

5 | Interstate Compacts

An interstate compact is a legally binding contractual agreement involving two or more states.

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5.1. CONSTITUTIONAL BASIS FOR INTERSTATE COMPACTS

Interstate compacts predate the U.S. Constitution.

The Articles of Confederation (proposed by the Continental Congress in 1777 and ratified by the states in 1781) provided for interstate compacts:

“No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the united states, in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.”¹

¹ Articles of Confederation. Article VI. Clause 2. <https://www.ourdocuments.gov/doc.php?flash=false&doc=3&page=transcript>

The current U.S. Constitution was proposed by the Constitutional Convention in 1787 and ratified in 1788, and it went into effect in 1789.

Article I, section 10, clause 3 of the U.S. Constitution provides:

“No state shall, without the consent of Congress, ... enter into any agreement or compact with another state.”²

The terms “compact” and “agreement” are interchangeable. In 1893, the U.S. Supreme Court stated in *Virginia v. Tennessee*:

“Compacts or agreements ... we do not perceive any difference in the meaning...”³

5.2. LEGAL STANDING OF INTERSTATE COMPACTS

An interstate compact is, first and foremost, a contract.

Once a state enters into an interstate compact, the state—like an individual, corporation, or any other legal entity that enters into a contract—is bound by the compact’s terms.

All contracts—whether they be between or among individuals, corporations, or state governments—are protected by the Impairments Clause of the U.S. Constitution (also called the Contracts Clause).

Article I, section 10, clause 1 of the Constitution provides:

“No State shall ... pass any ... Law impairing the Obligation of Contracts....”⁴

Thus, the Impairments Clause prevents a state from passing any law impairing its obligations under an interstate compact to which it is currently a party.

The Council of State Governments summarized the nature of interstate compacts as follows:

“Compacts are agreements between two or more states that bind them to the compact’s provisions, just as a contract binds two or more parties in a business deal. As such, compacts are subject to the substantive principles of contract law and are protected by the constitutional prohibition against laws that impair the obligations of contracts (U.S. Constitution, Article I, Section 10).

“That means that **compacting states are bound to observe the terms of their agreements, even if those terms are inconsistent with other state laws**. In short, compacts between states are somewhat like treaties between

² The full wording of the clause 3 is “No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

³ *Virginia v. Tennessee*. 148 U.S. 503 at 520. 1893.

⁴ The full wording of clause 1 is: “No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.”

nations. Compacts have the force and effect of statutory law (whether enacted by statute or not) and **they take precedence over conflicting state laws, regardless of when those laws are enacted.**

“However, unlike treaties, compacts are not dependent solely upon the good will of the parties. **Once enacted, compacts may not be unilaterally renounced by a member state, except as provided by the compacts themselves.** Moreover, Congress and the courts can compel compliance with the terms of interstate compacts. That’s why **compacts are considered the most effective means of ensuring interstate cooperation.**”⁵ [Emphasis added]

The contractual obligations undertaken by a state in an interstate compact bind all state officials.

In addition, an interstate compact binds the state legislature itself—including future legislatures—because no state legislature may enact a law impairing a contract.

Thus, after a state enters into an interstate compact, and the compact takes effect, state officials and the state legislature are bound by all of the terms of the compact until

- the state withdraws from the compact in accordance with the compact’s terms for withdrawal, or
- the compact is terminated under its terms.⁶

States generally enter into interstate compacts in order to obtain some benefit that can only be obtained by cooperative and coordinated action with one or more sister states.

In most cases, it would make no sense for a state to agree to the terms of any interstate compact unless the other state(s) in the compact agreed to abide by its obligations under the compact.

For example, a state would ordinarily not want to agree to any limitation on its use of water in a river basin located in the state. However, a state might find it advantageous to agree to a limitation if another state were to simultaneously agree to limit its water usage.

When a state enters into an interstate compact (other than a purely advisory compact), it is typically agreeing to a constraint—to one degree or another—on its ability to exercise some power that the state otherwise might freely exercise.

As summarized in *Hellmuth and Associates v. Washington Metropolitan Area Transit Authority*:

“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 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 all parties.”⁷ [Emphasis added]

⁵ Council of State Governments. 2003. *Interstate Compacts and Agencies 2003*. Lexington, KY: The Council of State Governments. Page 6.

⁶ Theoretically, an interstate compact could be terminated by a court, although we know of no case in which any interstate compact has been declared unconstitutional.

⁷ *C.T. Hellmuth v. Washington Metro. Area Trans.* (D.Md. 1976) 414 F.Supp. 408, 409.

Although one might debate the exact extent of what is included in the concept of state sovereignty, no one would dispute that it includes the power to legislate over an area within a state's jurisdiction.

The Columbia River Compact⁸ provides a clear example of the surrender of sovereignty inherent in interstate compacts.

This compact concerns fish in the Columbia River. It was enacted by the states of Washington⁹ and Oregon¹⁰ in 1915. It received congressional consent in 1918.¹¹

The entire compact—the shortest of all—reads:

“There exists between the states of Washington and Oregon a definite compact and agreement as follows:

“All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia river, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, **shall be made, changed, altered and amended** in whole or in part, **only with the mutual consent and approbation of both states.**” [Emphasis added]

In other words, by entering into this compact, each state agreed to make the other state's approval necessary for it to exercise what otherwise would have been its separate and independent legislative power over fish in the Columbia River.

5.3. HISTORY OF INTERSTATE COMPACTS

Four interstate compacts were approved under the Articles of Confederation.

Three of them were settlements of boundary disputes.

The first regulatory compact was an agreement between Maryland and Virginia concerning fishing and navigation on the Chesapeake Bay and the Patowmack (Potomac) and Pocomoke rivers.¹² This compact received the consent of the Confederation Congress under the Articles of Confederation in 1785. Because it was a contractual obligation between the two states, the compact continued in force despite the demise of the Articles of Confederation in 1789. In fact, it remained in force until 1958 (when it was replaced by the current Potomac River Compact).¹³

Prior to 1921, about three-quarters of all interstate compacts were for the purpose

⁸ Columbia River Compact. <https://compacts.csg.org/compact/columbia-river-compact/>

⁹ RCW 77.75.010. <https://app.leg.wa.gov/RCW/default.aspx?cite=77.75.010>

¹⁰ ORS 507.010. https://oregon.public.law/statutes/ors_507.010

¹¹ An act to ratify the compact and agreement between the States of Oregon and Washington regarding concurrent jurisdiction over the waters of the Columbia River and its tributaries in connection with regulating, protecting, and preserving fish. 40 Stat. 515. 1918. <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/40/STATUTE-40-Pg515a.pdf>

¹² Compact of 1785. 1786 Md. Laws c. 1. <http://www.virginiaplaces.org/pdf/mdvaapp1.pdf>

¹³ Potomac River Compact. <https://compacts.csg.org/wp-content/uploads/2024/03/Potomac-River-Compact-of-1958.pdf> See also <https://compacts.csg.org/compact/potomac-river-compact-of-1958/>

of resolving boundary disputes.¹⁴ Moreover, prior to 1921, all interstate compacts were administered by pre-existing agencies of the compacting states.

The modern era of interstate compacts began in 1921 with the New York–New Jersey Port Authority Compact.¹⁵

The pressures of World War I dramatized the inadequacies of the port of New York and New Jersey. The two states decided that efficient operation and development of their port required closer cooperation and coordination between them.

The resulting 1921 interstate compact broke new ground by establishing a new governmental entity that was separate from the administration of each state and that was administered by its own governing body.

The compact's intended purposes are summarized in its preamble:

“Whereas, In the year eighteen hundred and thirty-four the states of New York and New Jersey did enter into an agreement fixing and determining the rights and obligations of the two states in and about the waters between the two states, especially in and about the bay of New York and the Hudson River; and

“Whereas, Since that time the commerce of the port of New York has greatly developed and increased and the territory in and around the port has become commercially one center or district; and

“Whereas, It is confidently believed that a better co-ordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey; and

“Whereas, The future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money and the cordial co-operation of the states of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans; and

“Whereas, Such result can best be accomplished through the co-operation of the two states by and through a joint or common agency.”¹⁶

After 1921, the number, scope, and variety of interstate compacts increased dramatically.

Today, about half of all interstate compacts establish a commission to administer their

¹⁴ Frankfurter, Felix, and Landis, James. 1925. The compact clause of the constitution—A study in interstate adjustments. 34 *Yale Law Journal* 692–693 and 730–732. May 1925.

¹⁵ New York–New Jersey Port Authority Compact of 1921. <https://compacts.csg.org/compact/new-york-new-jersey-port-authority-compact-of-1921> The web site of the Port Authority is at <https://www.panynj.gov/port-authority/en/index.html>.

¹⁶ Agreement of New York and New Jersey establishing Port of New York Authority. 1921. *Laws of 1921*. Chapter 154. <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO>:

subject matter.¹⁷ Compact commissions are generally composed of a specified number of representatives from each state—typically appointed by their Governors.

Many compacts with commissions and separate staff receive annual funding from each member state.

If a compact is administered solely by existing state agencies, they each typically receive appropriations from their own state to cover the cost of administering the compact.

Other compacts—particularly those that operate transportation facilities (such as bridges, tunnels, airports, seaports, railroads, or ferries) or other facilities (such as industrial development projects, office buildings, or facilities for storing radioactive waste) have independent revenue streams to finance their operations.

5.4. TOPICS COVERED BY INTERSTATE COMPACTS

There are no constitutional restrictions on the subject matter of interstate compacts other than the implicit limitation that the subject matter must be among the powers that the states are permitted to exercise.

The 10th Amendment reserves considerable power for the states.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” [Emphasis added]

Accordingly, interstate compacts have been employed for a wide variety of purposes over the years.

The National Center for Interstate Compacts of the Council of State Governments lists 270 compacts in their database.¹⁸

Interstate compacts deal with numerous topics, including those listed below.

An *advisory compact* establishes a commission that is authorized only to conduct studies and to develop recommendations to solve interstate problems. Advisory compacts are the weakest and least important form of interstate compacts.

Agricultural compacts include the Compact on Agricultural Grain Marketing¹⁹ and the now-inactive Northeast Interstate Dairy Compact.²⁰

Boundary compacts allow states to settle disputes involving their official boundaries. Boundary disputes were especially common in the 18th and 19th centuries. States often found negotiated boundary compacts preferable to a protracted trial in the U.S. Supreme Court (which has original jurisdiction over disputes among states). One 20th-century example of a boundary compact is the 1989 Nebraska–South Dakota Boundary Compact,²¹

¹⁷ Council of State Governments. 2003. *Interstate Compacts and Agencies 2003*. Lexington, KY: The Council of State Governments.

¹⁸ Council of State Governments. *NCIC Database*. Accessed May 28, 2024. <https://compacts.csg.org/database/>

¹⁹ Compact on Agricultural Grain Marketing. https://ballotpedia.org/Interstate_Compact_on_Agricultural_Grain_Marketing

²⁰ Northeast Interstate Dairy Compact. <https://www.dairycompact.org/> Also see https://en.wikipedia.org/wiki/Northeast_Interstate_Dairy_Compact

²¹ South Dakota–Nebraska Boundary Compact. <https://compacts.csg.org/compact/south-dakota-nebraska-boundary-compact/>

which settled a dispute arising from the fact that the Missouri River had changed course with the passage of time.

Civil defense compacts were adopted by many states during the Cold War. Examples include the Interstate Civil Defense and Disaster Compact²² of the 1950s, which was replaced in the 1990s by the Emergency Management Assistance Compact.²³

Crime-control and corrections compacts are traceable to 1910, when Congress gave its advance consent to Illinois, Indiana, Michigan, and Wisconsin to enter into an agreement with respect to the exercise of jurisdiction “over offenses arising out of the violation of the laws” of these states on the waters of Lake Michigan.²⁴

In 1934, Congress enacted the Crime Control Consent Act²⁵ authorizing states, in advance, to enter into crime-control compacts.

The Interstate Compact for Supervision of Parolees and Probationers of 1937 was based on this 1934 statute and was the first interstate compact to be joined by all states. The compact provides for the supervision of parolees and probationers who live in states other than the one in which they originally committed their crime. After almost 70 years of use, the Council of State Governments (CSG), the National Institute of Corrections, and a drafting team of state officials updated the 1937 compact and created the Interstate Compact for Adult Offender Supervision.²⁶ Currently, all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are members. The compact handles over 100,000 cases per year.

The Interstate Agreement on Detainers²⁷ facilitates speedy and proper disposition of detainers based on indictments, information, or complaints from the jurisdictions that are parties to the compact. The parties include 49 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the federal government itself.

The Interstate Compact for Juveniles²⁸ and the Interstate Corrections Compact²⁹ authorize the return of delinquents and convicts, respectively, to their states of domicile to serve their sentences. Supporters of these compacts believe that rehabilitation of delinquents and convicts will be promoted if they are incarcerated in close proximity to their families.

²² Interstate Civil Defense and Disaster Compact https://ballotpedia.org/Interstate_Civil_Defense_and_Disaster_Compact#:~:text=The%20Interstate%20Civil%20Defense%20and,disaster%20response%20and%20defense%20aid

²³ Emergency Management Assistance Compact. P.L. 104-321. <https://compacts.csg.org/compact/emergency-management-assistance-compact/>

²⁴ 36 Stat. 882.

²⁵ Crime Control Consent Act of 1934. 48 Stat. 909. 4 U.S.C. §112.

²⁶ Interstate Compact for Adult Offender Supervision <https://compacts.csg.org/compact/interstate-compact-for-adult-offender-supervision/> The compact's extensive web site is at <https://www.interstatecompact.org/> Its 2020 annual report is at <https://www.interstatecompact.org/sites/default/files/2020-08/2020%20Annual%20Report%20WEB.pdf>

²⁷ Interstate Agreement on Detainers. <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>

²⁸ Interstate Compact for Juveniles. <https://compacts.csg.org/compact/interstate-compact-for-juveniles/>

²⁹ Interstate Corrections Compact. <https://compacts.csg.org/compact/interstate-corrections-compact/>

Kansas and Missouri created the nation's first *cultural compact* by establishing a metropolitan cultural district governed by a commission in 2000.³⁰

The first *education compact* pooled the resources of southern states by means of the Southern Regional Education Compact.³¹ The aim of the compact was to reduce each state's need to maintain separate expensive post-graduate and professional schools. There are two additional compacts of this nature, namely the New England Higher Education Compact³² and the Western Regional Education Compact.³³

The New Hampshire–Vermont Interstate School Compact³⁴ has been used to establish two interstate school districts, each involving New Hampshire and Vermont towns. The Maine–New Hampshire School District Compact³⁵ similarly establishes interstate school districts for those states.

Election compacts have been suggested at various times over the years. For example, the 1970 U.S. Supreme Court case of *Oregon v. Mitchell*³⁶ was concerned with congressional legislation to bring about uniformity among state durational residency requirements for voters in presidential elections. In his opinion (partially concurring and partially dissenting), Justice Potter Stewart observed that if Congress had not acted to address this issue, the states could have adopted an interstate compact to accomplish the same objective. Justice Stewart observed that a compact involving all of the states would, in effect, establish a nationwide policy on residency for election purposes.

In the 1990s, New York Congressman (and later Senator) Charles Schumer proposed a bi-state interstate compact in which New York and Texas would pool their electoral votes in presidential elections. At the time, both states were spectator states in presidential elections; they had approximately the same population; and they regularly produced majorities of approximately the same magnitude in favor of each state's respective dominant political party. In particular, the Democrats typically carried New York by about 60% in presidential elections, and the Republicans typically carried Texas by about 60%. The purpose of the proposed compact was to create a new electoral district (slightly larger than California) that would attract the attention of the presidential candidates during campaigns.

The National Popular Vote Compact concerning presidential elections (the subject of this book) is an example of a currently pending compact involving elections.

³⁰ Kansas and Missouri Metropolitan Culture District Compact. <https://compacts.csg.org/compact/kansas-and-missouri-metropolitan-culture-district-compact/>

³¹ Southern Regional Education Compact. <https://compacts.csg.org/compact/southern-regional-education-compact/>

³² New England Higher Education Compact. <https://compacts.csg.org/compact/new-england-higher-education-compact/>

³³ Western Regional Education Compact. <https://compacts.csg.org/compact/western-regional-education-compact/>

³⁴ New Hampshire–Vermont Interstate School Compact. <https://compacts.csg.org/compact/new-hampshire-vermont-interstate-school-compact/>

³⁵ Maine–New Hampshire School District Compact. <https://compacts.csg.org/compact/maine-new-hampshire-school-district-compact/>

³⁶ *Oregon v. Mitchell*. 400 U.S. 112. 1970. <https://supreme.justia.com/cases/federal/us/400/112/>

Energy compacts include the Interstate Compact to Conserve Oil and Gas.³⁷

Facilities compacts provide for the construction and operation of physical facilities such as bridges, tunnels, airports, seaports, railroads, and ferries.

The annual revenues of the Port Authority of New York and New Jersey³⁸ exceed those of 10 states.³⁹ The Port Authority operates:

- the George Washington Bridge,
- the Holland and Lincoln Tunnels,
- three airports (Kennedy, LaGuardia, and Newark Liberty),
- the PATH rail system,
- ferries, marine facilities, industrial development projects, office buildings including One World Trade Center (which replaced the original World Trade Center destroyed on September 11, 2001).

The Port Authority's police force alone numbers over 1,600.

The Washington Metropolitan Area Transit Authority was created by an interstate compact in 1967 to plan, develop, build, finance, and operate a regional transportation system in the national capital area, including subways and above-ground rail lines. Its members include Maryland, the District of Columbia, Virginia, and the federal government.⁴⁰

On the other hand, some facility compacts operate just one facility, such as the Portsmouth-Kittery Bridge Compact, which administers a bridge over the Piscataqua River between Maine and New Hampshire.

Fish are the topic of numerous compacts, including the previously mentioned 1915 Columbia River Compact⁴¹ between Oregon and Washington and the previously mentioned Compact of 1785⁴² between Maryland and Virginia regulating fishing and navigation on the Chesapeake Bay and the Patowmack (Potomac) and Pocomoke rivers. The Atlantic States Marine Fisheries Compact of 1942 is one of the many regional fishery compacts.⁴³

Flood-control compacts relate to the construction of projects to prevent flooding. A 1957 compact between Massachusetts and New Hampshire established the Merrimack River Flood Control Compact.⁴⁴ In this compact, New Hampshire agreed to the construction by the federal government of certain dams and reservoirs in its territory for regional flood-control purposes. Massachusetts, in turn, agreed to compensate New Hampshire for the loss of tax revenue resulting from the construction of the projects.

³⁷ Interstate Compact to Conserve Oil and Gas. <https://compacts.csg.org/compact/interstate-compact-to-serve-oil-and-gas/>

³⁸ The Port Authority's budget (approximately \$8.5 billion) is at <https://www.panynj.gov/corporate/en/financial-information/budget.html>

³⁹ State budgets may be found at https://en.wikipedia.org/wiki/List_of_U.S._state_budgets

⁴⁰ Washington Metropolitan Area Transit Authority. <https://www.wmata.com/about/history.cfm> The compact is at https://www.wmata.com/about/board/upload/Compact_Annotated_2009_final.pdf

⁴¹ Columbia River Compact. <https://compacts.csg.org/compact/columbia-river-compact/>

⁴² Compact of 1785. 1786 Md. Laws c. 1. <http://www.virginiaplaces.org/pdf/mdvaapp1.pdf>

⁴³ Atlantic States Marine Fisheries Compact. <https://compacts.csg.org/compact/atlantic-states-marine-fisheries-compact/>

⁴⁴ Merrimack River Flood Control Compact. <https://compacts.csg.org/compact/merrimack-river-flood-control-compact/>

Health compacts include the Compact on Mental Health⁴⁵ and the New England Radiological Health Protection Compact.⁴⁶

Lottery compacts include the Tri-State Lotto Commission that was created in 1985 by the state legislatures of Maine, New Hampshire, and Vermont and the Multistate Lottery Agreement⁴⁷ that administers the Powerball game sold in 39 states.

Low-level radioactive waste compacts were encouraged by Congress in the federal Low-Level Radioactive Waste Policy Act of 1980.⁴⁸ This federal legislation made each state responsible for the disposal of low-level nuclear waste created within its own boundaries (except for waste created by the activities of the federal government). The act then encouraged the use of interstate compacts to operate regional facilities for management of low-level radioactive waste as an alternative to individual storage sites in each state.

A total of 42 states have entered into one of 10 such compacts, namely the Appalachian, Central Midwest, Central States, Midwest, Northeast, Northwest, Rocky Mountain, Southeast, Southwest, and Texas.⁴⁹

One example is the Southwestern Low-Level Radioactive Waste Disposal Compact,⁵⁰ in which California agreed to serve, for 35 years, as the host state for the storage of radioactive waste for the states of Arizona, North Dakota, South Dakota, and California (and such other states that the compact commission might later decide to admit).⁵¹

Because of their politically sensitive subject matter, radioactive-waste compacts have generated fierce public debate.

Voters have directly participated in these controversies by means of the citizen-initiative process (in Nebraska) and the legislative referral process (in Maine). In addition, there has been considerable litigation concerning these compacts. Controversy over Nebraska's role in storing other states' radioactive waste spanned a 20-year period (as discussed in sections 5.7 and 5.11).

Marketing and development compacts address a variety of subjects and include the Agricultural Grain Marketing Compact and the Mississippi River Parkway Compact.

⁴⁵ Compact on Mental Health. <https://compacts.csg.org/compact/compact-on-mental-health/>

⁴⁶ New England Radiological Health Protection Compact. <https://compacts.csg.org/compact/new-england-radiological-health-protection-compact/>

⁴⁷ Multistate Lottery Agreement. <https://compacts.csg.org/compact/multistate-lottery-agreement/> See also <https://www.musl.com/>

⁴⁸ An Act to set forth a federal policy for the disposal of low-level radioactive wastes, and for other purposes. 94 Stat. 3347. <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg3347.pdf>

⁴⁹ As of 2021, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New York, North Carolina, and Rhode Island are not members of any low-level radioactive waste compact.

⁵⁰ Southwestern Low-Level Radioactive Waste Disposal Compact. <https://compacts.csg.org/compact/southwestern-low-level-radioactive-waste-disposal-compact/>

⁵¹ As can be seen, the states involved in each of these “regional” compacts are not necessarily adjacent or even nearby. For example, Vermont is a member of the Texas Low-Level Radioactive Waste Disposal Compact (<https://compacts.csg.org/compact/texas-low-level-radioactive-waste-disposal-compact/>), and South Carolina is a member of the Northeast Interstate Low-Level Radioactive Waste Management Compact (<https://compacts.csg.org/compact/northeast-interstate-low-level-radioactive-waste-management-compact-atlantic-compact/>).

Metropolitan problem compacts include the Washington Metropolitan Area Transit Regulation Compact,⁵² which regulates private-sector buses, vans, and motor carriers transporting passengers for hire in the District of Columbia, Maryland, and Virginia.

Military compacts include the National Guard Mutual Assistance Compact,⁵³ which provides for the sharing of military personnel and equipment among its member states.

Motor vehicles are the topic of a dozen interstate compacts dealing with such matters as driver's licenses, nonresident violators, equipment safety, and vehicle registration. The Driver License Compact⁵⁴ is discussed later in section 5.14.

Natural resources compacts are designed to settle disputes and to promote the conservation and development of resources. The Connecticut River Atlantic Salmon Compact⁵⁵ involves the return of salmon to the river.

Parks and recreation compacts include the Palisades Interstate Park Compact.⁵⁶ This 1900 compact is noteworthy because New York and New Jersey, relying on the U.S. Supreme Court's 1893 decision in *Virginia v. Tennessee*, did not submit it to Congress for its consent (section 5.19 and section 9.23.3).

Regulatory compacts are used to regulate a given economic sector.

Sometimes economic interest groups encourage the establishment of regulatory compacts in order to avoid federal regulation. The Interstate Insurance Product Regulation Compact⁵⁷ and the Interstate Compact to Conserve Oil and Gas⁵⁸ are examples of industry-sponsored regulatory compacts.

The Atlantic States Marine Fisheries Compact⁵⁹ is an example of a compact that lacked direct regulatory enforcement powers when it was first created in the 1940s. However, in 1986, Congress passed the Atlantic Striped Bass Conservation Act.⁶⁰ This federal legislation offered the states the choice of complying with a management plan developed by the compact's commission or being subject to a fishing moratorium on striped bass in coastal waters imposed by the U.S. Fish and Wildlife Service. This pre-existing commission thereby acquired actual regulatory authority from a subsequent congressional act.

⁵² Washington Metropolitan Area Transit Regulation Compact. <https://compacts.csg.org/compact/washington-metropolitan-area-transit-authority-compact/> The Authority's web site is <https://www.wmatc.gov/> Congressional consent was granted by 74 Stat. 1031.

⁵³ National Guard Mutual Assistance Compact. <https://compacts.csg.org/compact/national-guard-mutual-assistance-compact/>

⁵⁴ Driver License Compact. <https://compacts.csg.org/compact/driver-license-agreement/>

⁵⁵ Connecticut River Atlantic Salmon Compact. <https://compacts.csg.org/compact/connecticut-river-atlantic-salmon-compact/>

⁵⁶ Palisades Interstate Park Compact. <https://compacts.csg.org/compact/palisades-interstate-park-compact/>

⁵⁷ Interstate Insurance Product Regulation Compact. <https://compacts.csg.org/compact/interstate-insurance-product-regulation-compact/> The Commission's web site is <https://www.insurancecompact.org/>

⁵⁸ Interstate Compact to Conserve Oil and Gas. <https://compacts.csg.org/compact/interstate-compact-to-serve-oil-and-gas/>

⁵⁹ Atlantic States Marine Fisheries Compact. <https://compacts.csg.org/compact/atlantic-states-marine-fisheries-compact/> The commission's web site is at <http://www.asmf.org/>

⁶⁰ Atlantic Striped Bass Conservation Act. 100 Stat. 989. 16 U.S.C. §1857. http://www.asmf.org/uploads/file/Striped_Bass_Act.pdf

The Tri-State Sanitation Compact,⁶¹ entered into by New Jersey and New York in 1935 and by Connecticut in 1941, created a commission with the power to abate and prevent pollution in tidal waters of the New York City metropolitan area. Subsequently, the compact was amended to allow the commission to monitor—but not to regulate—air quality. The commission (renamed the Interstate Environmental Commission) shares concurrent regulatory authority with the environmental protection departments of the member states.

River basin compacts provide an alternative to litigation to solve one of the greatest problems in southwestern states, namely the shortage of water. Water disputes have historically led to the filing of numerous lawsuits between states in the U.S. Supreme Court (which has original jurisdiction over lawsuits between states).

The first river basin compact was the Colorado River Compact⁶² apportioning water among seven western states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming). More recently, various mid-Atlantic states have entered into river basin compacts.

Service compacts seek to address social problems by committing each member state to provide services to residents of other member states. The Interstate Compact on the Placement of Children,⁶³ for example, facilitates the adoption of children by qualified foster parents in other compact states if there are too few families willing to adopt children in the home state.

Tax compacts reflect the growth of interstate commerce and the levying of state income and sales taxes. All 50 states participate in the Multistate Tax Compact⁶⁴ to one extent or another. Fifteen states and the District of Columbia have enacted the compact into law and are full members of its commission. Eight additional states help support the commission financially, and an additional 26 states participate in various specific programs of the commission, notably including auditing and promoting uniformity.

The impetus for the Multistate Tax Compact was the 1966 decision of the U.S. Supreme Court in *Northwestern States Portland Cement Company v. Minnesota*.⁶⁵ The Court ruled that a state may tax the net income of a foreign corporation (i.e., one chartered by another

⁶¹ Tri-State Sanitation Compact. https://ballotpedia.org/Tri-State_Sanitation_Compact See also <https://compacts.csg.org/compact/tri-state-sanitation-compact/>

⁶² Colorado River Compact. <https://compacts.csg.org/compact/colorado-river-compact/> The 1922 version of the compact is at <https://apps.csg.org/ncic/PDF/Colorado%20River%20Compact.pdf> The 1928 Boulder Canyon Project Act (<https://www.usbr.gov/lc/region/pao/pdfiles/bcpact.pdf>) reduced the number of states required to bring the provisions of the compact into effect. The Colorado River Compact came into effect in 1929. In 1948, five states (Arizona, Colorado, New Mexico, Utah, and Wyoming) formed the 1948 Upper Colorado River Basin Compact (<https://compacts.csg.org/compact/upper-colorado-river-basin-compact/>). The 1948 compact is at <http://www.ucrccommission.com/wp-content/uploads/2021/02/1948-Upper-Colorado-River-Basin-Compact.pdf>. The web site of the Upper Colorado Commission is at <http://www.ucrccommission.com>. Various additional laws, compacts, and decrees dictate how the waters of the Colorado River will be apportioned (sometimes collectively referred to as the “The Law of the River”) are found at <http://www.ucrccommission.com/governing-laws-decrees>

⁶³ Interstate Compact on the Placement of Children. <https://compacts.csg.org/compact/interstate-compact-on-the-placement-of-children/>

⁶⁴ Multistate Tax Compact. <https://compacts.csg.org/compact/multistate-tax-compact/> The compact is at <https://apps.csg.org/ncic/PDF/Multistate%20Tax%20Compact.pdf> The web site of the Multistate Tax Commission is at <https://www.mtc.gov>

⁶⁵ *Northwestern States Portland Cement Company v. Minnesota*. 358 U.S. 450. 1966.

state) if the tax is nondiscriminatory and is apportioned equitably on the basis of the corporation's activities with a nexus to the taxing state.

The Multistate Tax Compact has been subject of considerable litigation, notably including the 1978 case that established the current jurisprudence as to whether congressional consent is necessary for a given interstate compact to take effect (section 9.23.2 and section 9.23.3).

New Jersey and New York belong to an agreement providing for a mutual exchange of information relative to purchases by residents of the other state from in-state vendors. The states have also entered into numerous administrative agreements concerning taxation.

Most states belong to dozens of interstate compacts that have been enacted by their legislature.⁶⁶ The National Center for Interstate Compacts of the Council of State Governments⁶⁷ and *Ballotpedia*⁶⁸ each maintain helpful web sites listing the compacts to which each state belongs and providing information about individual compacts.

5.5. PARTIES TO INTERSTATE COMPACTS

Most early interstate compacts involved only two states.

Today, there are interstate compacts that include all 50 states—for example, the Interstate Compact for Adult Offender Supervision.⁶⁹

The parties to an interstate compact are often determined simply by geography (e.g., the Colorado River Compact and the Great Lakes Basin Compact).

In other cases, the presence of a certain industry or activity in a state determines the compact's membership. For example, the Interstate Compact to Conserve Oil and Gas encompasses 38 petroleum-producing states.

In many cases, compacts are open to all states, and actual membership is determined simply by whichever states decide to join the compact.

Many interstate compacts include entities other than states. For example, the Agreement on Detainers⁷⁰ includes 49 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

Even provinces of Canada are members of some interstate compacts. In 1949, the Northeastern Interstate Forest Fire Compact⁷¹ became the first interstate compact to include a Canadian province. The provinces of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Quebec are currently parties to this compact.

The federal government may also be a party to an interstate compact. For example, the membership of the Agreement on Detainers⁷² includes the federal government.

In their seminal 1925 article entitled “The compact clause of the constitution—A study

⁶⁶ Bowman, Ann O'M. 2004. Trends and issues in interstate cooperation. In *The Book of the States 2004 Edition*. Chicago, IL: The Council of State Governments. Page 36.

⁶⁷ Council of State Governments. <https://apps.csg.org/ncic/>

⁶⁸ *Ballotpedia*. https://ballotpedia.org/Interstate_compacts_by_topic

⁶⁹ Interstate Compact for Adult Offender Supervision. <https://compacts.csg.org/compact/interstate-compact-for-adult-offender-supervision/>

⁷⁰ Interstate Agreement on Detainers. <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>

⁷¹ Northeastern Interstate Forest Fire Compact. <https://compacts.csg.org/compact/northeastern-interstate-forest-fire-protection-compact/>

⁷² Interstate Agreement on Detainers. <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>

in interstate adjustments,” Felix Frankfurter (later a Justice of the U.S. Supreme Court) and James Landis anticipated the possibility of federal-interstate compacts by writing:

“[T]he combined legislative powers of Congress and of the several states permit a wide range of permutations and combinations for governmental action. Until very recently these potentialities have been left largely unexplored.... Creativeness is called for to devise a great variety of legal alternatives to cope with the diverse forms of interstate interests.”⁷³

The first federal-interstate compact was formed in 1961. After a prolonged drought in the 1950s made the careful management of Delaware River waters essential, four states and the federal government entered into the Delaware River Basin Compact.⁷⁴ Congress enacted the compact into federal law with a provision that the United States be a member. That law created a commission with a national co-chairman and a state co-chairman and additional state and federal members.

The federal government, Maryland, New York, and Pennsylvania entered into the Susquehanna River Basin Compact,⁷⁵ which became effective in 1971.

Federal-interstate compacts have also been employed to promote economic development in large regions of the nation. The Appalachian Regional Compact was the first such agreement. It was enacted by Congress and 13 states in 1965. This compact has a commission with a state co-chairman appointed by the Governors involved and a federal co-chairman appointed by the President with the Senate’s advice and consent.⁷⁶

A unique federal-interstate agreement resulted from a 1980 congressional statute granting consent to an agreement entered into by the Bonneville Power Administration, a federal entity, with Idaho, Montana, Oregon, and Washington.⁷⁷ If the states had not enacted the proposed compact, a federal council would have been appointed by the U.S. Secretary of the Interior to perform the functions of the proposed federal-interstate council, namely preparing a conservation and electric power plan and implementing a program to protect fish and wildlife. One unique feature of this legislation was the provision for membership by a federal agency rather than the federal government.⁷⁸ The term “interstate compact” does not appear in this legislation. This agreement was not negotiated by the member states. Instead, the proposed compact was drafted by the Pacific Northwest Electric Power and Conservation Planning Council, which then submitted its proposal to the states.

In 1990, Congress created a similar body. The Northern Forest Lands Council Act⁷⁹ authorized each of the Governors of Maine, New Hampshire, New York, and Vermont to

⁷³ Frankfurter, Felix and Landis, James. 1925. The compact clause of the constitution—A study in interstate adjustments. 34 *Yale Law Journal* 692–693 and 730–732. May 1925.

⁷⁴ Delaware River Basin Compact. <https://compacts.csg.org/compact/delaware-river-basin-compact/>

⁷⁵ Susquehanna River Basin Compact. <https://compacts.csg.org/compact/susquehanna-river-basin-compact/>

⁷⁶ Appalachian Regional Development Act of 1966, 79 Stat. 5, 40 U.S.C. app. §1.

⁷⁷ Pacific Northwest Electric Power and Conservation Planning Act of 1980. 94 Stat. 2697. 16 U.S.C. §839b.

⁷⁸ Olsen, Darryll and Butcher, Walter R. The Regional Power Act: A model for the nation? *Washington State Policy Notes* 35. Winter 1984. Pages 1–6.

⁷⁹ Northern Forest Lands Council Act of 1990, 104 Stat. 3359, 16 U.S.C. §2101.

appoint four council members charged with developing plans to maintain the “traditional patterns of land ownership and use” of the northern forest. The Council was disbanded in 1994.

The National Criminal Prevention and Privacy Compact Act, enacted by Congress in 1998, established what may be termed a federal-interstate compact that:

“organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records for non-criminal justice purposes authorized by Federal or State law, such as background checks for governmental licensing and employment.”⁸⁰

Federal and state law enforcement officers were not involved in the negotiations leading to this compact. The compact is activated when entered into by two or more states. Article VI of the compact established a Compact Council with authority to promulgate rules and procedures pertaining to the use of the Interstate Identification Index System for non-criminal justice purposes. The council is composed of fifteen members appointed by the Attorney General of the United States, including nine members selected from among the law enforcement officers of member states, two at-large members nominated by the Chairman of the Compact Council, two other at-large members, a member of the FBI’s advisory policy board, and an FBI employee appointed by the FBI director. The Director of the FBI designates the federal “Compact Officer.”

Indian gaming compacts are a new type of compact. The origin of such compacts is the U.S. Supreme Court’s 1987 decision in *Cabazon Band of Mission Indians v. California*, which held that a state may not unduly restrict gaming on Indian lands.⁸¹ This decision led to a sharp increase in gaming on Indian lands. Congress became concerned that tribal governments and their members were not actually profiting from the gaming and that organized crime might acquire a stake in such activity. The Indian Gaming Regulatory Act of 1988⁸² therefore authorized tribe–state gaming compacts. The 1988 act established three classes of Indian gaming. Class I gaming—primarily social gaming for small prizes—is regulated totally by Indian tribes. Class II gaming—bingo and bingo-type games and non-banking card games—is regulated by tribes but is subject to limited oversight by the National Indian Gaming Commission. Class III contains all other types of gaming and is prohibited in the absence of a tribe-state compact approved by the U.S. Secretary of the Interior. The compact device permits states to exercise their reserved powers without the need for direct congressional action.

5.6. ORIGINATION OF INTERSTATE COMPACTS

Prior to 1930, interstate compacts were typically negotiated by commissioners appointed by the Governors of the states involved. The commissioners would meet and negotiate and eventually submit their proposed compact to their respective state legislatures and Governors.

⁸⁰ National Crime Prevention and Privacy Compact Act of 1998. 112 Stat. 1874. 42 U.S.C. §14611.

⁸¹ *Cabazon Band of Mission Indians v. California*. 480 U.S. 202. 1987.

⁸² Indian Gaming Regulatory Act of 1988. 108 Stat. 2467. 25 U.S.C. §2701.

This method was especially appropriate when the contemplated compact required lengthy negotiations among the prospective parties and frequent consultation with the Governors and legislative leaders of the states involved. The 1958 Potomac River Compact is an example of a compact created through negotiation by commissioners representing Maryland and Virginia.⁸³

In practice, interstate compacts often originate in state legislatures. A single legislature might initiate the process by unilaterally enacting a statute containing a prospective interstate compact. The passage of such a statute by the initiating state then serves as an open invitation (an “offer” in the legal sense) to other states to join the compact. Other states can then “accept” the “offer” by enacting identical statutes. The U.S. Supreme Court referred to the first state’s enactment of an interstate compact as a “continuing offer” in *Wedding v. Meyer*.⁸⁴

Since the 1930s, many interstate compacts have been formulated by non-governmental entities.

For example, non-profit organizations such as the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG) have drafted numerous interstate compacts and then presented their proposals to the states for their consideration.⁸⁵

Sometimes industry groups have promoted interstate regulatory compacts in attempts to discourage Congress from exercising its preemption powers over the subject matter involved. These groups argue that the states can adequately address the problem at hand by cooperative action and that a compact obviates the need for federal regulation. The Interstate Insurance Product Regulation Compact⁸⁶ and the Interstate Compact to Conserve Oil and Gas are examples of industry-sponsored compacts.

Compacts are sometimes initiated by private citizens. For example, former Governor Terry Sanford of North Carolina wrote the book *The Compact for Education*.⁸⁷ As Marian E. Ridgeway noted in her book *Interstate Compacts*:

“The Compact on Education is largely the product of the zeal and energy of former Governor Terry Sanford of North Carolina, acting on a suggestion of James B. Conant in his [1964 book] *Shaping Education Policy*.”⁸⁸

Political advocacy organizations, such as the Goldwater Institute in Arizona, have drafted numerous interstate compacts for consideration by state legislatures.⁸⁹ One of its

⁸³ Potomac River Compact. Page 1. <https://compacts.csg.org/wp-content/uploads/2024/03/Potomac-River-Compact-of-1958.pdf> See also <https://compacts.csg.org/compact/potomac-river-compact-of-1958/>

⁸⁴ *Wedding v. Meyer*. 192 U.S. 573, 583. 1904.

⁸⁵ Hardy, Paul T. 1982. *Interstate Compacts: The Ties That Bind*. Athens, GA: Institute of Government, University of Georgia.

⁸⁶ Interstate Insurance Product Regulation Compact. <https://compacts.csg.org/compact/interstate-insurance-product-regulation-compact/> The Commission’s web site is <https://www.insurancecompact.org/>

⁸⁷ Sanford, Terry. 1965. *The Compact for Education*. December 1965. <https://www.ecs.org/wp-content/uploads/Compact-for-Education-Dec1965.pdf>

⁸⁸ Ridgeway, Marian E. 1971. *Interstate Compacts: A Question of Federalism*. Carbondale, IL: Southern Illinois University Press. Page 41.

⁸⁹ <http://goldwaterinstitute.org>.

proposed compacts provides procedures for a federal Constitutional Convention to consider a constitutional amendment for a balanced budget.⁹⁰

The National Popular Vote Compact (the topic of this book) is another example of a compact drafted by a political advocacy organization.

Representatives of the federal government occasionally participate in the negotiation of interstate compacts. Such federal participation is usually at the invitation of the states themselves.

Federal participation is sometimes necessary, given the nature of the compact. For example, federal representatives participated from the beginning in the negotiation of the Potomac River Compact of 1958.⁹¹ Both the federal government and the District of Columbia were eventually represented on the commission established by the compact.

In the case of the Colorado River Compact, the impetus came from Congress rather than the states. The aim was to resolve a long-standing water dispute involving seven western states in the Colorado River basin (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming). Congress passed legislation⁹² in 1921 calling on the seven states to enter negotiations to provide for the use of the water for agriculture and power generation and to resolve their dispute. Under the terms of the federal legislation, the U.S. Secretary of Commerce (then Herbert Hoover) was designated to head the negotiations. These negotiations led to the Colorado River Compact of 1922.^{93,94} See section 5.8.

5.7. METHODS FOR ENACTING INTERSTATE COMPACTS

A state may enter an interstate compact in several ways.

The focus of this book is on compacts that require explicit state legislative action in order to come into effect.

In rare circumstances, the Governor, the head of an administrative department, or a commission may have sufficient statutory or constitutional authority to enter into a particular compact on behalf of its state. For example, the Multistate Lottery Agreement was adopted by some of its member states merely by the action of the state's lottery commission (rather than action by the legislature).

Enactment of an interstate compact by a state legislature is accomplished in the same way that ordinary state laws are enacted. Enactment of a state statute typically requires a majority vote⁹⁵ of each house of the state legislature and presenting the legislative bill to the state's Governor for approval or disapproval. If the Governor approves a bill that has

⁹⁰ <https://goldwaterinstitute.org/article/compact-for-a-balanced-budget/>

⁹¹ Potomac River Compact. Page 1. <https://compacts.csg.org/wp-content/uploads/2024/03/Potomac-River-Compact-of-1958.pdf> See also <https://compacts.csg.org/compact/potomac-river-compact-of-1958/>

⁹² 42 Stat. 171.

⁹³ Barton, Weldon V. 1967. *Interstate Compacts in the Political Process*. Chapel Hill, NC: University of North Carolina Press. Pages 94–95.

⁹⁴ Zimmerman, Joseph F. 2012. *Interstate Cooperation: Compacts and Administrative Agreements*. Second edition. Westport, CT: Praeger.

⁹⁵ The definition of the required “majority” vote varies from state to state. Assuming a quorum is present, it can mean a majority of those present and voting, an absolute majority of those serving (i.e., not counting vacancies), or an absolute majority of the seats. A quorum can range from a majority to two-thirds of the legislature.

been passed by the legislature, then the bill becomes law. All Governors have the power to veto legislation passed by their state legislatures.⁹⁶ If a Governor vetoes a bill, it may nonetheless become law if the legislature overrides the veto in the manner provided by the state's constitution. Overriding a gubernatorial veto typically requires a legislative super-majority (e.g., two-thirds or three-fifths) but can be accomplished in some states by a majority vote.⁹⁷

The citizen-initiative process, if available in a given state, provides a way by which a proposed law (including a law enacting an interstate compact) may be enacted by means of a petition and a statewide vote. In some states, the petition is first submitted to the legislature, thereby giving the legislature the opportunity to enact the legislation proposed by the petition. Then, if the legislature fails to enact the legislation proposed in the petition, the question of enacting the proposal is submitted to the voters in a statewide election. The citizen-initiative process is described in the book *The Initiative: Citizen Law-Making*⁹⁸ by Professor Joseph F. Zimmerman (co-author of this book) and in section 7.3 of this book.

The citizen-initiative process may also be used preemptively to oppose enactment of a compact. In 2021, a petition drive was launched in Massachusetts by 2022 Republican gubernatorial candidate Geoff Diehl, State Representative David DeCoste (R), and other legislators concerning the Transportation Climate Initiative (TCI). The TCI is a multi-state compact in the northeast that would establish a cap-and-trade system to reduce carbon emissions from the transportation sector. The sponsors of the petition say that their proposed initiative, if approved by voters, would effectively make it impossible for Massachusetts to participate in the compact.^{99,100} This proposed initiative did not qualify for the November 2022 ballot in Massachusetts.¹⁰¹

The citizen-initiative process may be used to repeal an existing state law (including an existing law enacting an interstate compact). For example, an initiative petition was used in Nebraska in 1988 to force a statewide vote on the question of Nebraska's participation in the controversial Central Interstate Low-Level Radioactive Waste Compact.¹⁰² The

⁹⁶ The veto by the Vermont Governor of the bill enacting the New England Interstate Water Pollution Control Compact is an example of a gubernatorial veto of an interstate compact. As it happened, Vermont later joined the compact. <https://compacts.csg.org/compact/new-england-interstate-water-pollution-control-compact/>

⁹⁷ Council of State Governments. 2005. *The Book of the States*. Lexington, KY: The Council of State Governments. 2005 Edition. Volume 37. Pages 161–162.

⁹⁸ Zimmerman, Joseph F. 1999. *The Initiative: Citizen Law-Making*. Westport, CT: Praeger. See pages 24–25 for citations to the constitutional and statutory provisions governing the initiative processes in various states.

⁹⁹ Murphy, Matt. 2021. Ballot proposal targets participation in transpo emissions pact. *WWLP 22 News*. August 4, 2021. <https://www.wwlp.com/news/state-politics/ballot-proposal-targets-participation-in-transpo-emissions-pact/>

¹⁰⁰ Revello, Katherine. 2021. Massachusetts eyes ballot initiative to halt participation in the Transportation Climate Initiative. *Maine Wire*. August 9, 2021. <https://www.themainewire.com/2021/08/massachusetts-eyes-ballot-initiative-to-halt-participation-in-the-transportation-climate-initiative/>

¹⁰¹ Massachusetts 2022 ballot measures. *Ballotpedia*. https://ballotpedia.org/Massachusetts_2022_ballot_measures

¹⁰² Central Interstate Low-Level Radioactive Waste Compact. <https://compacts.csg.org/compact/central-interstate-low-level-radioactive-waste-compact/>

compact (which had been passed several years earlier by the legislature) provided for the building of a nuclear waste site in Nebraska to store other states' nuclear waste. In the statewide vote on Proposition 402 in 1988, Nebraska voters rejected the opportunity to repeal the state's participation in the compact. Nonetheless, the compact continued to be politically controversial in Nebraska, and, 11 years later, the legislature enacted a law withdrawing the state from the compact.¹⁰³

The protest-referendum process, if available in a given state, provides a way by which voters may review a law enacted by the legislature. The protest-referendum process usually must be invoked within a very short and limited time after the law was passed by the legislature.¹⁰⁴ The protest-referendum process is described in the book *The Referendum: The People Decide Public Policy*¹⁰⁵ by Professor Joseph F. Zimmerman (who is also co-author of this book).

For example, in 2019, the Colorado legislature passed the National Popular Vote Compact (Senate Bill 42).¹⁰⁶ On March 15, 2019, Governor Jared Polis signed the bill. Shortly thereafter, the Protect Colorado's Vote organization¹⁰⁷ started circulation of a protest-referendum petition opposing the enactment of the Compact. As a result of the validation of the petition by the Colorado Secretary of State in August 2019, the Compact's enactment was temporarily suspended until a statewide referendum could be held on the issue.¹⁰⁸ The Compact was defended by the Yes on National Popular Vote organization,¹⁰⁹ Coloradans for National Popular Vote, and Conservatives for Yes on National Popular Vote. A statewide referendum was held on the question in November 2020. In the statewide vote on Proposition 113, Colorado voters supported the Compact.¹¹⁰ Ballotpedia¹¹¹ and the National Popular Vote web site¹¹² provide historical information about the campaign.

The referral process, if available in a given state, provides another way by which the voters may get the opportunity to vote on the question of adopting an interstate compact.

For example, in 1993, the Maine legislature referred the question of Maine's participa-

¹⁰³ See section 5.13 for additional discussion of the controversies surrounding this compact in Nebraska.

¹⁰⁴ Note that an initiative petition, as opposed to the protest-referendum process, was used in Nebraska in 1988 to force a statewide vote on the question of Nebraska's participation in the controversial Central Interstate Low-Level Radioactive Waste Compact because the legislature had enacted the compact several years earlier.

¹⁰⁵ Zimmerman, Joseph F. 1997. *The Referendum: The People Decide Public Policy*. Westport, CT: Praeger.

¹⁰⁶ Colorado Senate Bill 42 of 2019. <https://leg.colorado.gov/bills/sb19-042>

¹⁰⁷ <https://www.protectcoloradosvote.org/>

¹⁰⁸ Davies, Emily. 2019. Colorado approved a national popular vote law. Now it might be repealed. August 2, 2019. *Washington Post*. https://www.washingtonpost.com/politics/colorado-approved-a-national-popular-vote-law-now-it-might-be-repealed/2019/08/02/a305b1de-b468-11e9-8e94-71a35969e4d8_story.html

¹⁰⁹ <https://www.YesOnNationalPopularVote.com>

¹¹⁰ The official election returns for Proposition 113 are at <https://results.enr.clarityelections.com/CO/105975/web.264614/#/detail/1126>

¹¹¹ Ballotpedia. Colorado Proposition 113, National Popular Vote Interstate Compact Referendum (2020). [https://ballotpedia.org/Colorado_Proposition_113,_National_Popular_Vote_Interstate_Compact_Referendum_\(2020\)](https://ballotpedia.org/Colorado_Proposition_113,_National_Popular_Vote_Interstate_Compact_Referendum_(2020))

¹¹² See the Colorado page at the National Popular Vote web site at <https://www.nationalpopularvote.com/state/co>

tion in the Texas Low-Level Radioactive Waste Disposal Compact¹¹³ to the state's voters. The question on the ballot was:

“Do you approve of the interstate compact to be made with Texas, Maine and Vermont for the disposal of the State's low-level radioactive waste at a proposed facility in the State of Texas?”

The proposition received 170,411 “yes” votes and 63,672 “no” votes.

There are no constitutional restrictions on the length of time that potential parties to an interstate compact may take in deciding whether to join the compact.

For example, approval of the Colorado River Compact was spread out over the 22-year period between 1922 and 1944,¹¹⁴ and approval of the California–Nevada Water Apportionment Interstate Compact was spread out over 46 years.

The Multistate Tax Compact is open to all states and provided that it would initially go into effect when seven states approved it.¹¹⁵ The compact acquired its first seven adherents in 1967 and acquired additional adherents over the years, including Oregon in 2013 and Utah in 2014.¹¹⁶

The Great Lakes Basin Compact¹¹⁷ was enacted in 1955 by the state legislatures in Illinois, Indiana, Michigan, Minnesota, and Wisconsin. Pennsylvania approved it in 1956, and New York did so in 1960. The Ohio General Assembly did not act until 1963.

An interstate compact typically functions as both:

- a state law (controlling the actions of state officials in the same manner as any other state law) and
- a legally binding contract between the state and the other parties to the compact.

Ohio's legislation for approving the Great Lakes Basin Compact¹¹⁸ in 1963 illustrates the dual roles of a typical interstate compact.

Ohio's legislation began with an enacting clause that stated that the compact was both being “enacted into law” in Ohio and that the State of Ohio was entering into a contractual obligation.

“The ‘great lakes basin compact’ is hereby ratified, **enacted into law**, and **entered into by this state as a party** thereto with any other state or province which, pursuant to Article II of said compact, has legally joined in the compact as follows:” [Emphasis added]

¹¹³Texas Low-Level Radioactive Waste Disposal Compact. <https://compacts.csg.org/compact/texas-low-level-radioactive-waste-disposal-compact/>

¹¹⁴Colorado River Compact. <https://compacts.csg.org/compact/colorado-river-compact/>

¹¹⁵Multistate Tax Compact. <https://compacts.csg.org/compact/multistate-tax-compact/> The compact is at <https://apps.csg.org/ncic/PDF/Multistate%20Tax%20Compact.pdf> The web site of the Multistate Tax Commission is at <https://www.mtc.gov>

¹¹⁶At approximately the same time, California repealed its enactment of the Multistate Tax Compact in 2012 because of dissatisfaction with the compact's limited choice of methods for computing tax liability of multistate businesses.

¹¹⁷Great Lakes Basin Compact. <https://compacts.csg.org/compact/great-lakes-basin-compact/>

¹¹⁸Ohio Revised Code 6161.01–6161.03.

Similar or identical words are used by many states when they approve interstate compacts to recognize the dual roles of the ratifying legislation.

The remainder of Ohio's 1963 activating legislation simply consisted of the exact text of the compact.

Statutory language for enacting an interstate compact at the state level may or may not be self-executing. The above Ohio legislation is an example of self-executing legislation—that is, no further action is required by any Ohio official or body.

On the other hand, the statutory language enacting an interstate compact may require that the compact be subsequently executed by the state's Governor, Attorney General, or other official—perhaps at the discretion of the official involved or perhaps after some specified condition is satisfied.

The Interstate Compact for the Supervision of Parolees and Probationers is an example of a non-self-executing compact. That particular compact was enacted in 1936 by the New York Legislature but required execution by the Governor. However, Governor Herbert H. Lehman opposed the compact, and it consequently languished unexecuted for many years.

When the party adopting an interstate compact is the District of Columbia, two different procedures have been used.

Prior to 1973, it was customary for Congress to enact interstate compacts on behalf of the District of Columbia.

However, in 1973, Congress delegated its authority to pass laws concerning the District to the elected Council of the District of Columbia in all except 10 specifically identified areas listed in section 602(a) of the District of Columbia Home Rule Act.¹¹⁹

None of the 10 specific restrictions in the Home Rule Act precluded the District from entering into interstate compacts.

Accordingly, the Council of the District of Columbia has exercised the power to enter into numerous compacts since 1973.

For example, the Council entered into the Interstate Parole and Probation Compact¹²⁰ in 1976 (three years after enactment of the Home Rule Act). In 2000, the Council entered into the Interstate Compact on Adoption and Medical Assistance.¹²¹ In 2002, it entered into the Emergency Management Assistance Compact.¹²² In 2010, the District of Columbia Council entered into the National Popular Vote Compact.

The Council of State Governments (CSG) lists 22 interstate compacts to which the District of Columbia is a party.¹²³

A District of Columbia law passed by the Council (including those adopting an interstate compact) is, in accordance with section 602(c)(1) of the Home Rule Act, usually subject to congressional review for 30 days and potential disapproval by Congress during that period (as discussed in detail in 9.24.5).

¹¹⁹ D.C. Code § 1-233.

¹²⁰ D.C. Code § 24-452.

¹²¹ Title 4, Chapter 3, D.C. St § 4-326, June 27, 2000, D.C. Law 13-136, § 406, 47 DCR 2850.

¹²² Emergency Management Assistance Compact. <https://compacts.csg.org/compact/emergency-management-assistance-compact/>

¹²³ Council of State Governments. <https://apps.csg.org/ncic/State.aspx?search=1&id=51>

However, the Council has an additional option under the Home Rule Act. After the terrorist attacks on September 11, 2001, the Council entered into the Emergency Management Assistance Compact on an emergency 90-day temporary basis (by D.C. Council Act 14-0081) under the special authority granted to the Council by section 412(a) of the Home Rule Act. Shortly thereafter, the Council entered into this same compact (by D.C. Council Act A14-0317) under the authority of section 602(c)(1) of the Home Rule Act (providing for the usual 30-day congressional review period).

Occasionally, an interstate compact may be adopted on a temporary basis by executive or administrative action. For example, the Compact for Education permitted its adoption:

“either by enactment thereof, or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his state a party only until December 31, 1967.”

The Governor of Kansas authorized participation in the Interstate Compact for Supervision of Parolees and Probationers for a period of limited time prior to enactment of the compact by the legislature.

5.8. CONTINGENT NATURE OF COMPACTS

Interstate compacts are contracts.

The process of entering into an interstate compact follows standard principles of contract law. The offer is the first state’s enactment of its law. The acceptance is the second state’s enactment of a law committing the second state to do what the first state wants. The consideration is the promise of each state to do something it would not otherwise do, absent compensating action by the other state.

As a general rule, a state enters into an interstate compact in order to obtain some benefit that can only be obtained by mutually agreed coordinated action with its sister state(s). In most cases, it would make no sense for a state to agree to the terms of a compact unless other states also agreed to it. Thus, an interstate compact generally does not come into effect until it is approved by a specified combination of prospective parties and possibly until other conditions (e.g., timing) are satisfied.

For example, the Tri-State Lotto Compact is an example of a compact that did not come into effect until it was enacted by all three of its explicitly named parties (Maine, New Hampshire, and Vermont).

The Gulf States Marine Fisheries Compact contemplated participation by five states but required enactment by only two states to bring it into effect.

“This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it.”

The Great Lakes Basin Compact was intended to include eight states but came into effect when four states enacted it.

“This compact shall enter into force and become effective and binding when it has been enacted by the legislatures of any four of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and

thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.”

The Great Lakes Basin Compact is noteworthy because it permitted two Canadian provinces to join the compact. The Canadian provinces did not, however, count toward the threshold of four states necessary to bring the compact into effect.

“The province of Ontario and the province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the government of Canada may prescribe for adherence thereto. For the purpose of this compact the word ‘state’ shall be construed to include a province of Canada.”¹²⁴

The Midwest Interstate Passenger Rail Compact came into effect when it was enacted by three states out of a pool of 12 named prospective members. The membership of this compact may be expanded by action of the commission established by the compact.¹²⁵

The Central Interstate Low-Level Radioactive Waste Compact¹²⁶ named 10 states as eligible for membership. It specified that it would become effective when enacted by any three of the 10 prospective parties. The compact enabled its commission to admit additional states by a unanimous vote.

Sometimes the specific requirements for bringing a compact into effect are of paramount political importance.

For example, the original version of the Colorado River Compact was negotiated in 1922 by commissioners appointed by the Governors of the seven western states involved (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming). The negotiations were headed by Secretary of Commerce (and later President) Herbert Hoover. Amid considerable fanfare, the compact was signed in Santa Fe, New Mexico on November 24, 1922. The 1922 version of the compact provided:

“This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states.”¹²⁷

The Arizona legislature, however, never agreed to the 1922 compact.

In reaction to Arizona’s intransigence, Congress initiated a revised version of the compact—the Boulder Canyon Project Act of 1928. The 1928 version of the compact specified that it would come into effect when enacted by six of the seven western states involved, provided that California was one of the six.¹²⁸ As expected, Arizona, the seventh prospective member, held out. In fact, Arizona did not approve of the 1928 compact until 1944.

¹²⁴ Great Lakes Basin Compact. <https://compacts.csg.org/compact/great-lakes-basin-compact/>

¹²⁵ Midwest Interstate Passenger Rail Compact. Section 1 of Article X. <https://compacts.csg.org/compact/midwest-interstate-passenger-rail-compact/>

¹²⁶ Central Interstate Low-Level Radioactive Waste Compact. <https://compacts.csg.org/compact/central-interstate-low-level-radioactive-waste-compact/>

¹²⁷ See <http://ssl.csg.org/compactlaws/coloradoriver.html>.

¹²⁸ 45 Stat. 1057.

5.9. COMPACTS CONTINGENT ON ENACTMENT OF FEDERAL LEGISLATION

An interstate compact may contain terms specifying that it is contingent on the enactment of federal legislation at the time Congress grants its consent to the compact.

For example, the Belle Fourche River Compact¹²⁹ between South Dakota and Wyoming stipulated that it would not become effective unless congressional consent were accompanied by congressional legislation satisfactorily addressing three enumerated points that the compacting states desired.¹³⁰

Congress agreed to the legislation requested by the states when it granted consent to the compact.

Similarly, the Republican River Compact contained a description of congressional legislation desired by the compact's parties. Again, Congress agreed to the legislation requested by the states at the time of granting its consent to the compact.

5.10. WHETHER COMPACTS SHOULD BE INTERPRETED UNDER STATE OR FEDERAL LAW

In 1874, the U.S. Supreme Court laid the groundwork for the general principle that the interpretation of state law is the province of the state's highest state court, in *Murdock v. City of Memphis*.¹³¹

This case had nothing to do with interstate compacts, which, in the 19th century, were used primarily to permanently settle boundary disputes between states.

As the years progressed, compacts started to deal with more complex issues. In particular, they started to address ongoing issues rather than one-time issues, such as the settlement of a boundary dispute.

As compacts became more complex, the question arose as to whether the courts should interpret interstate compacts under state or federal law.

In particular, if a compact requires congressional consent, and Congress grants its consent, the question arose as to whether the compact is “converted” into federal law—and therefore should be interpreted as such.

The Supreme Court's answer to this question has varied over the years.

In 1938, the Supreme Court considered a case involving the La Plata River Compact between Colorado and New Mexico—an interstate compact that had received congressional consent. In *Hinderlider v. La Plata River & Cherry Creek Ditch Company*, the Court ruled that congressional consent does *not* make a compact the equivalent of a “statute of the United States.”¹³²

However, the Court modified this decision shortly thereafter in *Delaware River Joint Toll Bridge Commission v. Colburn*. In 1940, it ruled:

¹²⁹ Belle Fourche River Compact. <https://compacts.csg.org/compact/belle-fourche-river-compact/>

¹³⁰ The three specific points are found on pages 6–7 of the Belle Fourche River Compact at <https://apps.csg.org/ncic/PDF/Belle%20Fourche%20River%20Compact.pdf>

¹³¹ *Murdock v. City of Memphis*. 87 U.S. 590. 1874. <https://supreme.justia.com/cases/federal/us/87/590/>

¹³² *Hinderlider v. La Plata River & Cherry Creek Ditch Company*. 304 U.S. 92. 1938. <https://supreme.justia.com/cases/federal/us/304/92/>

“The construction of a compact made between two States and sanctioned by an Act of Congress involves a federal ‘title, right, privilege or immunity.’”¹³³

In 1951, the Supreme Court held in *Dyer v. Sims*:

“This Court has final power to pass upon the meaning and validity of compacts between states.

“An agreement entered into between states by those who alone have political authority to speak for a state cannot be nullified unilaterally, or given final meaning by any organ of one of the contracting states.

“This Court is free to examine determinations of law by state courts where an interstate compact brings in issue the rights of other states and the United States.”¹³⁴ [Emphasis added]

In 1959, the Supreme Court held in *Petty v. Tennessee-Missouri Bridge Commission*:

“By entering into the compact and acting under it after Congressional approval, the States waived whatever immunity from a suit such as this in a federal court respondent, as their agency, might have enjoyed under the Eleventh Amendment. 359 U.S. 276-282.”¹³⁵

“The construction of a compact sanctioned by Congress under Art. I, § 10, cl. 3, of the Constitution presents a federal question over which this Court has the final say.”¹³⁶ [Emphasis added]

In *Cuyler v. Adams* in 1981, the Court summarized its rulings in previous cases and wrote:

“Because congressional consent transforms an interstate compact within this Clause into a law of the United States, we have held that **the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question.** See *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275, 278 (1959); *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951); *Delaware River Joint Toll Bridge Comm’n v. Colburn*, 310 U.S. 419, 427 (1940).”¹³⁷ [Emphasis added]

¹³³ *Delaware River Joint Toll Bridge Commission v. Colburn*. 320 U.S. 419. 1940. <https://supreme.justia.com/cases/federal/us/310/419/>

¹³⁴ *Dyer v. Sims*. 341 U.S. 22 at 28. 1951. <https://supreme.justia.com/cases/federal/us/341/22/>

¹³⁵ *Petty v. Tennessee-Missouri Bridge Comm’n*. 359 U.S. 275 at 278. 1959. <https://supreme.justia.com/cases/federal/us/359/275/>

¹³⁶ *Ibid.*

¹³⁷ *Cuyler v. Adams*. 449 U.S. 433, 439. 1981. <https://supreme.justia.com/cases/federal/us/449/433/>

Specifically, the Court concluded in *Cuyler v. Adams*:

“[W]here Congress has authorized the States to enter into a cooperative agreement and the subject matter of that agreement is an appropriate subject for congressional legislation, **Congress’ consent transforms the States’ agreement into federal law** under the Compact Clause, and construction of that agreement presents a federal question.”¹³⁸ [Emphasis added]

The Court then applied this principle to the congressional act consenting to the Interstate Agreement on Detainers:

“Because this Act was intended to be a grant of consent under the Compact Clause, and **because the subject matter of the Act is an appropriate subject for congressional legislation**, we conclude that the Detainer Agreement is a congressionally sanctioned interstate compact **the interpretation of which presents a question of federal law**.”¹³⁹ [Emphasis added]

The Court thus overturned the 1874 *Murdock* principle in connection with interstate compacts. This action enabled it to ignore the Pennsylvania Supreme Court’s interpretation of the Interstate Agreement on Detainers and interpret that compact on its own.^{140,141} See section 9.23.5.

5.11. ADJUDICATION AND ENFORCEMENT OF INTERSTATE COMPACTS

Article III, section 2, clause 2 of the U.S. Constitution states:

“**In all Cases** affecting Ambassadors, other public Ministers and Consuls, and those **in which a State shall be Party, the Supreme Court shall have original Jurisdiction**.”¹⁴² [Emphasis added]

Joseph F. Zimmerman summarized the implementation of this provision in his book *Interstate Disputes: The Supreme Court’s Original Jurisdiction*:

“The court decided to exercise its original jurisdiction over interstate controversies on a discretionary basis and promulgated Rule 17 governing the procedures to be followed when a state desires to sue a sister state. The court employs three criteria to determine whether it should invoke its original jurisdiction to resolve an interstate dispute:

- “(1) whether the complainant state is a genuine or nominal party,
- “(2) a judicable controversy exists, and
- “(3) the dispute is an appropriate one for the court to adjudicate.

¹³⁸ *Ibid.* at Page 434.

¹³⁹ *Ibid.* at Page 441.

¹⁴⁰ Hardy, Paul T. 1982. *Interstate Compacts: The Ties That Bind*. Athens, GA: Institute of Government, University of Georgia.

¹⁴¹ Zimmerman, Joseph F. 2012. *Interstate Cooperation: Compacts and Administrative Agreements*. Westport, CT: Praeger. Second edition.

¹⁴² U.S. Constitution. Article III, section 2, clause 2.

“The Supreme Court, when it invokes its original jurisdiction, appoints a special master to collect evidence, determine the facts in the dispute, and prepare a report for the Court. The special master performs a role similar to the role of a U.S. District Court judge with the master’s recommendations subject to appeal by the party state to the Supreme Court.”¹⁴³

A recent example of a suit in the U.S. Supreme Court concerning the interpretation of an interstate compact occurred in 2001 when the Court granted a request by Kansas to file a bill of complaint in equity against Colorado under the Arkansas River Basin Compact.¹⁴⁴

After the special master issued his report, Colorado raised four objections, and Kansas raised one objection to the report. One of Colorado’s objections to the special master’s report was based on the 11th Amendment, which provides:

“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.”

In its decision in *Kansas v. Colorado*, the Supreme Court rejected Colorado’s argument that the 11th Amendment barred a damages award for Colorado’s violation of the compact because the damages were losses suffered by individual farmers in Kansas and not by the State of Kansas.¹⁴⁵

Nebraska’s participation in the Central Interstate Low-Level Radioactive Waste Compact¹⁴⁶ created controversy over a 20-year period starting in the 1980s. As discussed in section 5.7, an initiative petition was used in Nebraska in 1988 in an unsuccessful attempt to repeal the law authorizing Nebraska’s participation in the compact. Then, after 11 additional years of controversy, the legislature decided to withdraw from the compact. Nebraska’s change of heart proved costly. The Central Interstate Low-Level Radioactive Waste Commission filed a federal lawsuit resulting from Nebraska’s withdrawal from the compact and its alleged refusal to meet its contractual obligations to store the radioactive waste. Waste generators and the compact commission’s contractor filed a suit in the U.S. District Court for the District of Nebraska, alleging that the state of Nebraska had deliberately delayed review of their license application for eight years and that it had always intended to deny it. The federal court ruled in 1999 that Nebraska had waived its 11th Amendment immunity when it joined the compact.¹⁴⁷ In 2001, the U.S. Court of Appeals for the Eighth Circuit affirmed the lower court’s decision.¹⁴⁸ In 2004, Nebraska agreed to settle the lawsuit for \$141,000,000.¹⁴⁹

¹⁴³ Zimmerman, Joseph F. 2006. *Interstate Disputes: The Supreme Court’s Original Jurisdiction*. Albany, NY: State University of New York Press. Page 42.

¹⁴⁴ Arkansas River Basin Compact of 1965. <https://compacts.csg.org/compact/arkansas-river-compact-of-1965/>

¹⁴⁵ *Kansas v. Colorado*. 533 U.S. 1. 2001. <https://supreme.justia.com/cases/federal/us/533/1/>

¹⁴⁶ Central Interstate Low-Level Radioactive Waste Compact. <https://compacts.csg.org/compact/central-interstate-low-level-radioactive-waste-compact/>

¹⁴⁷ *Entergy, Arkansas, Incorporated v. Nebraska*, 68 F.Supp.2d 1093 at 1100 (D.Neb.1999).

¹⁴⁸ *Entergy, Arkansas, Incorporated v. Nebraska*, 241 F.3d 979 at 991–992 (8th Cir. 2001).

¹⁴⁹ *Lincoln Journal Star*. July 15, 2005.

An individual or a state may challenge the validity of a compact in state or federal court. Similarly, an individual or a state may bring suit to have provisions of a compact enforced. In general, the 11th Amendment forbids a federal court from considering a suit in law or equity against a state, brought by a citizen of a sister state or a foreign nation. Notwithstanding the 11th Amendment, a citizen can challenge a compact or its execution in a state or federal court in a proceeding to prevent a public officer from enforcing it.

If brought in a state court, the suit can potentially be removed to a United States district court under provisions of the Removal of Causes Act of 1920 on the grounds that the state court “might conceivably be interested in the outcome of the case.”¹⁵⁰

The granting of consent suggests that Congress may enforce compact provisions; however, in practice, enforcement of interstate compacts is usually left to the courts.

5.12. AMENDMENTS TO INTERSTATE COMPACTS

States may amend an interstate compact to which they are a party. Proposed amendments to an interstate compact typically follow the same process employed in the enactment of the original compact (e.g., approval of a bill by the legislature and Governor). For example, the Tri-States Lotto Compact provides:

“Amendments and supplements to this compact may be adopted by concurrent legislation of the party states.”

In addition, if the original compact received congressional consent, then the consent of Congress is necessary for an amendment to it.

As a matter of practical politics, an objection by a member of Congress who represents an area affected by a compact will often be able to halt congressional consideration of consent. This fact is illustrated by the experience of the New Jersey Legislature and the New York Legislature, which each enacted an amendment to the Port Authority of New York and New Jersey Compact (signed by the two Governors) allowing the Port Authority to initiate industrial development projects.

Representative Elizabeth Holtzman of New York delayed the consent bill on the grounds that the Port Authority had failed to solve the port’s transportation problems. Holtzman argued that the Port Authority should construct a railroad freight tunnel under the Hudson River to obviate the need of trains to travel 125 miles to the north to a rail bridge over the river. She removed the hold upon reaching a negotiated agreement with the Authority. The Port Authority agreed that it would finance an independent study of the economic feasibility of constructing such a tunnel. The study ultimately reached the conclusion that a rail freight tunnel would not be economically viable.

The Constitution (section 10 of Article I) authorizes Congress to revise state statutes levying import and export duties; however, it does not grant similar authority to revise interstate compacts. Congress withdrew its consent to a Kentucky–Pennsylvania Interstate Compact that stipulated that the Ohio River should be kept free of obstructions. In 1855, the U.S. Supreme Court ruled in *Pennsylvania v. Wheeling and Belmont Bridge Company* that the compact was constitutional under the Constitution’s Supremacy Clause

¹⁵⁰ 41 Stat. 554.

(Article VI) and that a compact approved by Congress did not restrict Congress' power to regulate an interstate compact.¹⁵¹ In *Louisville Bridge Company v. United States* in 1917, the Court ruled that Congress may amend a compact even in the absence of a specific provision reserving to Congress the authority to alter, amend, or repeal the compact.¹⁵² A federal statute terminating a compact is not subject to the due process guarantee of the Fifth Amendment to the Constitution on the grounds that this constitutional protection extends only to persons.

5.13. DURATION, TERMINATION, AND WITHDRAWAL

The duration of an interstate compact, the method of terminating a compact, and the method by which a party may withdraw from a compact are generally specified by the compact itself.

5.13.1. Duration of interstate compacts

The U.S. Constitution does not address the question of the permissible duration of interstate compacts.

The duration of some compacts has been considerable. For example, the Compact of 1785 between Maryland and Virginia¹⁵³ regulating fishing and navigation on the Chesapeake Bay and the Patowmack (Potomac) and the Pocomoke rivers was ratified by the Confederation Congress under the Articles of Confederation. Without any further action by the new Congress created by the ratification of the U.S. Constitution in 1788, this 1785 compact remained in effect until 1958, when it was replaced by the Potomac River Compact.¹⁵⁴

Some compacts contain a sunset provision. For example, in the Southwestern Low-Level Radioactive Waste Disposal Compact, California agreed to serve for 35 years as the host state for the storage of radioactive waste for the states of Arizona, North Dakota, South Dakota, and California.

5.13.2. Termination of an interstate compact

Many compacts contain a termination provision.

The Colorado River Compact stipulates that termination may be authorized only by a unanimous vote of all party states.

The Central Interstate Low-Level Radioactive Waste Compact permits states to withdraw, but it specifies that the compact is not terminated until all parties leave the compact. Article VII provides:

“The withdrawal of a party state from this compact under section d. of this Article or the revocation of a state’s membership in this compact under section e.

¹⁵¹ *Pennsylvania v. Wheeling and Belmont Bridge Company*. 50 U.S. 647. 1855.

¹⁵² *Louisville Bridge Company v. United States*. 242 U.S. 409. 1917.

¹⁵³ Compact of 1785. 1786 Md. Laws c. 1. <http://www.virginiaplaces.org/pdf/mdvaapp1.pdf>

¹⁵⁴ Potomac River Compact. Page 1. <https://compacts.csg.org/wp-content/uploads/2024/03/Potomac-River-Compact-of-1958.pdf> See also <https://compacts.csg.org/compact/potomac-river-compact-of-1958/>

of this Article shall not affect the applicability of this compact to the remaining party states.

“This compact shall be terminated when all party states have withdrawn pursuant to section d. of this Article.”¹⁵⁵

5.13.3. Withdrawal from an interstate compact

An interstate compact is, first of all, a contract.

States enter into interstate compacts voluntarily. When a state enters into a compact, it becomes a party to that contract. Thereafter, the general principles of contract law apply to states that have entered into interstate compacts.

In particular, unless a contract provides otherwise, a party may not amend, terminate, or withdraw from a contract without the unanimous consent of all parties.

With the exception of compacts that are presumed to be permanent (e.g., boundary settlement compacts), almost all interstate compacts permit a state to withdraw. Accordingly, compacts generally specify the procedure that a party state must follow in order to withdraw.

If a state originally joined a compact by enacting a statute, withdrawal is usually accomplished by repealing that statute.

A small number of interstate compacts permit any party to withdraw instantaneously—without any advance notice to the compact’s other parties and without any delay. For example, the Boating Offense Compact provides:

“Any party state may withdraw from this compact by enacting a statute repealing the same.”¹⁵⁶

The Interstate Compact on Licensure of Participants in Horse Racing with Parimutuel Wagering is similar.

Many compacts specify that a state’s withdrawal will not affect any “liability already incurred” or interrupt any legal process that started while the withdrawing party was a member of the compact.

For example, while the Multistate Tax Compact allows instantaneous withdrawal, it also provides:

“Any party state may withdraw from this compact by enacting a statute repealing the same. **No withdrawal shall affect any liability already incurred by or chargeable to a party state** prior to the time of such withdrawal.

“**No proceeding** commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party **shall be discontinued or terminated by the withdrawal**, nor

¹⁵⁵ Central Interstate Low-Level Radioactive Waste Compact. <https://compacts.csg.org/compact/central-interstate-low-level-radioactive-waste-compact/>

¹⁵⁶ Boating Offense Compact. <https://compacts.csg.org/compact/boating-offense-compact/>

shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.”¹⁵⁷ [Emphasis added]

The Interstate Agreement on Detainers provides:

“This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.”¹⁵⁸

In contrast, the majority of interstate compacts impose both a notification requirement for withdrawal and a delay before a withdrawal becomes effective. The length of the delay is typically calibrated based on the nature of the compact.

For example, the compact on the Interstate Taxation of Motor Fuels Consumed by Interstate Buses permits withdrawal after one year’s notice.

“This compact shall enter into force when enacted into law by any 2 states. Thereafter it shall enter into force and become binding upon any state subsequently joining when such state has enacted the compact into law. Withdrawal from the compact shall be by act of the legislature of a party state, but shall not take effect until one year after the Governor of the withdrawing state has notified the Governor of each other party state, in writing, of the withdrawal.”

The delay is generally based on the subject matter of the compact. It is typically lengthy in situations where the compact’s remaining parties need time to make alternative arrangements or to adjust economically to a withdrawal.

For example, the Rhode Island–Massachusetts Interstate Low-Level Radioactive Waste Management Compact requires that a withdrawing state give notice five years in advance.

Some compacts impose different delays, depending on the withdrawing party’s particular obligations.

For example, the Southwestern Low-Level Radioactive Waste Disposal Compact imposes a five-year delay for withdrawal on the “host” state that receives and stores the radioactive waste (California in the case of this compact), but only a two-year delay on the non-host states (Arizona, North Dakota, and South Dakota) that merely make use of California’s hosting services. The host state’s withdrawal would require that all of the non-host states scramble to find an alternative place to store their radioactive waste, whereas a withdrawal by a non-host state would merely necessitate that the host state adjust economically to handling a somewhat lower volume of waste.”¹⁵⁹

¹⁵⁷ Multistate Tax Compact. <https://compacts.csg.org/compact/multistate-tax-compact/> The compact is at <https://apps.csg.org/ncic/PDF/Multistate%20Tax%20Compact.pdf> The web site of the Multistate Tax Commission is at <https://www.mtc.gov>

¹⁵⁸ Interstate Agreement on Detainers. <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>

¹⁵⁹ Southwestern Low-Level Radioactive Waste Disposal Compact. <https://compacts.csg.org/compact/southwestern-low-level-radioactive-waste-disposal-compact/>

The Texas Low-Level Radioactive Waste Disposal Compact similarly imposes a longer time delay for withdrawal by the host state.¹⁶⁰

The Delaware River Basin Compact requires advance notice of at least 20 years for withdrawal, with such notice being allowed only during a five-year window every 100 years:

“The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not later than 20 years nor sooner than 25 years prior to the termination of the initial period or any succeeding period none of the signatory States, by authority of an act of its Legislature, notifies the commission of intention to terminate the compact at the end of the then current 100-year period.”¹⁶¹

The Interstate Compact on the Placement of Children provides:

“Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.”¹⁶²

The Multistate Lottery Agreement delays return of the departing lottery’s share of the prize reserve fund until the expiration of the period for winners to claim their lotto prizes.

“That [Agreement] shall continue in existence until this agreement is revoked by all of the party lotteries. The withdrawal of one or more party lotteries shall not terminate this agreement among the remaining lotteries.”

“A party lottery wishing to withdraw from this agreement shall give the board a six months notice of its intention to withdraw.”

“In the event that a party lottery terminates, voluntarily or involuntarily, or MUSL is terminated by agreement of the parties, the prize reserve fund share of the party lottery or lotteries shall not be returned to the party lottery or lotteries until the later of one year from and after the date of termination or final resolution of any pending unresolved liabilities arising from transactions processed during the tenure of the departing lottery or lotteries. The voluntary or involuntary termination of a party lottery or lotteries does not cancel any obligation to MUSL which the party lottery or lotteries incurred before the withdrawal date.”¹⁶³

¹⁶⁰ Texas Low-Level Radioactive Waste Disposal Compact. <https://compacts.csg.org/compact/texas-low-level-radioactive-waste-disposal-compact/>

¹⁶¹ Delaware River Basin Compact. <https://compacts.csg.org/compact/delaware-river-basin-compact/>

¹⁶² Interstate Compact for the Placement of Children <https://compacts.csg.org/compact/interstate-compact-for-the-placement-of-children/>

¹⁶³ Multistate Lottery Agreement. <https://compacts.csg.org/compact/multistate-lottery-agreement/> The web site of the Multistate Lottery Association (MUSL) is at <https://www.musl.com/>

Occasionally, a compact permits a member state to withdraw selectively from its obligations under the compact—that is, to withdraw from the compact with respect to some states, but to remain in the compact with respect to other states.

For example, the Interpleader Compact provides:

“This compact shall continue in force and remain binding on a party state until such state shall withdraw therefrom. To be valid and effective, any withdrawal must be preceded by a formal notice in writing of one year from the appropriate authority of that state. Such notice shall be communicated to the same officer or agency in each party state with which the notice of adoption was deposited pursuant to Article VI. In the event that a state wishes to withdraw with respect to one or more states, but wishes to remain a party to this compact with other states party thereto, its notice of withdrawal shall be communicated only to those states with respect to which withdrawal is contemplated.”

Although withdrawals from interstate compacts are relatively rare, they do occur.

In 1995, the Virginia General Assembly enacted a statute withdrawing from the Atlantic States Marine Fisheries Compact, complaining that Virginia’s fishing quotas were too low.

Maryland withdrew from the Interstate Bus Motor Fuel Tax Compact in 1967 and from the National Guard Mutual Assistance Compact in 1981.

California withdrew from the Multistate Tax Compact¹⁶⁴ in 2012 because of dissatisfaction with the limited choice of methods for computing tax liability of multistate businesses. The legislature and Governor enacted a law explicitly withdrawing from the compact after a California state court declared it was unconstitutional for the state to override the limited choices provided by the compact merely by passing a law contradicting the compact.

There are examples of a state withdrawing from a compact and later rejoining it. For example, Florida withdrew from the Atlantic States Marine Fisheries Compact¹⁶⁵ and then subsequently rejoined.

The New York–New Jersey Waterfront Commission Compact (created in 1953) was unusual in that it had no provision for withdrawal or termination of the agreement.

Instead, the compact only provided for amendments:

“Amendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.”¹⁶⁶

¹⁶⁴ Multistate Tax Compact. <https://compacts.csg.org/compact/multistate-tax-compact/> The compact is at <https://apps.csg.org/ncic/PDF/Multistate%20Tax%20Compact.pdf> The web site of the Multistate Tax Commission is at <https://www.mtc.gov>

¹⁶⁵ Atlantic States Marine Fisheries Compact. See <https://compacts.csg.org/compact/atlantic-states-marine-fisheries-compact/> and https://www.wcnyh.gov/docs/wcnyh_act.pdf

¹⁶⁶ Waterfront Commission Compact. Article XVI, section 3. Page 48. https://www.wcnyh.gov/docs/wcnyh_act.pdf

In recent years, New Jersey and New York have disagreed on whether to continue operation of the compact.^{167,168}

In 2018, New Jersey enacted a law withdrawing from the compact and asserting that it would be “dissolved” 90 days after the New Jersey Governor issued certain notifications.¹⁶⁹

New York did not concur.

A day after the New Jersey law was enacted, the Waterfront Commission sued New Jersey in federal district court, seeking an order enjoining enforcement of New Jersey’s law. The district court ruled in favor of New York,¹⁷⁰ saying:

“Because this concurrency requirement applies to alterations to the Compact, it applies a fortiori to New Jersey’s withdrawal from and termination of the Compact, **the most substantial types of change...**

“Because [New Jersey’s] unilateral directives unambiguously conflict with the Compact’s concurrency requirement, [New York’s] motion for summary judgment is granted.”¹⁷¹ [Emphasis added].

New Jersey appealed to the U.S. Court of Appeals for the Third Circuit. However, the appeals court focused on a technical issue, namely the 11th Amendment’s limitation on lawsuits against states in federal courts.¹⁷²

Because the *state* of New Jersey had been sued by the Waterfront Commission—rather than by the *state* of New York—the appeals court set aside the district court’s ruling in favor of New York. The U.S. Supreme Court declined to review the appeals court’s interpretation of the 11th Amendment.¹⁷³

New Jersey then renewed its threat to withdraw from the compact.

Then, the *state* of New York (rather than the Waterfront Commission) sued the *state* of

¹⁶⁷ McGeehan, Patrick. 2018. On the Waterfront, a Mob Watchdog Is Fighting to Survive. *New York Times*. January 17, 2018. <https://www.nytimes.com/2018/01/17/nyregion/waterfront-commission-new-york-new-jersey-mob.html>

¹⁶⁸ McGeehan, Patrick. 2018. Mob Watchdog Fights Trenton to Say on the Waterfront. *New York Times*. January 18, 2018.

¹⁶⁹ Chaffin, Joshua. 2022. Trouble on the waterfront. *Financial Times*. May 26, 2022.

¹⁷⁰ McGeehan, Patrick. 2018. Judge Blocks New Jersey From Backing Out of Waterfront Commission. *New York Times*. June 4, 2018. <https://www.nytimes.com/2018/06/04/nyregion/new-jersey-waterfront-commission.html>

McGeehan, Patrick. 2018. Mob Watchdog Fights Trenton to Stay on the Waterfront. *New York Times*. January 18, 2018.

¹⁷¹ *Waterfront Comm’n of N.Y. Harbor v. Murphy*, 429 F. Supp. 3d 1, 12 (D.N.J. 2019). <https://casetext.com/case/waterfront-commn-of-ny-harbor-v-murphy-1>

¹⁷² The 11th Amendment (ratified in 1795) states, “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.”

¹⁷³ *Waterfront Commission of New York Harbor v. Phil Murphy, Governor of New Jersey*. <https://www.supremecourt.gov/docket/docketfiles/html/public/20-772.html>

New Jersey in the U.S. Supreme Court. In 2022, the U.S. Supreme Court temporarily barred New Jersey from exiting the compact until it decided the case.^{174,175,176}

In 2023, the U.S. Supreme Court ruled that, given the Compact's silence on withdrawal, New Jersey could withdraw unilaterally.¹⁷⁷

“Because the Compact is silent as to unilateral withdrawal, the Court looks to background principles of law that would have informed the parties’ understanding when they entered the Compact. As relevant here, interstate compacts ‘are construed as contracts under the principles of contract law.’ [Tarrant Regional Water Dist. v. Herrmann, 569 U. S. 614, 628]. Under the default contract-law rule at the time of the Compact’s formation, a contract that contemplates “continuing performance for an indefinite time is to be interpreted as stipulating only for performance terminable at the will of either party.” 1 R. Lord, *Williston on Contracts* §4:23, p. 570. Here, the States delegated their sovereign authority to the Commission on an ongoing and indefinite basis. The default contract-law rule therefore ‘speaks in the silence of the Compact’ and indicates that either State may unilaterally withdraw.”¹⁷⁸ [Emphasis added]

The Court made it clear that New Jersey’s ability to unilaterally withdraw from the Waterfront Compact depended on the silence of this particular compact on the question of withdrawal.

“New York maintains that the Court’s decision will have sweeping consequences for interstate compacts generally. But the Court’s decision does not address all compacts, and States may propose language to compacts expressly allowing or prohibiting unilateral withdrawal.”¹⁷⁹

5.14. ADMINISTRATION OF INTERSTATE COMPACTS

About three-quarters of interstate compacts before the 1921 New York–New Jersey Port Authority Compact of 1921 were boundary-settlement compacts (where no further action of any kind was contemplated by the parties).

¹⁷⁴ NBC. 2022. NY Asks SCOTUS to Stop NJ From Leaving Waterfront Commission Compact. March 14, 2022. <https://www.nbcnewyork.com/news/local/ny-asks-scotus-to-stop-nj-from-leaving-waterfront-commission-compact/3598865/>

¹⁷⁵ Biryukov, Nikita. 2022. U.S. Supreme Court blocks New Jersey’s exit from Waterfront Commission. *New Jersey Monitor*. March 24, 2022. <https://newjerseymonitor.com/briefs/u-s-supreme-court-blocks-new-jerseys-exit-from-waterfront-commission/>

¹⁷⁶ *New York v. New Jersey*. U.S. Supreme Court order. March 24, 2022. https://www.supremecourt.gov/orders/courtorders/032422zr_aplc.pdf

¹⁷⁷ McGeehan, Patrick. 2023. Supreme Court Says New Jersey Can Break 70-Year Anti-Crime Pact With New York. *New York Times*. April 18, 2023. <https://www.nytimes.com/2023/04/18/nyregion/waterfront-organized-crime-nyc-nj.html>

¹⁷⁸ *New York v. New Jersey*. 2023. Page 1. https://www.supremecourt.gov/opinions/22pdf/156orig_k5fl.pdf

¹⁷⁹ *Ibid*. Page 3.

The Port Authority Compact was the first interstate compact to establish a commission to administer the subject matter of the compact.¹⁸⁰

Today, about half of all interstate compacts establish commissions. The remaining compacts are simply administered by pre-existing state officials and agencies.

Joseph F. Zimmerman, in his book *Interstate Cooperation: Compacts and Administrative Agreements*,¹⁸¹ points out that the compacts with commissions are typically those that are:

- facility-management compacts—that is, they are involved in running complex business operations (e.g., bridges, tunnels, airports, seaports, railroads, ferries, marine facilities, office buildings, radioactive waste storage facilities, and industrial development projects), or
- regulatory compacts—that is, they make and update regulations.

In contrast, what Zimmerman calls “compacts *sans* commissions” are typically those that are intended to implement one, or a small number of, specified policies.

For example, the Boating Offense Compact does not create a commission. This compact implements a specific policy that is expressed in one sentence, namely it gives adjoining states concurrent jurisdiction to arrest, prosecute, and try offenders of boating offenses. Article III, which is the operative section of the compact, provides:

“If conduct is prohibited by two adjoining party states, **courts and law enforcement officers in either state** who have jurisdiction over boating offenses committed where waters form a common interstate boundary **have concurrent jurisdiction to arrest, prosecute, and try offenders** for the prohibited conduct committed anywhere on the boundary water between the two states.”¹⁸² [Emphasis added]

The rest of the compact consists of definitions, findings, and clauses concerned with joining the compact, withdrawal, severability, and other housekeeping matters.

Similarly, the Compact for Pension Portability for Educators allows educators employed by a public school, college, or university to transfer money and credits for pensionable service from one state’s pension plan to that of another state. Article III provides:

“Each state that is a party to this compact shall establish and maintain procedures adequate to **effectuate the transfer of money and pensionable service** from an exporting plan to an importing plan.”¹⁸³ [Emphasis added]

¹⁸⁰ New York–New Jersey Port Authority Compact of 1921. <https://compacts.csg.org/compact/new-york-new-jersey-port-authority-compact-of-1921/> See also <https://www.panynj.gov/port-authority/en/index.html>

¹⁸¹ Zimmerman, Joseph F. 2002. *Interstate Cooperation: Compacts and Administrative Agreements*. Westport, CT: Praeger Publishers. Chapters 4 and 5.

¹⁸² Boating Offense Compact. Page 2. <https://apps.csg.org/ncic/PDF/Boating%20Offense%20Compact.pdf> See also <https://compacts.csg.org/compact/boating-offense-compact/>

¹⁸³ Compact for Pension Portability for Educators. Page 2. <https://apps.csg.org/ncic/PDF/Compact%20for%20Pension%20Portability%20for%20Educators.pdf> See also <https://compacts.csg.org/compact/compact-for-pension-portability-for-educators/>

The compact then provides a specific formula under which money and credits can be transferred from the educator's former pension plan to the new one.

Similarly, the Driver License Compact requires the motor vehicle department of each member state to perform the ministerial function of implementing three specific policies.

First, Article III of the compact requires each member state to report a motor-vehicle violation to the driver's home state:

"The licensing authority of a party state **shall report** each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee."¹⁸⁴ [Emphasis added]

Second, Article IV of the compact specifies the action that the driver's home state must take:

"The licensing authority in the home state ... **shall give the same effect to the conduct reported** ... as it would if such conduct had occurred in the home state."¹⁸⁵ [Emphasis added]

Third, Article V of the compact requires a member state to investigate each applicant for a new driver's license and not issue a new one under certain circumstances (but it may do so under certain other circumstances).

The Compact of 1785 is another example of a compact that simply lists the specific policies to which the parties agreed. This compact¹⁸⁶ regulated fishing and navigation on the Chesapeake Bay and the Patowmack (Potomac) and the Pocomoke rivers and contained 12 specific statutory provisions. This compact remained in effect until 1958, when it was replaced by the Potomac River Compact.¹⁸⁷

Finally, boundary settlement compacts do not require commissions, because no further action of any kind is contemplated.

5.15. STYLE OF INTERSTATE COMPACTS

As a matter of convention, modern interstate compacts are typically organized into articles, with un-numbered sections. After each member state enacts a compact, the various articles of the compact are given numbers and letters in the state's compiled code in accordance with the state's style. Similarly, after Congress consents to a compact, its various articles may be assigned different numbers and letters. To accommodate such minor stylistic differences, compacts and congressional legislation consenting to compacts typically refer to enactment of "substantially" the same agreement by other member states.

¹⁸⁴ Driver License Compact. Page 2. <https://apps.csg.org/ncic/PDF/Driver%20License%20Compact.pdf> See also <https://compacts.csg.org/compact/driver-license-compact/>

¹⁸⁵ *Ibid.*

¹⁸⁶ Compact of 1785. 1786 Md. Laws c. 1. <http://www.virginiaplaces.org/pdf/mdvaapp1.pdf>

¹⁸⁷ Potomac River Compact. Page 1. <https://compacts.csg.org/wp-content/uploads/2024/03/Potomac-River-Compact-of-1958.pdf> See also <https://compacts.csg.org/compact/potomac-river-compact-of-1958/>

5.16. COMPARISON OF TREATIES AND COMPACTS

Although interstate compacts bear many similarities to international treaties, they differ in three important respects.

First, Congress may enact a statute that conflicts with an international treaty, whereas a state legislature lacks the authority to enact a statute conflicting with any provision of an interstate compact.

Second, an interstate compact is a legally binding contract that is enforceable in court. In contrast, the procedure for the enforcement of an international treaty is specified within the treaty itself. In practice, many treaties contain no specific provision for enforcement but, instead, merely rely on the goodwill of the parties.

Third, the President has sole authority to negotiate a treaty with another nation. In contrast, no provision in the Constitution stipulates the manner of negotiation of interstate compacts. Moreover, Congress has never enacted any general statute specifying procedures to be followed by a state that is contemplating entry into an interstate compact.

There is no provision of international law authorizing citizens of a signatory to a treaty to be involved in its termination. In 1838, the U.S. Supreme Court applied this principle of international law to interstate compacts. The Court ruled, in the case of *Georgetown v. Alexander Canal Company*, that citizens whose rights would be affected adversely by a compact are not parties to a compact and that they consequently can have no direct involvement in a compact's termination.¹⁸⁸

5.17. COMPARISON OF UNIFORM STATE LAWS AND COMPACTS

The term "uniform state law" usually refers to a law drafted and recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL), although the term is occasionally used to refer to laws originating elsewhere.

NCCUSL is a non-governmental body formed in 1892 upon the recommendation of the American Bar Association. The Conference is most widely known for its work on the Uniform Commercial Code. Since 1892, it has produced more than 200 recommended laws in areas such as commercial law, family and domestic relations law, estates, probate and trusts, real estate, implementation of full faith and credit, interstate enforcement of judgments, and alternative dispute resolution.

Many of the Conference's recommended uniform laws have been adopted by large numbers of states, including the Uniform Anatomical Gift Act, the Uniform Fraudulent Transfer Act, the Uniform Interstate Family Support Act, the Uniform Enforcement of Foreign Judgments Act, and the Uniform Transfers to Minors Act.

There is some resemblance between an interstate compact and a uniform state law. Both, for example, entail enactment of identical statutes by a group of states.

Both an interstate compact encompassing all 50 states and the District of Columbia and a uniform state law enacted by the same 51 jurisdictions have the practical effect of establishing a uniform national policy. There are, however, a number of important differences.

First, the goal of the Conference in recommending a uniform state law is, almost al-

¹⁸⁸ *Georgetown v. Alexander Canal Company*. 37 U.S. 91 at 95–96. 1838.

ways, enactment of the identical statute by *all* states. Many interstate compacts are inherently limited to a particular geographic area (e.g., the Port of New York and New Jersey Authority Compact, the Arkansas River Compact, and the Great Lakes Basin Compact) or to scattered states that are engaged in a particular activity (e.g., the Interstate Oil Compact and the Multistate Lottery Agreement).

Second, the effective date of a uniform state law is typically not contingent on identical legislation being passed in any other state. A uniform state law generally takes effect in each state as soon as each state enacts it. That is, a uniform state law stands alone, and is not tightly coordinated with the identical laws that other states may, or may not, pass.

If it happens that all 50 states enact a particular uniform state law, then the Conference's goal of establishing a uniform policy for the entire country is achieved. If a substantial fraction of the states enact a uniform state law, then the goal of uniformity is partially achieved. If only one state enacts a uniform state law, that particular statute nonetheless serves as the law of that state on the subject matter involved.

In contrast, the effective date of an interstate compact is almost always contingent on the enactment by some specified number or combination of states. The reason for this is that states typically enter into interstate compacts in order to obtain some benefit that can be obtained only by cooperative and coordinated action with one or more sister states.

Third, although the goal of the National Conference of Commissioners on Uniform State Laws is that identical laws be adopted in all states, it is very common for individual states to amend the Conference's recommended statute in response to local pressures. If the changes are not major, the Conference's goal of uniformity may nonetheless be substantially (albeit not perfectly) achieved. In contrast, adoption of an interstate compact requires a meeting of minds. Variations in substance are not allowed. Because an interstate compact is a contract, each party must accept identical wording (except for insubstantial differences such as numbering and punctuation).

Fourth, and most importantly, a uniform state law does not establish a contractual relationship among the states involved. When a state enacts a uniform state law, it undertakes no obligation to any other state. The enacting state merely seeks the benefits associated with uniform treatment of the subject matter at hand. Each state's legislature may repeal or amend a uniform state law at any time, at its own pleasure and convenience. There is no procedure for withdrawal (or advance notice required prior to withdrawal) in a uniform state law. Indeed, there is no legal entity from which to withdraw, because a uniform state law does not create any new legal entity or create any obligation to any other state. In contrast, an interstate compact establishes a contractual relationship among its member states. Once a state enters into a compact, it is legally bound to the compact's terms, including the compact's procedures for withdrawal and termination.

5.18. COMPARISON OF FEDERAL MULTI-STATE COMMISSIONS AND COMPACTS

Federal multi-state commissions bear some resemblance to the commissions that are established by some interstate compacts. There are, however, a number of important differences between federally created multi-state commissions and interstate compacts.

In 1879, Congress first recognized the need for a governmental body in a multi-state region by establishing the Mississippi River Commission. The enabling statute directed the

Commission to deepen channels; improve navigation safety; prevent destructive floods; and promote commerce, the postal system, and trade. The Commission's original members were three officers of the U.S. Army Corps of Engineers, one member of the U.S. Coast and Geodetic Survey, and three citizen members, including two civil engineers. Commission members are nominated by the President, subject to the Senate's advice and consent.

In a similar vein, the Water Resources Planning Act of 1965 authorizes the President, at the request of the concerned Governors, to establish other river basin commissions. Such commissions have been created for the Ohio River and Upper Mississippi River basins.

The best-known multi-state commission—the Tennessee Valley Authority—was created by Congress in 1933. The TVA operates in an area encompassing parts of seven states. Its purposes are to promote agricultural and industrial development, control floods, and improve navigation on the Tennessee River. The President appoints three TVA commissioners for nine-year terms, with the Senate's advice and consent. The creation of the TVA is credited to populist Senator George Norris of Nebraska, who conducted a crusade for many years against the high rates charged by electric utility companies. Aside from the benefits to the states in the Tennessee Valley, Norris and his supporters argued that the cost of TVA-generated electricity would serve as a yardstick for evaluating the rates charged by private power companies elsewhere in the country.

Although the TVA possesses broad powers to develop the river basin, the authority has largely concentrated its efforts on dams and channels, fertilizer research, and production of electricity. The TVA is generally credited with achieving considerable success in its flood control, land and forest conservation, and river-management activities. At the same time, the TVA has engendered considerable controversy over the years.

There are several differences between federal multi-state commissions and the commissions that are established by interstate compacts.

First, federal multi-state commissions are entirely creatures of the federal government. The states play no official role in enacting the enabling legislation establishing such bodies. In contrast, the states are the primary actors in interstate compacts, and each state makes its own decision as to whether to participate in a given compact.

Second, although state officials typically provide advice on appointments to federal multi-state commissions, the appointing authority for members is entirely federal—that is, the President. In contrast, the governments of the participating states generally appoint the members of commissions established by an interstate compact. Such appointments are typically made by each state's Governor.

5.19. CONGRESSIONAL INVOLVEMENT IN INTERSTATE COMPACTS

Congress may become involved with an interstate compact in any of several ways:

- explicitly consenting to a compact,
- making the federal government a party to a compact,
- consenting to a compact involving the District of Columbia,
- providing implied consent to a compact,
- consenting in advance to a particular compact,
- consenting in advance to a broad category of compacts, and
- conditionally consenting in advance to a broad category of compacts.

The Constitution does not detail the specific form or manner by which congressional consent is to be granted.

There is no constitutional limitation on the amount of time that Congress may take in considering a compact.

For example, Maryland, New York, and Pennsylvania enacted the Susquehanna River Basin Compact in 1967 and 1968, but Congress did not grant its consent until 1970. The Washington Metropolitan Area Transit Regulation Compact was approved by Maryland, Virginia, and the District of Columbia in 1958; however, the compact did not receive the consent of Congress until 1960.

Moreover, congressional consent to an interstate compact may be given at any time during the compacting process.

5.19.1. Explicit consent to a compact

Congress typically uses a joint resolution to grant consent to a compact in cases where it is not simultaneously enacting additional statutory provisions.

For example, House Joint Resolution 193 (Public Law 104–321)¹⁸⁹ of the 104th Congress entitled “Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact” was used to grant consent to the Emergency Management Assistance Compact in 1996.¹⁹⁰

A joint resolution of Congress to consent to an interstate compact generally consists of three major parts. In the first part, Congress grants its consent:

“Resolved by the Senate and House of Representatives of the United States in Congress assembled,

“Section 1: CONGRESSIONAL CONSENT.

“The Congress consents to the Emergency Management Assistance Compact entered into by Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia and West Virginia. The compact reads substantially as follows ...”

The second part of the joint resolution consists of the entire wording of the compact.

The third part of a joint resolution typically contains sections that qualify the grant of consent. Congress may include a severability clause. Congress usually includes a savings clause relating to “insubstantial difference in its form or language as adopted by the States.” For example, the joint resolution concerning the Emergency Management Assistance Compact provided:

“Section 2. RIGHT TO ALTER, AMEND, OR REPEAL.

¹⁸⁹ Congressional consent was granted in Public Law 104–321 of 1996 entitled “Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact.” <https://www.congress.gov/104/plaws/publ321/PLAW-104publ321.pdf>

¹⁹⁰ Emergency Management Assistance Compact. <https://compacts.csg.org/compact/emergency-management-assistance-compact/>

“The right to alter, amend, or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall

- (1) not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the subject of the compact;
- (2) not be construed as consent to the National Guard Mutual Assistance Compact;
- (3) be construed as understanding that the first paragraph of Article II of the compact provides that emergencies will require procedures to provide immediate access to existing resources to make a prompt and effective response;
- (4) not be construed as providing authority in Article IIIA.7 that does not otherwise exist for the suspension of statutes or ordinances;
- (5) be construed as understanding that Article IIIC does not impose any affirmative obligation to exchange information, plans, and resource records on the United States or any party which has not entered into the compact; and
- (6) be construed as understanding that Article XIII does not affect the authority of the President over the National Guard provided by article I of the Constitution and title 10 of the United States Code.

“Section 3. CONSTRUCTION AND SEVERABILITY.

“It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. If any part or application of this compact, or legislation enabling the compact, is held invalid, the remainder of the compact or its application to other situations or persons shall not be affected.

“Section 4. INCONSISTENCY OF LANGUAGE.

“The validity of this compact shall not be affected by any insubstantial difference in its form or language as adopted by the States.”

5.19.2. Explicit consent when the federal government is party to a compact

When the federal government is a party to a compact, Congress:

- enters into the compact on behalf of the United States and
- enacts the compact as a federal law.

For example, Congress acted on the Interstate Agreement on Detainers in 1970. On that occasion, Congress performed three functions:

- entered into the compact on behalf of the United States,
- entered into the compact on behalf of the District of Columbia, and
- enacted the compact as a federal law.

In addition, Congress enacted some additional permanent statutory language (sections 5 and 6).

This 1970 law begins:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

“[Sec. 1.] That this Act may be cited as the ‘Interstate Agreement on Detainers Act.’

*“Sec. 2. The Interstate Agreement on Detainers is hereby **enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia** with all jurisdictions legally joining in substantially the following form: ...”*¹⁹¹ [Emphasis added]

At this point, Public Law 91–538 incorporated the entire Interstate Agreement on Detainers.¹⁹² The joint resolution then concluded with several definitions and additional sections.

5.19.3. Explicit consent to a compact on behalf of the District of Columbia

Prior to enactment of the District of Columbia Home Rule Act of 1973, Congress provided explicit consent to the interstate compact involving the District.

The 1973 Home Rule Act gave the Council of the District of Columbia the power to approve interstate compacts. However, the Council’s approval of a compact is, like other Council legislation, subject to a potential veto by Congress during a 30-day review period.

5.19.4. Implied consent to a compact

Congressional consent to an interstate compact need not be explicit.

The U.S. Supreme Court ruled in 1893 in *Virginia v. Tennessee*:

“The constitution does not state when the consent of congress shall be given, whether it shall precede or may follow the compact made, or whether it shall be express or may be implied. In many cases the consent will usually precede the compact or agreement.... But where the agreement relates to a matter which could not well be considered until its nature is fully developed, it is not perceived why the consent may not be subsequently given. [Justice] Story says that **the consent may be implied, and is always to be implied when congress adopts the particular act by sanctioning its objects and aiding in enforcing them.**”¹⁹³ [Emphasis added]

For example, in 1823, the U.S. Supreme Court in *Green v. Biddle* noted this fact in a case involving a congressional statute that admitted Kentucky to the Union. That statute referred to the Virginia–Kentucky Interstate Compact of 1789.¹⁹⁴ Kentucky challenged the

¹⁹¹ Appendix L contains Public Law 91–538 of 1970 entitled “An Act to enact the Interstate Agreement on Detainers into law.” <https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1397.pdf>

¹⁹² Interstate Agreement on Detainers. <https://compacts.csg.org/compact/interstate-agreement-on-detainers/>

¹⁹³ *Virginia v. Tennessee*. 148 U.S. 503 at 521. 1893.

¹⁹⁴ *Green v. Biddle*. 21 U.S. 1. 1823.

compact on the grounds that Congress had not explicitly consented to the compact. Kentucky's challenge proved unsuccessful, because the Supreme Court ruled that a reference by Congress to the compact in the statute was sufficient to establish implied consent.

In deciding *Virginia v. Tennessee*, the Court also noted that Congress had relied, over the years, upon the compact's terms for judicial and revenue purposes, thereby implying consent.

“The approval by congress of the compact entered into between the states upon their ratification of the action of their commissioners is fairly implied from its subsequent legislation and proceedings.”¹⁹⁵ [Emphasis added]

Another example involves the congressional act (quoted earlier in this section) in which Congress entered the federal government and the District of Columbia into the Interstate Agreement on Detainers. The congressional act did not explicitly mention that Congress was consenting to the compact. Instead, congressional consent was implied by its action making the District of Columbia and the federal government parties to the compact.

5.19.5. Advance consent to a particular compact

Congress has occasionally granted advance permission for states to enter into certain compacts.

For example, in 1921, Congress granted its consent to a Minnesota–South Dakota compact relating to criminal jurisdiction over boundary waters. Simultaneously, Congress granted its consent in advance if Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin were to adopt a similar compact.¹⁹⁶

The Boulder Canyon Project Act of 1928¹⁹⁷ granted congressional consent to the Colorado River Compact subject to several stipulated conditions, including approval of the modified compact by California and five of the other six states involved (it being understood, at the time, that Arizona was unlikely to join immediately).¹⁹⁸

5.19.6. Advance consent to a broad category of compacts

Congress sometimes grants its consent in advance for all compacts pertaining to a particular subject without seeing—much less approving—any specific compact.

For example, Congress consented in advance to interstate crime-control compacts in the Crime Control Consent Act of 1934, which stated:

“Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled,

¹⁹⁵ *Virginia v. Tennessee*. 148 U.S. 503 at 522. 1893.

¹⁹⁶ 41 Stat. 1447.

¹⁹⁷ 45 Stat. 1057.

¹⁹⁸ The original version of the Colorado River Compact was negotiated in 1922 by commissioners appointed by the Governors of the seven western states involved (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming). However, Arizona failed to approve that compact.

“[Sec. 1.] That the consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they deem desirable for making effective such agreement and compacts.

“Sec. 2. The right to alter, amend, or repeal this Act is hereby expressly reserved.”¹⁹⁹

In the Weeks Act of 1911, Congress granted unrestricted consent in advance to interstate compacts formed “for the purpose of conserving the forests and water supply.”²⁰⁰

In the Tobacco Control Act of 1936, Congress authorized tobacco-producing states to enter into interstate compacts “to enable growers to receive a fair price for such tobacco.”²⁰¹

In 1939, President Franklin D. Roosevelt vetoed a bill that would have granted congressional consent in advance to states to enter into compacts relating to fishing in the Atlantic Ocean, because he considered the advance authorization contained in the bill to be overly vague.

5.19.7. Conditional advance consent to a broad category of compacts

In 1951, Congress authorized states to enter into interstate civil defense compacts that, upon enactment, were required to be filed with the U.S. House of Representatives and Senate. These compacts were all deemed to have the consent of Congress unless disapproved by a concurrent resolution within 60 days of filing.²⁰²

5.19.8. Duration of congressional consent

Congressional consent to an interstate compact is most commonly granted for an indefinite period of time.

However, Congress subjected the Interstate Compact to Conserve Oil and Gas and the Atlantic States Marine Fisheries Compact to sunset provisions when it first consented to those compacts. Later, Congress removed these time restrictions.²⁰³

The 10 compacts (involving a total of 44 states) authorized by the Low-Level Radioactive Waste Policy Act of 1980 were each approved for the limited period of five years.²⁰⁴

Congress is, of course, not obligated to renew its consent.

For example, the Northeast Interstate Dairy Compact was created by the New Eng-

¹⁹⁹ <https://www.law.cornell.edu/uscode/text/4/112>

²⁰⁰ 36 Stat. 961. <https://www.law.cornell.edu/uscode/text/16/521a>

²⁰¹ 49 Stat. 1239.

²⁰² 64 Stat. 1249.

²⁰³ 86 Stat. 383 and 64 Stat. 467.

²⁰⁴ 94 Stat. 3347.

land states²⁰⁵ with authority to fix the price of milk above certain minimum prices. Congress granted its consent to this particular compact for a limited period of time. The Compact attracted considerable opposition from consumer groups as well as midwestern and western dairy states. Consumer advocates opposed the compact, because it increased the retail price of milk. Representatives of midwestern and western dairy states argued that their farmers suffered from low milk prices because of the compact. Wisconsin dairy farmers, in particular, argued that the compact effectively prevented them from selling their products in New England. In 2001, in the face of increasing political opposition, Congress failed to grant an extension to the compact, and the compact therefore became inactive.

5.19.9. Conditional consent by Congress

Congress may impose conditions in granting its consent. For example, it granted its consent to the Wabash Valley Compact in 1959²⁰⁶ and the Washington Metropolitan Area Transit Regulation Compact in 1960²⁰⁷ with the proviso that each compact authority had to publish certain specified data and information.

In addition, Congress generally reserves its authority over navigable waters.

Congress usually reserves its right to alter, amend, or repeal its consent to a compact.

In *Tobin v. United States* in 1962, the United States Court of Appeals for the District of Columbia Circuit upheld the authority of Congress to attach conditions to a compact.²⁰⁸ The U.S. Supreme Court declined to review that decision.

5.19.10. Interaction of compacts with existing or future federal laws

There are unsettled legal questions as to whether the grant of congressional consent to an interstate compact invalidates other federal statutes containing inconsistent provisions. Courts could interpret congressional consent as repealing, relative to the interstate compact, conflicting pre-existing federal statutes.

The question also arises as to the effect of a new federal statute whose provisions conflict with an interstate compact previously approved by Congress. Ostensibly, the consent would be repealed relative to the conflicting provisions—perhaps with the exception of any vested rights protected by the Fifth Amendment to the Constitution.

5.19.11. Presidential involvement in congressional consent

An example of a presidential veto of an interstate compact occurred in 1942 involving Colorado, Kansas, and Nebraska. President Franklin D. Roosevelt vetoed a bill granting congressional consent to the Republican River Compact (perhaps preferring a Democratic river).²⁰⁹

²⁰⁵ Northeast Interstate Dairy Compact. <https://www.dairycompact.org/> Also see https://en.wikipedia.org/wiki/Northeast_Interstate_Dairy_Compact

²⁰⁶ 73 Stat. 694.

²⁰⁷ 74 Stat. 1031.

²⁰⁸ *Tobin v. United States*. 306 F.2d 270 at 272–74. 1962.

²⁰⁹ Republican River Basin—Veto Message from the President of the United States. *Congressional Record*. Volume 88. Pages 3285–3286. April 2, 1942. <https://www.govinfo.gov/content/pkg/GPO-CRECB-1942-pt3>

In his veto message, the President said that he would approve the compact if one objectionable part were revised. The three states then revised their compact to satisfy the President's objections. Roosevelt then approved the congressional legislation consenting to the revised compact.

The failure of Congress to grant its consent for the Connecticut River and Merrimack River Flood Control Compacts in the 1930s has been attributed to the threat of a presidential veto.

5.20. FUTURE OF INTERSTATE COMPACTS

It is reasonable to predict that increasing urban sprawl may someday lead to an interstate compact that establishes an "interstate city" encompassing an urban area spread over two or more states.

Although no such interstate city has been created to date, Kansas and Missouri have entered into a compact establishing a metropolitan cultural district for Kansas City, Missouri, and Kansas City, Kansas.²¹⁰ The compact includes Missouri's Jackson County and Kansas' Wyandotte County. Other counties are eligible to join if they are adjacent to the state line or other member counties.²¹¹

In the same vein, the New Hampshire–Vermont Interstate School Compact²¹² and the Maine–New Hampshire School District Compact²¹³ each established interstate school districts.

There are countervailing trends concerning regulatory compacts.

In recent years, Congress has, with increasing frequency, exercised its preemption powers to remove regulatory authority totally or partially from the states. Consequently, there has been a decrease in the number of new regulatory compacts since the mid-1960s.²¹⁴

For example, Connecticut, New Jersey, and New York approved the Mid-Atlantic States Air Pollution Control Compact; however, Congress did not consent to that compact and instead enacted the Air Quality Act of 1967,²¹⁵ which preempted state regulatory authority over air pollution abatement.

On the other hand, economic interest groups have successfully lobbied for the establishment of regulatory compacts among states, arguing that coordinated action by the states is sufficient to solve a particular problem. Examples of industry-sponsored com-

/pdf/GPO-CRECB-1942-pt3-7-1.pdf Information about this compact is at <https://compacts.csg.org/compact/republican-river-compact/>

²¹⁰ Kansas and Missouri Metropolitan Culture District Compact. <https://compacts.csg.org/compact/kansas-and-missouri-metropolitan-culture-district-compact/>

²¹¹ 114 Stat. 909.

²¹² New Hampshire–Vermont Interstate School Compact. <https://compacts.csg.org/compact/new-hampshire-vermont-interstate-school-compact/>

²¹³ Maine–New Hampshire School District Compact. <https://compacts.csg.org/compact/maine-new-hampshire-school-district-compact/>

²¹⁴ Zimmerman, Joseph F. 2005. *Congressional Preemption: Regulatory Federalism* Albany, NY: State University of New York Press.

²¹⁵ 81 Stat. 485.

pacts include the Interstate Insurance Product Regulation Compact²¹⁶ and the Interstate Compact to Conserve Oil and Gas.²¹⁷

In recent years, groups that advocate that the states exercise their powers more vigorously, such as the Goldwater Institute in Arizona, have drafted a number of model interstate compacts that it maintains do not require congressional consent in order to take effect.²¹⁸ Several of these proposed compacts rely on the advance consent by Congress to interstate compacts in the field of crime control in the Crime Control Consent Act of 1934.

²¹⁶ Interstate Insurance Product Regulation Compact. <https://compacts.csg.org/compact/interstate-insurance-product-regulation-compact/> The Commission's web site is <https://www.insurancecompact.org/>

²¹⁷ Interstate Compact to Conserve Oil and Gas. <https://compacts.csg.org/compact/interstate-compact-to-serve-oil-and-gas/>

²¹⁸ The Goldwater Institute (<https://goldwaterinstitute.org>) has proposed numerous interstate compacts over the years, including the Compact for a Balanced Budget. <https://goldwaterinstitute.org/article/compact-for-a-balanced-budget/>