time of the 1976 *Law and Use of Interstate Compacts* and is still true today.

Whether a court characterizes an interstate compact as a statute or as a contract, the rules for interpreting compacts are generally the same. First, courts will examine the language of the compact for guidance. If a court still cannot determine the meaning of a compact term, then the court will examine the legislative history of the compact to determine the intent of the legislature in enacting the compact.

A classic example of interstate compact interpretation is the 1985 U.S. Supreme Court case Carchman v. Nash, 473 U.S. 716, 105 S.Ct. 3401, 87 L.Ed.2d 917 (1985), which involved the interpretation of the Interstate Detainers Act (IDA). The purpose of IDA is to promote the quick disposition of outstanding charges against a prisoner and to encourage the determination of the status of all detainers based on “untried indictment, informations or complaints” against a prisoner. A detainer is simply a request filed by a criminal justice agency with the prison where the prisoner is incarcerated. The detainer requests that the prison either hold the prisoner for the agency or notify the agency upon the imminent release of the prisoner. When a detainer is filed against a prisoner by another state, IDA gives a prisoner the right to demand a speedy disposition of “any untried indictment, informations or complaints.” If the prisoner makes such a demand, then the state that filed the detainer must bring the prisoner to trial within 180 days. If a state fails to do this, then the state must show good cause why the prisoner was not tried within the



specified timeframe. The failure of a state to satisfy this good cause requirement results in the dismissal of the charges against a prisoner.

In Carchman, New Jersey filed a detainer against a prisoner alleging that the prisoner had violated the terms of his probated sentence for assault and intent to rape charges. Due to a subsequent conviction in Maryland on similar charges, the prisoner was incarcerated in Maryland at the time that New Jersey filed its detainer. The prisoner demanded a speedy disposition of the New Jersey probation violation charge. New Jersey failed to dispose of the matter within 180 days of the prisoner's demand under IDA. The prisoner argued that New Jersey had not shown good cause why the matter had not been disposed of within 180 days and that the matter should be dismissed in accordance with IDA. To avoid dismissal of the probation violation charge, New Jersey argued that a detainer that is based upon allegations that a prisoner violated his probation does fall within IDA. The U.S. Supreme Court had to determine whether a probation violation charge qualifies as an "untried indictment, informations or complaints" within the meaning of IDA. Interpreting IDA by analyzing the language of the compact as well as the legislative intent behind it, the U.S. Supreme Court held that probation violation charges are not the same as indictments, informations or complaints. Thus, the speedy trial provision of IDA did not apply and the probation violation charges against the prisoner did not have to be dismissed.

- IDA applies to "untried" charges and requires that such matters be "brought to trial" within 180 days. Such references anticipate that a trial will take place on the charges upon which the detainer is based. Probation violation charges do not result in a trial. Such charges result in a probation revocation hearing, in which a judge decides if a prisoner violated the terms of his probation. If he did, then the judge has the option of modifying the terms of the probation or revoking the probation and making the prisoner serve out his sentence on the original conviction.
- By analyzing IDA's references to trials, the U.S. Supreme Court determined that IDA does not apply to probation revocation charges, since they do not result in trials.
- Article I of IDA, its statement of purpose, refers broadly to "charges outstanding" against a prisoner. Article III of IDA refers more specifically to charges that will

be “tried”. The U.S. Supreme Court found that Article I, when read in the more specific context of Article III, shows that the compact drafters intended IDA to apply to criminal charges and not probation violation charges.

- The U.S. Supreme Court also analyzed the legislative history of IDA and determined that IDA was not intended to apply to detainers based upon probation violation charges. Many of the mechanisms used to apply IDA’s speedy trial provision do not apply to the process of disposing of probation violation charges. Therefore, the U.S. Supreme Court found that IDA does not apply to probation violation charges.
- The motivation for IDA is to protect the prisoner’s interests in knowing the exact length of his incarceration and having charges against him disposed of promptly. The U.S. Supreme Court found that these interests are not present to the same extent when a prisoner is faced with a probation revocation charge. With a probation revocation hearing pending, a prisoner faces less uncertainty, because his guilt on the charge that resulted in his probation has already been established. Also, a less prompt disposal of probation violation charges gives the court more time to observe a prisoner’s behavior in order to determine if probation is truly appropriate for a prisoner.

Courts may also be called upon to interpret the meaning of ordinances and regulations passed by interstate compact commissions and agencies. In California Tahoe Regional Planning Agency v. Jennings, 594 F.2d 181 (9th Cir. 1979), the Tahoe Regional Planning Agency (TRPA), an administrative compact agency created by a Congressionally approved interstate compact, passed a land use ordinance limiting the height of building owners in certain areas to 40 feet. However, to be in excess of that height requirement, buildings could obtain a permit from the local permit-issuing authority. The defendants, hotel-casino owners, in this case, received permits to exceed the height limitation. The Ninth Circuit Court of Appeals addressed whether the height limitation contained in the ordinance was an absolute height limitation. If so, then the hotel-casino owners would be in violation of the ordinance. Interpreting the ordinance, the Ninth Circuit Court of Appeals held that the ordinance did not contain an absolute height limitation.

- The Ninth Circuit Court of Appeals recognized that, because an interstate compact is a union of two sovereign states, the analysis of a compact commission ordinance is not the traditional analysis used to review the land use ordinances passed by traditional zoning boards.
- The proper method of interpretation is to look at the actual language of the ordinance, against the “backdrop” of the compact’s legislative history.
- The Ninth Circuit Court of Appeals stated that it must interpret the ordinance in an “unrestrained manner and in a way that conforms to the design of the Compact.”
- The Ninth Circuit Court of Appeals determined that a land use ordinance passed by TRPA did not contain an absolute height limitation on buildings, because no such absolute limitation was actually contained in the ordinance and the history of the compact did not indicate an intent to create such an absolute limitation.

### **The Standard Of Judicial Review Of Interstate Compact Agency Action**

When there is a question about the propriety of a state or federal agency’s actions and litigation ensues over the matter, courts may or may not give some degree of deference to the agency in deciding these disputes. The lens through which courts view agency action is the standard of review used by courts. For example, the standard of review contained in the Administrative Procedure Act (APA) provides that courts reviewing agency action shall set aside any agency action that is “(A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law....” This is the standard of review that federal courts use to review federal agency action. The following decision analyzes what standard of review should be applied to the actions of interstate compact agencies.

In Old Town Trolley Tours of Washington, Inc. v. Washington Metropolitan Area Transit Commission, 129 F.3d 327 (D.C.Cir. 1997), the U.S. Court of Appeals, District of Columbia Circuit, reviewed the issuance of a certificate of authority by the Washington Metropolitan Area Transit Commission (WMATC) for a bus company to operate in the District of Columbia.

WMATC is an administrative interstate compact commission created by the Washington Metropolitan Area Transit Regulation Compact, which has received Congressional approval. A competing bus company sued WMATC alleging that WMATC improperly issued the permit. The compact language provides for judicial review of WMATC's actions but does not provide a standard of review. In reviewing the propriety of WMATC's issuance of the certificate of approval, the District of Columbia Court of Appeals had to decide what standard of review applied to its review of WMATC's actions. One option the District of Columbia Court of Appeals considered was the application of the APA standard of review for federal agencies. Although the District of Columbia Court of Appeals ultimately applied the same standard of review to WMATC as is contained in the APA, it found that the application of the APA standard of review was not mandatory.

- Although the compact that created WMATC is a federal law due to the receipt of Congressional approval, WMATC itself is an authority of the member states to the compact. Hence, the District of Columbia Court of Appeals held that WMATC is not a federal agency and that the APA does not apply to WMATC.
- The District of Columbia Court of Appeals rejected reviewing WMATC's actions without any deference to its action of issuing the certificate of authority, because the application of that standard would “deprive the Commission's judgment of importance and would, in effect, place the court in the position of the licensing authority.”
- The District of Columbia Court of Appeals chose to apply the same standard that is contained in the APA, because that standard of review is commonplace and was the general standard of review used by courts when it was codified in the APA. The same standard that is contained in the APA also was contained in the pre-amendment version of the interstate compact that created WMATC.
- Under this standard of review, the action of WMATC in issuing the certificate of authority was not arbitrary or capricious, even though the bus company's affiliate had a poor record of performance in another city. WMATC carefully considered the matter and placed the bus company on a period of probationary operation and placed other restrictions upon the bus company.

However, courts will not always give deference to the actions of interstate compact agencies. An example is the 1983 U.S. Supreme Court case, Texas v. New Mexico, 462 U.S. 554, 103 S.Ct. 2558, 77 L.Ed.2d 1 (1983). The members of the Pecos River Commission were involved in a voting deadlock. New Mexico asked the U.S. Supreme Court to review the case as it would review a federal agency. The U.S. Supreme Court refused to review the Pecos River Commission's voting deadlock as the mere judicial review of federal agency action.

- The Pecos River Commission could only take official action when the members of the commission voted to take official action. Because of the voting deadlock, the Pecos River Commission could not take any official action.
- Finding that the Pecos River Commission had taken no action due to the voting impasse, the U.S. Supreme Court determined that there was no agency action for it to review.
- The U.S. Supreme Court ultimately exercised its original jurisdiction to take the case as a dispute between two states, so that Texas could have a remedy.

### **Availability Of Remedies For Violations Of Interstate Compacts**

Due to increased litigation over interstate compacts since 1976, many cases have addressed the remedies available to a party where the terms of a compact have been violated or breached. The following cases stand as examples of how courts have dealt with the question of whether the unique nature of an interstate compact affects the type of remedy available to a litigant.

#### Reforming the Terms of an Interstate Compact

Occasionally, courts will reform, or rewrite, a contract. Reformation normally is permitted to correct a typographical error in a contract, but courts sometimes use reformation where there is fraud or misrepresentation associated with a contract. In reforming a contract, a court uses its equitable powers, which are powers afforded courts so as to permit them to render fair decisions.

In the 1983 case, Texas v. New Mexico, 462 U.S. 554, 103 S.Ct. 2558, 77 L.Ed.2d 1 (1983), the U.S. Supreme Court addressed the question of whether it could reform an interstate compact. Texas and New Mexico were battling over the deadlocked Pecos River Compact Commission, which was created by the Congressionally approved Pecos River Compact. Texas argued that the U.S. Supreme Court should reform the compact to allow for the appointment of a third-party to oversee water issues involving the administration of the compact. The U.S. Supreme Court refused to reform the compact.

- As a result of receiving Congressional approval, the Pecos River Compact is a federal law. As such, the U.S. Supreme Court determined that “one consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms.”
- Since the compact did not provide for the appointment of a third-party to break the deadlocked compact commission, the appointment of such a third-party would be inconsistent with the terms of the compact. On this basis, the U.S. Supreme Court refused to rewrite the compact and appoint a third-party tiebreaker.
- The U.S. Supreme Court also refused to appoint a third-party to oversee allocations of water under the compact stating that such “continuing supervision” of the compact commission “would test the limits of proper judicial function.”
- The U.S. Supreme Court concluded its opinion in this case by stating that it encouraged states with disputes to settle them "by co-operative study and by conference and mutual concession on the part of representatives of the States."

In 1998, the U.S. Supreme Court addressed the reformation issue again in New Jersey v. New York, 118 S.Ct. 1726 (1998). New Jersey and New York were embroiled in a dispute over which state owned a part of Ellis Island that had been filled-in after the original boundary lines for the Island had been established by an 1834 interstate compact, which had received Congressional approval. New Jersey argued that the U.S. Supreme Court could not adjust the boundary lines in favor of New York, because the states had agreed upon the boundary lines in the 1834 compact. The U.S. Supreme Court ultimately held that the filled-in part of Ellis Island

belonged to New Jersey, because such an interpretation was consistent with the terms of the interstate compact.

- Because the 1834 compact had received Congressional approval, the U.S. Supreme Court found that the compact was a federal law. In light of this, the U.S. Supreme Court stated that “[j]ust as if a court were addressing a federal statute, then, the ‘first and last order of business’ of a court addressing an approved interstate compact ‘is interpreting the compact.’”
- Regarding a Congressionally approved interstate compact, the U.S. Supreme Court cannot order relief that is inconsistent with the express terms of the compact, unless the compact is found to be unconstitutional. The constitutionality of the compact was not an issue in this case, so the U.S. Supreme Court could not order relief inconsistent with the terms of the compact.
- The U.S. Supreme Court refused to reform the compact and adjust the boundary lines for reasons of practicality and convenience. The U.S. Supreme Court instead interpreted what the words of the compact meant, determining that the compact gave the filled-in portion of Ellis Island to New Jersey.

### Monetary Damages and Specific Performance

Although courts are reluctant to reform interstate compacts, other judicial remedies used in contract law can be granted for the breach of an interstate compact. An example of this is Texas v. New Mexico, 482 U.S. 124 (1987), which is another opinion issued by the U.S. Supreme Court involving the Pecos River Compact. This time, New Mexico had breached the Pecos River Compact by not delivering to Texas a certain amount of water each year. The U.S. Supreme Court had appointed a Special Master who acted as a representative of the U.S. Supreme Court by hearing the arguments of the parties and rendering a recommendation to the U.S. Supreme Court. The Special Master recommended that New Mexico pay a penalty in the form of the delivery of additional water each year to Texas, even though the compact in that case did not provide for a remedy, such as damages or the delivery of additional water by New Mexico each year. New Mexico argued that the U.S. Supreme Court could only grant Texas a

remedy for past violations of the compact, because New Mexico allegedly had in "good faith" believed that it did not owe the extra water to Texas.

According to general principles of contract law, there are two remedies for the breach of a contract--monetary damages and specific performance. Specific performance is an equitable remedy requiring a party to fulfill the exact terms of a contract. Specific performance is only granted when monetary damages are not an appropriate remedy and, as an equitable remedy, is considered by the U.S. Supreme Court to require "some attention to the relative benefits and burdens that the parties may enjoy or suffer as compared with a legal remedy of damages." After analyzing the application of general contract remedies to cases involving the breach of an interstate compact, the U.S. Supreme Court did not accept the recommendation of the Special Master regarding a remedy for New Mexico's breach of the interstate compact and referred the case back to the Special Master for further consideration regarding whether monetary damages would be appropriate.

- The U.S. Supreme Court applied general principles of contract law to this case, which involved the breach of an interstate compact.
- As with other contract cases, parties involved in litigation over the breach of an interstate compact cannot demand the remedy of specific performance. The parties also cannot compel specific performance if it would be inequitable or unfair.
- The U.S. Supreme Court determined that, as in other contract cases, it still has the authority to enter monetary judgments in cases where it has jurisdiction.
- The U.S. Supreme Court recognized the propriety of monetary damages against a state in actions where it has original jurisdiction, even though there may be difficulties in enforcing a money judgment against a state.
- Stating that the Special Master's recommendation of additional water each year had all of the "earmarks" of specific performance, the U.S. Supreme Court remanded the case to the Special Master for consideration of a monetary remedy.

New Mexico argued that the U.S. Supreme Court could only grant Texas a remedy for past violations of the compact, because New Mexico allegedly had in "good faith" believed that it did not owe the extra water to Texas. However, under general principles of contract law, if the



parties to a contract intended to make the contract and the contract's terms provide a sufficient basis for determining if there has been a breach of the contract and if there is a remedy for such a breach, then the court should grant a remedy. A court can grant a remedy that will have a retroactive impact where one party promised to something under a contract and failed to carry out that promise. The U.S. Supreme Court held that, in accordance with general contract law, New Mexico could be held accountable not only for future violations of the interstate compact but for past violations of the compact as well, even if the past violations were committed in good faith.

- The U.S. Supreme Court applied general contract law principles finding New Mexico to be responsible for past violations of the compact and determining that it could grant a retroactive remedy.
- Even if New Mexico withheld water in good faith, good faith differences regarding contractual obligations do not relieve either party from compliance with their contractual obligations.

Finally, note that the U.S. Supreme Court in this case appointed a "River Master" to make periodic calculations regarding the compact's water apportionment formula, because the calculations were not totally mechanical and required a degree of judgment. Although such appointments by the U.S. Supreme Court are rare, though not unheard of, the U.S. Supreme Court determined that this portion of the remedy was "a fair and equitable solution that is consistent with the Compact terms," in light of the parties' history of disagreement.

### Laches

Under general legal principles, laches is a doctrine that allows for the dismissal of a lawsuit where a plaintiff inexcusably delays asserting his legal rights causing a detriment to the defendant in defending against the lawsuit. In Kansas v. Colorado, 514 U.S. 673 (1995), a case involving a dispute over the Arkansas River Compact, Colorado attempted to use the laches defense in an effort to persuade the U.S. Supreme Court to dismiss the lawsuit against it. The U.S. Supreme Court held that Colorado had not proven that Kansas inexcusably delayed bringing its lawsuit.

- There remains a question of whether laches can be used by defendants in a dispute involving the enforcement of an interstate compact.
- The U.S. Supreme Court has found laches to be generally inapplicable in boundary dispute cases involving two states. Illinois v. Kentucky, 500 U.S. 380 (1991). However, the U.S. Supreme Court also stated in another case involving the equitable apportionment of river water that a delay by the plaintiff in filing suit “might well preclude the award of the relief [requested]. But, in any event, they gravely add to the burden [the plaintiff] would otherwise bear.” Kansas v. Colorado, 320 U.S. 383, 64 S.Ct. 176, 88 L.Ed. 116 (1943).
- Although the U.S. Supreme Court did not foreclose the possibility of applying laches to an interstate compact dispute, the Court held that, under the facts of this case, even if laches were applicable, Colorado had not proven that Kansas had inexcusably delayed bringing its lawsuit.

### Injunctive Relief

The 1996 case, Waterfront Com'n of New York Harbor v. Construction and Marine Equipment Co., Inc., 928 F.Supp. 1388 (D.N.J. 1996), involved the Waterfront Commission of New York Harbor (WCNY), which administers the Congressionally approved Waterfront Commission Compact. The purpose of WCNY is to prevent racketeering and corrupt labor practices on the waterfront. WCNY asked a federal New Jersey District Court for a preliminary injunction to stop Construction and Marine Equipment Co., Inc. (CME) from committing the following violations of the WCNY’s regulations: CME performed services as a stevedore on the waterfront without obtaining a license, hired longshoremen, who were not on WCNY’s longshoremen’s register, and unlicensed pier superintendents.

This case gave the New Jersey District Court an opportunity to consider how the unique nature of interstate compacts affects the granting of a preliminary injunction to an interstate compact commission. An injunction is an equitable remedy through which a court compels a party to do or refrain from performing a certain act. A preliminary injunction is issued by a court before trial to prevent the defendant’s actions from irreparably harming the plaintiff. Normally, a plaintiff must prove that he has an inadequate legal remedy, such as an inability to obtain

monetary damages, in order for a court to grant a preliminary injunction. Four factors must be proven by the party requesting a preliminary injunction:

- the likelihood that the party seeking the injunction will prevail on the merits of the case at final hearing
- the extent to which the plaintiff is being irreparably harmed by the defendant's conduct
- the extent to which the defendant will suffer irreparable harm if the preliminary injunction is granted
- the public interest involved in granting the injunction.

After analyzing each of the four factors, the New Jersey District Court issued the preliminary injunction to prevent CME's violations from irreparably harming WCNY. Importantly, the New Jersey District Court found that the unique nature of interstate compacts alters its analysis in cases where a compact commission is seeking a preliminary injunction. The New Jersey District Court held that the elements of irreparable harm and an inadequate remedy at law would be presumed to have been proven when WCNY seeks a preliminary injunction in order to protect the effective enforcement of the compact.

- Drafters of compacts may be able to foreclose the availability of injunctive remedies. However, the New Jersey District Court stated that explicit language in the compact is needed to foreclose a court's discretion to grant an injunction. In this case, the Waterfront Commission Compact actually authorized WCNY to seek injunctive relief.
- The New Jersey District Court held that the statutory nature of WCNY's duties prevents it from being held to same equitable standard as a private party when it seeks an injunction. An example of WCNY's statutory duties is the compact's authorization of WCNY to bring suit against violators to compel compliance with the compact.
- Because the compact is a federal statute as the result of Congressional approval, the New Jersey District Court determined that Congress did not intend statutory entities, such as the compact's administrative commission, to make a showing of

irreparable injury. Such entities must only show to the court the injury to the public that Congress found inherent in the conduct made unlawful under the compact. Since Congress determined that there had been injury to the public through corrupt labor practices on the waterfront, WCNY fulfilled this requirement.

- The New Jersey District Court determined that Congress did not intend for WCNY to prove that it has an inadequate legal remedy, such as the unavailability of monetary damages. Since the compact provides that WCNY can seek monetary and criminal sanctions, which are legal remedies, the New Jersey District Court's decision was driven by a desire to avoid foreclosing the WCNY's ability to seek an injunction.

#### The Right To A Jury Trial:

As with other remedies, the availability of a right to a jury trial is affected by the presence of an interstate compact in litigation. An example is the 1997 case, State of Neb. v. Central Interstate Low-Level Radioactive Waste Com'n, 974 F.Supp. 762 (D.Neb. 1997). This case involved a dispute concerning the Central Interstate Low-Level Radioactive Waste Commission (LRWC), which was created by the Congressionally approved Central Interstate Low-Level Radioactive Waste Compact. Nebraska, a member to the Central Low-Level Radioactive Waste Compact, alleged that it was entitled to a trial by jury on its claims that LRWC breached the compact and violated Nebraska's Due Process and Tenth Amendment rights. At the outset, the federal Nebraska District Court stated that this was a case of "first impression".

LRCW argued that it is immune as a "quasi-sovereign" from a demand for a jury trial, because states are normally immune from jury trial demands. Nebraska argued that it has a right to a jury trial under the language of the compact. Under the federal system, a party is entitled to a jury trial if a federal statute explicitly provides for a jury trial. Nebraska argued that the Congressionally approved compact is federal law and provides for a jury trial. Moreover, Nebraska also argued that it is entitled to a jury trial under the Seventh Amendment. The Seventh Amendment provides the right to a jury trial where: (1) a plaintiff's claims are legal, not equitable, and (2) the nature of the plaintiff's claims are similar to the types of claims intended to be protected by the Framers of the U.S. Constitution in 1791. For example, generally there is a

right to a jury trial in contract construction and interpretation claims. The Nebraska District Court ruled that, although the LRCW was not immune from Nebraska's demand for a jury trial, Nebraska was not entitled to a jury trial.

- As an administrative compact commission, LRWC is not a “quasi-sovereign”, because it is not the subject of control of one single state sovereign and is too far removed from the power of the state voters to be considered a sovereign. Unlike the compact member states, LRWC’s authority is narrow and limited to a small part of each of the member states’ interests.
- Although the Congressionally approved compact is a federal statute, it is silent on the issue of whether Nebraska is entitled to a jury trial. Since a federal statute must explicitly provide the right to a jury trial, Nebraska is not entitled to a jury trial under the compact.
- Nebraska is not entitled to a trial by jury on the theory that breach of interstate compact claims are similar to breach of contract claims. Breach of interstate compact claims are more similar to disputes between states. States do not have the right to a jury trial in such cases, because the U.S. Supreme Court under its original jurisdiction hears those claims.
- The Nebraska District Court found that Nebraska’s claims that LRWC violated express terms of the compact would be more properly characterized as claims that LRWC did not have authority under the compact to take certain actions. Claims questioning an entity’s authority to act are called “ultra vires” actions, and historically, have not been entitled to a trial by jury.
- Nebraska also does not have the right to a jury trial on its claims that LRWC encroached upon Nebraska’s power that the U.S. Constitution reserves to it under the Tenth Amendment. The Nebraska District Court ruled that those claims are best handled by the judiciary rather than a jury.
- Nebraska is not entitled to a trial by jury for its Due Process claims under the U.S. Constitution. The Nebraska District Court held that Nebraska is not even entitled to protection under the Due Process Clause, since that clause by its own terms applies to individuals, not states.

- If Nebraska were entitled to a trial by jury, the jury would have been made up of only Nebraska citizens. Since the interests of several states were involved due to the multi-state nature of the compact commission, the Nebraska District Court decided that it is best not to have the case decided by a jury.

### **The Amendment And Modification Of Interstate Compacts**

From time to time, members of an interstate compact may seek to amend or modify the compact. Some compacts provide specific procedures for amending or modifying compact provisions. As with entry into a compact, compact members must be careful to follow the amendment and modification procedures stated in the compact. If the compact does not contain such a provision or if the compact members do not follow the provision, then the following general legal principle applies: one party to a compact cannot nullify unilaterally the provisions of an interstate compact. The principle was true in 1976 and is still true today. The following case illustrates this legal principle.

State of Neb. ex rel. Nelson v. Central Interstate Low-Level Radioactive Waste Com'n, 902 F.Supp. 1046 (D.Neb. 1995), involved a dispute over amending the Congressionally approved Central Interstate Low-Level Radioactive Waste Compact to change the voting rights of the member states' commissioners. The compact specifically provided for one vote per state on the Central Interstate Low-Level Radioactive Waste Commission (LRWC). Representatives of member states agreed in principle to request that each of their state legislatures pass an amendment to the compact that would alter the voting membership of the compact. LRWC argued that Nebraska was attempting to unilaterally alter the provisions of the compact without the concurrence of the other member states. The federal Nebraska District Court agreed with LRWC.

- One member state to a compact cannot unilaterally nullify provisions of a compact or give the compact final meaning.
- If a proposed amendment to an interstate compact imposes a burden on the compact, then the “concurrence” of the member states is needed for the amendment to be valid.

- Concurrence, in this case, must be in the form of legislative approval by the burdened states considering the weight of the burden on some of the states. The burdened states were potentially facing a dilution of their voting rights. The Nebraska District Court found that, because the compact requires states to pass legislation to be bound by the compact, legislation also is required for the states to be bound by Nebraska's amendment.
- Because the states that would be negatively impacted by the amendment did not all pass the legislation approving the change in voting rights, the court did not enforce the amendment.
- Since the Central Interstate Low-Level Radioactive Waste Compact had received Congressional approval, LRWC had questioned whether Congress would need to approve of amendments to the compact. The Nebraska District Court did not decide whether Congressional approval would be needed, but stated that it tended to agree with LRWC.