APPENDIX A: U.S. CONSTITUTIONAL PROVISIONS ON PRESIDENTIAL ELECTIONS

Article II, Section 1, Clause 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Article II, Section 1, Clause 2

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Article II, Section 1, Clause 3

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

Article II, Section 1, Clause 4

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

12th Amendment

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state

with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

14th Amendment—Sections 2 and 3

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature,

or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

15th Amendment—Section 1

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

19th Amendment

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

20th Amendment—Sections 1–5

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

22nd Amendment—Section 1

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for

more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

23rd Amendment

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

24th Amendment

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

25th Amendment

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the

House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

26th Amendment

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

APPENDIX B: FEDERAL LAW ON PRESIDENTIAL ELECTIONS

UNITED STATES CODE
TITLE 3, CHAPTER 1. PRESIDENTIAL ELECTIONS AND VACANCIES

Time of appointing electors

§1. The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.

Failure to make choice on prescribed day

§2. Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

Number of electors

§3. The number of electors shall be equal to the number of Senators and Representatives to which the several States are by law entitled at the time when the President and Vice President to be chosen come into office; except, that where no apportionment of Representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of Senators and Representatives.

Vacancies in electoral college

§4. Each State may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote.

Determination of controversy as to appointment of electors

§5. If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

Credentials of electors; transmission to archivist of the United States and to Congress; public inspection

§6. It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, under and in pursuance of the laws of such State providing for such ascertain-

ment, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed, setting forth the names of such electors and the canvass or other ascertainment under the laws of such State of the number of votes given or cast for each person for whose appointment any and all votes have been given or cast; and it shall also thereupon be the duty of the executive of each State to deliver to the electors of such State, on or before the day on which they are required by section 7 of this title to meet, six duplicate-originals of the same certificate under the seal of the State; and if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made; and the certificate or certificates so received by the Archivist of the United States shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection; and the Archivist of the United States at the first meeting of Congress thereafter shall transmit to the two Houses of Congress copies in full of each and every such certificate so received at the National Archives and Records Administration.

Meeting and vote of electors

§7. The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.

Manner of voting

§8. The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution.

Certificates of votes for President and Vice President

§9. The electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President, and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State.

Sealing and endorsing certificates

§10. The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein.

Disposition of certificates

§11. The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

First. They shall forthwith forward by registered mail one of the same to the President of the Senate at the seat of government.

Second. Two of the same shall be delivered to the secretary of state of the State, one of which shall be held subject to the order of the President of the Senate, the other to be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection.

Third. On the day thereafter they shall forward by registered mail two of such certificates and lists to the Archivist of the United States at the seat of government, one of which shall be held subject to the order of the President of the Senate. The other shall be preserved by the Archivist of the United States for one year and shall be a part of the public records of his office and shall be open to public inspection.

Fourth. They shall forthwith cause the other of the certificates and lists to be delivered to the judge of the district in which the electors shall have assembled.

Failure of certificates of electors to reach President of the Senate or archivist of the United States; demand on state for certificate

§12. When no certificate of vote and list mentioned in sections 9 and 11 and of this title from any State shall have been received by the President of the Senate or by the Archivist of the United States by the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall request, by the most expeditious method available, the secretary of state of the State to send up the certificate and list lodged with him by the electors of such State; and it shall be his duty upon receipt of such request immediately to transmit same by registered mail to the President of the Senate at the seat of government.

Same; demand on district judge for certificate

§13. When no certificates of votes from any State shall have been received at the seat of government on the fourth Wednesday in December, after the meeting of the electors shall have been held, the President of the Senate or, if he be absent from the seat of government, the Archivist of the United States shall send a special messenger to the district judge in whose custody one certificate of votes from that State has been lodged, and such judge shall forthwith transmit that list by the hand of such messenger to the seat of government.

Forfeiture for messenger's neglect of duty

§14. Every person who, having been appointed, pursuant to section 13 of this title, to deliver the certificates of the votes of the electors to the President of the Senate,

and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of $1,000.

Counting electoral votes in Congress

§15. Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by such successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question

which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.

Same; seats for officers and members of two houses in joint meeting

§16. At such joint meeting of the two Houses seats shall be provided as follows: For the President of the Senate, the Speaker's chair; for the Speaker, immediately upon his left; the Senators, in the body of the Hall upon the right of the presiding officer; for the Representatives, in the body of the Hall not provided for the Senators; for the tellers, Secretary of the Senate, and Clerk of the House of Representatives, at the Clerk's desk; for the other officers of the two Houses, in front of the Clerk's desk and upon each side of the Speaker's platform. Such joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared; and no recess shall be taken unless a question shall have arisen in regard to counting any such votes, or otherwise under this subchapter, in which case it shall be competent for either House, acting separately, in the manner hereinbefore provided, to direct a recess of such House not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. But if the counting of the electoral votes and the declaration of the result shall not have been completed before the fifth calendar day next after such first meeting of the two Houses, no further or other recess shall be taken by either House.

Same; limit of debate in each house

§17. When the two Houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes, and not more than once; but after such debate shall

have lasted two hours it shall be the duty of the presiding officer of each House to put the main question without further debate.

Same; parliamentary procedure at joint meeting

§18. While the two Houses shall be in meeting as provided in this chapter, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either House on a motion to withdraw.

Vacancy in offices of both President and Vice President; officers eligible to act

§19. (a)

(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President.

(2) The same rule shall apply in the case of the death, resignation, removal from office, or inability of an individual acting as President under this subsection.

(b) If, at the time when under subsection (a) of this section a Speaker is to begin the discharge of the powers and duties of the office of President, there is no Speaker, or the Speaker fails to qualify as Acting President, then the President pro tempore of the Senate shall, upon his resignation as President pro tempore and as Senator, act as President.

(c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that

(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies; and

(2) if his discharge of the powers and duties of the office is founded in whole or in part on the inability of the President or Vice President, then he shall act only until the removal of the disability of one of such individuals.

(d)

(1) If, by reason of death, resignation, removal from office, inability, or failure to qualify, there is no President pro tempore to act as President under subsection (b) of this section, then the officer of the United States who is highest on the following list, and who is not

under disability to discharge the powers and duties of the office of President shall act as President: Secretary of State, Secretary of the Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs.

(2) An individual acting as President under this subsection shall continue so to do until the expiration of the then current Presidential term, but not after a qualified and prior-entitled individual is able to act, except that the removal of the disability of an individual higher on the list contained in paragraph (1) of this subsection or the ability to qualify on the part of an individual higher on such list shall not terminate his service.

(3) The taking of the oath of office by an individual specified in the list in paragraph (1) of this subsection shall be held to constitute his resignation from the office by virtue of the holding of which he qualifies to act as President.

(e) Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution. Subsection (d) of this section shall apply only to officers appointed, by and with the advice and consent of the Senate, prior to the time of the death, resignation, removal from office, inability, or failure to qualify, of the President pro tempore, and only to officers not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.

(f) During the period that any individual acts as President under this section, his compensation shall be at the rate then provided by law in the case of the President.

Resignation or refusal of office

§20. The only evidence of a refusal to accept, or of a resignation of the office of President or Vice President, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the Secretary of State.

Definitions

§21. As used in this chapter the term—

(a) "State" includes the District of Columbia.

(b) "executives of each State" includes the Board of Commissioners of the District of Columbia.

APPENDIX C: U.S. CONSTITUTION ON INTERSTATE COMPACTS AND CONTRACTS

Article I, Section 10, Clause 1

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.

Article I, Section 10, Clause 3

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.

APPENDIX D: MINNESOTA LAWS ON PRESIDENTIAL ELECTIONS

208.02. Election of presidential electors

Presidential electors shall be chosen at the state general election held in the year preceding the expiration of the term of the president of the United States.

208.03. Nomination of presidential electors

Presidential electors for the major political parties of this state shall be nominated by delegate conventions called and held under the supervision of the respective state central committees of the parties of this state. On or before primary election day the chair of the major political party shall certify to the secretary of state the names of the persons nominated as Presidential electors and the names of the party candidates for president and vice-president.

208.04. Preparation of ballots

Subdivision 1. When Presidential electors are to be voted for, a vote cast for the party candidates for president and vice-president shall be deemed a vote for that party's electors as filed with the secretary of state. The secretary of state shall certify the names of all duly nominated Presidential and vice-Presidential candidates to the county auditors of the counties of the state. Each county auditor, subject to the rules of the secretary of state, shall cause the names of the candidates of each major political party and the candidates nominated by petition to be printed in capital letters, set in type of the same size and style as for candidates on the state white ballot, before the party designation. To the left of, and on the same line with the names of the candidates for president and vice-president, near the margin, shall be placed a square or box, in which the voters may indicate their choice by marking an "X."

The form for the Presidential ballot and the relative position of the several candidates shall be determined by the rules applicable to other state officers. The state ballot, with the required heading, shall be printed on the same piece of paper and shall be below the Presidential ballot with a blank space between one inch in width.

Subdivision 2. The rules for preparation, state contribution to the cost of printing, and delivery of Presidential ballots are the same as the rules for white ballots under section 204D.11, subdivision 1.

208.05. State canvassing board

The state canvassing board at its meeting on the second Tuesday after each state general election shall open and canvass the returns made to the secretary of state for Presidential electors, prepare a statement of the number of votes cast for the persons receiving votes for these offices, and declare the person or persons receiving the highest number of votes for each office duly elected. When it appears that more than the number of persons to be elected as Presidential electors have the highest and an equal number of votes, the secretary of state, in the presence of the board shall decide by lot which of the persons shall be declared elected. The governor shall transmit to

each person declared elected a certificate of election, signed by the governor, sealed with the state seal, and countersigned by the secretary of state.

208.06. Electors to meet at capitol; filling of vacancies

The Presidential electors, before 12:00 M. on the day before that fixed by congress for the electors to vote for president and vice-president of the United States, shall notify the governor that they are at the state capitol and ready at the proper time to fulfill their duties as electors. The governor shall deliver to the electors present a certificate of the names of all the electors. If any elector named therein fails to appear before 9:00 a.m. on the day, and at the place, fixed for voting for president and vice-president of the United States, the electors present shall, in the presence of the governor, immediately elect by ballot a person to fill the vacancy. If more than the number of persons required have the highest and an equal number of votes, the governor, in the presence of the electors attending, shall decide by lot which of those persons shall be elected.

208.07. Certificate of electors

Immediately after the vacancies have been filled, the original electors present shall certify to the governor the names of the persons elected to complete their number, and the governor shall at once cause written notice to be given to each person elected to fill a vacancy. The persons so chosen shall be Presidential electors and shall meet and act with the other electors.

208.08. Electors to meet at state capitol

The original and substituted Presidential electors, at 12:00 M., shall meet in the executive chamber at the state capitol and shall perform all the duties imposed upon them as electors by the constitution and laws of the United States and this state.

204B.07. Nominating petitions

Subdivision 1. Form of petition. A nominating petition may consist of one or more separate pages each of which shall state:

(a) The office sought;

(b) The candidate's name and residence address, including street and number if any; and

(c) The candidate's political party or political principle expressed in not more than three words. No candidate who files for a partisan office by nominating petition shall use the term "nonpartisan" as a statement of political principle or the name of the candidate's political party. No part of the name of a major political party may be used to designate the political party or principle of a candidate who files for a partisan office by nominating petition, except that the word "independent" may be used to designate the party or principle. A candidate who files by nominating petition to fill a vacancy in nomination for a nonpartisan office pursuant to section 204B.13, shall not state any political principle or the name of any political party on the petition.

Subdivision 2. Petitions for presidential electors. This subdivision does not apply to candidates for Presidential elector nominated by major political parties. Major party candidates for Presidential elector are certified under section 208.03. Other Presidential electors are nominated by petition pursuant to this section. On petitions nominating Presidential electors, the names of the candidates for president and vice-president shall be added to the political party or political principle stated on the petition. One petition may be filed to nominate a slate of Presidential electors equal in number to the number of electors to which the state is entitled.

Subdivision 3. Number of candidates nominated. No nominating petition shall contain the name of more than one candidate except a petition jointly nominating individuals for governor and lieutenant governor or nominating a slate of Presidential electors.

Subdivision 4. Oath and address of signer. Following the information required by subdivisions 1 and 2 and before the space for signing, each separate page that is part of the petition shall include an oath in the following form:

> "I solemnly swear (or affirm) that I know the contents and purpose of this petition, that I do not intend to vote at the primary election for the office for which this nominating petition is made, and that I signed this petition of my own free will."

Notarization or certification of the signatures on a nominating petition is not required. Immediately after the signature, the signer shall write on the petition the signer's residence address including street and number, if any, and mailing address if different from residence address.

Subdivision 5. Sample forms. An official with whom petitions are filed shall make sample forms for nominating petitions available upon request.

Subdivision 6. Penalty. An individual who, in signing a nominating petition, makes a false oath is guilty of perjury.

204B.09. Time and place of filing affidavits and petitions

Subdivision 1. Candidates in state and county general elections.

(a) Except as otherwise provided by this subdivision, affidavits of candidacy and nominating petitions for county, state, and federal offices filled at the state general election shall be filed not more than 70 days nor less than 56 days before the state primary. The affidavit may be prepared and signed at any time between 60 days before the filing period opens and the last day of the filing period.

(b) Notwithstanding other law to the contrary, the affidavit of candidacy must be signed in the presence of a notarial officer or an individual authorized to administer oaths under section 358.10.

(c) This provision does not apply to candidates for Presidential elector nomi-

nated by major political parties. Major party candidates for Presidential elector are certified under section 208.03. Other candidates for Presidential electors may file petitions on or before the state primary day pursuant to section 204B.07. Nominating petitions to fill vacancies in nominations shall be filed as provided in section 204B.13. No affidavit or petition shall be accepted later than 5:00 p.m. on the last day for filing.

(d) Affidavits and petitions for offices to be voted on in only one county shall be filed with the county auditor of that county. Affidavits and petitions for offices to be voted on in more than one county shall be filed with the secretary of state.

Subdivision 1a. Absent candidates. A candidate for special district, county, state, or federal office who will be absent from the state during the filing period may submit a properly executed affidavit of candidacy, the appropriate filing fee, and any necessary petitions in person to the filing officer. The candidate shall state in writing the reason for being unable to submit the affidavit during the filing period. The affidavit, filing fee, and petitions must be submitted to the filing officer during the seven days immediately preceding the candidate's absence from the state. Nominating petitions may be signed during the 14 days immediately preceding the date when the affidavit of candidacy is filed.

Subdivision 2. Other elections. Affidavits of candidacy and nominating petitions for city, town or other elective offices shall be filed during the time and with the official specified in chapter 205 or other applicable law or charter, except as provided for a special district candidate under subdivision 1a. Affidavits of candidacy and applications filed on behalf of eligible voters for school board office shall be filed during the time and with the official specified in chapter 205A or other applicable law.

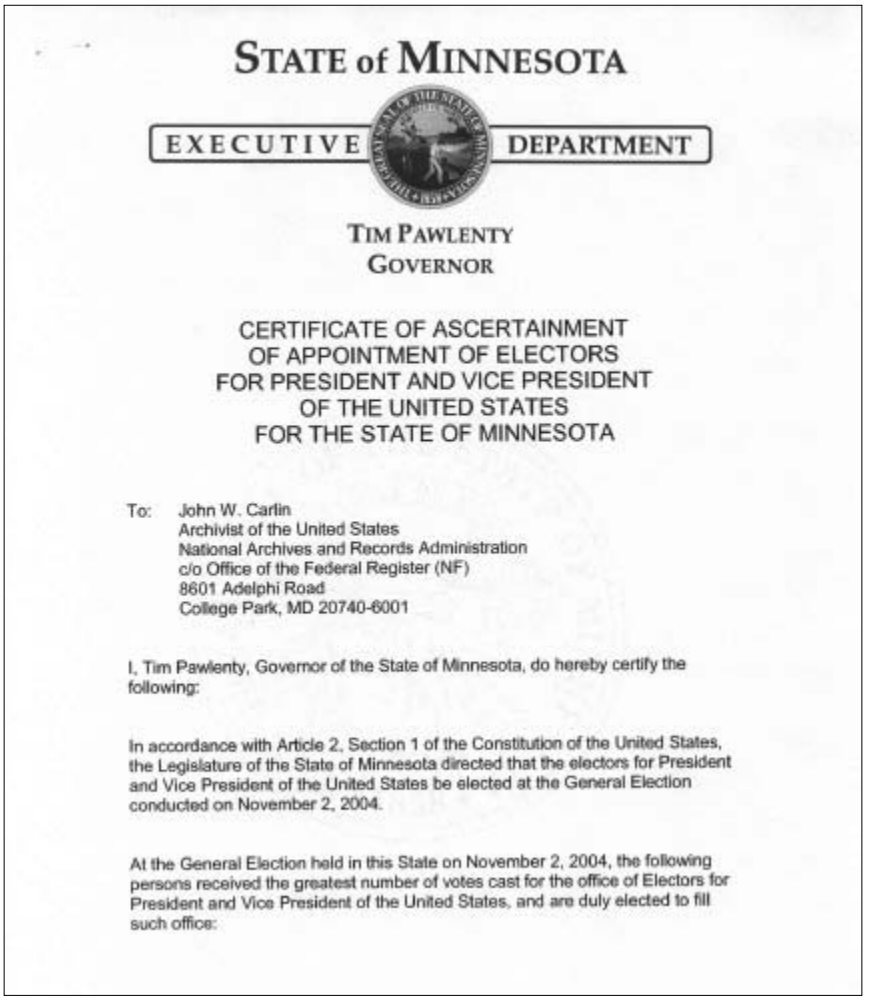
Subdivision 3. Write-in candidates.

(a) A candidate for state or federal office who wants write-in votes for the candidate to be counted must file a written request with the filing office for the office sought no later than the fifth day before the general election. The filing officer shall provide copies of the form to make the request.

(b) A candidate for president of the United States who files a request under this subdivision must include the name of a candidate for vice-president of the United States. The request must also include the name of at least one candidate for Presidential elector. The total number of names of candidates for Presidential elector on the request may not exceed the total number of electoral votes to be cast by Minnesota in the presidential election.

(c) A candidate for governor who files a request under this subdivision must include the name of a candidate for lieutenant governor.

APPENDIX E: MINNESOTA 2004 CERTIFICATE OF ASCERTAINMENT



STATE of MINNESOTA

EXECUTIVE DEPARTMENT

TIM PAWLENTY
GOVERNOR

CERTIFICATE OF ASCERTAINMENT
OF APPOINTMENT OF ELECTORS
FOR PRESIDENT AND VICE PRESIDENT
OF THE UNITED STATES
FOR THE STATE OF MINNESOTA

To: John W. Carlin
Archivist of the United States
National Archives and Records Administration
c/o Office of the Federal Register (NF)
8601 Adelphi Road
College Park, MD 20740-6001

I, Tim Pawlenty, Governor of the State of Minnesota, do hereby certify the following:

In accordance with Article 2, Section 1 of the Constitution of the United States, the Legislature of the State of Minnesota directed that the electors for President and Vice President of the United States be elected at the General Election conducted on November 2, 2004.

At the General Election held in this State on November 2, 2004, the following persons received the greatest number of votes cast for the office of Electors for President and Vice President of the United States, and are duly elected to fill such office:

State of Minnesota
Certificate of Ascertainment, 2004, Page 2 of 8

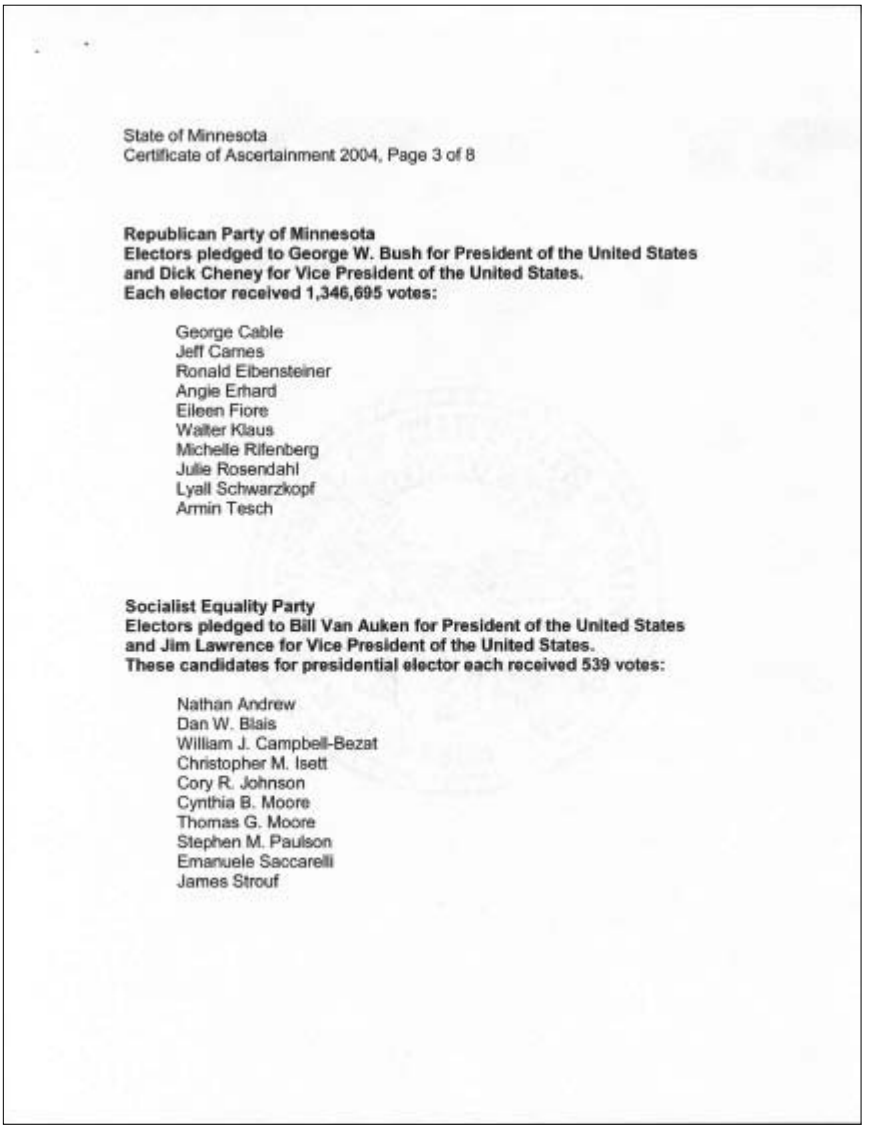
Minnesota Democratic-Farmer-Labor Party
Electors pledged to John F. Kerry for President of the United States and John Edwards for Vice President of the United States.
These candidates for presidential elector each received 1,445,014 votes:

Sonja Berg, of St. Cloud
Vi Grooms-Alban, of Cohasset
Matthew Little, of Maplewood
Michael Meuers, of Bemidji
Tim O'Brien, of Edina
Lil Ortendahl, of Osakis
Everett Pettiford, of Minneapolis
Jean Schiebel, of Brooklyn Center
Frank Simon, of Chaska
Chandler Harrison Stevens, of Austin

I further certify that the returns of the votes cast for Presidential Electors at the General Election were canvassed and certified by the State Canvassing Board on the 16th day of November, 2004 in accordance with the laws of the State of Minnesota, and that the number of votes cast for each candidate for Presidential Elector at the General Election is as follows:

Green Party of Minnesota
Electors pledged to David Cobb for President of the United States and Pat LaMarche for Vice President of the United States.
These candidates for presidential elector each received 4,408 votes:

Scott Bol
Kellie Burriss
Michael Cavlan
Amber Garlan
Jenny Heiser
Molly Nutting
Douglas Root
Mark Wahl
Annie Young
Dean Zimmermann



State of Minnesota
Certificate of Ascertainment 2004, Page 3 of 8

Republican Party of Minnesota
Electors pledged to George W. Bush for President of the United States and Dick Cheney for Vice President of the United States.
Each elector received 1,346,695 votes:

George Cable
Jeff Carnes
Ronald Eibensteiner
Angie Erhard
Eileen Fiore
Walter Klaus
Michelle Rifenberg
Julie Rosendahl
Lyall Schwarzkopf
Armin Tesch

Socialist Equality Party
Electors pledged to Bill Van Auken for President of the United States and Jim Lawrence for Vice President of the United States.
These candidates for presidential elector each received 539 votes:

Nathan Andrew
Dan W. Blais
William J. Campbell-Bezat
Christopher M. Isett
Cory R. Johnson
Cynthia B. Moore
Thomas G. Moore
Stephen M. Paulson
Emanuele Saccarelli
James Strouf

State of Minnesota
Certificate of Ascertainment 2004, Page 4 of 8

Socialist Workers Party
Electors pledged to Roger Calero for President of the United States and Arrin Hawkins for Vice President of the United States.
These candidates for presidential elector each received 416 votes:

Dennis Drake
Rebecca L. Ellis
Catherine S. Fowlkes
Allan J. Grady
Bryce J. Grady
Louise M. Halverson
Bernadette Kuhn
Thomas O'Brien
Michael Pennock
Sandra M. Sherman

Christian Freedom Party
Electors pledged to Thomas J. Harens for President of the United States and Jennifer A. Ryan for Vice President of the United States.
These candidates for presidential elector each received 2,387 votes:

Gail Froncek
Brian Harens
Kaja R. King
Wayne Kruekeberg
Sally Paulsen
Janine Quaile
Susan Smith
Nadine Snyder
Susan M. Style
John Vinje

State of Minnesota
Certificate of Ascertainment 2004, Page 5 of 8

Better Life Party
Electors pledged to Ralph Nader for President of the United States and Peter Miguel Camejo for Vice President of the United States.
These candidates for presidential elector each received 18,683 votes:

Cassandra Lynn Carlson
Enrique Pedro Gentzsch
Rhoda Jean Gilman
Kari Elizabeth Kyle
Linda Shannon Mann
Corey Scott Mattson
Lois Minna Piper
Preston George Piper
Matthew Alan Ryg
Suzanne Shelley Skorich

Constitution Party
Electors pledged to Michael Peroutka for President of the United States and Chuck Baldwin for Vice President of the United States.
These candidates for presidential elector each received 3,074 votes:

Arthur Becker
Patricia Becker
Kent Berdahl
Bill Dodge
Rev. Dr. Tom Jestus Sr.
Lars Johnson
Don Koehler
Marilyn Nibbe
John Robillard
Wayne Zimmerscheid

State of Minnesota
Certificate of Ascertainment 2004, Page 6 of 8

Libertarian Party
Electors pledged to Michael Badnarik for President of the United States and Richard Campagna for Vice President of the United States.
These candidates for presidential elector each received 4,639 votes:

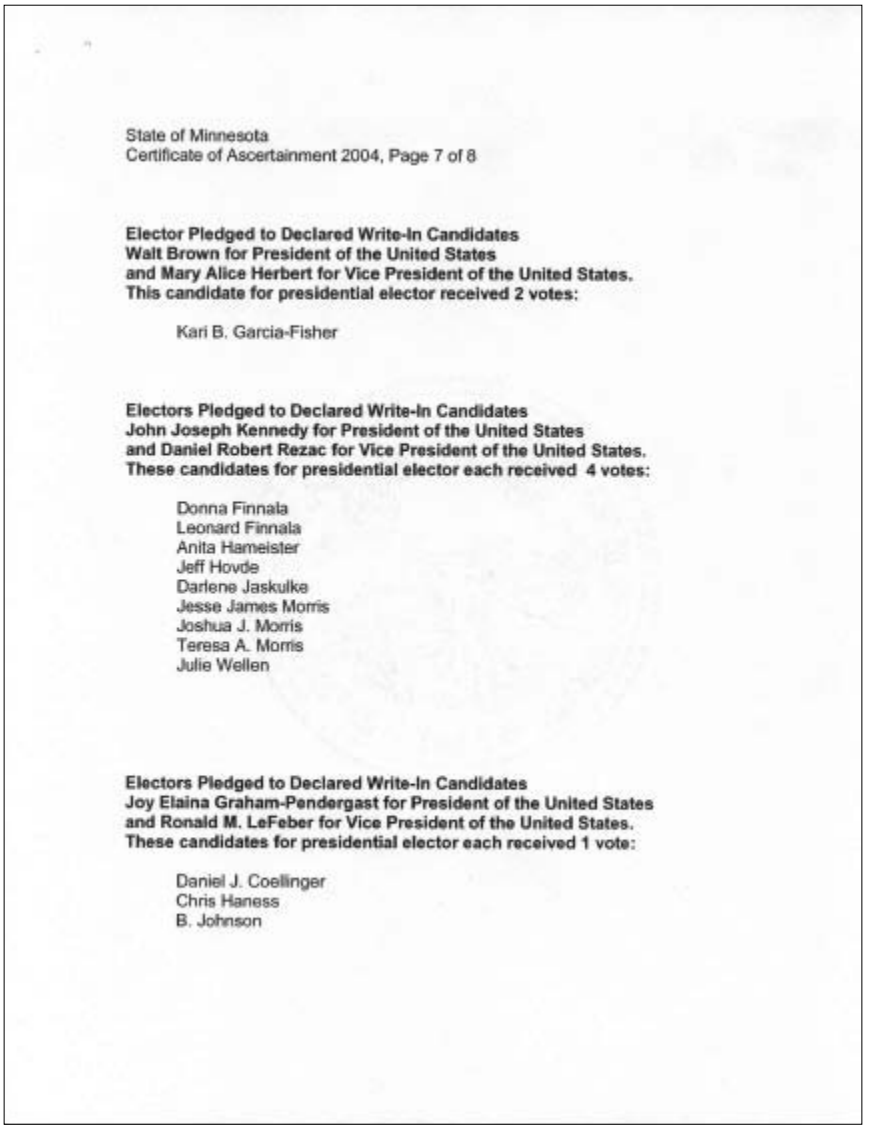
Stephen Baker
Kathy Helwig
Beatrice Kurk
Jeremy Mackinney
Mary O'Connor
Corey Stern
Shelby Thorsted
David Wiester
Colin Wilkinson
Jill Wilkinson

Elector Pledged to Declared Write-In Candidates
Debra Joyce Renderos for President of the United States and Oscar Renderos Castillo for Vice President of the United States.
This candidate for presidential elector received 2 votes:

Henry Ford

Elector Pledged to Declared Write-In Candidates
Martin Wishnatsky for President of the United States and Andrew Vanyo for Vice President of the United States.
This candidate for presidential elector received 2 votes:

Chris Welle



State of Minnesota
Certificate of Ascertainment 2004, Page 7 of 8

Elector Pledged to Declared Write-In Candidates
Walt Brown for President of the United States
and Mary Alice Herbert for Vice President of the United States.
This candidate for presidential elector received 2 votes:

Kari B. Garcia-Fisher

Electors Pledged to Declared Write-In Candidates
John Joseph Kennedy for President of the United States
and Daniel Robert Rezac for Vice President of the United States.
These candidates for presidential elector each received 4 votes:

Donna Finnala
Leonard Finnala
Anita Hameister
Jeff Hovde
Darlene Jaskulke
Jesse James Morris
Joshua J. Morris
Teresa A. Morris
Julie Wellen

Electors Pledged to Declared Write-In Candidates
Joy Elaina Graham-Pendergast for President of the United States
and Ronald M. LeFeber for Vice President of the United States.
These candidates for presidential elector each received 1 vote:

Daniel J. Coellinger
Chris Haness
B. Johnson

State of Minnesota
Certificate of Ascertainment 2004, Page 8 of 8

IN WITNESS WHEREOF,
I have set my hand and the Great Seal of the State of Minnesota at the Capitol in Saint Paul this 8th day of December, 2004, being the 228th year of Independence, and the 146th year of Statehood.

TIM PAWLENTY
Governor

ATTEST:

MARY KIFFMEYER
Secretary of State

APPENDIX F: MAINE 2004 CERTIFICATE OF ASCERTAINMENT

STATE OF MAINE

Certificate of Ascertainment of Electors

I, John Elias Baldacci, Governor of the State of Maine, *do hereby certify that Jill Duson of Portland; Samuel Shapiro of Waterville; Lu Bauer of Standish and David Garrity of Portland have been duly chosen and appointed*

ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES

for the State of Maine, at an election for that purpose which was held on the Tuesday following the first Monday in November, in the year two thousand and four, in accordance with the provisions of the laws of the State of Maine and in conformity with the Constitution and laws of the United States, for the purpose of giving their votes for President and Vice President of the United States for the respective terms commencing on the twentieth day of January, in the year two thousand and five; and

I further certify, that, *the votes given at said election for Electors of President and Vice President of the United States as appears by the returns from the several cities, towns and plantations in the State, which were duly received and examined by me in accordance with the laws, were as follows:*

The LIBERTARIAN PARTY Electors supporting the candidacy of Michael Badnarik for President and Richard Campagna for Vice President received the following votes:

First Congressional District
Mark Cenci, Portland — *1,047*

Second Congressional District
Dana Snowman, Alton — *918*

At-Large
Richard W. Eaton, Westbrook — *1,965*

At-Large
Geoffrey H. Keller, Dayton — *1,965*

The REPUBLICAN PARTY Electors supporting the candidacy of George W. Bush for President and Dick Cheney for Vice President received the following votes:

First Congressional District
Kenneth M. Cole, III, Falmouth — *165,824*

Second Congressional District
Katherine L. Watson, Pittsfield — *164,377*

At-Large
Peter E. Cianchette, South Portland — *330,201*

At-Large
James D. Tobin, Bangor — *330,201*

The GREEN INDEPENDENT PARTY Electors supporting the candidacy of David Cobb for President and Patricia LaMarche for Vice President received the following votes:

First Congressional District
Larry Dean Lofton-McGee, Augusta — *1,468*

Second Congressional District
Heather E. Garrold, Brooks — *1,468*

At-Large
Charlene Decker, Machias — *2,936*

At-Large
Ruth Z. Gabey, West Gardiner — *2,936*

The DEMOCRATIC PARTY Electors supporting the candidacy of John F. Kerry for President and John Edwards for Vice President received the following votes:

First Congressional District	
Jill Duson, Portland	*211,703*
Second Congressional District	
Samuel Shapiro, Waterville	*185,139*
At-Large	
Lu Bauer, Standish	*396,842*
At-Large	
David Garrity, Portland	*396,842*

The BETTER LIFE PARTY Electors supporting the candidacy of Ralph Nader for President and Peter Miguel Camejo for Vice President received the following votes:

First Congressional District	
Rosemary L. Whittaker, South Portland	*4,004*
Second Congressional District	
Christopher M. Droznick, Auburn	*4,065*
At-Large	
Nancy Oden, Jonesboro	*8,069*
At-Large	
J. Noble Snowdeal, Jonesboro	*8,069*

The CONSTITUTION PARTY Electors supporting the candidacy of Michael Anthony Peroutka for President and Chuck Baldwin for Vice President received the following votes:

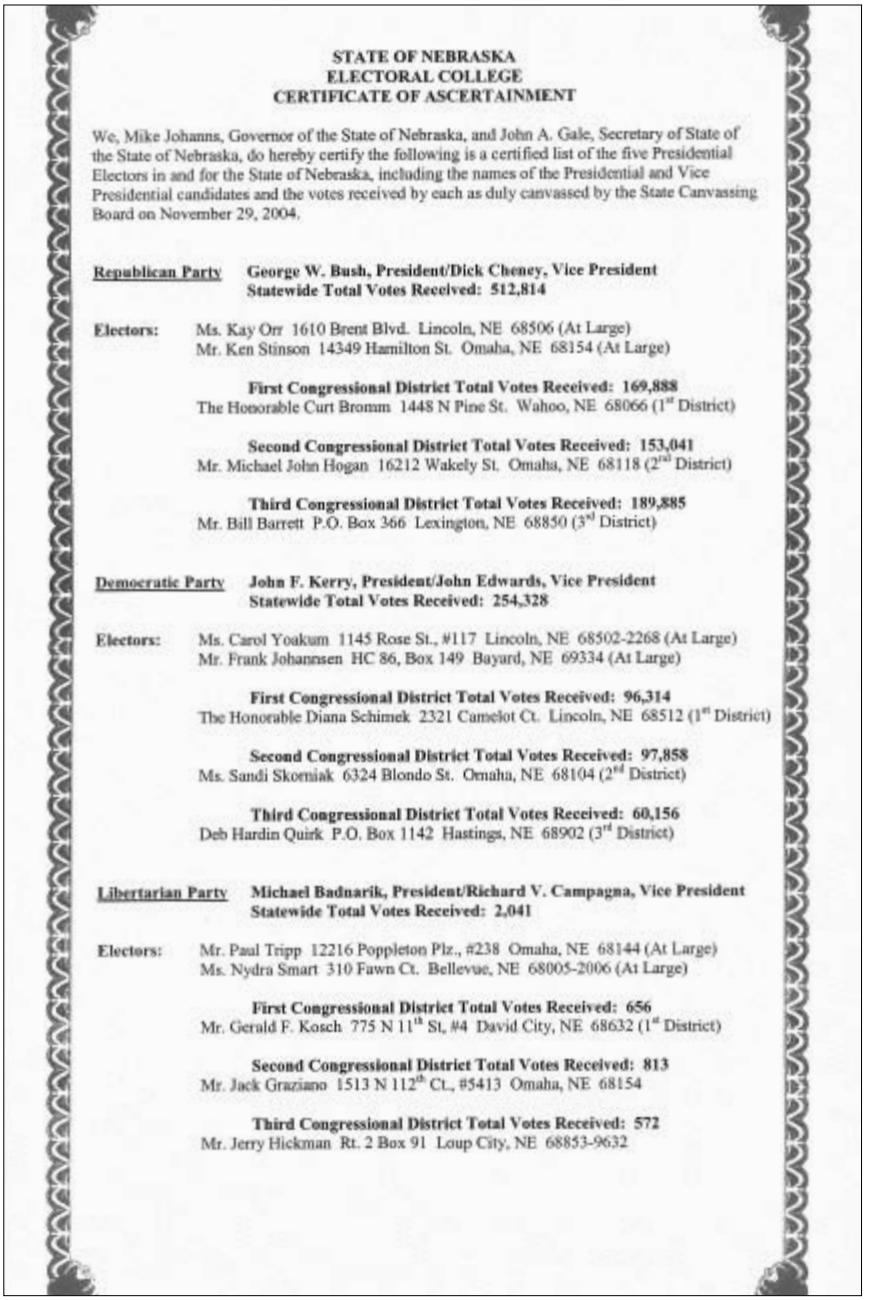
First Congressional District	
Stanley Jones, Hallowell	*346*
Second Congressional District	
Harvey R. Lord, Paris	*389*
At-Large	
Mary-Ann Greiner, St. George	*735*
At-Large	
Patricia Truman, Hallowell	*735*

***In Testimony Whereof**, I have caused the Great Seal of the State of Maine to be hereunto affixed, given under my hand, this twenty-third day of November in the year two thousand and four.*

John Elias Baldacci, Governor

Dan A. Gwadosky, Secretary of State

APPENDIX G: NEBRASKA 2004 CERTIFICATE OF ASCERTAINMENT



STATE OF NEBRASKA
ELECTORAL COLLEGE
CERTIFICATE OF ASCERTAINMENT

We, Mike Johanns, Governor of the State of Nebraska, and John A. Gale, Secretary of State of the State of Nebraska, do hereby certify the following is a certified list of the five Presidential Electors in and for the State of Nebraska, including the names of the Presidential and Vice Presidential candidates and the votes received by each as duly canvassed by the State Canvassing Board on November 29, 2004.

Republican Party — **George W. Bush, President/Dick Cheney, Vice President**
Statewide Total Votes Received: 512,814

Electors:
Ms. Kay Orr 1610 Brent Blvd. Lincoln, NE 68506 (At Large)
Mr. Ken Stinson 14349 Hamilton St. Omaha, NE 68154 (At Large)

First Congressional District Total Votes Received: 169,888
The Honorable Curt Bromm 1448 N Pine St. Wahoo, NE 68066 (1st District)

Second Congressional District Total Votes Received: 153,041
Mr. Michael John Hogan 16212 Wakely St. Omaha, NE 68118 (2nd District)

Third Congressional District Total Votes Received: 189,885
Mr. Bill Barrett P.O. Box 366 Lexington, NE 68850 (3rd District)

Democratic Party — **John F. Kerry, President/John Edwards, Vice President**
Statewide Total Votes Received: 254,328

Electors:
Ms. Carol Yoakum 1145 Rose St., #117 Lincoln, NE 68502-2268 (At Large)
Mr. Frank Johannsen HC 86, Box 149 Bayard, NE 69334 (At Large)

First Congressional District Total Votes Received: 96,314
The Honorable Diana Schimek 2321 Camelot Ct. Lincoln, NE 68512 (1st District)

Second Congressional District Total Votes Received: 97,858
Ms. Sandi Skorniak 6324 Blondo St. Omaha, NE 68104 (2nd District)

Third Congressional District Total Votes Received: 60,156
Deb Hardin Quirk P.O. Box 1142 Hastings, NE 68902 (3rd District)

Libertarian Party — **Michael Badnarik, President/Richard V. Campagna, Vice President**
Statewide Total Votes Received: 2,041

Electors:
Mr. Paul Tripp 12216 Poppleton Plz., #238 Omaha, NE 68144 (At Large)
Ms. Nydra Smart 310 Fawn Ct. Bellevue, NE 68005-2006 (At Large)

First Congressional District Total Votes Received: 656
Mr. Gerald F. Kosch 775 N 11th St, #4 David City, NE 68632 (1st District)

Second Congressional District Total Votes Received: 813
Mr. Jack Graziano 1513 N 112th Ct., #5413 Omaha, NE 68154

Third Congressional District Total Votes Received: 572
Mr. Jerry Hickman Rt. 2 Box 91 Loup City, NE 68853-9632

Nebraska Party — **Michael Anthony Peroutka, President/Chuck Baldwin, Vice President**
Statewide Total Votes Received: 1,314

Electors: Mr. Duane Dufek Box 555 Creighton, NE 68729 (At Large)
Mr. Gene Dobias 510 Washington Ave. Creighton, NE 68729 (At Large)

First Congressional District Total Votes Received: 405
Mr. Peter Rosberg 83626 557 Ave. Norfolk NE 68701 (1st District)

Second Congressional District Total Votes Received: 305
Mr. Tim Larson 15709 O Cir. Omaha, NE 68135 (2nd District)

Third Congressional District Total Votes Received: 604
Mr. Joseph Rosberg 54288 874 Rd. Wausa, NE 68786

Green Party — **David Cobb, President/Patricia LaMarche, Vice President**
Statewide Total Votes Received: 978

Electors: Mr. Tim Jensen 307 W. Charleston, #1232 Lincoln, NE 68528 (At Large)
Ms. Elaine Santore 609 N 17th St. Lincoln, NE 68508 (At Large)

First Congressional District Total Votes Received: 453
Ms. Ginny Crisco 1601 F St. Lincoln, NE 68508 (1st District)

Second Congressional District Total Votes Received: 261
Mr. Charles Ostdiek 3808 Harney St., #4 Omaha, NE 68131(2nd District)

Third Congressional District Total Votes Received: 264
Mr. Josh Skufca 3058 S. 41 Omaha, NE 68105 (3rd District)

By Petition — **Roger Calero, President/Arrin Hawkins, Vice President**
Statewide Total Votes Received: 82

Electors: Mr. Nelson F. Gonzalez 4731 S 24th St., Apt. 209 Omaha, NE 68107 (At Large)
Mr. David Z. Rosenfeld 4841 S 24th St. Omaha, NE 68107 (At Large)

First Congressional District Total Votes Received: 30
Ms. Lisa J. Krueger 5951 Oakridge Dr. Lincoln, NE 68516 (1st District)

Second Congressional District Total Votes Received: 23
Ms. Lisa M. Rottach 4841 S 24th St. Omaha, NE 68107 (2nd District)

Third Congressional District Total Votes Received: 29
Mr. Wayne Honsermeier 1206 Nebraska Hwy 2 Phillips, NE 68865 (3rd District)

By Petition — **Ralph Nader, President, Peter Miguel Camejo, Vice President**
Statewide Total Votes Received: 5,698

Electors: Ms. Diana McIntyre-Wright 5621 Dogwood Dr. Lincoln, NE 68516 (At Large)
Ms. Irma Sarata 2000 SW 47th St. Lincoln, NE 68522 (At Large)

First Congressional District Total Votes Received: 2,025
Ms. Amber McIntyre 5621 Dogwood Dr. Lincoln, NE 68516 (1st District)

Second Congressional District Total Votes Received: 1,731
Ms. Susan Robinson 9815 Pasadena Ave. Omaha, NE 68124 (2nd District)

Third Congressional District Total Votes Received: 1,942
Mr. Lee R. Heerten HC 81 PO Box 121 Springview, NE 68778

We hereby certify the names of the Republican Party Electors associated with the Bush-Cheney ticket have been duly appointed and notified by certified mail by the Governor and will appear at the State Capitol, Lincoln, Nebraska on the 13th day of December 2004, for the purpose of casting Nebraska's five Electoral College votes.

We hereunto affix our signatures this 13th day of December, 2004, at Lincoln, Nebraska.

Mike Johanns
Governor

John A. Gale
Secretary of State

APPENDIX H: NEW YORK 2004 CERTIFICATE OF ASCERTAINMENT

STATE OF NEW YORK

BY

George E. Pataki

GOVERNOR

I, GEORGE E. PATAKI, Governor of the State of New York, do hereby certify, that the statement containing the Canvass and Certificate of Determination by the State Board of Canvassers of the State of New York, as to **ELECTORS of PRESIDENT and VICE-PRESIDENT** hereto annexed, and certified by the Chairperson of the State Board of Elections of said State, under her seal of office, contains a true and correct list setting forth the names of Electors of President and Vice-President, elected in said State, at the General Election held in said State on the Tuesday after the First Monday in November (November second), in the year two thousand four, pursuant to the Constitution and Laws of the United States and of the State of New York, to wit:

Joseph Ashton
Bill De Blasio
Molly Clifford
Lorraine Cortes-Vazquez
Inez Dickens
Danny Donahue
Herman D. Farrell
Virginia Fields
Emily Giske
Bea Gonzalez
Alan Hevesi
Frank Hoare
Virginia Kee
Peggy Kerry
Denise King
Len Lenihan
Bertha Lewis
Alan Lubin
Thomas Manton
Dennis Mehiel
June O'Neill
David Paterson
Jose Rivera
Rich Schaffer
Chung Seto
Sheldon Silver
Eliot Spitzer
Antoine Thompson
Paul Tokasz
Bill Wood
Robert Zimmerman

And further that the Statement of Canvass and Certificate of Determination certified by the Chairperson of the State Board of Elections of said State, as aforesaid, correctly sets forth the Canvass of Determination under the Laws of said State of New York, of the number of votes given or cast for each person for whose elections any and all votes have been given or cast at said election as aforesaid.

In Testimony Whereof, The Great Seal of the State is hereunto affixed.

Witness my hand at the City of Albany, the tenth day of December, in the year two thousand four.

Attested by

Secretary of State

We, the State Board of Elections, constituting the State Board of Canvassers, having canvassed the whole number of votes given for the office of ELECTOR of PRESIDENT and VICE-PRESIDENT at the general election held in said State, on the Second day of November, 2004, according to the certified statement of canvass received by the State Board of Elections, in the manner directed by law, do hereby determine, declare and certify that

Joseph Ashton
Bill De Blasio
Molly Clifford
Lorraine Cortes-Vazquez
Inez Dickens
Danny Donahue
Herman D. Farrell
Virginia Fields
Emily Giske
Bea Gonzalez
Alan Hevesi
Frank Hoare
Virginia Kee
Peggy Kerry
Denise King
Len Lenihan
Bertha Lewis
Alan Lubin
Thomas Manton
Dennis Mehiel
June O'Neill
David Paterson
Jose Rivera
Rich Schaffer
Chung Seto
Sheldon Silver
Eliot Spitzer
Antoine Thompson
Paul Tokasz
Bill Wood
Robert Zimmerman

were, by the greatest number of votes given at said election duly elected ELECTOR of PRESIDENT and VICE-PRESIDENT of the United States.

GIVEN under our hands in Sloatsburg, New York, the 6th day of December in the year two thousand four.

Carol Berman	Commissioner
Neil W. Kelleher	Commissioner
Evelyn J. Aquila	Commissioner
Helena Moses Donohue	Commissioner

STATE OF NEW YORK :
: ss:
STATE BOARD OF ELECTIONS :

I certify that I have compared the foregoing with the original certificate filed in this office, and that the same is a correct transcript therefrom and of the whole of such original.

GIVEN under my hand and official seal of office of the State Board of Elections, in Sloatsburg, New York, this 6th day of December in the year two thousand four.

Carol Berman
Carol Berman — Chairperson

STATE OF NEW YORK, ss:

Statement of the whole number of votes cast for all the candidates for the office of ELECTOR OF PRESIDENT and VICE-PRESIDENT at a General Election held in said State on the Second day of November, 2004.

The whole number of votes given for the office of ELECTOR OF PRESIDENT and VICE-PRESIDENT was **7,448,266** of which

		REPUBLICAN	CONSERVATIVE	TOTAL
George E. Pataki	received	2,806,993	155,574	2,962,567
Alexander F. Treadwell	received	2,806,993	155,574	2,962,567
Joseph Bruno	received	2,806,993	155,574	2,962,567
Charles Nesbitt	received	2,806,993	155,574	2,962,567
Mary Donohue	received	2,806,993	155,574	2,962,567
Rudolph Giuliani	received	2,806,993	155,574	2,962,567
Charles Gargano	received	2,806,993	155,574	2,962,567
Joseph Mondello	received	2,806,993	155,574	2,962,567
J. Patrick Barrett	received	2,806,993	155,574	2,962,567
John F. Nolan	received	2,806,993	155,574	2,962,567
Robert Davis	received	2,806,993	155,574	2,962,567
Peter J. Savago	received	2,806,993	155,574	2,962,567
Maggie Brooks	received	2,806,993	155,574	2,962,567
Catherine Blaney	received	2,806,993	155,574	2,962,567
Howard Mills	received	2,806,993	155,574	2,962,567
John Cahill	received	2,806,993	155,574	2,962,567
Rita DiMartino	received	2,806,993	155,574	2,962,567
Libby Pataki	received	2,806,993	155,574	2,962,567
Stephen Minarik	received	2,806,993	155,574	2,962,567
Raymond Meier	received	2,806,993	155,574	2,962,567
Thomas M. Reynolds	received	2,806,993	155,574	2,962,567
Adam Stoll	received	2,806,993	155,574	2,962,567
Herman Badillo	received	2,806,993	155,574	2,962,567
Jane Forbes Clark	received	2,806,993	155,574	2,962,567
James Garner	received	2,806,993	155,574	2,962,567
Shawn Marie Levine	received	2,806,993	155,574	2,962,567
Viola J. Hunter	received	2,806,993	155,574	2,962,567
Laura Schreiner	received	2,806,993	155,574	2,962,567
Carmen Gomez Goldberg	received	2,806,993	155,574	2,962,567
Bernadette Castro	received	2,806,993	155,574	2,962,567
Cathy Jimino	received	2,806,993	155,574	2,962,567

		DEMOCRATIC	WORKING FAM.	TOTAL
Joseph Ashton	received	4,180,755	133,525	4,314,280
Bill De Blasio	received	4,180,755	133,525	4,314,280
Molly Clifford	received	4,180,755	133,525	4,314,280
Lorraine Cortes-Vazquez	received	4,180,755	133,525	4,314,280
Inez Dickens	received	4,180,755	133,525	4,314,280
Danny Donahue	received	4,180,755	133,525	4,314,280
Herman D. Farrell	received	4,180,755	133,525	4,314,280
Virginia Fields	received	4,180,755	133,525	4,314,280
Emily Giske	received	4,180,755	133,525	4,314,280
Bea Gonzalez	received	4,180,755	133,525	4,314,280
Alan Hevesi	received	4,180,755	133,525	4,314,280
Frank Hoare	received	4,180,755	133,525	4,314,280
Virginia Kee	received	4,180,755	133,525	4,314,280
Peggy Kerry	received	4,180,755	133,525	4,314,280
Denise King	received	4,180,755	133,525	4,314,280
Len Lenihan	received	4,180,755	133,525	4,314,280
Bertha Lewis	received	4,180,755	133,525	4,314,280
Alan Lubin	received	4,180,755	133,525	4,314,280
Thomas Manton	received	4,180,755	133,525	4,314,280
Dennis Mehiel	received	4,180,755	133,525	4,314,280
June O'Neill	received	4,180,755	133,525	4,314,280
David Paterson	received	4,180,755	133,525	4,314,280
Jose Rivera	received	4,180,755	133,525	4,314,280
Rich Schaffer	received	4,180,755	133,525	4,314,280
Chung Seto	received	4,180,755	133,525	4,314,280
Sheldon Silver	received	4,180,755	133,525	4,314,280
Eliot Spitzer	received	4,180,755	133,525	4,314,280
Antoine Thompson	received	4,180,755	133,525	4,314,280
Paul Tokasz	received	4,180,755	133,525	4,314,280
Bill Wood	received	4,180,755	133,525	4,314,280
Robert Zimmerman	received	4,180,755	133,525	4,314,280

		INDEPENDENCE	TOTAL
Fran Siems	received	84,247	84,247
Barbara Smith	received	84,247	84,247
Theresa Smith	received	84,247	84,247
Joseph Baruth	received	84,247	84,247
Howard Edelbaum	received	84,247	84,247
Bryan Puertas	received	84,247	84,247
Barbara Pershay	received	84,247	84,247
Elizabeth Allen	received	84,247	84,247
Paul Gouldin	received	84,247	84,247
Joan Fleischman	received	84,247	84,247
Ken Gallashaw	received	84,247	84,247
Robert Conroy	received	84,247	84,247
Bobby Soto	received	84,247	84,247
Lenora Fulani	received	84,247	84,247
Harry Kresky	received	84,247	84,247
Amy Jo Butler	received	84,247	84,247
Rebecca Seward	received	84,247	84,247
Lili Vega	received	84,247	84,247
Jeff Graham	received	84,247	84,247
Patricia Anken	received	84,247	84,247
Judith Resen	received	84,247	84,247
Paul Caputo	received	84,247	84,247
Jessie Field	received	84,247	84,247
Sarah Lyons	received	84,247	84,247
Judith A. Orsini	received	84,247	84,247
Lee Kolesnikoff	received	84,247	84,247
Ben Curtis	received	84,247	84,247
Lorraine Stevens	received	84,247	84,247
Frank Mackay	received	84,247	84,247
Eileen Trace	received	84,247	84,247
Richard Schulman	received	84,247	84,247

		PEACE & JUSTICE	TOTAL
Sally J. Cass	received	15,626	15,626
Mitchel Cohen	received	15,626	15,626
Millicent Y. Collins	received	15,626	15,626
Edward T. Dodge	received	15,626	15,626
Mark A. Dunlea	received	15,626	15,626
J. David Edelstein	received	15,626	15,626
James Farney	received	15,626	15,626
Leslie Farney	received	15,626	15,626
Anthony Gronowicz	received	15,626	15,626
Howie Hawkins	received	15,626	15,626
Gerald F. Kann	received	15,626	15,626
Alan B. Kendrick-Bowser	received	15,626	15,626
James C. Lane	received	15,626	15,626
Peter LaVenia	received	15,626	15,626
Daniella Liebling	received	15,626	15,626
Joseph Lombardo	received	15,626	15,626
Ronald J. MacKinnon	received	15,626	15,626
Jessica L. Maxwell	received	15,626	15,626
Robin L. Miller	received	15,626	15,626
Steven Penn	received	15,626	15,626
Stephen H. Reynolds	received	15,626	15,626
Rebecca Rotzler	received	15,626	15,626
Leigh C. Safford	received	15,626	15,626
Eric Salzman	received	15,626	15,626
Lorna Salzman	received	15,626	15,626
Rachel Treichler	received	15,626	15,626
Jason West	received	15,626	15,626
Betty K. Wood	received	15,626	15,626
Paul H. Zulkowitz	received	15,626	15,626

		SOCIALIST WORKERS	TOTAL
Michael J. Fitzsimmons	received	2,405	2,405
Olga L. Rodriguez	received	2,405	2,405

		LIBERTARIAN	TOTAL
Richard A. Cooper	received	11,607	11,607
Dawn Davis	received	11,607	11,607
Donald H. Davis	received	11,607	11,607
Robert S. Flanzer	received	11,607	11,607
Christopher B. Garvey	received	11,607	11,607
David A. Hamett	received	11,607	11,607
James E. Harris	received	11,607	11,607
Loretta K. Hetzner	received	11,607	11,607
Werner Hetzner	received	11,607	11,607
David J. Hopwood	received	11,607	11,607
Nicolas Leobold	received	11,607	11,607
Jim Lesczynski	received	11,607	11,607
Adam Martin	received	11,607	11,607
Bruce A. Martin	received	11,607	11,607
Crystal Martin	received	11,607	11,607
William P. McMillen	received	11,607	11,607
Ronald G. Moore	received	11,607	11,607
John C. Mounteer	received	11,607	11,607
Christian Padgett	received	11,607	11,607
Audrey M. Pappaeliou	received	11,607	11,607
Gary S. Popkin	received	11,607	11,607
Louise Popkin	received	11,607	11,607
Eleanor Rosenblatt	received	11,607	11,607
Catherine Ruks	received	11,607	11,607
Thomas Ruks	received	11,607	11,607
Norma Segal	received	11,607	11,607
Donald Silberger	received	11,607	11,607
Sam Sloan	received	11,607	11,607
Thomas Robert Stevens	received	11,607	11,607
Michael L. Trombetta	received	11,607	11,607
Alexander E. Ullmann, III	received	11,607	11,607

GIVEN under our hands in Sloatsburg, New York, the 6th day of December in the year two thousand four.

Carol Berman	Commissioner
Neil W. Kelleher	Commissioner
Evelyn J. Aquila	Commissioner
Helena Moses Donohue	Commissioner

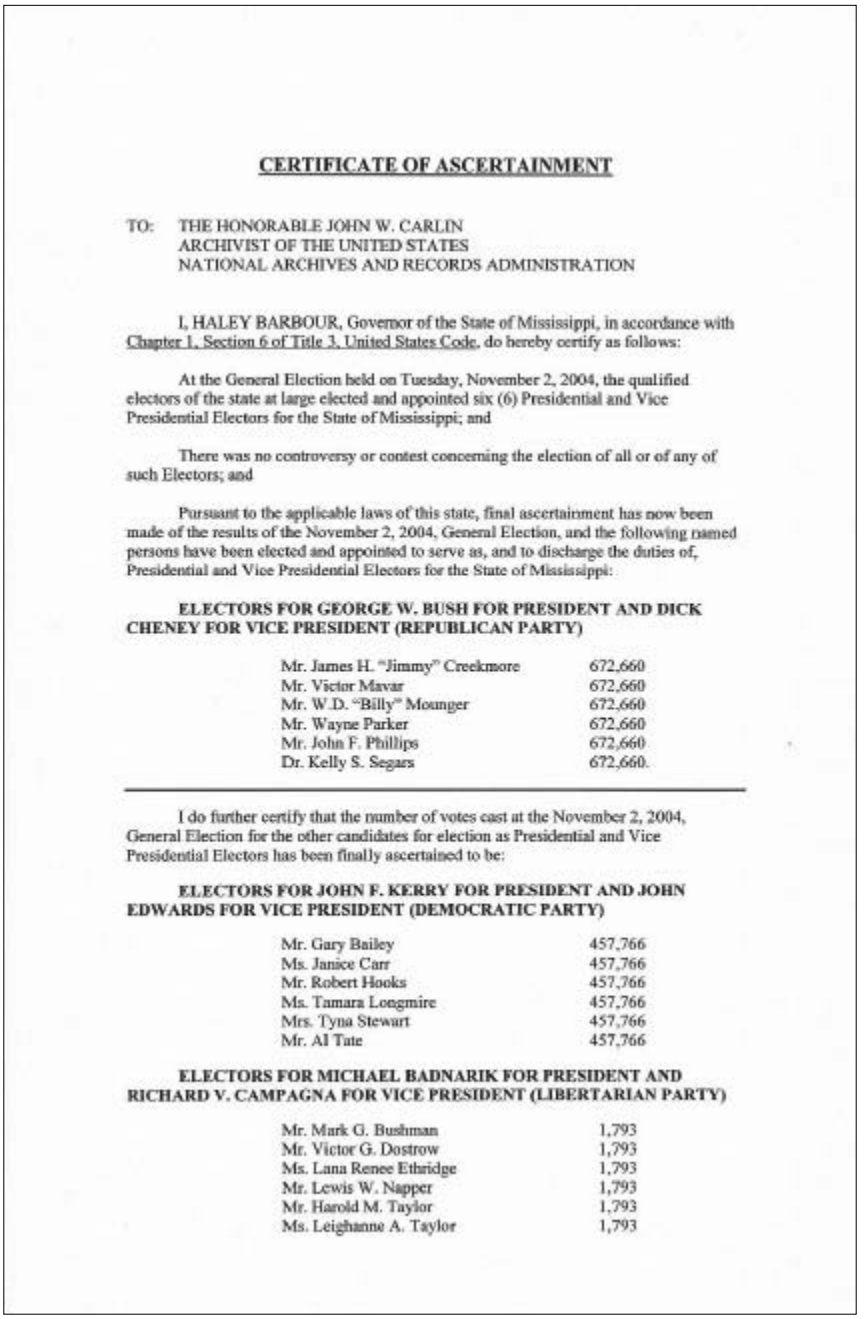
STATE OF NEW YORK :
: ss:
STATE BOARD OF ELECTIONS :

I certify that I have compared the foregoing with the original certificate filed in this office, and that the same is a correct transcript therefrom and of the whole of such original.

GIVEN under my hand and official seal of office of the State Board of Elections, in the City of Albany, this 6th day of December, 2004.

Peter S. Kosinski Deputy Executive Director

APPENDIX I: MISSISSIPPI 2004 CERTIFICATE OF ASCERTAINMENT



CERTIFICATE OF ASCERTAINMENT

TO: THE HONORABLE JOHN W. CARLIN
ARCHIVIST OF THE UNITED STATES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

I, HALEY BARBOUR, Governor of the State of Mississippi, in accordance with Chapter 1, Section 6 of Title 3, United States Code, do hereby certify as follows:

At the General Election held on Tuesday, November 2, 2004, the qualified electors of the state at large elected and appointed six (6) Presidential and Vice Presidential Electors for the State of Mississippi; and

There was no controversy or contest concerning the election of all or of any of such Electors; and

Pursuant to the applicable laws of this state, final ascertainment has now been made of the results of the November 2, 2004, General Election, and the following named persons have been elected and appointed to serve as, and to discharge the duties of, Presidential and Vice Presidential Electors for the State of Mississippi:

ELECTORS FOR GEORGE W. BUSH FOR PRESIDENT AND DICK CHENEY FOR VICE PRESIDENT (REPUBLICAN PARTY)

Mr. James H. "Jimmy" Creekmore	672,660
Mr. Victor Mavar	672,660
Mr. W.D. "Billy" Mounger	672,660
Mr. Wayne Parker	672,660
Mr. John F. Phillips	672,660
Dr. Kelly S. Segars	672,660.

I do further certify that the number of votes cast at the November 2, 2004, General Election for the other candidates for election as Presidential and Vice Presidential Electors has been finally ascertained to be:

ELECTORS FOR JOHN F. KERRY FOR PRESIDENT AND JOHN EDWARDS FOR VICE PRESIDENT (DEMOCRATIC PARTY)

Mr. Gary Bailey	457,766
Ms. Janice Carr	457,766
Mr. Robert Hooks	457,766
Ms. Tamara Longmire	457,766
Mrs. Tyna Stewart	457,766
Mr. Al Tate	457,766

ELECTORS FOR MICHAEL BADNARIK FOR PRESIDENT AND RICHARD V. CAMPAGNA FOR VICE PRESIDENT (LIBERTARIAN PARTY)

Mr. Mark G. Bushman	1,793
Mr. Victor G. Dostrow	1,793
Ms. Lana Renee Ethridge	1,793
Mr. Lewis W. Napper	1,793
Mr. Harold M. Taylor	1,793
Ms. Leighanne A. Taylor	1,793

ELECTORS FOR DAVID COBB FOR PRESIDENT AND PATRICIA LAMARCHE FOR VICE PRESIDENT (GREEN PARTY)

Mr. Sherman Lee Dillon	1,073
Mr. Ray Gebhart	1,073
Ms. Jan Hillegas	1,073
Mr. Greg Johnson	1,073
Mr. Chitade Evan Peacock	1,073
Ms. Gwendolyn M. Wages	1,073

ELECTORS FOR JAMES HARRIS FOR PRESIDENT AND MARGARET TROWE FOR VICE PRESIDENT (INDEPENDENT)

Ms. Barbara Bell	1,268
Mr. Roy Bell	1,268
Ms. Joann Hogan	1,268
Ms. Penny Hogan	1,268
Mr. R.C. Howard	1,268
Ms. Linda Miles	1,268

ELECTORS FOR RALPH NADER FOR PRESIDENT AND PETER MIGUEL CAMEJO FOR VICE PRESIDENT (REFORM PARTY)

Mr. Rodney (Billy) Fulgham	3,177
Ms. Carroll Grantham	3,177
Mr. John A. Hailey	3,177
Ms. Lawonica L. Mages	3,177
Mr. Billy Minshew	3,177
Mr. Christopher Minshew	3,177

ELECTORS FOR MICHAEL A. PEROUTKA FOR PRESIDENT AND CHUCK BALDWIN FOR VICE PRESIDENT (CONSTITUTION PARTY)

Mr. John C. Bethea	1,759
Mr. Jim Bourland	1,759
Mr. Tim Deltrie	1,759
Mr. Thomas R. Floyd	1,759
Mr. Leslie Riley	1,759
Mr. Steve C. Thornton	1,759.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Mississippi to be affixed.

DONE at the Capitol, in the City of Jackson, this the 22nd day of March, in the year of our Lord, Two thousand and five, and of the Independence of the United States of America, the two hundred and twenty ninth.

GOVERNOR

BY THE GOVERNOR

SECRETARY OF STATE

APPENDIX J: DATES APPEARING ON CERTIFICATES OF ASCERTAINMENT FOR 2000–2008 PRESIDENTIAL ELECTIONS

This appendix contains a table (table J.1) showing the key dates in the presidential election process for 2000–2008 and a table (table J.2) showing the dates appearing on the Certificates of Ascertainment from each state and the District of Columbia for the 2000–2008 elections.

Table J.1 Key Dates in Presidential Election Process for 2000–2008

	DATE FOR 2000	DATE FOR 2004	DATE FOR 2008
Election day	November 7, 2000	November 2, 2004	November 4, 2008
Safe harbor day	December 12, 2000	December 7, 2004	December 9, 2008
Electoral college meeting day	December 18, 2000	December 13, 2004	December 15, 2008

Table J.2 Dates Appearing on 2000–2008 Certificates of Ascertainment

JURISDICTION	DATE FOR 2000	DATE FOR 2004	DATE FOR 2008
Alabama	December 8, 2000	November 29, 2004	December 10, 2008
Alaska	December 5, 2000	December 7, 2004	December 8, 2008
Arizona	December 4, 2000	November 22, 2004	December 1, 2008
Arkansas	November 30, 2000	November 23, 2004	December 4, 2008
California	December 14, 2000	December 13, 2004	December 15, 2008
Colorado	December 4, 2000	December 13, 2004	December 11, 2008
Connecticut	November 29, 2000	November 24, 2004	November 26, 2008
Delaware	December 4, 2000	November 30, 2004	November 29, 2008
District of Columbia	December 6, 2000	December 7, 2004	December 10, 2008
Florida	November 26, 2000	November 18, 2004	November 24, 2008
Georgia	December 1, 2000	November 23, 2004	December 9, 2008
Hawaii	November 27, 2000	November 22, 2004	November 24, 2008
Idaho	November 22, 2000	November 17, 2004	November 19, 2008
Illinois	November 27, 2000	December 3, 2004	November 30, 2008
Indiana	December 5, 2000	December 7, 2004	December 8, 2008
Iowa	December 14, 2000	December 13, 2004	December 9, 2008
Kansas	December 6, 2000	December 8, 2004	December 3, 2008
Kentucky	December 4, 2000	December 1, 2004	December 3, 2008
Louisiana	November 21, 2000	November 16, 2004	November 17, 2008
Maine	November 27, 2000	November 23, 2004	November 25, 2008
Maryland	December 18, 2000	December 13, 2004	December 15, 2008
Massachusetts	December 6, 2000	December 13, 2004	December 9, 2008
Michigan	November 30, 2000	November 30, 2004	December 1, 2008
Minnesota	December 5, 2000	November 30, 2004	December 9, 2008
Mississippi	December 7, 2000	December 13, 2004	December 3, 2008
Missouri	December 11, 2000	December 13, 2004	December 5, 2008
Montana	December 6, 2000	December 8, 2004	December 9, 2008
Nebraska	December 18, 2000	December 13, 2004	December 15, 2008
Nevada	December 4, 2000	December 7, 2004	December 8, 2008
New Hampshire	December 6, 2000	December 1, 2004	December 3, 2008
New Jersey	December 8, 2000	December 13, 2004	December 4, 2008
New Mexico	December 5, 2000	December 3, 2004	December 7, 2008
New York	December 12, 2000	December 6, 2004	December 11, 2008
North Carolina	December 8, 2000	December 1, 2004	December 8, 2008
North Dakota	November 27, 2000	December 3, 2004	November 28, 2008
Ohio	December 11, 2000	December 6, 2004	December 11, 2008
Oklahoma	December 8, 2000	December 13, 2004	December 15, 2008
Oregon	No date	No date	No date
Pennsylvania	December 14, 2000	December 10, 2004	December 8, 2008
Rhode Island	November 22, 2000	November 23, 2004	November 24, 2008
South Carolina	November 28, 2000	December 3, 2004	November 20, 2008
South Dakota	November 28, 2000	December 13, 2004	November 13, 2008
Tennessee	November 28, 2000	December 7, 2004	December 8, 2008
Texas	November 27, 2000	November 18, 2004	November 19, 2008
Utah	December 1, 2000	December 13, 2004	November 24, 2008
Vermont	December 9, 2000	December 3, 2004	December 3, 2008
Virginia	November 29, 2000	December 13, 2004	November 25, 2008
Washington	December 7, 2000	December 9, 2004	December 4, 2008
West Virginia	December 11, 2000	December 13, 2004	December 16, 2008
Wisconsin	December 11, 2000	December 6, 2004	December 6, 2008
Wyoming	November 22, 2000	December 2, 2004	November 12, 2008

APPENDIX K: OHIO ADOPTION OF THE GREAT LAKES BASIN COMPACT

SECTION 6161.01 (EFFECTIVE ON OCTOBER 9, 1963)

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:

GREAT LAKES BASIN COMPACT

The party states solemnly agree:

Article I

The purposes of this compact are, through means of joint or co-operative action:

(A) To promote the orderly, integrated, and comprehensive development, use, and conservation of the water sources of the great lakes basin (hereinafter called the basin);

(B) To plan for the welfare and development of the water resources of the basin as a whole, as well as for those portions of the basin which may have problems of special concern;

(C) To make it possible for the states of the basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time;

(D) To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the basin;

(E) To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

Article II

(A) 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.

(B) 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 in include a province of Canada.

Article III

The great lakes commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the basin which, for the purposes

of this compact, shall consist of so much of the following as may be within the party states:

(A) Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or man-made water interconnections between or among them;

(B) All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing condition, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior, or any of them, or which comprise part of any watershed draining into any of said lakes.

Article IV

(A) There is hereby created an agency of the party states to be known as the great lakes commission (hereinafter called the commission). In that name the commission may sue and be sued, acquire, hold and convey real and personal property, and any interest therein. The commission shall have a seal with the words "the great lakes commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the commission may by bylaws provide for the execution and acknowledgment of all instruments in its behalf.

(B) The commission shall be composed of not less than three commissioners nor more than five commissioners from each party state designated or appointed in accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

(C) Each state delegation shall be entitled to three votes in the commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the commission. Actions of the commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

(D) The commissioners of any two or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the commission unless and until the commission shall specifically approve the same.

(E) In the absence of any commissioner, his vote may be cast by another representative or commissioner of his state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the commission.

(F) The commission shall elect annually from among its members a chairman and vice-chairman. The commission shall appoint an executive director who shall also act

as secretary-treasurer, and who shall be bonded in such amount as the commission may require. The executive director shall serve at the pleasure of the commission and at such compensation and under such terms and conditions as may be fixed by it. The executive director shall be custodian of the records of the commission with authority to affix the commission's official seal and to attest and certify such records or copies thereof.

(G) The executive director, subject to the approval of the commission in such cases as its bylaws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the commission's functions. Subject to the aforesaid approval, the executive director may fix their compensation, define their duties, and require bonds of such of them as the commission may designate.

(H) The executive director, on behalf of, as trustee for, and with the approval of the commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm, or corporation; and may accept for any of the commission's purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm, or corporation and may receive and utilize the same.

(I) The commission may establish and maintain one or more offices for the transacting of its business and for such purposes the executive director, on behalf of, as trustee for, and with the approval of the commission, may acquire, hold, and dispose of real and personal property necessary to the performance of its functions.

(J) No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the commission.

(K) The commission may adopt, amend, and rescind bylaws, rules, and regulations for the conduct of its business.

(L) The organization meeting of the commission shall be held within six months from the effective date of this compact.

(M) The commission and its executive director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

(N) The commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

(O) The commission shall make and transmit annually to the legislature and governor of each party state a report covering the activities of the commission for the preceding year and embodying such recommendations as may have been adopted by the commission. The commission may issue such additional reports as it may deem desirable.

Article V

(A) The members of the commission shall serve without compensation, but the expenses of each commissioner shall be met by the state which he represents in accordance with the law of that state. All other expenses incurred by the commission in the course of exercising the powers conferred upon it by this compact, unless met in some other manner specifically provided by this compact, shall be paid by the commission out of its own funds.

(B) The commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of the state for presentation to the legislature thereof.

(C) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

(D) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this compact, provided that the commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the commission makes use of funds available to it under Article IV (H) hereof, the commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

(E) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

(F) The accounts of the commission shall be open at any reasonable time for inspection by such agency, representative, or representatives of the party states as may be duly constituted for that purpose and by others who may be authorized by the commission.

Article VI

The commission shall have power to:

(A) Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the basin or any portion thereof;

(B) Recommend methods for the orderly, efficient, and balanced development, use, and conservation of the water resources of the basin or any portion thereof to the party states and to any other governments or agencies having interests in or jurisdiction over the basin or any portion thereof;

(C) Consider the need for and desirability of public works and improvements relating to the water resources in the basin or any portion thereof;

(D) Consider means of improving navigation and port facilities in the basin or any portion thereof;

(E) Consider means of improving and maintaining the fisheries of the basin or any portion thereof;

(F) Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances, and regulations;

(G) Recommend uniform or other laws, ordinances, or regulations relating to the development, use, and conservation of the basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies, or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the basin or any portion thereof;

(H) Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements;

(I) Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sale prices therefor;

(J) With respect to the water resources of the basin or any portion thereof, recommend agreements between the governments of the United States and Canada;

(K) Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of congress and the parliament of Canada including but not limited to such agreements and mutual arrangement as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No. 548);

(L) Co-operate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the basin or any portion thereof;

(M) At the request of the United States, or in the event that a province shall be a party state, at the request of the government of Canada, assist in the negotiation and formulation of any treaty or other mutual arrangement or agreement between the United States and Canada with reference to the basin or any portion thereof;

(N) Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the commission by this compact, provided that no action of the commission shall have the force of law in, or be binding upon, any party state.

Article VII

Each party state agrees to consider the action the commission recommends in respect to:

(A) Stabilization of lake levels;

(B) Measures for combating pollution, beach erosion, floods, and shore inundation;

(C) Uniformity in navigation regulations within the constitutional powers of the states;

(D) Proposed navigation aids and improvements;

(E) Uniformity or effective co-ordinating action in fishing laws and regulations and co-operative action to eradicate destructive and parasitical forces endangering the fisheries, wild life, and other water resources;

(F) Suitable hydroelectric power developments;

(G) Co-operative programs for control of soil and bank erosion for the general improvement of the basin;

(H) Diversion of waters from and into the basin;

(I) Other measures the commission may recommend to the states pursuant to Article VI of this compact.

Article VIII

This compact shall continue in force and remain binding upon each party state until renounced by act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state, provided that such renunciation shall not become effective until six months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

Article IX

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person, or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person, or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

APPENDIX L: CONGRESSIONAL CONSENT TO THE INTERSTATE AGREEMENT ON DETAINERS

PUBLIC LAW 91-538 OF 1970

AN ACT
To enact the Interstate Agreement on Detainers into law

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

"The contracting States solemnly agree that:

"Article I
"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"Article II
"As used in this agreement:
"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.
"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"Article III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: Provided, That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and

courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"Article IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: Provided, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved recorded, and transmitted the request: And provided further, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody

shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further fore or effect, and the court shall enter an order dismissing the same with prejudice.

"Article V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in the sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing

herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"Article VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"Article VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"Article VIII

"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.

"Article IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

Sec. 3. The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Commissioner of the District of Columbia.

Sec. 4. The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

Sec. 5. All courts, departments, agencies officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

Sec. 6. For the United States, the Attorney General, and for the District of Columbia, the Commissioner of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

Sec. 7. The right to alter, amend, or repeal this Act is expressly reserved.

Sec. 8. This Act shall take effect on the ninetieth day after the date of its enactment.

APPENDIX M: LIST OF INTERSTATE COMPACTS

The National Center for Interstate Compacts of the Council of State Governments has compiled the following list of 196 interstate compacts believed to be currently in force as of 2006.

The National Center for Interstate Compacts (NCIC) is designed to be an information clearinghouse, a provider of training and technical assistance, and a primary facilitator in assisting states in their review, revision, and creation of new interstate compacts to solve multi-state problems or to provide alternatives to federal preemption. As such, the NCIC combines policy research and best practices, and functions as a membership association, serving the needs of compact administrators, compact commissions, and state agencies where interstate compacts are in effect.

For additional information on the National Center for Interstate Compacts (NCIC), visit `http://www.csg.org/ncic/`.

List of Interstate Compacts

- Apalachicola-Chattahoochee-Flint River Basin Compact,
- Alabama-Coosa-Tallapossa River Basin Compact,
- Animas–La Plata Project Compact,
- Appalachian States Low-Level Radioactive Waste Compact,
- Arkansas-Mississippi Great River Bridge Construction Compact Arkansas,
- Arkansas River Basin Compact of 1970,
- Arkansas River Compact of 1949,
- Arkansas River Compact of 1965 (Arkansas River Basin Compact, Kansas, Oklahoma),
- Atlantic States Marine Fisheries Compact Delaware,
- Bay State–Ocean State Compact,
- Bear River Compact,
- Belle Fourche River Compact,
- Chesapeake Bay Commission Agreement (Bi/Tri-State Agreement on the Chesapeake Bay)—Chesapeake Bay Commission,
- Bi-State Criminal Justice Center Compact Arkansas,
- Bi-State Development Agency Compact Missouri (Bi-State Metropolitan District),
- Boating Offense Compact,
- Breaks Interstate Park Compact,
- Buffalo and Fort Erie Bridge Compact New York,
- Bus Taxation Proration and Reciprocity Agreement,
- California-Nevada Compact for Jurisdiction on Interstate Waters,

- Canadian River Compact—Canadian River Compact Commission,
- Central Interstate Low-Level Radioactive Waste Compact—Central Interstate Low-Level Radioactive Waste Commission,
- Central Midwest Low-Level Radioactive Waste Compact,
- Chesapeake Regional Olympic Games Authority,
- Chickasaw Trail Economic Development Compact,
- Colorado River Compact,
- Colorado River Crime Enforcement Compact (Interstate Compact for Jurisdiction on the Colorado River),
- Columbia River Compact (Oregon-Washington Columbia River Fish Compact),
- (Columbia River Gorge Compact)—Columbia River Gorge Commission,
- Compact for Pension Portability for Educators,
- (Connecticut–New York) Railroad Passenger Transportation Compact,
- Connecticut River Atlantic Salmon Compact—Connecticut River Atlantic Salmon Compact Commission,
- Connecticut River Valley Flood Control Compact,
- Costilla Creek Compact Colorado,
- Cumberland Gap National Park Compact Virginia,
- Cumbres and Toltec Scenic Railroad Compact,
- Delaware River and Bay Authority Compact (Delaware–New Jersey Compact),
- Delaware River Basin Compact—Delaware River Basin Commission,
- Delaware River Joint Toll Bridge Compact,
- Delaware River and Port Authority Compact—Delaware River Port Authority,
- Delaware Valley Urban Area Compact—Delaware Valley Regional Planning Commission,
- Delmarva Advisory Council Agreement Virginia,
- Desert Pacific Economic Region Compact,
- Drivers' License Compact—American Association of Motor Vehicle Administrators,
- Emergency Management Assistance Compact,
- Great Lakes Basin Compact Indiana—Great Lakes Basin Commission,
- Great Lakes Forest Fire Compact—Great Lakes Forest Fire Compact Board,
- Gulf States Marine Fisheries Compact,
- Historic Chattahoochee Compact,
- International Registration Plan,
- International Fuel Tax Agreement (Motor Carriers),
- Interpleader Compact,

- Interstate Adoption Assistance Compact,
- (Interstate) Agreement on Qualification of Educational Personnel,
- (Interstate) Civil Defense (and Disaster Compact),
- (Interstate) Compact for (on) Adoption and Medical Assistance,
- Interstate Compact for Adult offender Supervision,
- (Interstate) Compact for Education (Compact)—Education Commission of the States,
- (Interstate) Compact(s) on Parole and Probation (the Supervision of Parolees and Probationers) (for the Supervision of) (Interstate Compact for Supervision of Parolees and Probationers),
- (Interstate) Civil Defense (and Disaster) Compact,
- Interstate Compact on Energy (Midwest Energy Compact),
- Interstate Compact on Industrialized/Modular Buildings,
- Interstate Compact on Juveniles—Association of Juvenile Compact Administrators,
- Interstate Compact on Licensure of Participants in Live Racing with Parimutuel Wagering,
- Interstate (Compact on) Pest Control Compact—Interstate Pest Control Governing Board,
- (Interstate) Compact on (the) Placement of Children,
- Interstate (Compact to Conserve) Oil and Gas Compact Illinois—Interstate Oil and Gas Compact Commission,
- Interstate Corrections Compact,
- Interstate Dealer Licensing Compact,
- Interstate Earthquake Emergency Compact,
- Interstate Forest Fire Suppression Compact,
- Interstate Furlough Compact Utah,
- Interstate High Speed Intercity Rail Passenger Network Compact/Interstate High Speed Rail Compact,
- Interstate Insurance Receivership Compact,
- Interstate Jobs Protection Compact,
- Interstate Library Compact,
- Interstate Mining Compact—Interstate Mining Compact Commission,
- (Interstate) Mutual Aid (Agreements) Compact,
- Interstate Rail Passenger Network Compact,
- Interstate Solid Waste Compact,
- (Interstate) (Uniform) Agreement on Detainers (Interstate Compact on),
- Interstate Water Supply Compact (Vermont–New Hampshire),

- (Interstate) Wildlife Violator Compact,
- Jennings Randolph Lake Project Compact,
- Kansas City Area Transportation District and Authority Compact,
- Kansas-Missouri Flood Prevention and Control Compact Missouri,
- (Kansas-Nebraska) Big Blue River Compact,
- Klamath River Compact,
- La Plata River Compact,
- Low-Level Radioactive Waste Disposal,
- Live Horseracing Compact (the Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering),
- Maine–New Hampshire School District Compact,
- Mentally Disordered Offender Compact,
- Middle Atlantic (Interstate) Forest Fire Protection Compact,
- Midwestern Higher Education Compact—Midwestern Higher Education Commission,
- Midwest Interstate Passenger Rail Compact,
- Midwest Interstate Low-Level Radioactive Waste Compact,
- Minnesota-Wisconsin Boundary (Area) Compact,
- Mississippi River Interstate Pollution Phase Out Compact,
- Missouri and Kansas Metropolitan Culture District Compact,
- Missouri River Toll Bridge Compact,
- Motor Vehicle Safety Equipment Compact,
- Multistate Highway Transportation Agreement,
- Multistate Lottery Agreement,
- Multistate Tax Compact—The Multistate Tax Commission,
- Mutual Interstate Aid Agreements and Compacts,
- Mutual/Military Aid Compact,
- National Crime Prevention and Privacy Compact,
- National Guard Mutual Assistance Compact,
- National Guard Mutual Assistance Counter-Drug Activities Compact,
- New England Compact on Radiological Health Protection,
- New England Compact on Involuntary Detention for Tuberculosis Control,
- New England (Interstate) Corrections Compact,
- New England Higher Education Compact—New England Board of Higher Education,
- New England Interstate Water Pollution Control Compact—New England Interstate Water Pollution Control Commission,
- New England States Emergency Military Aid Compact,

- New England (State) Police Compact Massachusetts,
- New England Truckers Compact,
- New England Truck Permit Agreement for Oversize, Non-Divisible, Interstate Loads,
- New Hampshire–Massachusetts Interstate Sewage and Waste Disposal Facilities Compact,
- New Hampshire–Vermont Interstate School Compact (Hanover-Norwich District),
- New Hampshire–Vermont Interstate Sewage and Waste Disposal Facilities Compact,
- New Jersey–Pennsylvania Turnpike Bridge Compact,
- New York–New Jersey Port Authority Compact—The Port Authority of New York and New Jersey,
- New York–Vermont Interstate School Compact,
- Nonresident Violator Compact—American Association of Motor Vehicle Administrators,
- Northern New England Low-Level Radioactive Waste Compact,
- Northeast Interstate Dairy Compact,
- Northeast Interstate Low-Level Radioactive Waste Management Compact,
- Northeast Mississippi–Northwest Alabama Railroad Authority Compact,
- Northeastern (Interstate) Forest Fire Protection Compact—Northeastern Forest Fire Protection Commission,
- Northeast Interstate Dairy Compact—Northeast Interstate Dairy Compact Committee,
- Northeast Interstate Low-Level Radioactive Waste Management Compact,
- Northwest (Interstate) Compact on Low-Level Radioactive Waste Management,
- Nurse Licensure Compact,
- Ogdensburg Bridge and Port Authority,
- Ohio River Valley Water Sanitation Compact—Ohio River Valley Sanitation Commission,
- Out-of-State Parollee Supervision,
- Pacific Marine Fisheries Compact—Pacific States Marine Fisheries Commission,
- Pacific Ocean Resources Compact,
- Pacific States Agreement on Radioactive Materials Transportation,
- Palisades Interstate Park Compact New Jersey—Palisades Interstate Park Commission,
- Pecos River Compact Texas—Pecos River Compact Commission,

- Portsmouth-Kittery Bridge Compact,
- Potomac Highlands Airport Authority,
- Potomac River Bridges Towing Compact,
- Potomac River Compact of 1958,
- Potomac Valley Compact (Conservancy District) (Potomac River Basin Interstate Compact of 1940),
- Pymatuning Lake Compact,
- Quad Cities Interstate Metropolitan Authority Compact,
- Red River Compact—Red River Compact Commission,
- Republican River Compact,
- Rio Grande Interstate Compact—Rio Grande Compact Commission,
- Rocky Mountain Low-Level Radioactive Waste Compact,
- Sabine River Compact,
- Snake River Compact,
- South Central (Interstate) Forest Fire Protection Compact,
- South Platte River Compact,
- Southern Dairy Compact,
- Southern Growth Policies (Agreements) (Board) (Compact)—Southern Growth Policies Board,
- Southern (Interstate) (Energy) (Nuclear) Compact (Southern States Energy Compact),
- Southeastern (Interstate) Forest Fire Protection Compact,
- Southeast Interstate Low-Level Radioactive Waste (Management) Compact—Southeast Interstate Low-Level Radioactive Waste Commission,
- (Southern) Rapid Rail Transit Compact (Mississippi-Louisiana-Alabama-Georgia Rapid Rail Transit Compact),
- Southern Regional Education Compact—Southern Regional Education Board,
- Southwestern Low-Level Radioactive Waste Disposal Compact,
- Susquehanna River Basin Compact—Susquehanna River Basin Commission,
- Tahoe Regional Planning Compact,
- Tangipahoa River Waterway Compact,
- Taxation of Motor Fuels Consumed by Interstate Buses,
- Tennessee-Tombigbee Waterway Development Compact—Tombigbee Waterway Development Authority,
- Tennessee Interstate Furlough Compact,
- (Texas) Low-Level Radioactive Waste Disposal Compact,
- (The) Interstate Compact on Agricultural Grain Marketing,
- (The) (Interstate) Compact on Mental Health,

- Thames River Flood Control Compact,
- Tri-State Agreement on the Chesapeake Bay,
- Tri-State Delta Economic Compact,
- Tri-State Lotto Compact,
- Tri-State Sanitation Compact (Interstate Environmental Commission, Tri-State Compact),
- Tuberculosis Control Compact,
- Unclaimed (Abandoned or Uniform) Property Compact (Act) (Uniform Disposition of Unclaimed Property Act),
- Upper Colorado River Basin Compact,
- Upper Niobrara River Compact,
- Vehicle Equipment Safety Compact—American Association of Motor Vehicle Administrators,
- Wabash Valley Compact,
- Washington Metropolitan Area Transit Authority—Washington Metropolitan Area Transit Authority,
- Washington Metropolitan Area Transit District,
- Waterfront Commission Compact,
- Western (Interstate) Corrections Compact,
- Western Interstate Nuclear (Energy) (Cooperation) Compact,
- Western Regional (Higher) Education Compact—Western Interstate Commission for Higher Education,
- Wheeling Creek Watershed Protection and Flood Prevention Compact,
- Woodrow Wilson Bridge and Tunnel Compact, and
- Yellowstone River Compact.

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APPENDIX N: CONGRESSIONAL CONSENT TO THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT

PUBLIC LAW 104–321 OF 1996

JOINT RESOLUTION
Granting the consent of Congress to
the Emergency Management Assistance Compact

Resolved by the Senate and House of Representatives of the United States of America 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:

"Emergency Management Assistance Compact

"ARTICLE I.
"PURPOSE AND AUTHORITIES.
"This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term 'states' is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.
"The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.
"This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

"ARTICLE II.
"GENERAL IMPLEMENTATION.
"Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.
"The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.
"On behalf of the Governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

"ARTICLE III.
"PARTY STATE RESPONSIBILITIES.
"A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

"1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;

"2. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

"3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

"4. Assist in warning communities adjacent to or crossing the state boundaries;

"5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

"6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

"7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

"B. The authorized representative of a party state may request assistance to another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

"1. A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

"2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

"3. The specific place and time for staging of the assisting party's response and a point of contact at that location.

"C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

"ARTICLE IV.

"LIMITATIONS.

"Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

"Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

"ARTICLE V.
"LICENSES AND PERMITS.
"Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting state may prescribe by executive order or otherwise.

"ARTICLE VI.
"LIABILITY.
"Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

"ARTICLE VII.
"SUPPLEMENTARY AGREEMENTS.
"Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base

common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

"ARTICLE VIII.
"COMPENSATION.
"Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

"ARTICLE IX.
"REIMBURSEMENT.
"Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

"ARTICLE X.
"EVACUATION.
"Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the

registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

"ARTICLE XI.
"IMPLEMENTATION.
"A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.
"B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.
"C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

"ARTICLE XII.
"VALIDITY.
"This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

"ARTICLE XIII.
"ADDITIONAL PROVISIONS.
"Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emer-

gency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code."

SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

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 III A. 7. that does not otherwise exist for the suspension of statutes or ordinances;
(5) be construed as understanding that Article III C. 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.

SEC. 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.

SEC. 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.

APPENDIX O: U.S. SUPREME COURT DECISION IN *MCPHERSON V. BLACKER* (1892)

U.S. Supreme Court
146 U.S. 1
McPherson et al. v. Blacker, Secretary of State
No. 1,170
October 17, 1892

Statement by Mr. Chief Justice FULLER:

William McPherson, Jr., Jay A. Hubbell, J. Henry Carstens, Charles E. Hiscock, Otto Ihling, Philip T. Colgrove, Conrad G. Swensburg, Henry A. Haigh, James H. White, Fred. Slocum, Justus S. Stearns, John Millen, Julius T. Hannah, and J. H. Comstock filed their petition and affidavits in the supreme court of the state of Michigan on May 2, 1892, as nominees for presidential electors, against Robert R. Blacker, secretary of state of Michigan, praying that the court declare the act of the legislature, approved May 1, 1891, (Act No. 50, Pub. Acts Mich. 1891,) entitled "An act to provide for the election of electors of president and vice president of the United States, and to repeal all other acts and parts of acts in conflict herewith," void and of no effect, and that a writ of mandamus be directed to be issued to the said secretary of state, commanding him to cause to be delivered to the sheriff of each county in the state, between the 1st of July and the 1st of September, 1892, "a notice in writing that at the next general election in this state, to be held on Tuesday, the 8th day of November, 1892, there will be chosen (among other officers to be named in said notice) as many electors of president and vice president of the United States as this state may be entitled to elect senators and representatives in the congress."

The statute of Michigan (1 How. Ann. St. Mich. 147, c. 9, p. 133) provided: "The secretary of the state shall, between the 1st day of July and the 1st day of September preceding a general election, direct and cause to be delivered to the sheriff of each county in this state a notice in writing that, at the next general election, there will be chosen as many of the following officers as are to be elected at such general election, viz.: A governor, lieutenant governor, secretary of state, state treasurer, auditor general, attorney general, superintendent of public instruction, commissioner of state land office, members of the state board of education, electors of president and vice president of the United States, and a representative in congress for the district to which each of such counties shall belong."

A rule to show cause having been issued, the respondent, as secretary of state, answered the petition, and denied that he had refused to give the notice thus required, but he said "that it has always been the custom in the office of the secretary of state, in giving notices under said section 147, to state in the notice the number of electors that should be printed on the ticket in each voting precinct in each county in this state, and following such custom with reference to such notice, it is the intention of

this respondent in giving notice under section 147 to state in said notice that there will be elected one presidential elector at large and one district presidential elector and two alternate presidential electors, one for the elector at large and one for the district presidential elector, in each voting precinct, so that the election may be held under and in accordance with the provisions of Act No. 50 of the Public Acts of the state of Michigan of 1891."

By an amended answer the respondent claimed the same benefit as if he had demurred.

Relators relied in their petition upon various grounds as invalidating Act No. 50 of the Public Acts of Michigan of 1891, and, among them, that the act was void because in conflict with clause 2 of section 1 of article 2 of the constitution of the United States, and with the fourteenth amendment to that instrument, and also in some of its provisions in conflict with the act of congress of February 3, 1887, entitled "An act to fix the day for the meeting of the electors of president and vice president, and to provide for and regulate the counting of the votes for president and vice president, and the decision of questions arising thereon." The supreme court of Michigan unanimously held that none of the objections urged against the validity of the act were tenable; that it did not conflict with clause 2, 1, art. 2, of the constitution, or with the fourteenth amendment thereof; and that the law was only inoperative so far as in conflict with the law of congress in a matter in reference to which congress had the right to legislate. The opinion of the court will be found reported, in advance of the official series, in 52 N. W. Rep. 469.

Judgment was given, June 17, 1892, denying the writ of mandamus, whereupon a writ of error was allowed to this court.

The October term, 1892, commenced on Monday, October 10th, and on Tuesday, October 11th, the first day upon which the application could be made, a motion to advance the case was submitted by counsel, granted at once in view of the exigency disclosed upon the face of the papers, and the cause heard that day. The attention of the court having been called to other provisions of the election laws of Michigan than those supposed to be immediately involved, (Act No. 190, Pub. Acts Mich. 1891, pp. 258, 263,) the chief justice, on Monday, October 17th, announced the conclusions of the court, and directed the entry of judgment affirming the judgment of the supreme court of Michigan, and ordering the mandate to issue at once, it being stated that this was done because immediate action under the state statutes was apparently required and might be affected by delay, but it was added that the court would thereafter file an opinion stating fully the grounds of the decision.

Act No. 50 of the Public Acts of 1891 of Michigan is as follows:

> "An act to provide for the election of electors of president and vice president of the United States, and to repeal all other acts and parts of acts in conflict herewith.

"*Section 1.* The people of the state of Michigan enact that, at the general election next preceding the choice of president and vice president of the United States, there shall be elected as many electors of president and vice president as this state may be entitled to elect of senators and representatives in congress in the following manner, that is to say: There shall be elected by the electors of the districts hereinafter defined one elector of president and vice president of the United States in each district, who shall be known and designated on the ballot, respectively, as 'eastern district elector of president and vice president of the United States at large,' and 'western district elector of president and vice president of the United States at large.' There shall also be elected, in like manner, two alternate electors of president and vice president, who shall be known and designated on the ballot as 'eastern district alternate elector of president and vice president of the United States at large,' and 'western district alternate elector of president and vice president of the United States at large;' for which purpose the first, second, sixth, seventh, eighth, and tenth congressional districts shall compose one district, to be known as the 'Eastern Electoral District,' and the third, fourth, fifth, ninth, eleventh, and twelfth congressional districts shall compose the other district, to be known as the 'Western Electoral District.' There shall also be elected, by the electors in each congressional district into which the state is or shall be divided, one elector of president and vice president, and one alternate elector of president and vice president, the ballots for which shall designate the number of the congressional district and the persons to be voted for therein, as 'district elector' and 'alternate district elector' of president and vice president of the United States, respectively.

"*Sec. 2.* The counting, canvassing, and certifying of the votes cast for said electors at large and their alternates, and said district electors and their alternates, shall be done as near as may be in the same manner as is now provided by law for the election of electors of president and vice president of the United States.

"*Sec. 3.* The secretary of state shall prepare three lists of the names of the electors and the alternate electors, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver such certificates thus signed and sealed to one of the electors, on or before the first Wednesday of December next following said general election. In case of death, disability, refusal to act, or neglect to attend, by the hour of twelve o'clock at noon of said day, of either of said electors at large, the duties of the office shall be performed by the alternate electors at large, that is to say: The eastern district alternate elector at large shall supply the place of the eastern district elector at large, and the western district alternate elec-

> tor at large shall supply the place of the western district elector at large. In like case, the alternate congressional district elector shall supply the place of the congressional district elector. In case two or more persons have an equal and the highest number of votes for any office created by this act as canvassed by the board of state canvassers, the legislature in joint convention shall choose one of said persons to fill such office, and it shall be the duty of the governor to convene the legislature in special session for such purpose immediately upon such determination by said board of state canvassers.
> "*Sec. 4.* The said electors of president and vice president shall convene in the senate chamber at the capital of the state at the hour of twelve o'clock at noon, on the first Wednesday of December immediately following their election, and shall proceed to perform the duties of such electors as required by the constitution and the laws of the United States. The alternate electors shall also be in attendance, but shall take no part in the proceedings, except as herein provided.
> "*Sec. 5.* Each of said electors and alternate electors shall receive the sum of five dollars for each day's attendance at the meetings of the electors as above provided, and five cents per mile for the actual and necessary distance traveled each way in going to and returning from said place of meeting, the same to be paid by the state treasurer upon the allowance of the board of state auditors.
> "*Sec. 6.* All acts and parts of acts in conflict with the provisions of this act are hereby repealed." Pub. Acts Mich. 1891, pp. 50, 51.

Section 211 of Howell's Annotated Statutes of Michigan (volume 1, c. 9, p. 145) reads:

> "For the purpose of canvassing and ascertaining the votes given for electors of president and vice president of the United States, the board of state canvassers shall meet on the Wednesday next after the third Monday of November, or on such other day before that time as the secretary of state shall appoint; and the powers, duties, and proceedings of said board, and of the secretary of state, in sending for, examining, ascertaining, determining, certifying, and recording the votes and results of the election of such electors, shall be in all respects, as near as may be, as hereinbefore provided in relation to sending for, examining, ascertaining, determining, certifying, and recording the votes and results of the election of state officers."

Section 240 of Howell's Statutes, in force prior to May 1, 1891, provided: "At the general election next preceding the choice of president and vice president of the United States, there shall be elected by general ticket as many electors of president

and vice president as this state may be entitled to elect of senators and representatives in congress."

The following are sections of article 8 of the constitution of Michigan:

> "*Sec. 4.* The secretary of state, state treasurer, and commissioner of the state land office shall constitute a board of state auditors, to examine and adjust all claims against the state, not otherwise provided for by general law. They shall constitute a board of state canvassers, to determine the result of all elections for governor, lieutenant governor, and state officers, and of such other officers as shall by law be referred to them.
> "*Sec. 5.* In case two or more persons have an equal and the highest number of votes for any office, as canvassed by the board of state canvassers, the legislature in joint convention shall choose one of said persons to fill such office. When the determination of the board of state canvassers is contested, the legislature in joint convention shall decide which person is elected." 1 How. Ann. St. Mich. p. 57.

Reference was also made in argument to the act of congress of February 3, 1887, to fix the day for the meeting of the electors of president and vice president, and to provide for and regulate and counting of the votes. 24 St. p. 373.

Henry M. Duffield, W. H. H. Miller, and Fred A. Baker, for plaintiff in error.

Otto Kirchner, A. A. Ellis, and John W. Champlin, for defendant in error.

Mr. Chief Justice FULLER, after stating the facts in the foregoing language, delivered the opinion of the court. The supreme court of Michigan held, in effect, that if the act in question were invalid, the proper remedy had been sought. In other words, if the court had been of opinion that the act was void, the writ of mandamus would have been awarded.

And having ruled all objections to the validity of the act urged as arising under the state constitution and laws adversely to the plaintiffs in error, the court was compelled to, and did, consider and dispose of the contention that the act was invalid because repugnant to the constitution and laws of the United States.

We are not authorized to revise the conclusions of the state court on these matters of local law, and, those conclusions being accepted, it follows that the decision of the federal questions is to be regarded as necessary to the determination of the cause. *De Saussure v. Gaillard*, 127 U.S. 216, 8 Sup. Ct. Rep. 1053.

Inasmuch as, under section 709 of the Revised Statutes of the United States, we have jurisdiction by writ of error to re-examine and reverse or affirm the final judgment in any suit in the highest court of a state in which a decision could be had, where the validity of a statute of the state is drawn in question on the ground that it is repugnant to the constitution and laws of the United States, and the decision is in favor of its validity, we perceive no reason for holding that this writ was improvidently brought.

It is argued that the subject-matter of the controversy is not of judicial cognizance, because it is said that all questions connected with the election of a presidential elector are political in their nature; that the court has no power finally to dispose of them; and that its decision would be subject to review by political officers and agencies, as the state board of canvassers, the legislature in joint convention, and the governor, or, finally, the congress.

But the judicial power of the United States extends to all cases in law or equity arising under the constitution and laws of the United States, and this is a case so arising, since the validity of the state law was drawn in question as repugnant to such constitution and laws, and its validity was sustained. *Boyd v. State*, 143 U.S. 135, 12 Sup. Ct. Rep. 375. And it matters not that the judgment to be reviewed may be rendered in a proceeding for mandamus. *Hartman v. Greenhow*, 102 U.S. 672.

As we concur with the state court, its judgment has been affirmed; if we had not, its judgment would have been reversed. In either event, the questions submitted are finally and definitely disposed of by the judgment which we pronounce, and that judgment is carried into effect by the transmission of our mandate to the state court.

The question of the validity of this act, as presented to us by this record, is a judicial question, and we cannot decline the exercise of our jurisdiction upon the inadmissible suggestion that action might be taken by political agencies in disregard of the judgment of the highest tribunal of the state, as revised by our own.

On behalf of plaintiffs in error it is contended that the act is void because in conflict with (1) clause 2, 1, art. 2, of the constitution of the United States; (2) the fourteenth and fifteenth amendments to the constitution; and (3) the act of congress, of February 3, 1887.

The second clause of section 1 of article 2 of the constitution is in these words: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

The manner of the appointment of electors directed by the act of Michigan is the election of an elector and an alternate elector in each of the twelve congressional districts into which the state of Michigan is divided, and of an elector and an alternate elector at large in each of two districts defined by the act. It is insisted that it was not competent for the legislature to direct this manner of appointment, because the state is to appoint as a body politic and corporate, and so must act as a unit, and cannot delegate the authority to subdivisions created for the purpose; and it is argued that the appointment of electors by districts is not an appointment by the state, because all its citizens otherwise qualified are not permitted to vote for all the presidential electors.

"A state, in the ordinary sense of the constitution," said Chief Justice Chase, (*Texas v. White*, 7 Wall. 700, 731,) "is a political community of free citizens, occupying

a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed." The state does not act by its people in their collective capacity, but through such political agencies as are duly constituted and established. The legislative power is the supreme authority, except as limited by the constitution of the state, and the sovereignty of the people is exercised through their representatives in the legislature, unless by the fundamental law power is elsewhere reposed. The constitution of the United States frequently refers to the state as a political community, and also in terms to the people of the several states and the citizens of each state. What is forbidden or required to be done by a state is forbidden or required of the legislative power under state constitutions as they exist. The clause under consideration does not read that the people or the citizens shall appoint, but that "each state shall;" and if the words, "in such manner as the legislature thereof may direct," had been omitted, it would seem that the legislative power of appointment could not have been successfully questioned in the absence of any provision in the state constitution in that regard. Hence the insertion of those words, while operating as a limitation upon the state in respect of any attempt to circumscribe the legislative power, cannot be held to operate as a limitation on that power itself.

If the legislature possesses plenary authority to direct the manner of appointment, and might itself exercise the appointing power by joint ballot or concurrence of the two houses, or according to such mode as designated, it is difficult to perceive why, if the legislature prescribes as a method of appointment choice by vote, it must necessarily be by general ticket, and not by districts. In other words, the act of appointment is none the less the act of the state in its entirety because arrived at by districts, for the act is the act of political agencies duly authorized to speak for the state, and the combined result is the expression of the voice of the state, a result reached by direction of the legislature, to whom the whole subject is committed.

By the first paragraph of section 2, art. 1, it is provided: "The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature;" and by the third paragraph, "when vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies." Section 4 reads: "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators."

Although it is thus declared that the people of the several states shall choose the members of congress, (language which induced the state of New York to insert a salvo as to the power to divide into districts, in its resolutions of ratification,) the state legislatures, prior to 1842, in prescribing the times, places, and manner of holding elections

for representatives, had usually apportioned the state into districts, and assigned to each a representative; and by act of congress of June 25, 1842, (carried forward as section 23 of the Revised Statutes,) it was provided that, where a state was entitled to more than one representative, the election should be by districts. It has never been doubted that representatives in congress thus chosen represented the entire people of the state acting in their sovereign capacity.

By original clause 3, 1, art. 2, and by the twelfth amendment, which superseded that clause in case of a failure in the election of president by the people the house of representatives is to choose the president; and "the vote shall be taken by states, the representation from each state having one vote." The state acts as a unit, and its vote is given as a unit, but that vote is arrived at through the votes of its representatives in congress elected by districts.

The state also acts individually through its electoral college, although, by reason of the power of its legislature over the manner of appointment, the vote of its electors may be divided.

The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors. It recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object.

The framers of the constitution employed words in their natural sense; and, where they are plain and clear, resort to collateral aids to interpretation is unnecessary, and cannot be indulged in to narrow or enlarge the text; but where there is ambiguity or doubt, or where two views may well be entertained, contemporaneous and subsequent practical construction is entitled to the greatest weight. Certainly, plaintiffs in error cannot reasonably assert that the clause of the constitution under consideration so plainly sustains their position as to entitle them to object that contemporaneous history and practical construction are not to be allowed their legitimate force, and, conceding that their argument inspires a doubt sufficient to justify resort to the aids of interpretation thus afforded, we are of opinion that such doubt is thereby resolved against them, the contemporaneous practical exposition of the constitution being too strong and obstinate to be shaken or controlled. *Stuart v. Laird*, 1 Cranch, 299, 309.

It has been said that the word "appoint" is not the most appropriate word to describe the result of a popular election. Perhaps not; but it is sufficiently comprehensive to cover that mode, and was manifestly used as conveying the broadest power of determination. It was used in article 5 of the articles of confederation, which provided that "delegates shall be annually appointed in such manner as the legislature of each state shall direct;" and in the resolution of congress of February 21, 1787, which declared it expedient that "a convention of delegates who shall have been appointed by the several states" should be held. The appointment of delegates was, in fact, made by the legislatures directly, but that involved no denial of authority to direct some other

mode. The constitutional convention, by resolution of September 17, 1787, expressed the opinion that the congress should fix a day "on which electors should be appointed by the states which shall have ratified the same," etc., and that, "after such publication, the electors should be appointed, and the senators and representatives elected."

The journal of the convention discloses that propositions that the president should be elected by "the citizens of the United States," or by the "people," or "by electors to be chosen by the people of the several states," instead of by the congress, were voted down, (Jour. Conv. 286, 288; 1 Elliot, Deb. 208, 262,) as was the proposition that the president should be "chosen by electors appointed for that purpose by the legislatures of the states," though at one time adopted, (Jour. Conv. 190; 1 Elliot, Deb. 208, 211, 217;) and a motion to postpone the consideration of the choice "by the national legislature," in order to take up a resolution providing for electors to be elected by the qualified voters in districts, was negatived in committee of the whole, (Jour. Conv. 92; 1 Elliot, Deb. 156.) Gerry proposed that the choice should be made by the state executives; Hamilton, that the election be by electors chosen by electors chosen by the people; James Wilson and Gouverneur Morris were strongly in favor of popular vote; Ellsworth and Luther Martin preferred the choice by electors elected by the legislatures; and Roger Sherman, appointment by congress. The final result seems to have reconciled contrariety of views by leaving it to the state legislatures to appoint directly by joint ballot or concurrent separate action, or through popular election by districts or by general ticket, or as otherwise might be directed.

Therefore, on reference to contemporaneous and subsequent action under the clause, we should expect to find, as we do, that various modes of choosing the electors were pursued, as, by the legislature itself on joint ballot; by the legislature through a concurrent vote of the two houses; by vote of the people for a general ticket; by vote of the people in districts; by choice partly by the people voting in districts and partly by the people voting in districts and partly by the candidates voted for by the people in districts; and in other ways, as, notably, by North Carolina in 1792, and Tennessee in 1796 and 1800. No question was raised as to the power of the state to appoint in any mode its legislature saw fit to adopt, and none that a single method, applicable without exception, must be pursued in the absence of an amendment to the constitution. The district system was largely considered the most equitable, and Madison wrote that it was that system which was contemplated by the framers of the constitution, although it was soon seen that its adoption by some states might place them at a disadvantage by a division of their strength, and that a uniform rule was preferable.

At the first presidential election, the appointment of electors was made by the legislatures of Connecticut, Delaware, Georgia, New Jersey, and South Carolina. Pennsylvania, by act of October 4, 1788, (Acts Pa. 1787–88, p. 513,) provided for the election of electors on a general ticket. Virginia, by act of November 17, 1788, was divided into 12 separate districts, and an elector elected in each district, while for the election of congressmen the state was divided into 10 other districts. Laws Va. Oct.

Sess. 1788, pp. 1, 2. In Massachusetts, the general court, by resolve of November 17, 1788, divided the state into districts for the election of representatives in congress, and provided for their election, December 18, 1788, and that at the same time the qualified inhabitants of each district should give their votes for two persons as candidates for an elector of president and vice president of the United States, and, from the two persons in each district having the greatest number of votes, the two houses of the general court by joint ballot should elect one as elector, and in the same way should elect two electors at large. Mass. Resolves 1788, p. 53. In Maryland, under elected on general ticket, five being residents elected on general ticket, five being residents of the Western Shore, and three of the Eastern Shore. Laws Md. 1788, c. 10. In New Hampshire an act was passed November 12, 1788, (Laws N. H. 1789, p. 169,) providing for the election of five electors by majority popular vote, and in case of no choice that the legislature should appoint out of so many of the candidates as equaled double the number of electors elected. There being no choice, the appointment was made by the legislature. The senate would not agree to a joint ballot, and the house was compelled, that the vote of the state might not be lost, to concur in the electors chosen by the senate. The state of New York lost its vote through a similar contest. The assembly was willing to elect by joint ballot of the two branches or to divide the electors with the senate, but the senate would assent to nothing short of a complete negative upon the action of the assembly, and the time for election passed without an appointment. North Carolina and Rhode Island had not then ratified the constitution.

Fifteen states participated in the second presidential election, in nine of which electors were chosen by the legislatures. Maryland, Laws Md. 1790, c. 16; Laws 1791, c. 62,) New Hampshire, (Laws N. H. 1792, pp. 398, 401,) and Pennsylvania, (Laws Pa. 1792, p. 240,) elected their electors on a general ticket, and Virginia by districts, (Laws Va. 1792, p. 87.) In Massachusetts the general court, by resolution of June 30, 1792, divided the state into four districts, in each of two of which five electors were elected, and in each of the other two three electors. Mass. Resolves, June, 1792, p. 25. Under the apportionment of April 13, 1792, North Carolina was entitled to ten members of the house of representatives. The legislature was not in session, and did not meet until November 15th, while under the act of congress of March 1, 1792, (1 St. p. 239,) the electors were to assemble on December 5th. The legislature passed an act dividing the state into four districts, and directing the members of the legislature residing in each district to meet on the 25th of November, and choose three electors. 2 Ired. N. C. Laws, 1715–1800, c. 15 of 1792. At the same session an act was passed dividing the state into districts for the election of electors in 1796, and every four years thereafter. *Id.* c. 16.

Sixteen states took part in the third presidential election, Tennessee having been admitted June 1, 1796. In nine states the electors were appointed by the legislatures, and in Pennsylvania and New Hampshire by popular vote for a general ticket. Virginia, North Carolina, and Maryland elected by districts. The Maryland law of December 24, 1795, was entitled "An act to alter the mode of electing electors," and provided for

dividing the state into ten districts, each of which districts should "elect and appoint one person, being a resident of the said district, as an elector." Laws Md. 1795, c. 73. Massachusetts adhered to the district system, electing one elector in each congressional district by a majority vote. It was provided that, if no one had a majority, the legislature should make the appointment on joint ballot, and the legislature also appointed two electors at large in the same manner. Mass. Resolves, June, 1796, p. 12. In Tennessee an act was passed August 8, 1796, which provided for the election of three electors, "one in the district of Washington, one in the district of Hamilton, and one in the district of Mero," and, "that the said electors may be elected with as little trouble to the citizens as possible," certain persons of the counties of Washington, Sullivan, Green, and Hawkins were named in the act and appointed electors to elect an elector for the district of Washington; certain other persons of the counties of Knox, Jefferson, Sevier, and Blount were by name appointed to elect an elector for the district of Hamilton; and certain others of the counties of Davidson, Sumner, and Tennessee to elect an elector for the district of Mero. Laws Tenn. 1794, 1803, p. 209; Acts 2d Sess. 1st Gen. Assem. Tenn. c. 4. Electors were chosen by the persons thus designated.

In the fourth presidential election, Virginia, under the advice of Mr. Jefferson, adopted the general ticket, at least "until some uniform mode of choosing a president and vice president of the United States shall be prescribed by an amendment to the constitution." Laws Va. 1799–1800, p. 3. Massachusetts passed a resolution providing that the electors of that state should be appointed by joint ballot of the senate and house. Mass. Resolves, June, 1800, p. 13. Pennsylvania appointed by the legislature, and, upon a contest between the senate and house, the latter was forced to yield to the senate in agreeing to an arrangement which resulted in dividing the vote of the electors. 26 Niles' Reg. 17. Six states, however, chose electors by popular vote, Rhode Island supplying the place of Pennsylvania, which had theretofore followed that course. Tennessee, by act October 26, 1799, designated persons by name to choose its three electors, as under the act of 1796. Laws Tenn, 1794–1803, p. 211; Acts 2d Sess. 2d Gen. Assem, Tenn. c. 46.

Without pursuing the subject further, it is sufficient to observe that, while most of the states adopted the general ticket system, the district method obtained in Kentucky until 1824; in Tennessee and Maryland until 1832; in Indiana in 1824 and 1828; in Illinois in 1820 and 1824; and in Maine in 1820, 1824, and 1828. Massachusetts used the general ticket system in 1804, (Mass. Resolves, June, 1804, p. 19;) chose electors by joint ballot of the legislature in 1808 and in 1816, (Mass. Resolves 1808, pp. 205, 207, 209; Mass. Resolves 1816, p. 233;) used the district system again in 1812 and 1820, (Mass. Resolves 1812, p. 94; Mass. Resolves 1820, p. 245;) and returned to the general ticket system in 1824, (Mass. Resolves 1824, p. 40.) In New York the electors were elected in 1828 by districts, the district electors choosing the electors at large. Rev. St. N. Y. 1827, tit. 6, p. 24. The appointment of electors by the legislature, instead of by popular vote, was made use of by North Carolina, Vermont, and New Jersey in 1812.

In 1824 the electors were chosen by popular vote, by districts, and by general

ticket, in all the states excepting Delaware, Georgia, Louisiana, New York, South Carolina, and Vermont, where they were still chosen by the legislature. After 1832 electors were chosen by general ticket in all the states excepting South Carolina, where the legislature chose them up to and including 1860. Journals 1860, Senate, pp. 12, 13; House, 11, 15, 17. And this was the mode adopted by Florida in 1868, (Laws 1868, p. 166,) and by Colorado in 1876, as prescribed by section 19 of the schedule to the constitution of the state, which was admitted into the Union, August 1, 1876, (Gen. Laws Colo. 1877, pp. 79, 990.)[1]

Mr. Justice Story, in considering the subject in his Commentaries on the Constitution, and writing nearly 50 years after the adoption of that instrument, after stating that "in some states the legislatures have directly chosen the electors by themselves; in others, they have been chosen by the people by a general ticket throughout the whole state; and in others, by the people by electoral districts, fixed by the legislature, a certain number of electors being apportioned to each district,"—adds: "No question has ever arisen as to the constitutionality of either mode, except that by a direct choice by the legislature. But this, though often doubted by able and ingenious minds, (3 Elliot, Deb. 100, 101,) has been firmly established in practice ever since the adoption of the constitution, and does not now seem to admit of controversy, even if a suitable tribunal existed to adjudicate upon it." And he remarks that "it has been thought desirable by many statesmen to have the constitution amended so as to provide for a uniform mode of choice by the people." Story, Const. (1st Ed.) 1466.

Such an amendment was urged at the time of the adoption of the twelfth amendment, the suggestion being that all electors should be chosen by popular vote, the states to be divided for that purpose into districts. It was brought up again in congress in December, 1813, but the resolution for submitting the amendment failed to be carried. The amendment was renewed in the house of representatives in December, 1816, and a provision for the division of the states into single districts for the choice of electors received a majority vote, but not two thirds. Like amendments were offered in the senate by Messrs. Sanford of New York, Dickerson of New Jersey, and Macon of North Carolina. December 11, 1823, Senator Benton introduced an amendment providing that each legislature should divide its state into electoral districts, and that the voters of each district "should vote, in their own proper persons," for president and vice president, but it was not acted upon. December 16 and December 24, 1823, amendments were introduced in the senate by Messrs. Dickerson, of New Jersey, and Van

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[1] See Stanwood, Presidential Elections, (3d Ed.) and Appleton, Presidential Counts, passim; 2 Lalor, Enc. Pol. Science, 68; 4 Hild. Hist. U. S. (Rev. Ed.) 39, 382, 689; 5 Hild. Hist. U. S. 389, 531; 1 Schouler, Hist. U. S. 72, 334; 2 Schouler, Hist. U. S. 184; 3 Schouler, Hist. U. S. 313, 439; 2 Adams, Hist. U. S. 201; 4 Adams, Hist. U. S. 285; 6 Adams, Hist. U. S. 409, 413; 9 Adams, Hist. U. S. 139; 1 McMaster, Hist. Peopel U. S. 525; 2 McMaster, Hist. People U. S. 85, 509; 3 McMaster, Hist. People U. S. 188, 189, 194, 317; 2 Scharf, Hist. Md. 547; 2 Bradf. Mass. 335; Life of Plumer, 104; 3 Niles' Reg. 160; 5 Niles' Reg. 372; 9 Niles' Reg. 319, 349; 10 Niles' Reg. 45, 177, 409; 11 Niles' Reg.

Buren, of New York, requiring the choice of electors to be by districts; but these and others failed of adoption, although there was favorable action in that direction by the senate in 1818, 1819, and 1822. December 22, 1823, an amendment was introduced in the house by Mr. McDuffie, of South Carolina, providing that electors should be chosen by districts assigned by the legislatures, but action was not taken[2]. The subject was again brought forward in 1835, 1844, and subsequently, but need not be further dwelt upon, except that it may be added that, on the 28th of May, 1874, a report was made by Senator Morton, chairman of the senate committee on privileges and elections, recommending an amendment dividing the states into electoral districts, and that the majority of the popular vote of each district should give the candidate one presidential vote, but this also failed to obtain action. In this report it was said: "The appointment of these electors is thus placed absolutely and wholly with the legislatures of the several states. They may be chosen by the legislature, or the legislature may provide that they shall be elected by the people of the state at large, or in districts, as are members of congress, which was the case formerly in many states; and it is no doubt competent for the legislature to authorize the governor, or the supreme court of the state, or any other agent of its will, to appoint these electors. This power is conferred upon the legislatures of the states by the constitution of the United States, and cannot be taken from them or modified by their state constitutions any more than can their power to elect senators of the United States. Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated." Senate Rep. 1st Sess. 43d Cong. No. 395.

From this review, in which we have been assisted by the laborious research of counsel, and which might have been greatly expanded, it is seen that from the formation of the government until now the practical construction of the clause has conceded plenary power to the state legislatures in the matter of the appointment of electors.

Even in the heated controversy of 1876–77 the electoral vote of Colorado cast by electors chosen by the legislature passed unchallenged, and our attention has not been drawn to any previous attempt to submit to the courts the determination of the constitutionality of state action.

In short, the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States. They are, as remarked by Mr. Justice Gray *in Re Green*, 134 U.S. 377, 379, 10 S. Sup. Ct. Rep. 586, "no more officers or agents of the United States than are the members of the state legislatures when acting as electors of federal senators, or the people of the states when acting as the electors of representatives in congress." Congress is empowered to determine the

[2] 1 Benton, Thirty Years' View, 37; 5 Benton, Cong. Deb. 110, 677; 7 Benton, Cong. Deb. 472–474, 600; 3 Niles' Reg. 240, 334; 11 Niles' Reg. 258, 274, 293, 349; Annals Cong. (1812–13,) 847.

time of choosing the electors and the day on which they are to give their votes, which is required to be the same day throughout the United States; but otherwise the power and jurisdiction of the state is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that congressional and federal influence might be excluded.

The question before us is not one of policy, but of power; and, while public opinion had gradually brought all the states as matter of fact to the pursuit of a uniform system of popular election by general ticket, that fact does not tend to weaken the force of contemporaneous and long-continued previous practice when and as different views of expediency prevailed. The prescription of the written law cannot be overthrown because the states have laterally exercised, in a particular way, a power which they might have exercised in some other way. The construction to which we have referred has prevailed too long and been too uniform to justify us in interpreting the language of the constitution as conveying any other meaning than that heretofore ascribed, and it must be treated as decisive.

It is argued that the district mode of choosing electors, while not obnoxious to constitutional objection, if the operation of the electoral system had conformed to its original object and purpose, had become so in view of the practical working of that system. Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the chief executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. In relation, then, to the independence of the electors, the original expectation may be said to have been frustrated. Miller, Const. Law, 149; Rawle, Const. 55; Story, Const. 1473; Federalist, No. 68. But we can perceive no reason for holding that the power confided to the states by the constitution has ceased to exist because the operation of the system has not fully realized the hopes of those by whom it was created. Still less can we recognize the doctrine that because the constitution has been found in the march of time sufficiently comprehensive to be applicable to conditions not within the minds of its framers, and not arising in their time, it may therefore be wrenched from the subjects expressly embraced within it, and amended by judicial decision without action by the designated organs in the mode by which alone amendments can be made. Nor are we able to discover any conflict between this act and the fourteenth and fifteenth amendments to the constitution. The fourteenth amendment provides:

> "*Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without

> due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
> "*Sec. 2.* Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state."

The first section of the fifteenth amendment reads: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

In the Slaughterhouse Cases, 16 Wall. 36, this court held that the first clause of the fourteenth amendment was primarily intended to confer citizenship on the negro race; and, secondly, to give definitions of citizenship of the United States, and citizenship of the states; and it recognized the distinction between citizenship of a state and citizenship of the United States by those definitions; that the privileges and immunities of citizens of the states embrace generally those fundamental civil rights for the security and establishment of which organized society was instituted, and which remain, with certain exceptions mentioned in the federal constitution, under the care of the state governments; while the privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its constitution, or its laws and treaties made in pursuance thereof; and that it is the latter which are placed under the protection of congress by the second clause of the fourteenth amendment.

We decided in *Minor v. Happersett*, 21 Wall. 162, that the right of suffrage was not necessarily one of the privileges or immunities of citizenship before the adoption of the fourteenth amendment, and that that amendment does not add to these privileges and immunities, but simply furnishes an additional guaranty for the protection of such as the citizen already has; that, at the time of the adoption of that amendment, suffrage was not coextensive with the citizenship of the state, nor was it at the time of the adoption of the constitution; and that neither the constitution nor the fourteenth amendment made all citizens voters.

The fifteenth amendment exempted citizens of the United States from discrimination in the exercise of the elective franchise on account of race, color, or previous

condition of servitude. The right to vote in the states comes from the states, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the constitution of the United States, but the last has been. *U.S. v. Cruikshank*, 92 U.S. 542; *U.S. v. Reese*, *Id.* 214.

If, because it happened, at the time of the adoption of the fourteenth amendment, that those who exercised the elective franchise in the state of Michigan were entitled to vote for all the presidential electors, this right was rendered permanent by that amendment, then the second clause of article 2 has been so amended that the states can no longer appoint in such manner as the legislatures thereof may direct; and yet no such result is indicated by the language used, nor are the amendments necessarily inconsistent with that clause. The first section of the fourteenth amendment does not refer to the exercise of the elective franchise, though the second provides that if the right to vote is denied or abridged to any male inhabitant of the state having attained majority, and being a citizen of the United States, then the basis of representation to which each state is entitled in the congress shall be proportionately reduced. Whenever presidential electors are appointed by popular election, then the right to vote cannot be denied or abridged without invoking the penalty; and so of the right to vote for representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof. The right to vote intended to be protected refers to the right to vote as established by the laws and constitution of the state. There is no color for the contention that under the amendments every male inhabitant of the state, being a citizen of the United States, has from the time of his majority a right to vote for presidential electors.

The object of the fourteenth amendment in respect of citizenship was to preserve equality of rights and to prevent discrimination as between citizens, but not to radically change the whole theory of the relations of the state and federal governments to each other, and of both governments to the people. *In re Kemmler*, 136 U.S. 436, 10 Sup. Ct. Rep. 930.

The inhibition that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. *Milling Co. v. Pennsylvania*, 125 U.S. 181, 188, Sup. Ct. Rep. 737.

In *Hayes v. Missouri*, 120 U.S. 68, 71, 7 S. Sup. Ct. Rep. 350, Mr. Justice Field, speaking for the court, said: "The fourteenth amendment to the constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges and in the liabilities imposed. As we said in *Barbier v. Connolly*, speaking of the fourteenth amendment: 'Class legislation, discriminating against some and favoring others, is prohibited; but legislation which,

in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment' 113 U.S. 27, 32, 5 S. Sup. Ct. Rep. 357."

If presidential electors are appointed by the legislatures, no discrimination is made; if they are elected in districts where each citizen has an equal right to vote, the same as any other citizen has, no discrimination is made. Unless the authority vested in the legislatures by the second clause of section 1 of article 2 has been divested, and the state has lost its power of appointment, except in one manner, the position taken on behalf of relators is untenable, and it is apparent that neither of these amendments can be given such effect.

The third clause of section 1 of article 2 of the constitution is: "The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."

Under the act of congress of March 1, 1792, (1 St. p. 239, c. 8,) it was provided that the electors should meet and give their votes on the first Wednesday in December at such place in each state as should be directed by the legislature thereof, and by act of congress of January 23, 1845, (5 St. p. 721,) that the electors should be appointed in each state on the Tuesday next after the first Monday in the month of November in the year in which they were to be appointed: provided, that each state might by law provide for the filling of any vacancies in its college of electors when such college meets to give its electoral vote: and provided that when any state shall have held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed, then the electors may be appointed on a subsequent day, in such manner as the state may by law provide. These provisions were carried forward into sections 131, 133, 134, and 135 of the Revised Statutes, (Rev. St. tit. 3, c. 1, p. 22.)

By the act of congress of February 3, 1887, entitled "An act to fix the day for the meeting of the electors of president and vice president," etc., (24 St. p. 373.) it was provided that the electors of each state should meet and give their votes on the second Monday in January next following their appointment. The state law in question here fixes the first Wednesday of December as the day for the meeting of the electors, as originally designated by congress. In this respect it is in conflict with the act of congress, and must necessarily give way. But this part of the act is not so inseparably connected, in substance, with the other parts as to work the destruction of the whole act. Striking out the day for the meeting, which had already been otherwise determined by the act of congress, the act remains complete in itself, and capable of being carried out in accordance with the legislative intent. The state law yields only to the extent of the collision. *Cooley, Const. Lim.* 178; *Com. v. Kimball*, 24 Pick. 359; *Houston v. Moore*, 5 Wheat. 1, 49. The construction to this effect by the state court is of persuasive force, if not of controlling weight.

We do not think this result affected by the provision in Act No. 50 in relation to a tie vote. Under the constitution of the state of Michigan, in case two or more persons

have an equal and the highest number of votes for any office, as canvassed by the board of state canvassers, the legislature in joint convention chooses one of these persons to fill the office. This rule is recognized in this act, which also makes it the duty of the governor in such case to convene the legislature in special session for the purpose of its application, immediately upon the determination by the board of state canvassers.

We entirely agree with the supreme court of Michigan that it cannot be held, as matter of law, that the legislature would not have provided for being convened in special session but for the provision relating to the time of the meeting of the electors contained in the act, and are of opinion that that date may be rejected, and the act be held to remain otherwise complete and valid.

And as the state is fully empowered to fill any vacancy which may occur in its electoral college, when it meets to give its electoral vote, we find nothing in the mode provided for anticipating such an exigency which operates to invalidate the law. We repeat that the main question arising for consideration is one of power, and not of policy, and we are unable to arrive at any other conclusion than that the act of the legislature of Michigan of May 1, 1891, is not void as in contravention of the constitution of the United States, for want of power in its enactment.

The judgment of the supreme court of Michigan must be affirmed.

APPENDIX P: U.S. SUPREME COURT DECISION IN *STATE OF OHIO EX REL. DAVIS V. HILDEBRANDT* (1916)

U.S. Supreme Court
241 U.S. 565
STATE OF OHIO ON RELATION OF DAVID DAVIS, Plff. in Err.,
v.
CHARLES Q. HILDEBRANT, Secretary of State of Ohio, State Supervisor and Inspector of Elections, and State Supervisor of Elections, et al.
No. 987
Submitted May 22, 1916
Decided June 12, 1916

Messrs. Sherman T. McPherson and J. Warren Keifer for plaintiff in error.

Mr. Edward C. Turner, Attorney General of Ohio, and Messrs. Edmond H. Moore and Timothy S. Hogan for defendants in error.

Mr. Chief Justice White delivered the opinion of the court:

By an amendment to the Constitution of Ohio, adopted September 3d, 1912, the legislative power was expressly declared to be vested not only in the senate and house of representatives of the state, constituting the general assembly, but in the people, in whom a right was reserved by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly. And by other constitutional provisions the machinery to carry out the referendum was created. Briefly they were this: Within a certain time after the enactment of a law by the senate and house of representatives, and its approval by the governor, upon petition of 6 per centum of the voters, the question of whether the law should become operative was to be submitted to a vote of the people, and, if approved, the law should be operative; and, if not approved, it should have no effect whatever.

In May, 1915, the general assembly of Ohio passed an act redistricting the state for the purpose of congressional elections, by which act twenty-two congressional districts were created, in some respects differing from the previously established districts, and this act, after approval by the governor, was filed in the office of the secretary of state. The requisite number of electors under the referendum provision having petitioned for a submission of the law to a popular vote, such vote was taken and the law was disapproved. Thereupon, in the supreme court of the state, the suit before us was begun against state election officers for the purpose of procuring a mandamus, directing them to disregard the vote of the people on the referendum, disapproving the law, and to proceed to discharge their duties as such officers in the next congressional election, upon the assumption that the action by way of referendum was void, and that the law which was disapproved was subsisting and valid. The right

to this relief was based upon the charge that the referendum vote was not and could not be a part of the legislative authority of the state, and therefore could have no influence on the subject of the law creating congressional districts for the purpose of representation in Congress. Indeed, it was in substance charged that both from the point of view of the state Constitution and laws and from that of the Constitution of the United States, especially 4 of article 1, providing that 'the times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law, make or alter such regulations, except as to the places of choosing Senators;' and also from that of the provisions of the controlling act of Congress of August 8, 1911 (chap. 5, 37 Stat. at L. 13, Comp. Stat. 1913, 15), apportioning representation among the states, the attempt to make the referendum a component part of the legislative authority empowered to deal with the election of members of Congress was absolutely void. The court below adversely disposed of these contentions, and held that the provisions as to referendum were a part of the legislative power of the state, made so by the Constitution, and that nothing in the act of Congress of 1911, or in the constitutional provision, operated to the contrary, and that therefore the disapproved law had no existence and was not entitled to be enforced by mandamus.

Without going into the many irrelevant points which are pressed in the argument, and the various inapposite authorities cited, although we have considered them all, we think it is apparent that the whole case and every real question in it will be disposed of by looking at it from three points of view,—the state power, the power of Congress, and the operation of the provision of the Constitution of the United States, referred to.

1. As to the state power, we pass from its consideration, since it is obvious that the decision below is conclusive on that subject, and makes it clear that, so far as the state had the power to do it, the referendum constituted a part of the state Constitution and laws, and was contained within the legislative power; and therefore the claim that the law which was disapproved and was no law under the Constitution and laws of the state was yet valid and operative is conclusively established to be wanting in merit.

2. So far as the subject may be influenced by the power of Congress, that is, to the extent that the will of Congress has been expressed on the subject, we think the case is equally without merit. We say this because we think it is clear that Congress, in 1911, in enacting the controlling law concerning the duties of the states, through their legislative authority, to deal with the subject of the creation of congressional districts, expressly modified the phraseology of the previous acts relating to that subject by inserting a clause plainly intended to provide that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of

creating congressional districts by law. This is the case since, under the act of Congress dealing with apportionment, which preceded the act of 1911, by 4 it was commanded that the existing districts in a state should continue in force 'until the legislature of such state, in the manner herein prescribed, shall redistrict such state' (act of February 7, 1891, chap. 116, 26 Stat. at L. 735); while in the act of 1911 there was substituted a provision that the redistricting should be made by a state 'in the manner provided by the laws thereof.' And the legislative history of this last act leaves no room for doubt that the prior words were stricken out and the new words inserted for the express purpose, in so far as Congress had power to do it, of excluding the possibility of making the contention as to referendum which is now urged. Cong. Rec. vol. 47, pp. 3436, 3437, 3507.

3. To the extent that the contention urges that to include the referendum within state legislative power for the purpose of apportionment is repugnant to 4 of article 1 of the Constitution and hence void, even if sanctioned by Congress, because beyond the constitutional authority of that body, and hence that it is the duty of the judicial power so to declare, we again think the contention is plainly without substance, for the following reasons: It must rest upon the assumption that to include the referendum in the scope of the legislative power is to introduce a virus which destroys that power, which in effect annihilates representative government, and causes a state where such condition exists to be not republican in form, in violation of the guaranty of the Constitution. Const. 4, art. 4. But the proposition and the argument disregard the settled rule that the question of whether that guaranty of the Constitution has been disregarded presents no justiciable controversy, but involves the exercise by Congress of the authority vested in it by the Constitution. *Pacific States Teleph. & Teleg. Co. v. Oregon*, 223 U.S. 118, 56 L. ed. 377, 32 Sup. Ct. Rep. 224. In so far as the proposition challenges the power of Congress, as manifested by the clause in the act of 1911, treating the referendum as a part of the legislative power for the purpose of apportionment, where so ordained by the state Constitutions and laws, the argument but asserts, on the one hand, that Congress had no power to do that which, from the point of view of 4 of article 1, previously considered, the Constitution expressly gave the right to do. In so far as the proposition may be considered as asserting, on the other hand, that any attempt by Congress to recognize the referendum as a part of the legislative authority of a state is obnoxious to a republican form of government as provided by 4 of article 4, the contention necessarily but reasserts the proposition on that subject previously adversely disposed of. And that this is the inevitable result of the contention is plainly manifest, since at best the proposition comes to the assertion that because Congress, upon whom the

> Constitution has conferred the exclusive authority to uphold the guaranty of a republican form of government, has done something which it is deemed is repugnant to that guaranty, therefore there was automatically created judicial authority to go beyond the limits of judicial power, and, in doing so, to usurp congressional power, on the ground that Congress had mistakenly dealt with a subject which was within its exclusive control, free from judicial interference.

It is apparent from these reasons that there must either be a dismissal for want of jurisdiction, because there is no power to re-examine the state questions foreclosed by the decision below, and because of the want of merit in the Federal questions relied upon, or a judgment of affirmance, it being absolutely indifferent, as to the result, which of the two be applied. In view, however, of the subject-matter of the controversy and the Federal characteristics which inhere in it, we are of opinion, applying the rule laid down in *Swafford v. Templeton*, 185 U.S. 487, 46 L. ed. 1005, 22 Sup. Ct. Rep. 783, the decree proper to be rendered is one of affirmance, and such a decree is therefore ordered.

Affirmed.

APPENDIX Q: MAINE SUPREME COURT OPINION FOR *IN RE OPINION OF THE JUSTICES* (1919)

Maine Supreme Court
107 A. 705
In re Opinion of the Justices
August 28, 1919

Answer to question propounded to the Justices of the Supreme Judicial Court by the Governor.

To the Honorable Carl E. Milliken, Governor of Maine:

The undersigned Justices of the Supreme Judicial Court, having considered the question propounded by you under date of July 9, 1919, concerning the necessity of submitting by referendum to the qualified voters of the state a certain act of the Legislature of Maine, entitled "An act granting to women the right to vote for presidential electors," respectfully submit the following answer:

The request contains certain recitals of fact, the substance of which is that the above statute was passed by the concurrent action of both branches of the Legislature and was duly approved by the Governor; that the Legislature adjourned without day on April 4, 1919, and within 90 days thereafter petitions, apparently bearing the requisite number of signatures, were filed with the secretary of state, requesting that this act be referred to the people under Amendment 31 of article 4 of the Constitution of Maine, known as the initiative and referendum amendment.

QUESTION.

"Is the effect of the act of the Legislature of Maine of 1919, entitled 'An act granting to women the right to vote for presidential electors,' approved by the Governor on March 28, 1919, suspended by valid written petitions of not less than 10,000 electors, addressed to the Governor and filed in the office of the secretary of state within 90 days after the recess of the Legislature, requesting that it be referred to the people, and should the act be referred to the people as provided in article 4 of the Constitution of Maine, as amended by Amendment 31, adopted September 14, 1908?"

ANSWER.

This question we answer in the affirmative. In our opinion this legislative act comes within the provisions of the initiative and referendum amendment, and should be referred to the people for adoption or rejection by them.

To solve this problem it is necessary to pursue the same general course as in deciding the question concerning the prohibitory amendment to the federal Constitution, by an examination, first, of the provisions and requirements of the Constitution of the United States relating to this subject-matter, and, second, of the provisions and requirements of the Constitution of Maine.

The first question that naturally arises is this: Where, under the federal Constitution, is lodged the power of determining in what manner presidential electors shall be chosen and of prescribing the qualifications of the voters therefor?

It was competent for the people of the United States, in creating the compact known as the federal Constitution, to lodge this power wherever they saw fit. It was a matter wholly within their discretion. It is a well-known historical fact that there was a long and spirited debate in the constitutional convention over this very question; that is, the method to be adopted in electing the chief magistrate of the nation. Many plans were submitted, such as election by Congress, by the people at large, by the chief executives of the several states, and by electors appointed by the Legislatures. 1 Elliot, Deb. 208, 211, 217, 262.

Finally the following provisions, which were presented by Gouveneur Morris for the special committee, were adopted by the convention after much discussion, and were incorporated in article 11 of the perfected instrument, where they stand unchanged today, viz.:

> "Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress," etc. Article 2, § 1, subd. 2.
>
> "The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States." Article 2, § 1, subd. 4.

These two subdivisions comprise all the provisions of the federal Constitution applicable to the point in issue here. Under section 1, subd. 4, Congress is given the power to determine the date of holding presidential elections and of the meeting of the electors, but that marks the limit of its constitutional power. *In re Green*, 134 U.S. 377, 10 Sup. Ct. 586, 33 L. Ed. 951. All other powers in connection with this subject are expressly reserved to the states. *McPherson v. Blacker*, 146 U.S. 1, 13 Sup. Ct. 3, 36 L. Ed. 869; *Pope v. Williams*, 193 U.S. 621, 24 Sup. Ct. 573, 48 L. Ed. 817.

In the case last cited the Supreme Court of the United States say:

> "The privilege to vote in a state is within the jurisdiction of the state itself, to be exercised as the state may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the federal Constitution."

The word "appoint" as employed in subdivision 2 has been interpreted to be sufficiently comprehensive to include the result of a popular election and to convey the broadest powers of determination. *McPherson v. Blacker*, 146 U.S. 1, 27, 13 Sup. Ct. 3, 36 L. Ed. 869.

The language of section 1, subd. 2, is clear and unambiguous. It admits of no doubt as to where the constitutional power of appointment is vested, namely, in the several states. "Each state shall appoint in such manner as the Legislature thereof may direct" are the significant words of the section, and their plain meaning is that each state is thereby clothed with the absolute power to appoint electors in such manner as it may see fit, without any interference or control on the part of the federal government, except, of course, in case of attempted discrimination as to race, color, or previous condition of servitude under the fifteenth amendment. The clause, "in such manner as the Legislature thereof may direct," means, simply that the state shall give expression to its will, as it must, of necessity, through its law-making body, the Legislature. The will of the state in this respect must be voiced in legislative acts or resolves, which shall prescribe in detail the manner of choosing electors, the qualifications of voters therefor, and the proceedings on the part of the electors when chosen.

But these acts and resolves must be passed and become effective in accordance with and in subjection to the Constitution of the state, like all other acts and resolves having the force of law. The Legislature was not given in this respect any superiority over or independence from the organic law of the state in force at the time when a given law is passed. Nor was it designated by the federal Constitution as a mere agency or representative of the people to perform a certain act, as it was under article 5 in ratifying a federal amendment, a point more fully discussed in the answer to the question concerning the federal prohibitory amendment. 107 Atl. 673. It is simply the ordinary instrumentality of the state, the legislative branch of the government, the law-making power, to put into words the will of the state in connection with the choice of presidential electors. The distinction between the function and power of the Legislature in the case under consideration and its function and power as a particular body designated by the federal Constitution to ratify or reject a federal amendment is sharp and clear and must be borne in mind.

It follows, therefore, that under the provisions of the federal Constitution the state by its legislative direction may establish such a method of choosing its presidential electors as it may see fit, and may change that method from time to time as it may deem advisable; but the legislative acts both of establishment and of change must always be subject to the provisions of the Constitution of the state in force at the time such acts are passed and can be valid and effective only when enacted in compliance therewith.

In the exercise of the power thus conferred by the federal Constitution, various methods of electing presidential electors were adopted in the early days by the several states, as set forth in detail in *McPherson v. Blacker*, 146 U.S. at pages 29 to 35, 13 Sup. Ct. 3, 36 L. Ed. 869.

In our own state the same holds true to a certain extent. Prior to 1847 the legislative direction expressed itself in the form of a joint resolution, passed every fourth

year, at the session immediately preceding a presidential election. These resolves had the force of law, and with the exception of those of 1820 and 1824 they were uniformly presented to and were approved by the Governor.

Prior to 1840 the district prevailed in whole or in part. Res. 1820, c. 19; 1824, c. 76; 1828, c. 23; 1832, c. 65; 1836, c. 9. In 1840 (Res. c. 55) 10 electors at large were provided for, and since that time the electors have been chosen at large upon a single ballot. This method was followed in 1844. Res. 1844, c. 295.

Under the resolves of 1820, 1824, and 1828, the qualifications of voters for representatives and senators to the Legislature were made the qualifications of voters for presidential electors. By the resolves of 1832 and 1836, the qualifications of voters for representatives alone were made the test, and by the resolve of 1840 this was changed to qualifications of voters for senators alone.

The Legislature of 1847 directed for the first time by a general act, instead of by a quadrennial resolve, the manner in which the voters should proceed in the election of presidential electors (Pub. L. 1847, c. 26), and, following the resolves of 1840 and 1844, prescribed the qualified voters therefor to be "the people of this state qualified to vote for senators in its Legislature." This qualification established by the act of 1847 has been preserved in all the subsequent revisions. R. S. 1857, c. 4, § 79; R. S. 1871, c. 4, § 78; R. S. 1883, c. 4, § 86; R. S. 1903, c. 6, § 123; R. S. 1916, c. 7, § 57. And such was the law of this state when the act in question (chapter 120 of the Public Laws of 1919) was passed. The qualification of voters for senators, as well as for representatives, is fixed by the Constitution of Maine as "every male citizen of the United States of the age of twenty-one years and upwards," etc. Article 2, § 1. Therefore, prior to the act of 1919, only male citizens could vote for presidential electors. It is clear that this act, extending this privilege to women, constitutes a change in the method of electing presidential electors, and is a virtual amendment of R. S. 1916, c. 7, § 57, not in express terms, but by necessary implication.

In other words, this state during the century of its existence prior to 1919, had by appropriate legislative act or resolve directed that only male citizens were qualified to vote for presidential electors. By the act of 1919 it has attempted to change that direction, by extending the privilege of suffrage, so far as presidential electors are concerned, to women. Had this act been passed prior to the adoption of the initiative and referendum amendment in 1908, it would have become effective, so far as legal enactment is concerned, without being referred to the people; but now under Amendment 31 such reference must be had, if the necessary steps therefor are taken.

The language of that amendment is as follows:

> "No act or joint resolution of the Legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the Legislature, of either branch, or of any committee or officer thereof, or ap-

> propriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the Legislature passing it, unless in case of emergency," etc.

None of the exceptions applies here. Section 17 provides that upon written petition of not less than 10,000 electors, filed in the office of the Secretary of State within 90 days after the recess of the Legislature, requesting that—

> "one or more acts, bills, resolves or resolutions, or part or parts thereof passed by the Legislature, not then in effect by reason of the provisions of the preceding section be referred to the people, such acts, bills, resolves or resolutions shall not take effect until thirty days after the Governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election."

It is evident that the act in question falls within the terms and scope of this amendment. This is an ordinary legislative act, a bill in the form prescribed by Amendment 31. It is entitled "An act granting," etc. The enacting clause is, "Be it enacted by the people of the state of Maine." It was presented to the Governor for his approval, and was signed by him, as required by section 2 of part third of article 4 of the Constitution of Maine, viz.:

> "Every bill or resolution having the force of law, to which the concurrence of both houses may be necessary, . . . which shall have passed both houses, shall be presented to the Governor, and if he approves, he shall sign it," etc.

It has been published as chapter 120 of Public Laws of 1919.

This is not a mere joint resolution, addressed to the Governor, asking for the removal of a public official, as in *Moulton v. Scully*, 111 Me. 428, 89 Atl. 944, nor is it a joint resolution ratifying an amendment to the federal Constitution, as in the other question propounded to us herewith, in neither of which cases did the referendum attach, because neither resolution had the force of law. This is the public statute of a law-making body, and is as fully within the control of the referendum amendment as is any other of the 239 public acts passed at the last session of the Legislature, excepting, of course, emergency acts. It is shielded from the jurisdiction of that referendum neither by the state nor by the federal Constitution. In short, the state, through its Legislature, has taken merely the first step toward effecting a change in the appointment of presidential electors; but, because of the petitions filed, it must await the second step which is the vote of the people. The legislative attempt in this case cannot be fully effective until "thirty days after the Governor shall have announced by public proclamation that the same has been ratified by a majority of the electors voting thereon at a general or special election."

It follows that, for the reasons already stated, this question is answered in the affirmative.

Very respectfully,

LESLIE C. CORNISH
ALBERT M. SPEAR
GEORGE M. HANSON
WARREN C. PHILBROOK
CHARLES J. DUNN
JOHN A. MORRILL
SCOTT WILSON
LUERE B. DEASY

APPENDIX R: STATE CONSTITUTIONAL PROVISIONS RELATING TO REPEALING OR AMENDING VOTER INITIATIVES

ALASKA CONSTITUTION—ARTICLE XI

SECTION 6. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

ARIZONA CONSTITUTION—ARTICLE 4, PART 1(6)

(A) Veto of initiative or referendum. The veto power of the governor shall not extend to an initiative measure approved by a majority of the votes cast thereon or to a referendum measure decided by a majority of the votes cast thereon.

(B) Legislature's power to repeal initiative or referendum. The legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon or to repeal a referendum measure decided by a majority of the votes cast thereon.

(C) Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.

ARKANSAS CONSTITUTION—AMENDMENT

No Veto: The veto power of the Governor or Mayor shall not extend to measures initiated by or referred to the people.

Amendment and Repeal: No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any City Council, except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly, or of the City Council, as the case may be.

CALIFORNIA CONSTITUTION—ARTICLE 2, SECTION 10(C)

The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by

the electors unless the initiative statute permits amendment or repeal without their approval.

MASSACHUSETTS CONSTITUTION—AMENDMENT ARTICLE 4

Section 3. Amendment of Proposed Amendments. —A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

MICHIGAN CONSTITUTION—ARTICLE 2, SECTION 9

Initiative; duty of legislature, referendum. Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

Legislative rejection of initiated measure; different measure; submission to people. If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

Initiative or referendum law; effective date, veto, amendment and repeal. Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

NEBRASKA CONSTITUTION—ARTICLE III, SECTION 2

. . . The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure

or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature.

NEVADA CONSTITUTION—ARTICLE 19, SECTION 2

3. . . . An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. . . .

NORTH DAKOTA CONSTITUTION—ARTICLE 3, SECTION 8

. . . A measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house . . .

WASHINGTON CONSTITUTION, ARTICLE 2, SECTION 41

. . . No act, law or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: Provided, That any such act, law or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. These provisions supersede the provisions of subsection (c) of section 1 of this article as amended by the seventh amendment to the Constitution of this state.

WYOMING CONSTITUTION—ARTICLE 3, SECTION 52

(f) If votes in an amount in excess of fifty percent (50%) of those voting in the general election are cast in favor of adoption of an initiated measure, the measure is enacted. If votes in an amount in excess of fifty percent (50%) of those voted in the general election are cast in favor of rejection of an act referred, it is rejected. The secretary of state shall certify the election returns. An initiated law becomes effective ninety (90) days after certification, is not subject to veto, and may not be repealed by the legislature within two (2) years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

APPENDIX S: SUPPORTERS IN CONGRESS OF NATIONWIDE POPULAR ELECTION OF THE PRESIDENT IN ROLL CALLS AND SPONSORS OF CONSTITUTIONAL AMENDMENTS

S.1 ALABAMA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John H. Buchanan (R) · HJR 228 - 95th Congress · HJR 288 - 96th Congress		Rep. John H. Buchanan (R)
		Rep. William Dickinson (R)
Rep. William Edwards (R) · HJR 138 - 95th Congress · HJR 189 - 96th Congress · HJR 195 - 97th Congress		Rep. William Edwards (R)
	Sen. Donald Stewart (D)	

S.2 ALASKA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Maurice Gravel (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Maurice Gravel (D)	

S.3 ARIZONA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. John Rhodes (R)
		Rep. Sam Steiger (R)
Rep. Morris K. Udall (D) · HJR 168 - 95th Congress		Rep. Morris K. Udall (D)
Sen. Dennis DeConcini (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress · SJR 297 - 102nd Congress	Sen. Dennis DeConcini (D)	

S.4 ARKANSAS

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. William Vollie Alexander, Jr. (D) · HJR 137 - 93rd Congress		Rep. William Vollie Alexander, Jr. (D)
		Rep. John Hammerschmidt (R)
		Rep. Wilbur Mills (D)
Sen. David H. Pryor (D) · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress · SJR 163 - 101st Congress · SJR 297 - 102nd Congress	Sen. David H. Pryor (D)	Rep. David H. Pryor (D)

S.5 CALIFORNIA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Glenn Anderson (D)
Rep. Jim Bates (D) · HJR 137 - 101st Congress		
Rep. Anthony Beilenson (D) · HJR 9 - 102nd Congress		
Rep. Alphonza Bell (R) · HJR 237 - 93rd Congress		Rep. Alphonza Bell (R)
Sen. Barbara Boxer (D) · HJR 5 - 100th Congress		
Rep. George Brown (D) · HJR 228 - 95th Congress · HJR 254 - 96th Congress		Rep. George Brown (D)
Rep. Clair Burgener (R) · HJR 228 - 95th Congress		
		Rep. Phillip Burton (D)
Rep. Tom Campbell (R) · HJR 180 - 104th Congress · HJR 43 - 105th Congress		
		Rep. Donald Clausen (R)
		Rep. Delwin Clawson (R)
Rep. Anthony Coelho (D) · HJR 254 - 96th Congress		
		Rep. Jeffery Cohelan (D)
		Rep. James Corman (D)
Sen. Alan Cranston (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 297 - 102nd Congress	Sen. Alan Cranston (D)	

S.5 CALIFORNIA *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. George Danielson (D) · HJR 207 - 93rd Congress · HJR 149 - 95th Congress · HJR 7 - 96th Congress		
Rep. Ronald Dellums (D) · HJR 117 - 104th Congress		
Rep. Calvin Dooley (D) · HJR 28 - 103rd Congress		
		Rep. William Edwards (D)
Rep. Vic Fazio (D) · HJR 254 - 96th Congress		
Sen. Diane Feinstein (D) · SJR 11 - 109th Congress		
Rep. Bob Filner (D) · HJR 103 - 108th Congress		
		Rep. Charles Gubser (R)
		Rep. Richard Hanna (D)
Rep. Mark W. Hannaford (D) · HJR 229 - 95th Congress		
Rep. Augustus Hawkins (D) · HJR 384 - 95th Congress		Rep. Augustus Hawkins (D)
Rep. Andrew Hinshaw (R) · HJR 207 - 93rd Congress		
Rep. Chester Holifield (D) · HJR 207 - 93rd Congress		Rep. Chester Holifield (D)
		Rep. Craig Hosmer (R)
		Rep. Harold Johnson (D)
Rep. William M. Ketchum (R) · HJR 168 - 95th Congress · HJR 230 - 95th Congress · HJR 384 - 95th Congress		
Rep. Jay Kim (R) · HJR 28 - 103rd Congress		
Rep. John H. Krebs (D) · HJR 228 - 95th Congress		
Rep. Robert L. Leggett (D) · HJR 207 - 93rd Congress · HJR 231 - 95th Congress		Rep. Robert L. Leggett (D)
Rep. James Fredrick Lloyd (D) · HJR 168 - 95th Congress		
Rep. Zoe Lofgren (D) · HJR 112 - 108th Congress · HJR 50 - 109th Congress		
		Rep. William Mailliard (R)
Rep. Matthew Martinez (D) · HJR 137 - 101st Congress		

(continued)

S.5 CALIFORNIA *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Robert Mathias (R)
Rep. Alfred McCandless (R) · HJR 28 - 103rd Congress		
		Rep. Paul McCloskey (R)
		Rep. John McFall (D)
		Rep. George Miller (D)
Rep. John Moss (D) · HJR 70 - 95th Congress · HJR 168 - 95th Congress		Rep. John Moss (D)
Rep. Jerry M. Patterson (D) · HJR 231 - 95th Congress · HJR 397 - 95th Congress · HJR 254 - 96th Congress		
Rep. Nancy Pelosi (D) · HJR 137 - 101st Congress		
		Rep. Jerry Pettis (R)
Rep. Shirley N. Pettis (R) · HJR 228 - 95th Congress		
		Rep. Thomas Rees (D)
Rep. Edward R. Roybal (D) · HJR 228 - 95th Congress		
Rep. Bernice Sisk (D) · HJR 207 - 93rd Congress		
		Rep. Allen Smith (R)
Rep. Fortney Stark (D) · HJR 228 - 95th Congress · HJR 299 - 96th Congress · HJR 36 - 109th Congress · HJR 50 - 109th Congress		
		Rep. Burt Talcott (R)
Rep. Walter R. Tucker III (D) · HJR 65 - 103rd Congress		
Sen. John Tunney (D) · SJR 1 - 94th Congress		Sen. John Tunney (D)
Rep. Lionel Van Deerlin (D) · HJR 254 - 96th Congress		Rep. Lionel Van Deerlin (D)
		Rep. Jerome Waldie (D)
		Rep. Charles Wiggins (R)
Rep. Charles H. Wilson (D) · HJR 231 - 95th Congress		Rep. Charles H. Wilson (D)
		Rep. Robert Wilson (R)
Rep. Lynn Woolsey · HJR 50 - 109th Congress		

S.6 COLORADO

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
	Sen. William Armstrong (R)	
		Rep. Wayne Aspinall (D)
		Rep. Donald Brotzman (R)
Sen. Ben Campbell (R) · HJR 9 - 102nd Congress		
Rep. Frank Evans (D) · HJR 137 - 93rd Congress		Rep. Frank Evans (D)
Sen. Gary W. Hart (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress	Sen. Gary W. Hart (D)	
Sen. Floyd Haskell (D) · SJR 1 - 95th Congress · SJR 1 - 99th Congress		
		Rep. Byron Rogers (D)

S.7 CONNECTICUT

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Emilio Daddario (D)
Rep. Robert Giaimo (D) · HJR 137 - 93rd Congress		Rep. Robert Giaimo (D)
Rep. Stewart McKinney (R) · HJR 197 - 95th Congress		
		Rep. Thomas Meskill (R)
		Rep. John Monagan (D)
Rep. Bill Ratchford (D) · HJR 254 - 96th Congress		
Sen. Abaraham A. Ribicoff (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Abaraham A. Ribicoff (D)	
Rep. Ronald A. Sarasin (R) · HJR 300 - 93rd Congress · HJR 230 - 95th Congress		
		Rep. William St. Onge (D)
		Rep. Lowell Palmer Weicker (R)

S.8 DELAWARE

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. William Victor Roth (R)
Sen. Thomas Carper (D) · HJR 137 - 101st Congress		

S.9 FLORIDA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Jim Bacchus (D) · HJR 506 - 102nd Congress · HJR 28 - 103rd Congress		
Rep. Charles E. Bennett (D) · HJR 13 - 93rd Congress · HJR 3 - 94th Congress · HJR 33 - 95th Congress · HJR 24 - 96th Congress · HJR 20 - 97th Congress · HJR 11 - 98th Congress · HJR 19 - 99th Congress · HJR 12 - 100th Congress · HJR 11 - 101st Congress · HJR 9 - 102nd Congress		Rep. Charles E. Bennett (D)
		Rep. Herbert Burke (R)
		Rep. William Cramer (R)
Rep. Dante Fascell (D) · HJR 207 - 93rd Congress		Rep. Dante Fascell (D)
		Rep. Louis Frey (R)
Rep. Don Fuqua (D) · HJR 31 - 93rd Congress		
Rep. Sam Gibbons (D) · HJR 228 - 95th Congress · HJR 261 - 96th Congress		Rep. Sam Gibbons (D)
Rep. Alcee Hastings (D) · HJR 28 - 103rd Congress · HJR 17 - 109th Congress		
Rep. Claude Pepper (D) · HJR 207 - 93rd Congress · HJR 228 - 95th Congress · HJR 288 - 96th Congress		Rep. Claude Pepper (D)
		Rep. Paul Rogers (D)

S.10 GEORGIA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. John Davis (D)
		Rep. Phillip Landrum (D)
Rep. John Lewis (D) · HJR 137 - 101st Congress · HJR 9 - 102nd Congress		
		Rep. Robert G. Stephens, Jr. (D)
		Rep. Standish Thompson (R)

S.11 HAWAII

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Cecil Heftel (D) · HJR 168 - 95th Congress		
Sen. Daniel K. Inouye (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 362 - 100th Congress	Sen. Daniel K. Inouye (D)	
Sen. Spark M. Matsunaga (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Spark M. Matsunaga (D)	Rep. Spark M. Matsunaga (D)
		Rep. Patsy Mink (D)

S.12 IDAHO

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Frank F. Church (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress	Sen. Frank F. Church (D)	
		Rep. Orval Hansen (R)
Rep. George Hansen (R) · HJR 207 - 93rd Congress		

S.13 ILLINOIS

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John Anderson (R) · HJR 228 - 95th Congress · HJR 288 - 96th Congress		Rep. John Anderson (R)
Rep. Frank Annunzio (D) · HJR 137 - 93rd Congress		Rep. Frank Annunzio (D)
		Rep. Leslie Arends (R)
Rep. Rod Blagojevich (D) · HJR 23 - 106th Congress		
Rep. Harold Collier (R) · HJR 137 - 93rd Congress · HJR 462 - 93rd Congress		Rep. Harold Collier (R)
		Rep. George Collins (D)[1]
Rep. Cardiss Collins (D) · HJR 229 - 95th Congress · HJR 137 - 101st Congress · HJR 28 - 103rd Congress · HJR 117 - 104th Congress		
Rep. Philip Crane (R) · HJR 28 - 105th Congress		
Sen. Richard Durbin (D) · HJR 60 - 103rd Congress · SJR 56 - 106th Congress		
		Rep. John Erlenborn (R)
Rep. Lane Evans (D) · HJR 506 - 102nd Congress · HJR 28 - 103rd Congress · HJR 23 - 106th Congress · HJR 17 - 109th Congress		
		Rep. Paul Findley (R)
		Rep. Kenneth Gray (D)
Rep. Robert Hanrahan (R) · HJR 207 - 93rd Congress		
Rep. Jesse Jackson, Jr. (D) · HJR 109 - 108th Congress · HJR 36 - 109th Congress		
		Rep. John Kluczynski (D)
Rep. Ray LaHood (R) · HJR 28 - 105th Congress · HJR 23 - 106th Congress		
Rep. William O. Lipinski (D) · HJR 9 - 102nd Congress · HJR 28 - 105th Congress		
Rep. Robert McClory (R) · HJR 118 - 95th Congress · HJR 197 - 95th Congress · HJR 240 - 96th Congress		Rep. Robert McClory (R)

[1] The roll call does not make clear whether this Representative Collins or the one from Texas voted for HJR 681 in 1969.

S.13 ILLINOIS *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Robert Michel (R)
		Rep. Abner Mikva (D)
		Rep. William Murphy (D)
Rep. Charles Price (D) · HJR 228 - 95th Congress · HJR 261 - 96th Congress		Rep. Charles Price (D)
		Rep. Roman Pucinski (D)
		Rep. Thomas Railsback (R)
		Rep. Charlotte Reid (R)
		Rep. Daniel Rostenkowski (D)
Rep. Martin A. Russo (D) · HJR 288 - 96th Congress · HJR 384 - 96th Congress		
Rep. Janice Schakowsky (D) · HJR 109 - 108th Congress		
		Rep. George Shipley (D)
		Rep. William Springer (R)
Sen. Aldai Stevenson III (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Aldai Stevenson III (D)	
		Rep. Sidney Yates (D)

S.14 INDIANA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Edwin Adair (R)
Sen. Birch E. Bayh (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 123 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Birch E. Bayh (D)	
Rep. Adam Benjamin, Jr. (D) · HJR 384 - 95th Congress		
		Rep. John Brademas (D)
Rep. William Bray (R) · HJR 137 - 93rd Congress		Rep. William Bray (R)
Rep. Floyd Fithian (D) · HJR 521 - 94th Congress · HJR 350 - 95th Congress · HJR 208 - 96th Congress · HJR 254 - 96th Congress		

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S.14 INDIANA *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Lee Hamilton (D) · HJR 137 - 93rd Congress · HJR 207 - 95th Congress · HJR 137 - 101st Congress · HJR 9 - 102nd Congress · HJR 28 - 103rd Congress · HJR 28 - 105th Congress		Rep. Lee Hamilton (D)
Rep. Andrew Jacobs, Jr. (D) · HJR 28 - 103rd Congress · HJR 33 - 103rd Congress · HJR 117 - 104th Congress · HJR 180 - 104th Congress		Rep. Andrew Jacobs, Jr. (D)
		Rep. Ray Madden (D)
		Rep. John Myers (R)
Rep. Tim Roemer (D) · HJR 506 - 102nd Congress		
		Rep. Richard Roudebush (R)
Rep. John Roush (D) · HJR 106 - 93rd Congress		
		Rep. Roger Zion (R)

S.15 IOWA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Berkley W. Bedell (D) · HJR 229 - 95th Congress · HJR 230 - 95th Congress · HJR 254 - 96th Congress		
Rep. Michael T. Blouin (D) · HJR 1100 - 94th Congress · HJR 676 - 95th Congress		
Sen. Richard Clark (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
	Sen. John Culver (D)	Rep. John Culver (D)
Rep. James Leach (R) · HJR 585 - 96th Congress · HJR 516 - 102nd Congress · HJR 113 - 106th Congress		
		Rep. Frederick Schwengel (R)

S.16 KANSAS

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Robert J. Dole (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Robert J. Dole (R)	
Rep. Dan Glickman (D) · HJR 673 - 100th Congress · HJR 137 - 101st Congress · HJR 516 - 102nd Congress · HJR 28 - 103rd Congress		
Sen. James Pearson (R) · SJR 1 - 94th Congress		
Rep. William Roy (D) · HJR 207 - 93rd Congress		
		Rep. Garner Shriver (R)
		Rep. Joe Skubitz (R)
Rep. James Slattery (D) · HJR 137 - 101st Congress		
Rep. Edward Winn (R) · HJR 231 - 95th Congress		Rep. Edward Winn (R)

S.17 KENTUCKY

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Scotty Baesler (D) · HJR 28 - 103rd Congress		
Rep. John Breckinridge (D) · HJR 384 - 95th Congress		
		Rep. Tim Carter (R)
		Rep. William Cowger (R)
Sen. Wendell H. Ford (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Wendell H. Ford (D)	

(continued)

S.17 KENTUCKY *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Walter Huddleston (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Walter Huddleston (D)	
		Rep. William Natcher (D)
Rep. Carl D. Perkins (D) · HJR 228 - 95th Congress		Rep. Carl D. Perkins (D)
		Rep. Marion Snyder (R)
		Rep. Frank Stubblefield (D)
		Rep. John Watts (D)

S.18 LOUISIANA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Thomas Hale Boggs (D)
Sen. John Breaux (D) · HJR 229 - 95th Congress		
		Rep. Edwin Edwards (D)
Rep. Thomas J. Huckaby (D) · HJR 516 - 102nd Congress · HJR 526 - 102nd Congress		
Sen. John B. Johnston, Jr. (D) · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. John B. Johnston, Jr. (D)	
Rep. Richard A. Tonry (D) · HJR 228 - 95th Congress		

S.19 MAINE

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Thomas Andrews (D) · HJR 28 - 103rd Congress		
Rep. David Emery (R) · HJR 228 - 95th Congress		
Sen. William Hathaway (D) · SJR 1 - 94th Congress		Rep. William Hathaway (D)
		Rep. Peter Kyros (D)

S.20 MARYLAND

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. John Glenn Beall (R)
Rep. Elijah E. Cummings (D) · HJR 109 - 108th Congress		
		Rep. George Fallon (D)
		Rep. Samuel Friedel (D)
		Rep. Edward Garmatz (D)
		Rep. Gilbert Gude (R)
		Rep. Lawrence Hogan (R)
		Rep. Clarence Long (D)
Sen. Charles McCurdy Mathias, Jr. (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 8 - 97th Congress · SJR 17 - 98th Congress	Sen. Charles McCurdy Mathias, Jr. (R)	
Rep. Kweisi Mfume (D) · HJR 117 - 104th Congress		
Rep. Parren Mitchell (D) · HJR 229 - 95th Congress · HJR 261 - 96th Congress		
		Rep. Rogers Morton (R)
Rep. Gladys Spellman (D) · HJR 384 - 95th Congress		
Rep. Albert Wynn (D) · HJR 103 - 108th Congress		

S.21 MASSACHUSETTS

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Chester Atkins (D) · HJR 137 - 101st Congress		
Rep. Edward Boland (D) · HJR 137 - 93rd Congress		Rep. Edward Boland (D)
Sen. Edward W. Brooke (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
		Rep. James Burke (D)

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2.21 MASSACHUSETTS *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Silvio Conte (R) · HJR 300 - 93rd Congress · HJR 38 - 94th Congress · HJR 45 - 95th Congress · HJR 230 - 95th Congress · HJR 231 - 95th Congress · HJR 373 - 95th Congress · HJR 150 - 96th Congress		Rep. Silvio Conte (R)
Rep. William D. Delahunt (D) · HJR 5 - 107th Congress · HJR 103 - 108th Congress · HJR 8 - 109th Congress		
Rep. Brian Donnelly (D) · HJR 288 - 96th Congress		
		Rep. Harold Donohue (D)
Rep. Barney Frank (D) · HJR 137 - 101st Congress · HJR 9 - 102nd Congress · HJR 28 - 103rd Congress · HJR 117 - 104th Congress · HJR 28 - 105th Congress · HJR 17 - 109th Congress · HJR 36 - 109th Congress		
		Rep. Margaret Heckler (R)
		Rep. Hastings Keith (R)
Sen. Ted Kennedy (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Ted Kennedy (D)	
Rep. Torbert MacDonald (D) · HJR 336 - 94th Congress		Rep. Torbert MacDonald (D)
Rep. Edward Markey (D) · HJR 373 - 95th Congress		
		Rep. Frank Morse (R)
		Rep. David Obey (D)
		Rep. Thomas O'Neill (D)
		Rep. Philip Philbin (D)
Rep. Gerry Studds (D) · HJR 208 - 93rd Congress · HJR 384 - 95th Congress · HJR 261 - 96th Congress · HJR 591 - 96th Congress · HJR 70 - 97th Congress · HJR 124 - 98th Congress · HJR 137 - 101st Congress · HJR 117 - 104th Congress		
Sen. Paul Tsongas (D) · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Paul Tsongas (D)	

S.22 MICHIGAN

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. James A. Barcia (D) · HJR 117 - 104th Congress		
Rep. James J. Blanchard (D) · HJR 168 - 95th Congress		
Rep. David Bonior (D) · HJR 230 - 95th Congress · HJR 145 - 102nd Congress · HJR 28 - 103rd Congress		
Rep. William Broomfield (R) · HJR 137 - 93rd Congress · HJR 288 - 94th Congress		Rep. William Broomfield (R)
		Rep. Garry Brown (R)
Rep. Milton R. Carr (D) · HJR 397 - 95th Congress · HJR 261 - 96th Congress		
Rep. Elford Cederberg (R) · HJR 168 - 95th Congress		Rep. Elford Cederberg (R)
Rep. Charles Chamberlain (R) · HJR 202 - 93rd Congress		Rep. Charles Chamberlain (R)
Rep. John Conyers, Jr. (D) · HJR 137 - 93rd Congress · HJR 109 - 108th Congress		Rep. John Conyers, Jr. (D)
Rep. George Crockett (D) · HJR 137 - 101st Congress		
Rep. John David Dingell, Jr. (D) · HJR 137 - 93rd Congress		Rep. John David Dingell, Jr. (D)
Rep. Marvin Esch (R) · HJR 137 - 93rd Congress		Rep. Marvin Esch (R)
		Rep. Gerald Ford (R)
Rep. W. D. Ford (D) · HJR 137 - 93rd Congress · HJR 229 - 95th Congress · HJR 288 - 96th Congress		Rep. W. D. Ford (D)
Sen. Robert Griffin (R) · SJR 1 - 94th Congress		
Sen. Philip Hart (D) · SJR 1 - 94th Congress		
Sen. Rupert Hartke (D) · SJR 1 - 94th Congress		
Rep. James Harvey (R) · HJR 207 - 93rd Congress		Rep. James Harvey (R)
Rep. Dale E. Kildee (D) · HJR 229 - 95th Congress · HJR 254 - 96th Congress · HJR 261 - 96th Congress		

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S.22 MICHIGAN *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Carl Levin (D) · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress · SJR 362 - 100th Congress · SJR 163 - 101st Congress	Sen. Carl Levin (D)	
		Rep. Jack McDonald (R)
Rep. Lucien Nedzi (D) · HJR 168 - 95th Congress · HJR 231 - 95th Congress · HJR 384 - 95th Congress		Rep. Lucien Nedzi (D)
Rep. James O'Hara (D) · HJR 137 - 93rd Congress · HJR 139 - 93rd Congress · HJR 207 - 93rd Congress · HJR 208 - 93rd Congress		Rep. James O'Hara (D)
Rep. Carl D. Pursell (R) · HJR 168 - 95th Congress · HJR 230 - 95th Congress		
Sen. Donald Riegle (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Donald Riegle (D)	Rep. Donald Riegle (D)
		Rep. Philip Ruppe (R)
Rep. Harold Sawyer (R) · HJR 384 - 95th Congress		
Rep. Bart Stupak (D) · HJR 28 - 103rd Congress		
		Rep. Guy Vander Jagt (R)
Rep. Howard Wolpe (D) · HJR 288 - 96th Congress		

S.23 MINNESOTA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Wendell Anderson (D) · SJR 1 - 95th Congress		
		Rep. John Blatnik (D)
Sen. Dave Durenberger (R) · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress	Sen. Dave Durenberger (R)	
Rep. Donald Fraser (D) · HJR 207 - 93rd Congress · HJR 384 - 95th Congress		Rep. Donald Fraser (D)
Rep. William Frenzel (R) · HJR 300 - 93rd Congress · HJR 253 - 95th Congress		
Sen. Hubert Humphrey (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
Rep. Joseph Karth (D) · HJR 204 - 94th Congress		Rep. Joseph Karth (D)
		Rep. Odin Langen (R)
Rep. Bill Luther (D) · HJR 117 - 104th Congress · HJR 28 - 105th Congress		
		Rep. Clark MacGregor (R)
Rep. Betty McCollum (D) · HJR 103 - 108th Congress		
Rep. David Minge (D) · HJR 28 - 103rd Congress · HJR 23 - 106th Congress		
Sen. Walter Mondale (D) · SJR 1 - 94th Congress		
		Rep. Ancher Nelsen (R)
Rep. Richard M. Nolan (D) · HJR 229 - 95th Congress · HJR 308 - 96th Congress		
Rep. Collin Peterson (D) · HJR 28 - 103rd Congress		
Rep. Albert H. Quie (R) · HJR 151 - 94th Congress · HJR 434 - 95th Congress		Rep. Albert H. Quie (R)
Rep. Bruce F. Vento (D) · HJR 288 - 96th Congress · HJR 137 - 101st Congress		
		Rep. John Zwach (R)

S.24 MISSISSIPPI

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Gene Taylor (D) · HJR 506 - 102nd Congress		

S.25 MISSOURI

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Richard Bolling (D) · HJR 207 - 93rd Congress		
Rep. William D. Burlison (D) · HJR 137 - 93rd Congress · HJR 786 - 94th Congress · HJR 39 - 95th Congress · HJR 228 - 95th Congress · HJR 229 - 95th Congress · HJR 281 - 95th Congress · HJR 384 - 95th Congress · HJR 397 - 95th Congress · HJR 254 - 96th Congress · HJR 261 - 96th Congress · HJR 288 - 96th Congress · HJR 299 - 96th Congress · HJR 308 - 96th Congress · HJR 332 - 96th Congress		Rep. William D. Burlison (D)
Sen. John C. Danforth (R) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. John C. Danforth (R)	
Rep. Pat Danner (D) · HJR 117 - 104th Congress · HJR 28 - 105th Congress		
Rep. Richard Gephardt (D) · HJR 228 - 95th Congress		
		Rep. William Raleigh Hull (D)
		Rep. William Hungate (D)
		Rep. Richard Ichord (D)
		Rep. William Randall (D)
Sen. William Symington (D) · SJR 1 - 94th Congress		
Rep. James Symington (D) · HJR 300 - 93rd Congress		Rep. James Symington (D)
Rep. Alan Wheat (D) · HJR 137 - 101st Congress · HJR 145 - 102nd Congress · HJR 65 - 103rd Congress		
Rep. Robert Young (D) · HJR 261 - 96th Congress		

S.26 MONTANA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Max Baucus (D) · HJR 197 - 95th Congress · HJR 229 - 95th Congress · HJR 230 - 95th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Max Baucus (D)	
Sen. Michael Mansfield (D) · SJR 1 - 94th Congress		
		Rep. Arnold Olsen (D)

S.27 NEBRASKA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John J. Cavanaugh (D) · HJR 228 - 95th Congress · HJR 332 - 96th Congress		
		Rep. Glenn Cunningham (R)
		Rep. Robert Denney (R)
Sen. J. James Exon (D) · SJR 3 - 97th Congress · SJR 362 - 100th Congress · SJR 163 - 101st Congress · SJR 302 - 102nd Congress · SJR 173 - 103rd Congress	Sen. J. James Exon (D)	
		Rep. David Martin (R)
Sen. Edward Zorinsky (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Edward Zorinsky (D)	

S.28 NEVADA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Harry M. Reid (D) · SJR 297 - 102nd Congress		

S.29 NEW HAMPSHIRE

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Thomas J. McIntyre (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
		Rep. Louis Wyman (R)

S.30 NEW JERSEY

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. William Cahill (R)
Rep. Dominick Daniels (D) · HJR 137 - 93rd Congress		Rep. Dominick Daniels (D)
		Rep. Florence Dwyer (R)
Rep. Edwin Forsythe (R) · HJR 207 - 93rd Congress		
		Rep. Peter Frelinghuysen (R)
		Rep. Cornelius Gallagher (D)
		Rep. Henry Helstoski (D)
Rep. James J. Howard (D) · HJR 228 - 95th Congress · HJR 288 - 96th Congress · HJR 130 - 97th Congress		Rep. James J. Howard (D)
Rep. William J. Hughes (D) · HJR 114 - 95th Congress		
		Rep. John Hunt (R)
Rep. Joseph G. Minish (D) · HJR 231 - 95th Congress		Rep. Joseph G. Minish (D)
Rep. Edward Patten (D) · HJR 820 - 93rd Congress		Rep. Edward Patten (D)
Rep. Matthew Rinaldo (R) · HJR 300 - 93rd Congress		
Rep. Peter Rodino (D) · HJR 144 - 95th Congress		Rep. Peter Rodino (D)
		Rep. Charles Sandman (R)
		Rep. Frank Thompson (D)
Rep. William Widnall (R) · HJR 208 - 93rd Congress		Rep. William Widnall (R)
Sen. Harrison Williams (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Harrison Williams (D)	

S.31 NEW MEXICO

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Manuel Lujan (R)
Sen. Joseph Montoya (D) · SJR 1 - 94th Congress		

S.32 NEW YORK

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Joseph P. Addabbo (D) · HJR 207 - 93rd Congress · HJR 168 - 95th Congress		Rep. Joseph P. Addabbo (D)
Rep. Herman Badillo (D) · HJR 207 - 93rd Congress		
		Rep. Mario Biaggi (D)
Rep. Jonathan Bingham (D) · HJR 352 - 95th Congress · HJR 384 - 95th Congress		Rep. Jonathan Bingham (D)
Rep. Frank James Brasco (D) · HJR 137 - 93rd Congress		Rep. Frank James Brasco (D)
		Rep. Daniel Button (R)
		Rep. Hugh Carey (D)
		Rep. Emanuel Celler (D)
Rep. Shirley A. Chisholm (D) · HJR 197 - 93rd Congress · HJR 300 - 93rd Congress · HJR 254 - 96th Congress		Rep. Shirley A. Chisholm (D)
		Rep. Barber Conable (R)
		Rep. James Delaney (D)
Rep. Thomas J. Downey (D) · HJR 229 - 95th Congress · HJR 288 - 96th Congress		
		Rep. Thaddeus Dulski (D)
Rep. Eliot L. Engel (D) · HJR 17 - 109th Congress		
		Rep. Leonard Farbstein (D)
Rep. Hamilton Fish, Jr. (R) · HJR 137 - 93rd Congress · HJR 50 - 94th Congress		Rep. Hamilton Fish, Jr. (R)
		Rep. Jacob Gilbert (D)
Rep. James Russell Grover, Jr. (R) · HJR 137 - 93rd Congress		Rep. James Russell Grover, Jr. (R)
		Rep. Seymour Halpern (R)
Rep. James Hanley (D) · HJR 228 - 95th Congress · HJR 261 - 96th Congress		Rep. James Hanley (D)
Rep. James Hastings (R) · HJR 207 - 93rd Congress		Rep. James Hastings (R)
		Rep. Frank Horton (R)
Sen. Jacob Javits (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Jacob Javits (R)	

(continued)

S.32 NEW YORK *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Carleton King (R)
		Rep. Edward Koch (D)
		Rep. Allard Lowenstein (D)
		Rep. Richard McCarthy (D)
		Rep. Robert McEwen (R)
		Rep. Martin McKneally (R)
Rep. Michael McNulty (D) · HJR 28 - 103rd Congress · HJR 60 - 103rd Congress · HJR 28 - 105th Congress · HJR 23 - 106th Congress · HJR 103 - 108th Congress · HJR 17 - 109th Congress		
Rep. Donald Mitchell (R) · HJR 750 - 94th Congress · HJR 168 - 95th Congress · HJR 228 - 95th Congress · HJR 288 - 96th Congress		
Rep. Susan Molinari (R) · HJR 28 - 103rd Congress		
		Rep. John Murphy (D)
Rep. Jerrold Nadler (D) · HJR 109 - 108th Congress		
Rep. Richard L. Ottinger (D) · HJR 231 - 95th Congress · HJR 384 - 95th Congress · HJR 288 - 96th Congress		Rep. Richard L. Ottinger (D)
Rep. Major Owens (D) · HJR 117 - 104th Congress · HJR 109 - 108th Congress		
		Rep. Otis Pike (D)
		Rep. Alexander Pirnie (R)
Rep. Bertram Podell (D) · HJR 207 - 93rd Congress		Rep. Bertram Podell (D)
Rep. Charles B. Rangel (D) · HJR 300 - 95th Congress		
		Rep. Ogden Reid (D)
Rep. Frederick Richmond (D) · HJR 229 - 95th Congress · HJR 254 - 96th Congress		
		Rep. Howard Robison (R)
		Rep. John Rooney (D)
Rep. Benjamin Rosenthal (D) · HJR 207 - 93rd Congress		Rep. Benjamin Rosenthal (D)

S.32 NEW YORK *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. William Ryan (D)
		Rep. James Scheuer (D)
Rep. Jose E. Serrano (D) · HJR 103 - 108th Congress · HJR 50 - 109th Congress		
		Rep. Henry Smith (R)
		Rep. Samuel Stratton (D)
Rep. Anthony Weiner (D) · HJR 103 - 108th Congress		
Rep. Theodore S. Weiss (D) · HJR 228 - 95th Congress		
Rep. Lester L. Wolff (D) · HJR 208 - 93rd Congress · HJR 228 - 95th Congress		Rep. Lester L. Wolff (D)
		Rep. John Wydler (R)

S.33 NORTH CAROLINA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. James Broyhill (R)
		Rep. Lawrence Fountain (D)
		Rep. Nick Galifianakis (D)
		Rep. David Henderson (D)
		Rep. Charles Jonas (R)
Rep. Walter Beaman Jones, Sr. (D) · HJR 207 - 93rd Congress		Rep. Walter Beaman Jones, Sr. (D)
		Rep. Wilmer Mizell (R)
		Rep. Lunsford Preyer (D)
		Rep. Earl Ruth (R)
		Rep. Roy Taylor (D)

S.34 NORTH DAKOTA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Mark Andrews (R)
Sen. Quentin N. Burdick (D) · SJR 1 - 94th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 17 - 98th Congress	Sen. Quentin N. Burdick (D)	

S.35 OHIO

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Thomas Ashley (D) · HJR 137 - 93rd Congress		Rep. Thomas Ashley (D)
		Rep. William Ayers (R)
		Rep. Jackson Betts (R)
		Rep. Frank Bow (R)
		Rep. Clarence J. Brown (R)
Rep. Charles J. Carney (D) · HJR 35 - 94th Congress · HJR 40 - 95th Congress · HJR 384 - 95th Congress		
		Rep. Donald Clancy (R)
Rep. Dennis Eckart (D) · HJR 9 - 102nd Congress		
		Rep. Michael Feighan (D)
Sen. John H. Glenn, Jr. (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. John H. Glenn, Jr. (D)	
		Rep. William Harsha (R)
		Rep. Wayne Hays (D)
Rep. Dennis J. Kucinich (D) · HJR 109 - 108th Congress		
		Rep. Delbert Latta (R)
Rep. Thomas Luken (D) · HJR 228 - 95th Congress		
		Rep. William McCulloch (R)
Sen. Howard M. Metzenbaum (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Howard M. Metzenbaum (D)	
		Rep. Clarence Miller (R)
		Rep. William Minshall (R)
		Rep. Charles Mosher (R)
Rep. Ronald Mottl (D) · HJR 168 - 95th Congress		
Rep. Donald J. Pease (D) · HJR 168 - 95th Congress · HJR 229 - 95th Congress · HJR 288 - 96th Congress		

(continued)

S.35 OHIO *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John F. Seiberling (D) · HJR 229 - 95th Congress		
		Rep. John Stanton (R)
Rep. Louis Stokes (D) · HJR 254 - 96th Congress		Rep. Louis Stokes (D)
Sen. Robert Taft, Jr. (R) · SJR 1 - 94th Congress		Rep. Robert Taft, Jr. (R)
Rep. James A. Traficant, Jr. (D) · HJR 511 - 102nd Congress · HJR 117 - 104th Congress		
Rep. Charles Vanik (D) · HJR 139 - 93rd Congress		Rep. Charles Vanik (D)
Rep. Charles Whalen (R) · HJR 300 - 93rd Congress · HJR 345 - 94th Congress · HJR 238 - 95th Congress		Rep. Charles Whalen (R)
		Rep. Chalmers Wylie (R)

S.36 OKLAHOMA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Carl Albert (D)
Sen. Dewey F. Bartlett (R) · SJR 1 - 95th Congress		
		Rep. Page Belcher (R)
Sen. Henry Bellmon (R) · SJR 101 - 93rd Congress · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Henry Bellmon (R)	
Sen. David L. Boren (D) · SJR 3 - 97th Congress · SJR 17 - 98th Congress · SJR 297 - 102nd Congress · SJR 302 - 102nd Congress	Sen. David L. Boren (D)	
		Rep. John Camp (R)
		Rep. Edmond Edmondson (D)
		Rep. John Jarman (D)
		Rep. Thomas Steed (D)

S.37 OREGON

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John Dellenback (R) · HJR 78 - 93rd Congress · HJR 137 - 93rd Congress		Rep. John Dellenback (R)
Rep. Robert B. Duncan (D) · HJR 229 - 95th Congress · HJR 230 - 95th Congress		
		Rep. Edith Green (D)
Sen. Mark O. Hatfield (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 8 - 97th Congress · SJR 17 - 98th Congress	Sen. Mark O. Hatfield (R)	
Sen. Robert W. Packwood (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Robert W. Packwood (R)[2]	
Rep. Albert Ullman (D) · HJR 384 - 95th Congress		Rep. Albert Ullman (D)
		Rep. Wendell Wyatt (R)

[2]Senator Packwood was announced in favor of SJR 28, but did not cast a vote in the roll call.

S.38 PENNSYLVANIA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Joseph Ammerman (D) · HJR 384 - 95th Congress		
		Rep. William Barrett (D)
Rep. Edward George Biester, Jr. (R) · HJR 207 - 93rd Congress		Rep. Edward George Biester, Jr. (R)
		Rep. James Byrne (D)
Rep. Frank Clark (D) · HJR 137 - 93rd Congress		Rep. Frank Clark (D)
		Rep. Robert Corbett (R)
		Rep. Robert Coughlin (R)
		Rep. John Dent (D)
Rep. Robert Edgar (D) · HJR 230 - 95th Congress · HJR 384 - 95th Congress		
Rep. Joshua Eilberg (D) · HJR 127 - 95th Congress		Rep. Joshua Eilberg (D)

S.38 PENNSYLVANIA *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Allen E. Ertel (D) · HJR 384 - 95th Congress · HJR 288 - 96th Congress		
		Rep. Edwin Eshleman (R)
Rep. Daniel J. Flood (D) · HJR 137 - 93rd Congress · HJR 288 - 96th Congress		Rep. Daniel J. Flood (D)
		Rep. James Fulton (R)
Rep. Joseph Gaydos (D) · HR 2063 - 95th Congress		Rep. Joseph Gaydos (D)
Rep. William F. Goodling (R) · HJR 150 - 96th Congress		Rep. George Goodling (R)
		Rep. William Green (D)
Rep. James Greenwood (R) · HJR 28 - 103rd Congress		
		Rep. Albert Johnson (R)
Rep. Joseph P. Kolter (D) · HJR 506 - 102nd Congress		
Rep. Peter H. Kostmayer (D) · HJR 506 - 102nd Congress		
Rep. Joseph McDade (R) · HJR 207 - 93rd Congress		Rep. Joseph McDade (R)
Rep. Paul McHale (D) · HJR 28 - 103rd Congress		
		Rep. William Moorhead (D)
		Rep. Thomas Morgan (D)
Rep. Austin Murphy (D) · HJR 228 - 95th Congress · HJR 288 - 96th Congress		
		Rep. Robert Nix (D)
		Rep. Frederick Rooney (D)
		Rep. John Saylor (R)
		Rep. Herman Schneebeli (R)
Sen. Richard Schweiker (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
		Rep. Joseph Vigorito (D)
		Rep. George Watkins (R)
		Rep. Lawrence Williams (R)
Rep. Gus Yatron (D) · HJR 139 - 93rd Congress · HJR 168 - 95th Congress · HJR 231 - 95th Congress · HJR 261 - 96th Congress		Rep. Gus Yatron (D)

S.39 RHODE ISLAND

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Edward P. Beard (D) · HJR 168 - 95th Congress		
Sen. John H. Chafee (R) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. John H. Chafee (R)	
Sen. John Pastore (D) · SJR 1 - 94th Congress		
Sen. Claiborne Pell (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Claiborne Pell (D)	
		Rep. Fernand St. Germain (D)
Rep. Robert Tiernan (D) · HJR 208 - 93rd Congress		Rep. Robert Tiernan (D)

S.40 SOUTH CAROLINA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. John Wilson Jenrette, Jr. (D) · HJR 384 - 95th Congress		

S.41 SOUTH DAKOTA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. James G. Abourezk (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress		
Sen. Thomas A. Daschle (D) · SJR 297 - 102nd Congress		
Sen. Tim Johnson (D) · HJR 145 - 102nd Congress · HJR 28 - 103rd Congress · SJR 56 - 106th Congress		
Sen. George McGovern (D) · SJR 1 - 94th Congress	Sen. George McGovern (D)	

S.42 TENNESSEE

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. William Anderson (D)
Sen. Howard H. Baker, Jr. (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress	Sen. Howard H. Baker, Jr. (R)	
		Rep. Leonard Blanton (D)
Rep. William Boner (D) · HJR 252 - 96th Congress		
Rep. Bob Clement (D) · HJR 28 - 103rd Congress		
		Rep. Richard Fulton (D)
		Rep. John Kyl (R)
	Sen. James Sasser (D)	

S.43 TEXAS

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
	Sen. Lloyd Millard Bentsen, Jr. (D)	
Rep. Jack Bascom Brooks (D) · HJR 137 - 93rd Congress · HJR 80 - 97th Congress · HJR 5 - 98th Congress · HJR 5 - 99th Congress · HJR 5 - 100th Congress · HJR 2 - 101st Congress		Rep. Jack Bascom Brooks (D)
		Rep. George H.W. Bush (R)
		Rep. Earle Cabell (D)
		Rep. Robert Casey (D)
		Rep. James Collins (R)[3]
Rep. Lloyd Doggett (D) · HJR 36 - 109th Congress		
Rep. Henry Gonzalez (D) · HJR 167 - 93rd Congress		Rep. Henry Gonzalez (D)
Rep. Gene Green (D) · HJR 28 - 103rd Congress · HJR 117 - 104th Congress · HJR 180 - 104th Congress · HJR 28 - 105th Congress · HJR 132 - 106th Congress · HJR 3 - 107th Congress · HJR 103 - 108th Congress · HJR 8 - 109th Congress		

(continued)

S.43 TEXAS *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Sam Blakeley Hall (D) · HJR 384 - 95th Congress		
		Rep. Abraham Kazen (D)
Rep. Dale Milford (D) · HJR 239 - 93rd Congress · HJR 230 - 95th Congress		
		Rep. Herbert Roberts (D)
Rep. Bill Sarpalius (D) · HJR 28 - 103rd Congress		
		Rep. Olin Teague (D)
		Rep. Richard White (D)
		Rep. James Claude Wright (D)
		Rep. John Young (D)

[3] The roll call does not make clear whether this Representative Collins or the one from Illinois voted for HJR 681 in 1969.

S.44 UTAH

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. E. J. Garn (R) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress	Sen. E. J. Garn (R)	
Rep. James Hansen (R) · HJR 28 - 103rd Congress		
		Rep. Sherman Lloyd (R)
Sen. Frank Moss (D) · SJR 1 - 94th Congress		
Rep. Bill Orton (D) · HJR 506 - 102nd Congress · HJR 169 - 103rd Congress · HJR 36 - 104th Congress		
Rep. Douglas Owens (D) · HJR 347 - 93rd Congress		
Rep. Karen Shepherd (D) · HJR 28 - 103rd Congress		

S.45 VERMONT

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Sen. Patrick J. Leahy (D) · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress	Sen. Patrick J. Leahy (D)	
Rep. Bernard Sanders (I) · HJR 28 - 103rd Congress		
Sen. Robert T. Stafford (R) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 17 - 98th Congress	Sen. Robert T. Stafford (R)	Rep. Robert T. Stafford (R)

S.46 VIRGINIA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Rick Boucher (D) · HJR 28 - 105th Congress · HJR 23 - 106th Congress		
		Rep. Joel Broyhill (R)
Rep. Leslie Byrne (D) · HJR 28 - 103rd Congress		
Rep. Thomas Downing (D) · HJR 207 - 93rd Congress · HJR 43 - 94th Congress		Rep. Thomas Downing (D)
		Rep. John Marsh (D)
		Rep. Richard Poff (R)
		Rep. William Scott (R)
		Rep. William Wampler (R)
		Rep. George Whitehurst (R)

S.47 WASHINGTON

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Brockman Adams (D)
Rep. Brian Baird (D) · HJR 103 - 108th Congress · HJR 8 - 109th Congress		
Rep. Norman Dicks (D) · HJR 384 - 95th Congress		
		Rep. Thomas Foley (D)

(continued)

S.47 WASHINGTON *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Julia Hansen (D)
Rep. Floyd Hicks (D) · HJR 300 - 93rd Congress		Rep. Floyd Hicks (D)
Sen. Henry M. Jackson (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Henry M. Jackson (D)	
Sen. Warren G. Magnuson (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress	Sen. Warren G. Magnuson (D)	
		Rep. Catherine May (R)
Rep. Mike McCormack (D) · HJR 281 - 95th Congress		
Rep. Jim McDermott (D) · HJR 117 - 104th Congress · HJR 50 - 109th Congress		
Rep. Lloyd Meeds (D) · HJR 66 - 94th Congress · HJR 228 - 95th Congress		Rep. Lloyd Meeds (D)
		Rep. Thomas Pelly (R)
Rep. Joel Pritchard (R) · HJR 384 - 95th Congress		

S.48 WEST VIRGINIA

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
	Sen. Robert Byrd (D)	
		Rep. Kenneth Hechler (D)
		Rep. James Kee (D)
Rep. Robert H. Mollohan (D) · HJR 197 - 95th Congress · HJR 308 - 96th Congress		Rep. Robert H. Mollohan (D)
Sen. Jennings Randolph (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. Jennings Randolph (D)	
		Rep. John Mark Slack (D)

S.48 WEST VIRGINIA *(continued)*

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. Harley Staggers (D)
Rep. Robert E. Wise, Jr. (D) · HJR 137 - 101st Congress · HJR 28 - 103rd Congress · HJR 117 - 104th Congress · HJR 28 - 105th Congress		

S.49 WISCONSIN

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
Rep. Alvin J. Baldus (D) · HJR 231 - 95th Congress		
		Rep. John Byrnes (R)
Rep. Robert J. Cornell (D) · HJR 229 - 95th Congress		
		Rep. Glenn Davis (R)
Rep. Robert Kastenmeier (D) · HJR 62 - 94th Congress · HJR 70 - 95th Congress · HJR 57 - 96th Congress		Rep. Robert Kastenmeier (D)
Rep. Gerald D. Kleczka (D) · HJR 145 - 102nd Congress · HJR 60 - 103rd Congress		
Sen. Gaylord Nelson (D) · SJR 1 - 94th Congress	Sen. Gaylord Nelson (D)	
Sen. William Proxmire (D) · SJR 1 - 94th Congress · SJR 1 - 95th Congress · SJR 1 - 96th Congress · SJR 28 - 96th Congress · SJR 3 - 97th Congress · SJR 17 - 98th Congress	Sen. William Proxmire (D)	
		Rep. Henry Reuss (D)
		Rep. Henry Schadeberg (R)
Rep. William Steiger (R) · HJR 207 - 93rd Congress		Rep. William Steiger (R)
		Rep. Vernon Thomson (R)
		Rep. Clement Zablocki (D)

S.50 WYOMING

SPONSOR OF A CONSTITUTIONAL AMENDMENT	VOTED FOR SJR 28 IN 1979 ROLL CALL	VOTED FOR HJR 681 IN 1969 ROLL CALL
		Rep. John Wold (R)

APPENDIX T: STATE STATUTORY DEADLINES FOR CERTIFICATION OF ELECTIONS

Table T.1 State statutory deadlines for certification of elections for the 50 states and District of Columbia

JURISDICTION	CERTIFIER	CERTIFICATION DEADLINE
Alabama	Governor	Within 22 days after the election
Alaska	Director	No date specified
Arizona	Secretary of State	On the third Monday following a general election
Arkansas	Governor	Within 20 days after the election
California	Secretary of State	On the first Monday in the month following the election
Colorado	Secretary of State	No later than the fifteenth day after any election
Connecticut	Secretary of State / Superior Court	Last Wednesday in the month in which votes were cast
Delaware	Board of Elections	No date specified
District of Columbia	Superior Court	No date specified
Florida	Canvassing Commission	No date specified
Georgia	Secretary of State	No later than 5:00 p.m. on the fourteenth day following the date on which such election was conducted
Hawaii	Governor	No later than 4:30 p.m. on the last day in the month of the election or as soon as returns received from all counties
Idaho	Secretary of State	On or before the second Wednesday in December next after such election
Illinois	Governor	Within 31 days after holding the election
Indiana	Secretary of State	Not later than noon on the last Tuesday in November
Iowa	Governor	At the expiration of 10 days after the completed canvass
Kansas	Governor	Before the first Wednesday in December next after such election
Kentucky	State Board	State Board shall meet to count when all the returns are in or no later than the third Monday after the election
Louisiana	Governor	On or before the 12th day after the general election
Maine	Governor	Within 20 days after the election
Maryland	Board of Canvassers	Within 35 days of the election
Massachusetts	Governor	Within 10 days after they have been transmitted to the Secretary of State
Michigan	Secretary of State	On or before the 20th day after the election and no later than the 40th day
Minnesota	Governor	On the second Tuesday after each state general election the state canvassing board shall open and canvass the returns
Mississippi	Secretary of State	Within 30 days after the date of the election
Missouri	Governor	Within two days after the election, the clerks shall, within eight days after they receive the returns, certify and transmit them to the Governor

Table T.1 *(continued)*

JURISDICTION	CERTIFIER	CERTIFICATION DEADLINE
Montana	Secretary of State	No date specified
Nebraska	Secretary of State	Within 40 days
Nevada	Governor	On the fourth Tuesday of November canvass the vote, must be completed within 20 days
New Hampshire	Governor	No date specified
New Jersey	Secretary of State	No later than the 28th day after the election
New Mexico	Secretary of State	On the third Tuesday after each election board will meet to canvass and declare the results of the election
New York	State Board of Elections	No date specified
North Carolina	Governor	Board of elections shall meet at 11:00 a.m. on the seventh day after every election or a reasonable time thereafter if the counting of the votes has not been completed
North Dakota	Secretary of State	Within ten days and before 4 p.m. on the tenth day following any general election
Ohio	Board of Elections	No date specified
Oklahoma	Secretary of State	Election board shall convene on the day of and remaining session until all returns are delivered
Oregon	Secretary of State	No later than the 30th day after any election
Pennsylvania	Governor	No date specified
Rhode Island	State Board	State board shall commence the canvass at 9:00 p.m. on election day and shall continue and complete the tabulation with all reasonable expedition
South Carolina	State Board	State board shall meet within 10 days after any general election
South Dakota	Governor	Within seven days after the day of election
Tennessee	Secretary of State	No date specified
Texas	Secretary of State	No date specified
Utah	Lieutenant Governor	Fourth Monday of November at noon
Vermont	Canvassing Committee	Canvassing committee shall meet at 10:00 a.m. one week after the day of the election
Virginia	State Board	Fourth Monday in November, if the Board is unable to ascertain results on that day, the meeting shall stand adjourned for not more than three days
Washington	Secretary of State	Not later than 30 days after the election
West Virginia	Board of Canvassers	Fifth day after every election
Wisconsin	Elections Board	The first day of December following a general election
Wyoming	Canvassing Board	No later than the second Wednesday following the election

APPENDIX U: U.S. SUPREME COURT DECISION IN *HAWKE V. SMITH* (1920)

U.S. Supreme Court
253 U.S. 221
Hawke v. Smith, Secretary of State of Ohio. No. 582.
Argued April 23, 1920
Decided June 1, 1920

Mr. J. Frank Hanly, of Indianapolis, Ind., for plaintiff in error.

Mr. Lawrence Maxwell, of Cincinnati, Ohio, for defendant in error.

Mr. Justice DAY delivered the opinion of the Court.

Plaintiff in error (plaintiff below) filed a petition for an injunction in the court of common pleas of Franklin county, Ohio, seeking to enjoin the secretary of state of Ohio from spending the public money in preparing and printing forms of ballot for submission of a referendum to the electors of that state on the question of the ratification which the General Assembly had made of the proposed Eighteenth Amendment to the federal Constitution. A demurrer to the petition was sustained in the court of common pleas. Its judgment was affirmed by the Court of Appeals of Franklin County, which judgment was affirmed by the Supreme Court of Ohio, and the case was brought here.

A joint resolution proposing to the states this amendment to the Constitution of the United States was adopted on the 3d day of December, 1917. 40 Stat. 1050. The amendment prohibits the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes. The several states were given concurrent power to enforce the amendment by appropriate legislation. The resolution provided that the amendment should be inoperative unless ratified as an amendment of the Constitution by the Legislatures of the several states, as provide in the Constitution, within seven years from the date of the submission thereof to the states. The Senate and House of Representatives of the state of Ohio adopted a resolution ratifying the proposed amendment by the General Assembly of the state of Ohio, and ordered that certified copies of the joint resolution of ratification be forwarded by the Governor to the Secretary of State at Washington and to the presiding officer of each House of Congress. This resolution was adopted on January 7, 1919; on January 27, 1919, the Governor of Ohio complied with the resolution. On January 29, 1919, the Secretary of State of the United States proclaimed the ratification of the amendment, naming 36 states as having ratified the same, among them the state of Ohio.

The question for our consideration is: Whether the provision of the Ohio Constitution, adopted at the general election, November, 1918, extending the referendum to the ratification by the General Assembly of proposed amendments to the federal Constitution is in conflict with article 5 of the Constitution of the United States. The amendment of 1918 provides:

> "The people also reserve to themselves the legislative power of the referendum on the action of the General Assembly ratifying any proposed amendment to the Constitution of the United States."

Article 5 of the federal Constitution provides:

> "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

The Constitution of the United States was ordained by the people, and, when duly ratified, it became the Constitution of the people of the United States. *McCulloch v. Maryland*, 4 Wheat. 316, 402. The states surrendered to the general government the powers specifically conferred upon the nation, and the Constitution and the laws of the United States are the supreme law of the land.

The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article.

This article makes provision for the proposal of amendments either by two-thirds of both houses of Congress, or on application of the Legislatures of two-thirds of the states; thus securing deliberation and consideration before any change can be proposed. The proposed change can only become effective by the ratification of the Legislatures of three-fourths of the states, or by conventions in a like number of states. The method of ratification is left to the choice of Congress. Both methods of ratification, by Legislatures or conventions, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people.

The fifth article is a grant of authority by the people to Congress. The determination of the method of ratification is the exercise of a national power specifically granted by the Constitution; that power is conferred upon Congress, and is limited to two methods, by action of the Legislatures of three-fourths of the states, or conventions in a like number of states. *Dodge v. Woolsey*, 18 How. 331, 348. The framers of the Constitution might have adopted a different method. Ratification might have been left

to a vote of the people, or to some authority of government other than that selected. The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed.

All of the amendments to the Constitution have been submitted with a requirement for legislative ratification; by this method all of them have been adopted.

The only question really for determination is: What did the framers of the Constitution mean in requiring ratification by "legislatures"? That was not a term of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people. The term is often used in the Constitution with this evident meaning. Article 1, section 2, prescribes the qualifications of electors of Congressmen as those "requisite for electors of the most numerous branch of the state Legislature." Article 1, section 3, provided that Senators shall be chosen in each state by the Legislature thereof, and this was the method of choosing senators until the adoption of the Seventeenth Amendment, which made provision for the election of Senators by vote of the people, the electors to have the qualifications requisite for electors of the most numerous branch of the state Legislature. That Congress and the states understood that this election by the people was entirely distinct from legislative action is shown by the provision of the amendment giving the Legislature of any state the power to authorize the executive to make temporary appointments until the people shall fill the vacancies by election. It was never suggested, so far as we are aware, that the purpose of making the office of Senator elective by the people could be accomplished by a referendum vote. The necessity of the amendment to accomplish the purpose of popular election is shown in the adoption of the amendment. In article 4 the United States is required to protect every state against domestic violence upon application of the Legislature, or of the executive when the Legislature cannot be convened. Article 6 requires the members of the several Legislatures to be bound by oath, or affirmation, to support the Constitution of the United States. By article 1, section 8, Congress is given exclusive jurisdiction over all places purchased by the consent of the Legislature of the state in which the same shall be. Article 4, section 3, provides that no new states shall be carved out of old states without the consent of the Legislatures of the states concerned.

There can be no question that the framers of the Constitution clearly understood and carefully used the terms in which that instrument referred to the action of the Legislatures of the states. When they intended that direct action by the people should be had they were no less accurate in the use of apt phraseology to carry out such purpose. The members of the House of Representatives were required to be chosen by the people of the several states. Article 1, section 2.

The Constitution of Ohio in its present form, although making provision for a ref-

erendum, vests the legislative power primarily in a General Assembly, consisting of a Senate and House of Representatives. Article 2, section 1, provides:

> "The legislative power of the state shall be vested in a General Assembly consisting of a Senate and House of Representatives, but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the Constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided."

The argument to support the power of the state to require the approval by the people of the state of the ratification of amendments to the federal Constitution through the medium of a referendum rests upon the proposition that the federal Constitution requires ratification by the legislative action of the states through the medium provided at the time of the proposed approval of an amendment. This argument is fallacious in this—ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the state to a proposed amendment.

At an early day this court settled that the submission of a constitutional amendment did not require the action of the President. The question arose over the adoption of the Eleventh Amendment. *Hollingsworth et al. v. Virginia*, 3 Dall. 378. In that case is was contended that the amendment had not been proposed in the manner provided in the Constitution as an inspection of the original roll showed that it had never been submitted to the President for his approval in accordance with article 1, section 7, of the Constitution. The Attorney General answered that the case of amendments is a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of the Constitution investing the President with a qualified negative on the acts and resolutions of Congress. In a footnote to this argument of the Attorney General, Justice Chase said:

> "There can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition, or adoption, of amendments to the Constitution."

The court by a unanimous judgment held that the amendment was constitutionally adopted.

It is true that the power to legislate in the enactment of the laws of a state is derived from the people of the state. But the power to ratify a proposed amendment to the federal Constitution has its source in the federal Constitution. The act of ratification by the state derives its authority from the federal Constitution to which the state and its people have alike assented.

This view of the amendment is confirmed in the history of its adoption found in

2 Watson on the Constitution, 1301 et seq. Any other view might lead to endless confusion in the manner of ratification of federal amendments. The choice of means of ratification was wisely withheld from conflicting action in the several states.

But it is said this view runs counter to the decision of this court in *Davis v. Hildebrant*, 241 U.S. 565, 36 S. Ct. 708. But that case is inapposite. It dealt with article 1 section 4, of the Constitution, which provides that the times, places, and manners of holding elections for Senators and Representatives in each state shall be determined by the respective Legislatures thereof, but that Congress may at any time make or alter such regulations, except as to the place for choosing Senators. As shown in the opinion in that case, Congress had itself recognized the referendum as part of the legislative authority of the state for the purpose stated. It was held, affirming the judgment of the Supreme Court of Ohio, that the referendum provision of the state Constitution, when applied to a law redistricting the state with a view to representation in Congress, was not unconstitutional. Article 1, section 4, plainly gives authority to the state to legislate within the limitations therein named. Such legislative action is entirely different from the requirement of the Constitution as to the expression of assent or dissent to a proposed amendment to the Constitution. In such expression no legislative action is authorized or required.

It follows that the court erred in holding that the state had authority to require the submission of the ratification to a referendum under the state Constitution, and its judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

APPENDIX V: U.S. SUPREME COURT DECISION IN *SMILEY V. HOLM* (1932)

U.S. Supreme Court
***Smiley v. Holm*, 285 U.S. 355 (1932)**
285 U.S. 355
Smiley v. Holm, as Secretary of State of Minnesota
No. 617.
Argued March 16, 17, 1932
Decided April 11, 1932

Messrs. George T. Simpson, Alfred W. Bowen, W. Yale Smiley, John A. Weeks, and F. J. Donahue, all of Minneapolis, Minn., for petitioner.

Messrs. Henry N. Benson, Atty. Gen., and William H. Gurnee, Asst. Atty. Gen., both of St. Paul, Minn., for respondent.

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Under the reapportionment following the fifteenth decennial census, as provided by the Act of Congress of June 18, 1929 (c. 28, 22, 46 Stat. 21, 26 (2 USCA 2a)), Minnesota is entitled to nine Representatives in Congress, being one less than the number previously allotted. In April, 1931, the bill known as House File No. 1456 (Laws Minn. 1931, p. 640), dividing the state into nine congressional districts and specifying the counties of which they should be composed, was passed by the House of Representatives and the Senate of the state, and was transmitted to the Governor, who returned it without his approval. Thereupon, without further action upon the measure by the House of Representatives and the Senate, and in compliance with a resolution of the House of Representatives, House File No. 1456 was deposited with the secretary of state of Minnesota. This suit was brought by the petitioner as a "citizen, elector and taxpayer" of the state to obtain a judgment declaring invalid all fillings for nomination for the office of Representative in Congress, which should designate a subdivision of the state as a congressional district, and to enjoin the secretary of state from giving notice of the holding of elections for that office in such subdivisions. The petition alleged that House File No. 1456 was a nullity, in that, after the Governor's veto, it was not repassed by the Legislature as required by law, and also in that the proposed congressional districts were not "compact" and did not "contain an equal number of inhabitants as nearly as practicable" in accordance with the Act of Congress of August 8, 1911.[1]

The respondent, secretary of state, demurred to the petition upon the ground that

[1] The Act of August 8, 1911, c. 5, 37 Stat. 13 (2 USCA 2 and note, 3-5), provided for the apportionment of Representatives in Congress among the several states under the thirteenth census. After fixing the total number of Representatives and their apportionment, in sections 1 and 2, the act provided as follows:

> "Sec. 3. That in each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal

it did not state facts sufficient to constitute a cause of action. He maintained the validity of House File No. 1456 by virtue of the authority conferred upon the Legislature by article 1, 4, of the Federal Constitution, and he insisted that the act of Congress of August 8, 1911, was no longer in force, and that the asserted inequalities in redistricting presented a political and not a judicial question. The trial court sustained the demurrer, and its order was affirmed by the Supreme Court of the state. 238 N. W. 494. The action was then dismissed upon the merits, and the Supreme Court affirmed the judgment upon its previous opinion. 238 N. W. 792. This Court granted a writ of certiorari. 284 U.S. 616, 52 S. Ct. 266, 76 L. Ed.

Article 1, 4, of the Constitution of the United States, provides:

> "The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators."

Under the Constitution of Minnesota, the "legislature" consists "of the senate and house of representatives." Const. Minn. art. 4, 1. Before any bill passed by the Senate and House of Representatives "becomes a law," it must "be presented to the governor of the state," and if he returns it, within the time stated, without his approval, the bill may become a law provided it is reconsidered and thereupon passed by each house by a two-thirds vote. *Id.* art. 4, 11. The state Constitution also provides that, after each Federal census, "the legislature shall have the power to prescribe the bounds of congressional . . . districts." *Id.* art. 4, 23. We do not understand that the Supreme Court of the state has held that, under these provisions, a measure redistricting the state for congressional elections could be put in force by the Legislature without participation by the Governor, as required in the case of legislative bills, if such action were regarded as a performance of the function of the Legislature as a lawmaking body. No decision to that effect has been cited. It appears that "on seven occasions" prior to the measure now under consideration the Legislature of Minnesota had "made state and federal reapportionments in the form of a bill for an act which was approved by

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number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

"Sec. 4. That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this Act; and if there be no change in the number of Representatives from a State, the Representatives thereof shall be elected from the districts now prescribed by law until such State shall be redistricted as herein prescribed.

"Sec. 5. That candidates for Representative or Representatives to be elected at large in any State shall be nominated in the same manner as candidates for governor, unless otherwise provided by the laws of such State.'"

the Governor."[2] While, in the instant case, the Supreme Court regarded that procedure as insufficient to support the petitioner's contention as to practical construction, that question was dismissed from consideration because of the controlling effect which the court ascribed to the federal provision. 238 N. W. page 500. The court expressed the opinion that "the various provisions of our state Constitution cited in the briefs are of little importance in relation to the matter now in controversy"; that "the power of the state Legislature to prescribe congressional districts rests exclusively and solely in the language of article 1, 4, of the United States Constitution." *Id.* 238 N. W. page 497. Construing that provision, the court reached the conclusion that the Legislature in redistricting the state was not acting strictly in the exercise of the lawmaking power, but merely as an agency, discharging a particular duty in the manner which the Federal Constitution required. Upon this point the court said (*Id.* 238 N. W. page 499):

> "The Legislature in districting the state is not strictly in the discharge of legislative duties as a lawmaking body, acting in its sovereign capacity, but is acting as representative of the people of the state under the power granted by said article 1, 4. It merely gives expression as to district lines in aid of the election of certain federal officials; prescribing one of the essential details serving primarily the federal government and secondly the people of the state. The Legislature is designated as a mere agency to discharge the particular duty. The Governor's veto has no relation to such matters; that power pertains, under the state Constitution, exclusively to state affairs. The word 'legislature' has reference to the well-recognized branch of the state government—created by the state as one of its three branches for a specific purpose—and when the framers of the Federal Constitution employed this term, we believe they made use of it in the ordinary sense with reference to the official body invested with the functions of making laws, the legislative body of the state; and that they did not intend to include the state's chief executive as a part thereof. We would not be justified in construing the term as being used in its enlarged sense as meaning the state or as meaning the lawmaking power of the state."

The question then is whether the provision of the Federal Constitution, thus regarded as determinative, invests the Legislature with a particular authority, and imposes upon it a corresponding duty, the definition of which imports a function different from that of lawgiver, and thus renders inapplicable the conditions which attach to the making of state laws. Much that is urged in argument with regard to the meaning of the term "Legislature" is beside the point. As this Court said in *Hawke v. Smith*, No. 1, 253 U.S. 221, 227, 40 S. Ct. 495, 497, 10 A. L. R. 1504, the term was not one "of uncertain meaning when incorporated into the Constitution. What it meant when adopted

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[2] See Laws of Minnesota 1858, c. 83; 1872, c. 21; 1881, c. 128; 1891, c. 3; 1901, c. 92; 1913, c. 513; 1929, c. 64.

it still means for the purpose of interpretation. A Legislature was then the representative body which made the laws of the people." The question here is not with respect to the "body" as thus described but as to the function to be performed. The use in the Federal Constitution of the same term in different relations does not always imply the performance of the same function. The Legislature may act as an electoral body, as in the choice of United States Senators under article 1, 3, prior to the adoption of the Seventeenth Amendment. It may act as a ratifying body, as in the case of proposed amendments to the Constitution under article 5. *Hawke v. Smith*, No. 1, supra; *Hawke v. Smith*, No. 2, 253 U.S. 231, 40 S. Ct. 498; *Leser v. Garnett*, 258 U.S. 130, 137, 42 S. Ct. 217. It may act as a consenting body, as in relation to the acquisition of lands by the United States under article 1, 8, par. 17. Wherever the term "legislature" is used in the Constitution, it is necessary to consider the nature of the particular action in view. The primary question now before the Court is whether the function contemplated by article 1, 4, is that of making laws.

Consideration of the subject-matter and of the terms of the provision requires affirmative answer. The subject-matter is the "times, places and manner of holding elections for senators and representatives." It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved. And these requirements would be nugatory if they did not have appropriate sanctions in the definition of offenses and punishments. All this is comprised in the subject of "times, places and manner of holding elections," and involves lawmaking in its essential features and most important aspect.

This view is confirmed by the second clause of article 1, 4, which provides that "the Congress may at any time by law make or alter such regulations," with the single exception stated. The phrase "such regulations" plainly refers to regulations of the same general character that the legislature of the State is authorized to prescribe with respect to congressional elections. In exercising this power, the Congress may supplement these state regulations or may substitute its own. It may impose additional penalties for the violation of the state laws or provide independent sanctions. It "has a general supervisory power over the whole subject." *Ex parte Siebold*, 100 U.S. 371, 387; *Ex parte Yarbrough*, 110 U.S. 651, 661, 4 S. Ct. 152; *Ex parte Clarke*, 100 U.S. 399; *United States v. Mosley*, 238 U.S. 383, 386, 35 S. Ct. 904; *Newberry v. United States*, 256 U.S. 232, 255, 41 S. Ct. 469. But this broad authority is conferred by the constitutional provision now under consideration, and is exercised by the Congress in making "such regulations"; that is, regulations of the sort which, if there be no overruling action by the Congress, may be provided by the Legislature of the state upon the same subject.

The term defining the method of action, equally with the nature of the subject matter, aptly points to the making of laws. The state Legislature is authorized to "prescribe" the times, places, and manner of holding elections. Respondent urges that the fact that the words "by law" are found in the clause relating to the action of the Congress, and not in the clause giving authority to the state Legislature, supports the contention that the latter was not to act in the exercise of the lawmaking power. We think that the inference is strongly to the contrary. It is the nature of the function that makes the phrase "by law" apposite. That is the same whether it is performed by state or national Legislature, and the use of the phrase places the intent of the whole provision in a strong light. Prescribing regulations to govern the conduct of the citizen, under the first clause, and making and altering such rules by law, under the second clause, involve action of the same inherent character.

As the authority is conferred for the purpose of making laws for the state, it follows, in the absence of an indication of a contrary intent, that the exercise of the authority must be in accordance with the method which the state has prescribed for legislative enactments. We find no suggestion in the federal constitutional provision of an attempt to endow the Legislature of the state with power to enact laws in any manner other than that in which the Constitution of the state has provided that laws shall be enacted. Whether the Governor of the state, through the veto power, shall have a part in the making of state laws, is a matter of state polity. Article 1, 4, of the Federal Constitution, neither requires nor excludes such participation. And provision for it, as a check in the legislative process, cannot be regarded as repugnant to the grant of legislative authority. At the time of the adoption of the Federal Constitution, it appears that only two states had provided for a veto upon the passage of legislative bills; Massachusetts, through the Governor, and New York, through a council of revision.[3] But the restriction which existed in the case of these states was well known. That the state Legislature might be subject to such a limitation, either then or thereafter imposed as the several states might think wise, was no more incongruous with the grant of legislative authority to regulate congressional elections than the fact that the Congress in making its regulations under the same provision would be subject to the veto power of the President, as provided in article 1, 7. The latter consequence was not expressed, but there is no question that it was necessarily implied, as the Congress was to act by law; and there is no intimation, either in the debates in the Federal Convention or in contemporaneous exposition, of a purpose to exclude a similar re-

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[3] The Constitution of Massachusetts of 1780 provided for the Governor's veto of "bills" or "resolves." Part Second, ch. 1, 1, art. 2; 3 Thorpe, *American Charters, Constitutions and Organic Laws*, 1893, 1894. The council of revision in New York, which had the veto power under the first Constitution of 1777 (art. 3), was composed of the Governor, the chancellor, and the judges of the Supreme Court, "or any two of them, together with the Governor." The veto power was given to the Governor alone by the Constitution of 1821. Article 1, 12, 3 Thorpe, op. cit. 2628, 2641, 2642. In South Carolina, the veto power had been given by the Constitution of 1776 to the "president" (article 7), but under the Constitution of 1778 the Governor had no veto power; see article 14, 6 Thorpe, op. cit., 3244, 3252.

striction imposed by state Constitutions upon state Legislatures when exercising the lawmaking power.

The practical construction of article 1, 4, is impressive. General acquiescence cannot justify departure from the law, but long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning. This is especially true in the case of constitutional provisions governing the exercise of political rights, and hence subject to constant and careful scrutiny. Certainly, the terms of the constitutional provision furnish no such clear and definite support for a contrary construction as to justify disregard of the established practice in the states. *McPherson v. Blacker*, 146 U.S. 1, 36, 13 S. Ct. 3; *Missouri Pacific Railway Co. v. Kansas*, 248 U.S. 276, 284, 39 S. Ct. 93, 2 A. L. R. 1589; *Myers v. United States*, 272 U.S. 52, 119, 136 S., 47 S. Ct. 21; *The Pocket Veto Case*, 279 U.S. 655, 688-690, 49 S. Ct. 463, 64 A. L. R. 1434. That practice is eloquent of the conviction of the people of the states, and of their representatives in state Legislatures and executive office, that in providing for congressional elections, and for the districts in which they were to be held, these Legislatures were exercising the lawmaking power and thus subject, where the state Constitution so provided, to the veto of the Governor as a part of the legislative process. The early action in Massachusetts under this authority was by "resolves," and these, under the Constitution of 1780, were required to be submitted to the Governor, and it appears that they were so submitted and approved by him.[4] In New York, from the outset, provision for congressional districts was made by statute,[5] and this method was followed until 1931. The argument based on the disposition, during the early period, to curtail executive authority in the states, and on the long time which elapsed in a number of states before the veto power was granted to the Governor, is of slight weight in the light of the fact that this power was given in four states shortly after the adoption of the Federal Constitution,[6] that the use of this check has gradually been extended, and that the uniform practice (prior to the questions raised in relation to the present reapportionment) has been to provide for congressional districts by the enactment of statutes with the participation of the Governor wherever the state Constitution provided for such participation as part of the process of making laws. See *Moran v. Bowley*, 347 Ill. 148, 179 N. E. 526, 527; *Koening v. Flynn*, 258 N. Y. 292, 300, 179 N. E. 705; *Carroll v. Becker* (Mo. Sup.) 45 S.W.(2d) 533; *State ex rel. Schrader v. Polley*, 26 S. D. 5, 7, 127 N. W. 848. The Attorney General of Minnesota, in his argument in the

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[4] Const. Mass. 1780; 3 Thorpe, op. cit. 1893, 1894, Mass. Resolves, Oct.–Nov., 1788, c. XLIX, p. 52; May–June, 1792, c. LXIX, p. 23.

[5] New York, *Laws of 1789*, c. 11; 1797, c. 62; 1802, c. 72. See *Koenig v. Flynn*, 258 N. Y. 292.

[6] Georgia, Const. 1789, art. 2, 10, 2 Thorpe, op. cit. 788; Pennsylvania, Const. 1790, art. 1, 22, 5 Thorpe, op. cit., 3094; New Hampshire, Const. 1792; Part Second, 44, 4 Thorpe, op. cit., 2482; Kentucky, Const. 1792, art. 1, 28, 3 Thorpe, op. cit., 1267. In Vermont, the Constitution of 1793 (chapter 2, 16) gave the Governor and council a power of suspension similar to that for which provision had been made in the Constitution of 1786 (chapter 2, 14) before the admission of Vermont to the Union. See, also, Constitution of 1777 (chapter 2, 14), 6 Thorpe, op. cit., 3744, 3757, 3767.

instant case, states: "It is conceded that until 1931 whenever the State of Minnesota was divided into districts for the purpose of congressional elections such action was taken by the legislature in the form of a bill and presented to and approved by the governor." That the constitutional provision contemplates the exercise of the lawmaking power was definitely recognized by the Congress in the Act of August 8, 1911,[7] which expressly provided in section 4 for the election of Representatives in Congress, as stated, "by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof, and in accordance with the rules enumerated in section three of this Act." The significance of the clause "in the manner provided by the laws thereof" is manifest from its occasion and purpose. It was to recognize the propriety of the referendum in establishing congressional districts where the state had made it a part of the legislative process. "It is clear," said this Court in *Davis v. Hildebrant*, 241 U.S. 565, 568, 36 S. Ct. 708, 710, "that Congress, in 1911, in enacting the controlling law concerning the duties of the states, through their legislative authority, to deal with the subject of the creation of congressional districts, expressly modified the phraseology of the previous acts relating to that subject by inserting a clause plainly intended to provide that where, by the state Constitution and laws, the referendum was treated as part of the legislative power, the power as thus constituted should be held and treated to be the state legislative power for the purpose of creating congressional districts by law."

The case of *Davis v. Hildebrant*, supra, arose under the amendment of 1912 to the Constitution of Ohio reserving the right "by way of referendum to approve or disapprove by popular vote any law enacted by the general assembly." *Id.*, 241 U.S. page 566, 36 S. Ct. 708, 709. The act passed by the General Assembly of Ohio in 1915, redistricting the state for the purpose of congressional elections, was disapproved under the referendum provision, and the validity of that action was challenged under article 1, 4, of the Federal Constitution. The Supreme Court of the state, denying a mandamus to enforce the disapproved act, "held that the provisions as to referendum were a part of the legislative power of the state, made so by the Constitution, and that nothing in the act of Congress of 1911, or in the constitutional provision, operated to the contrary, and that therefore the disapproved law had no existence." *Id.* 241 U.S. page 567, 36 S. Ct. 708, 709. This Court affirmed the judgment of the state court. It is manifest that the Congress had no power to alter article 1, 4, and that the act of 1911, in its reference to state laws, could but operate as a legislative recognition of the nature of the authority deemed to have been conferred by the constitutional provision. And it was because of the authority of the state to determine what should constitute its legislative process that the validity of the requirement of the state Constitution of Ohio, in its application to congressional elections, was sustained. This was explicitly stated by this Court as the ground of the distinction which was made in *Hawke v. Smith No.*

[7] See note 1.

1, supra, where, referring to the Davis Case, the Court said: "As shown in the opinion in that case, Congress had itself recognized the referendum as part of the legislative authority of the state for the purpose stated. It was held, affirming the judgment of the Supreme Court of Ohio, that the referendum provision of the state Constitution, when applied to a law redistricting the state with a view to representation in Congress, was not unconstitutional. Article 1, section 4, plainly gives authority to the state to legislate within the limitations therein named. Such legislative action is entirely different from the requirement of the Constitution as to the expression of assent or dissent to a proposed amendment to the Constitution. In such expression no legislative action is authorized or required."

It clearly follows that there is nothing in article 1, 4, which precludes a state from providing that legislative action in districting the state for congressional elections shall be subject to the veto power of the Governor as in other cases of the exercise of the lawmaking power. Accordingly, in this instance, the validity of House File No. 1456 cannot be sustained by virtue of any authority conferred by the Federal Constitution upon the Legislature of Minnesota to create congressional districts independently of the participation of the Governor as required by the state Constitution with respect to the enactment of laws.

The further question has been presented whether the Act of Congress of August 8, 1911,[8] is still in force. The state court held that it was not, that it had been wholly replaced by the Act of June 18, 1929. Sections 1 and 2 of the former act, making specific provision for the apportionment under the thirteenth census, are, of course, superseded; the present question relates to the other sections. These have not been expressly repealed. The act of 1929 repeals "all other laws and parts of laws" that are inconsistent with its provisions (section 21 (46 Stat. 26, 13 USCA 1 note)). The petitioner urges that this act contains nothing inconsistent with sections 3, 4, and 58 of the act of 1911, and the only question is whether these sections by their very terms have ceased to be effective. It is pointed out that the provisions of the act of 1911 were carried into the United States Code. U.S. C., tit. 2, 2–5 (2 USCA 2 and note 3–5). Inclusion in the Code does not operate as a re-enactment; it establishes "prima facie the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925." Act of June 30, 1926, c. 712, 44 Stat. 777. While sections 3 and 4 of the act of 1911 expressly referred to "this apportionment" (the one made by that Act), the argument is pressed that they contain provisions setting forth a general policy which was intended to apply to the future creation of congressional districts, and the election of Representatives, until Congress should provide otherwise.

There are three classes of states with respect to the number of Representatives under the present apportionment pursuant to the act of 1929, (1) where the number remains the same, (2) where it is increased, and (3) where it is decreased. In states where

[8] See note 1.

the number of Representatives remains the same, and the districts are unchanged, no question is presented; there is nothing inconsistent with any of the requirements of the Congress in proceeding with the election of Representatives in such states in the same manner as heretofore. Section 4 of the act of 1911 (2 USCA 4) provided that, in case of an increase in the number of Representatives in any state, "such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law" until such state shall be redistricted. The Constitution itself provides in article 1, 2, that "The house of representatives shall be composed of members chosen every second year by the people of the several states," and we are of the opinion that under this provision, in the absence of the creation of new districts, additional Representatives allotted to a state under the present reapportionment would appropriately be elected by the state at large. Such a course, with the election of the other Representatives in the existing districts until a redistricting act was passed, would present no inconsistency with any policy declared in the act of 1911

Where, as in the case of Minnesota, the number of Representatives has been decreased, there is a different situation, as existing districts are not at all adapted to the new apportionment. It follows that in such a case, unless and until new districts are created, all Representatives allotted to the state must be elected by the state at large. That would be required, in the absence of a redistricting act, in order to afford the representation to which the state is constitutionally entitled, and the general provisions of the act of 1911 cannot be regarded as intended to have a different import.

This conclusion disposes of all the questions properly before the Court. Questions in relation to the application of the standards defined in section 3 of the act of 1911 to a redistricting statute, if such a statute should hereafter be enacted, are wholly abstract. The judgment is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.

APPENDIX W: SPEECH OF SENATOR BIRCH BAYH (D-INDIANA) ON MARCH 14, 1979

Mr. President, today we begin debate on a constitutional amendment to abolish the Electoral College and establish direct popular election of the President and Vice President. This proposal has been studied intensively in the Senate for well over a decade, but has only once reached the Senate floor and has never reached a vote. In 1970 it was approved in the House by a vote of 339 to 70, but the Senate was denied its opportunity to vote due to a filibuster, which occurred during the closing days of the session when many of the Senators were running for election and there was the problem of getting them back, so we took it off the calendar and it was never voted on by the Senate.

I am confident that the 96th Congress will pass this joint resolution by the necessary two-thirds vote and the State Legislatures will ratify this amendment, thereby finally providing our political system with a safe and fair means of electing the President and Vice President.

John Roche once described the Electoral College as "merely a jerry-rigged improvisation which has subsequently been endowed with a high theoretical content. The future was left to cope with the problem of what to do with this Rube Goldberg mechanism."

That two-sentence quote from John Roche carries a lot of meaning for anyone who has had a chance to really study the way in which the electoral college actually works.

Despite its eccentricities the electoral college is not a lovable old mechanism to be kept and treasured. Mr. President, the electoral college is not harmless. If, as its defenders like to say, it has worked it has worked oftentimes in strange ways. It carries with it always the risk that it may not work at all. As the Presidential election of 1980 approaches, I hope that the Congress will take heed of the ominous rumblings we have had from this cumbersome counting machine in the past, and begin the amendment process that would provide the country with political protection from a breakdown which could occur anytime in the future. To finally replace the electoral college with direct election is simply to give us insurance before it is needed.

I have read with a great deal of interest certain editorials of very distinguished columnists, the essence of which was, "If it ain't broke, Birch, don't fix it."

That is almost like saying, "If your house is not on fire, don't take out fire insurance. If you don't have heart trouble or if you don't have cancer or if you haven't had an accident on the way to the Senate that broke both legs and put you in the hospital at $150 a day, don't take out health insurance."

What we are trying to do in this effort is not to revolutionize the electoral process or dramatically change the constitutional structure of this country; what we are trying to do is put a little grease on a very squeaky wheel, which has come very close to having consequences which could prove unacceptable to the people of this country.

The electoral college has given problems since it was first created. Speaking in Federalist 67 of the manner of electing a President which had been chosen by the 1787 convention, Alexander Hamilton said:

> "There is hardly any part of the system which could have been attended with greater difficulty in the arrangements of it than this. . . ."

That was Alexander Hamilton speaking, yet we are going to be told here by some of the opponents of this effort that the Founding Fathers had infinite wisdom and all believed they had come forth with a majestic solution to electing the President. Not so, Mr. President.

The manner of electing the President was debated extensively during the summer of 1787. Debate centered mainly between those who believed in a direct popular vote and those who wanted election by the National Legislature. However, John Feerick, chairman of the American Bar Association Committee on Election Reform, an outstanding scholar of the workings and mechanism of the electoral college, reports from the historical records, that on July 25 the following proposals were all debated but none adopted:

> "Among the proposals made, but not adopted were that he be chosen by: Congress and, when running for re-election, by electors appointed by the state legislatures; the chief executives of the states, with the advice of their councils, or, if not councils, with the advice of electors chosen by their legislatures, with the votes of all states equal; the people; and the people of each state choosing its best citizen and Congress, or electors chosen by it, selecting the President from those citizens."

A committee of 11 finally was appointed to break the deadlock over how votes for President would be apportioned in the National Legislature. The committee discarded the legislative election method, and in the final days of the convention recommended a system of intermediate electors. Their recommendation was accepted.

I will say, Mr. President, that this was after the great compromise which put the union together. The Federal system had already been formulated; the compromise between the large and small States, the large States being represented in the House and the small being represented in the Senate.

The electoral college was not considered to be an indispensable part of that compromise. It was not even considered at that time.

Clearly, the electoral college system was neither the most obvious, the most popular nor the most inspired of the Founding Fathers' great works in framing the Constitution. What is more, the Founders did not envision political parties, the unit rule, or popular election of electors. These aspects of the present system of electing a President evolved quickly and changed the system dramatically, but not by design of the delegates to the 1787 Convention.

James Madison, one of the original Founding Fathers, wrote some 36 years later, as he looked back on his offspring:

> "The difficulty of finding an unexceptionable process for appointing the Executive Organ of a Government such as that of the U.S., was deeply felt by the Convention; and as the final arrangement took place in the latter stages of the session, it was not exempt from a degree of the hurrying influence produced by fatigue and impatience in all such bodies, tho' the degree was much less than usually prevails in them."

For its time, however, the electoral college made some sense.

I think it would be wrong for me to stand here and criticize this as a solution, but this was done 200 years ago by our Founding Fathers. We were living in a different age. The Founding Fathers were dealing with a much different society and the electoral college was a device for that society. The land mass of the country was huge; communication was primitive; and education was limited at best. Lack of information about possible Presidential candidates was in fact a very real consideration. Direct election would have been a difficult proposition, a reality which James Madison, one of its strong proponents, acknowledged reluctantly. Added to this were the problems involving suffrage. Out of a total population of 4,000,000, almost 700,000 were slaves, almost 90 percent of the South. It was not possible to count the slaves along the lines of a 3 to 5 compromise type of solution in a direct popular vote system. This would have led to northern-dominated elections and would have been wholly unacceptable unless the slaves were permitted to vote which was equally unacceptable.

James Madison spoke to this problem on July 19, 1787:

> "There was one difficulty however of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election on the score of the Negroes. The substitution of electors obviated this difficulty."

From the beginning the electoral college did not work as intended. Those who feel this has been a perfect mechanism should harken back to 1800. By 1800, the first crisis occurred when Burr and Jefferson tied in the electoral vote for President. Thus, the election was put to the House of Representatives. After 36 ballots and 6 days, Jefferson finally won, but it was clear that an amendment was needed. In 1804 the 12th amendment was ratified, solving only the immediate problem of the 1800 election, but leaving the already outmoded electoral college in place.

As has been often said, the system has backfired three times. In the elections of 1824, 1876 and 1888 the candidate who received the most votes did not win. That is three election out of the 39 which have recorded popular votes, or a failure rate of

8 percent. Each of these elections has shown some peculiar flaw of the electoral college system.

Mr. President, as I pointed out just a moment ago, those who say, "If it ain't broke, don't fix it," are poor readers of history.

A failure rate of 8 percent, and some very near misses that increase the almost failure rate to an unacceptable level, hardly support the notion that "it ain't broke."

I will deal with these near misses of more recent vintage in the memory of most of us in just a moment.

The election of 1824 ended up in the House of Representatives. It taught us a lesson to be carried to this day. What happened then was remembered 144 years later and hovered behind the fears about George Wallace's third party candidacy in 1968. Despite a popular vote plurality of 40,000 votes out of almost 400,000 votes cast—a 10 percent popular vote plurality—Andrew Jackson did not receive sufficient electoral votes to win. During the period between the election and House action, the Nation was subjected to the spectacle of the asking and the suspected granting of every manner of favor as Jackson and Adams vied for the votes of House Members. Charges of a corrupt deal followed Adams through his presidency and as a result of his anger over the election, Andrew Jackson formed our modern Democratic Party.

With direct election, no such deal-making or charges of deal-making ever would be possible. In the unlikely event that the leading candidate does not receive 40 percent of the popular vote, an event which has occurred only once in our history, the people themselves will get to choose the candidate they prefer in a runoff election.

The decision will not be made in a smoke-filled room where the vote of representatives could likely go to the highest bidder.

The election of 1876 was the result of a system steeped in corruption before the election, a nation not yet recovered from the bitterness and division of a Civil War and a system that permitted fraud in a handful of States to decide an election. Even President Rutherford Hayes, in his diary, admits that Samuel Tilden, in fact, won the Presidency. Fraud is an ever-present possibility in the electoral college system, even if it rarely has become a proven reality. With the electoral college, relatively few irregular votes can reap a healthy reward in the form of a bloc of electoral votes, because of the unit rule or winner take all rule. Under the present system, fraudulent popular votes are much more likely to have a great impact by swinging enough blocs of electoral votes to reverse the election. A like number of fraudulent popular votes under direct election would likely have little effect on the national vote totals.

I have said repeatedly in previous debates that there is no way in which anyone would want to excuse fraud. We have to do everything we can to find it, to punish those who participate in it; but one of the things we can do to limit fraud is to limit the benefits to be gained by fraud.

Under a direct popular vote system, one fraudulent vote wins one vote in the

return. In the electoral college system, one fraudulent vote could mean 45 electoral votes, 28 electoral votes.

So the incentive to participate in "a little bit of fraud," if I may use that phrase advisedly, can have the impact of turning a whole electoral block, a whole State operating under the unit rule. Therefore, so the incentive to participate in fraud is significantly greater than it would be under the direct popular vote system.

In addition, there is one other incentive, it seems to me, which does not exist today, to guard against fraud under the direct popular vote. In a direct popular vote, each vote counts. It does not make any difference whether you are going to win or lose by 1 vote or a million. Each vote adds to the national total. So each precinct committeeman and committeewoman standing at that polling place, representing his or her party, has an incentive to police each of those votes to see that it is a legitimate vote.

On the other hand, in the electoral college system, in which, if you are going to lose by 100,000, you might as well lose by 200,000, because either way you lose all the electors, there is no benefit given to the party that comes close. There is no incentive to either the winner or the loser at the precinct level to get out more votes; because once you have lost a State by one vote, you have lost everything you had to lose—namely, all the electoral votes. In a direct popular election each vote would count on the national scale, committeewoman would know in advance that that was going to be the case. You would have a much more severe policing of the precincts as the votes were counted, and you would have a self-policing mechanism the likes of which is not present in many precincts today.

We may cite New York in 1976 as an example. Cries of voting irregularities arose on election night. At stake were 41 electoral votes—more than enough to elect Ford over Carter in the electoral college. Carter's popular margin was 290,000. The calls for recount were eventually dropped, but if fraud had been present in New York, Carter's plurality of 290,000 would have been enough to determine the outcome of the entire national election. Under direct election, Carter's entire national margin of 1.7 million votes would have had to have been irregular to affect the outcome.

Fraud was also involved in the election of 1888, but there is no question that Grover Cleveland won the popular vote by a 23,000 plurality and lost the electoral vote 219 to 182, simply because the electoral system allowed it to happen. Had Cleveland not been so willing to return to public life; had he, like Jackson, gone home and created a great storm of controversy, we have no way of knowing how the people would have reacted.

What happened in 1888 represents the greatest danger presented to us by the electoral college. Of course, no one can foretell with accuracy what would be the reaction in the United States in the second half of the twentieth century if the duly elected President were not the popular vote winner. But we should be thinking about it. There have been three near misses in the last five elections.

Let us think of that. There have been three near misses in the last five elections. It

may be broken; it sure is rumbling and sputtering, if in three of the last five Presidential elections we almost had a miscarriage of what we traditionally would call electoral justice.

When we consider our present day increased suffrage, widespread education, ever-present communications systems, and, perhaps most important, popular dissatisfaction with and distrust in the political process, it is reasonable to predict that there would be a political crisis if a President were elected and tried to govern after receiving fewer votes than the candidate against whom he was running. Surely, there is nothing speculative in the view that the mandate of the President to lead would be severely, perhaps irreparably, weakened.

This morning, about 12:30 or 1 o'clock, I stood at Andrews Air Force base with my son and others of my countrymen, with my heart in my throat, as Air Force I came wheeling to a stop and the Marine Corps Band played "Hail to the Chief." As the President of the United States left the plane, to the cheers of the multitude, I could not help thinking how difficult a burden that man carries. It has become almost impossible to be a good President of the United States because of the complex society in which we live today.

It would increase the difficulty of governing for any President if he knew in the back of his mind, if Congress knew, if the people knew, that the man sitting down there, calling orders in the White House, was not the choice of most of the people, but was defeated by the popular vote in the last election.

Mr. President, that is what concerns me—not that the President who has fewer votes might not be an outstanding President. He or she might be a great American, but how could such a President lead our people effectively if more voters chose his opponent. We are living in a time when the people are looking with great dissatisfaction, distrust, and disenchantment at the political process, and I do not know how the public would respond to the leadership of a President who is not the choice of the people of this country.

Mr. President, I emphasize that the danger that the electoral college will produce a President who is not the choice of the voters is not remote—it is not a speculative danger. On several occasions in this century, a shift of less than 1 percent of the popular vote would have produced an electoral majority for the candidate who received fewer popular votes. I repeat: A change of 1 percent would have produced this electoral majority for the candidate who received fewer popular votes.

To reflect on recent years 1960, 1968, and 1976, most of us remember those years. We should remember the dangers that have been all too close.

To this day we cannot be absolutely certain whether John Kennedy in fact won the popular vote or not in 1960.

If you look at the record, in the States of Alabama and Mississippi, States where unpledged Democratic electors were run and some of them won positions as Presidential

electors, many did not vote for President Kennedy when the electoral college met; yet the popular votes for these electors was included in the Kennedy tally by the television networks and by the newspapers and most of those who did the counting.

So we really do not know what the national tally was. We do know it was frighteningly close to a backfire, though we do know if there had been a change of a few thousand votes in the State of Illinois we would have had a much different situation.

Most frightening in this election was an attempt by a Republican elector from Oklahoma to combine with other conservative electors, to disregard the popular vote and vote a Byrd-Goldwater ticket out of the electoral college.

My distinguished colleague, the Senator from Virginia, should be assured that we mean no disrespect for his distinguished father who was highly considered by many people throughout the country and performed a great service in this body. I use this as an example to show what actually has, in fact, happened under the system. Persons not even on the ballot have been urged in the electoral college—and in recent years.

Henry Irwin sent the following telegram in 1960 to his fellow electors:

> "I am an Oklahoma Republican elector. The Republican Electors cannot deny election to Kennedy. Sufficient conservative Democratic electors available to deny labor socialist nominee. Would you consider Byrd President, Goldwater Vice President, or wire any acceptable substitute. All replies strict confidence."

That is a fact. That is not some cheap TV-only novel that we have to watch interspersed with commercials.

In 1968, which concerned me, very frankly, much more, we entered an election and built a strategy based on the notion George Wallace could deadlock the electoral college and broker the Presidency there.

Here are the questions and answers by candidate Wallace in a press conference:

> "Question. If none of the three candidates get a majority, is the election going to be decided in the Electoral College or in the House of Representatives?
>
> "Wallace. I think it would be settled in the electoral college.
>
> "Question. Two of the candidates get together or their electors get together and determine who is to be President?
>
> "Wallace. That is right."

In other words, the Constitution requires that, when the votes are cast by the electors in December, if a majority is not received by one candidate then the matter goes to the House of Representatives. But what Governor Wallace was saying plainly, openly, for everyone to see, was that he intended to broker his support to one of the other candidates in the electoral college, and it was perfectly legal under the Constitution.

We are not accusing him of being devious—quite the contrary, he was quite open and flagrant—what he was trying to do he nearly accomplished. His purpose was to get electors, and he got 36. If there had been a change of a handful of votes, neither Nixon nor Humphrey would have had a majority of electoral votes, and Wallace would have prevented the matter from going to the House of Representatives. He would first sit down with Mr. Nixon, and then Mr. Humphrey, or vice versa, and cut a deal.

But I am here to say, without any irreverence to either one of these men, practical politics being what it is, one of those would have literally purchased, and I use the term advisedly, purchased the Wallace electors and the decision would have been made then in the Electoral College. There the independent Wallace electors would have joined with the electors of the other candidates and there would have been a majority without the matter having to go to the House of Representatives.

Wallace managed to get his name on the ballot in all 50 States and came within 54,000 votes of accomplishing this goal. We can only speculate how the American people at the height of the controversy over the Vietnam War would have reacted to the kind of deals that might well have taken place between election day and the meeting of the electors.

We might even ask ourselves more significantly how the voters would react today where their faith and confidence in the political processes and the political leaders of our country has gone even lower than it was at the height of the Vietnam War.

In the last election, in 1976, a change of less than 9,500 votes combined, in Ohio and Hawaii would have made Ford the President while Carter had an almost 1.7 million vote plurality. Such a misfiring of the system in our present climate could have grave consequences for our system and for the person charged with carrying out the duties of the Presidency.

One of the things that I have really appreciated about the particular effort that many of us have been involved in over the years is that it is a really bipartisan, multiphilosophy effort. We cannot say everyone who is for direct election belongs to one party or one part of either party. It has been a conglomeration of Senators, House Members, and individual citizens who are concerned about the problem.

One of our distinguished allies from the moment he had the opportunity to serve on the American Bar Association panel back in the late 1960s, was our distinguished colleague, the senior Senator from Oklahoma, Senator Bellmon. He will have his say on this and so I will not relate his experience as he sat there and watched how this system really works and determined that he was not going to support the electoral college system which prior to that time he had thought benefited his relatively sparsely populated State.

The reason I bring this up right now is that I recall after that spectacle of election night, with Carter with almost a 2 million vote plurality, and Ford with a change of less than 10,000 votes having the opportunity to get an electoral college majority. I called Henry Bellmon and I said:

"Henry, what do you think? Do you think we ought to give it another try?"

He said:

"Well, I have been intending to call you. If that had backfired and Ford had been elected it would have been good for the Republicans but it would have been bad for the Republic."

That takes a pretty big man to say something like that, but that is the truth.

I would have said the same thing about the 1968 election. As most of you know, I am not one of Richard Nixon's most avid supporters. But if Nixon had a plurality of that popular vote he ought to be elected President, and we should not have some jerry rigged kind of situation to end up with throwing out the popular vote winner.

In a runaway election—like that of 1972—any system will produce an electoral victory for the popular vote winner. But the real test of a system is whether it really will stand the test in close elections and in elections as close as that of 1960 the present system offered only a 50-50 chance that the electoral results would agree with the popular vote. For an election as close as 1968, where some 500,000 popular votes separated the candidates, there was one chance in three that the electoral vote winner would not be the popular vote winner as well. Even in the 1976 election, where Mr. Carter's plurality was 1.7 million, our statistical experts who run this through their computers tell us the chance of misfiring was one out of every four. According to the evidence, the danger of an electoral backfire is clear and present.

It is easy for us to forget, when a near miss is past, that we should prepare for the future. Not enough of us remember the flood of magazine and newspaper articles speculating on disaster when the possibility of an electoral college backfire was imminent in 1968.

And I think it is important that we remember that in the days just prior to the 1976 election the cry began again only to subside when all turned out to be safe. I would hope that we would not allow ourselves to wait until the electoral college actually does backfire again before we rouse ourselves to act. Insurance cannot be bought after the house has burned down.

Forgive me for reminiscing just a moment at this hour of the evening, but I cannot help but remark to my very sincere colleague and some who study and write about this outside of this Chamber: We talk about: "Well it never has backfired. It ain't broke. Don't fix it." This is not all that important.

It was that similar kind of cry that some of us faced when we tried to amend the Constitution with the 25th amendment. "Two hundred years of history had never presented us with a sequence of circumstances that would be met by filling a Vice-Presidential vacancy, so you do not really need to act." Or, "Put it aside. Wait for another day. Other things are more important."

As a matter of fact, the ink was hardly dry on the 25th Amendment when we were

confronted with a crisis, a dual crisis, where it was necessary to appoint two Vice Presidents.

My judgment is that if it had not been for the 25th Amendment, this Congress and the country would have been subjected to tortuous and divisive impeachment trials the like of which would have done severe damage to this country. But the Congress in its wisdom then did not put it off. It acted and, hopefully, Congress will take out the same kind of insurance policy so far as our electoral process is concerned.

Mr. President, the history of the electoral college is not significant simply because it has carried the threat of misfiring. Its very nature is contrary to the political ideals which we as a nation have come to realize over the years. In a very basic way, the electoral college is inimical to our political life. Unlike any other election in the United States from county commissioner to U.S. Senator, in a Presidential election all votes do not count the same.

What we want to do is to see that we return the election of the President and the Vice President to the same basis which has held up and held up very well in the election of every other official in the country. Under the electoral college, one American's vote is not equal to another's, simply on the basis of where he happens to live. Only with the direct election systems would all votes be equal. The electoral college's strange alchemy of apportioning electoral votes plus its "winner-take-all" rule produces the anomalous result that, for example, a citizen from Iowa's vote is actually worth less that his neighbor's in Illinois, but more than his neighbor's in Nebraska. This effect is contrary to our experience in all other elections and the principles behind our form of government. I am sometimes told that with direct election I am trying to make a major change in our political system. Far from it. With direct election, I think, we would simply be bringing our method of Presidential choice in line with all the rest of our voting process.

We worry a great deal nowadays about the "empty voting booth" in America. We speculate on why so few of us choose to take advantage of our right to vote.

The fact of the matter is I think a lot of people are smart enough to know that in that electoral college their votes do not count in some circumstances, and in others they count for the candidate they actually voted against. The time has come to put this aside so that I, in Indiana, when I vote for Carter, do not have my vote cast for Ford; and when a colleague of mine in Ohio, who voted for Ford, just as surely had that vote counted for Carter.

The time has come to convince people that if they come to the polls, their vote is going to count no matter whether the state goes big for the candidate they want or big against their candidate, or get out and vote, and see that those votes are counted.

Mr. President, in my opinion, the inequities inherent in the electoral college are also inimical to voter participation. The electoral college system provides a disincentive to voter turnout, and this is reflected in the way Presidential campaigns are conducted. It makes no difference to a Presidential candidate how many people show up

on election day in any state so long as he receives a plurality of one, for that one extra vote determines the outcome of the State's bloc of electoral votes. The votes constituting the plurality over the winner's vote of one are actually worthless. Conversely, all the votes for the loser are not simply lost; they are in effect recast for the winner along with the State's bloc of electoral votes.

These iniquities are of great consequence to the way campaigns are run and thus on the degree of encouragement by candidates for voter participation. With the electoral college, some States are inherently more influential than others, helping a candidate to decide where he will spend his time and effort. Therefore he will, in all likelihood, ignore much of the plains and mountain states and the South. If he reasonably expects to either win or lose a state, however, he will probably write it off as well. Thus, few Democratic candidates go to Massachusetts or Rhode Island, or Republicans to Wyoming. The Electoral College gives neither the candidate nor the national party any motivation to either work to turn out the votes in those States, or widen the margin of victory if he expects to win, or narrow it if he expects to lose.

There is no advantage in building significant margins of victory. As an example of what I mean, in 1976 Mr. Ford picked up 45 electoral votes in California with a 127,000 plurality; Mr. Carter earned 45 electoral votes in five Southern States with a 1,044,000 plurality. The difference in popular votes made no difference in the electoral votes.

Winning under direct election, however, depends precisely on a party's ability to get out the vote and to build sizable pluralities in every community simply because every vote counts and, therefore, no State nor population can easily be ignored.

Mr. President, there is little doubt that American citizens are ready to abolish the electoral college and establish direct election in its place. For over 10 years, polls have shown that support of direct election is over 75 percent, and that support comes from every region of the country, every political ideology, both parties and independents, all races and religions, all professions and economic strata, consistently across the board. The amendment is endorsed by an array of national organizations including the America Bar Association, the U.S. Chamber of Commerce, AFL-CIO, UAW, League of Women Voters, Common Cause, National Federation of Independent Businesses, the ACLU, National Small Business Association, the ADA, the American Federation of Teachers, and the National Farmer's Union.

You name it, the list is long. This is another example of why we have frustrations in our society, where the people are out ahead of our leaders.

When I ask a question why should we have the direct election for President, most people look back at me and say, "Why shouldn't we?" Most people think it already exists.

All the more reason to fear the consequences when they awaken on election night or the morning after and find out that although candidate A has scored a smashing popular vote victory, because of the nuances of the electoral college system, his opponent, who may have garnered, perhaps, only 40 percent of the popular vote still,

because of his concentrated effort in the large metropolitan areas, where we can elect a President of the United States by carrying 10 states, plus the District of Columbia, has turned out to be a loser who becomes the winner. The people of this country will scratch their heads and say, "It can't happen here." Let us act now so that it will not happen here.

In the 95th Congress it was cosponsored by 45 Senators, including 28 Senators from small States. It has broad support in the House where it passed by an 83-percent vote in 1969.

The direct election amendment should have been before this body years ago, but despite 43 days of hearings, including 9 in the last congress, for one reason or another, direct election has consistently been delayed in committee until floor action was virtually impossible. Now we have an opportunity to take advantage of all this study and to come to grips with the issue on the merits. I am sure that my 36 colleagues who have chosen to cosponsor the direct election amendment in the beginning of this 96th Congress join me in urging that in 1979 the time has come to replace the strange mode of Presidential election which was left to us in the last harried hours of the constitutional convention. It is time, Mr. President that we in Congress take the action that a great majority of our constituents long have supported and for which many of our colleagues have labored, and pass the direct election amendment. It is long overdue.

I invite any of my colleagues who remain yet uncertain, and who have heard varying arguments about why it is not in their interest, their State's interest, the country's interest, perhaps even the world's interest, to change the electoral process for President, to look at that strange amalgam of U.S. Senators who have joined in supporting this measure.

It is impossible to find one philosophical strain, one political strain, or one geographical strain. It is hard to convince a CLAIBORNE PELL or a JOHN CHAFEE, or a FRANK CHURCH or a JAKE GARN that the small States are going to be disadvantaged by the change. It is hard to convince JAKE JAVITS, JOHN GLENN, HOWARD METZENBAUM, CARL LEVIN that the large States are going to be disadvantaged. The fact of the matter is going to be disadvantaged if this process backfires, and the country will be served if we are successful in our efforts.[1]

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[1] *Congressional Record*. March 14, 1979. Pages 4999–5003.

APPENDIX X: SOURCES OF INFORMATION ON THE WEB

Interstate Compacts

The National Center for Interstate Compacts (NCIC) of the Council for State Governments (CSG) maintains a web site on interstate compacts at

`http://www.csg.org/ncic/`

The NCIC web site contains links to the texts of numerous interstate compacts currently in force.

Electoral College Certificates of Ascertainment

The National Archives and Records Administration (NARA) maintains a web site on the Electoral College, including the Certificates of Ascertainment from 2000, 2004, and 2008 presidential elections, at

`http://www.archives.gov/federal_register/electoral_college/index.html`

Electoral College Maps and Political Campaign Trackers

Various newspapers and political publications have Electoral College maps and trackers of candidate travels, including:

New York Times Interactive Electoral Map

`http://elections.nytimes.com/2012/electoral-map?smid=tw-nytimes`

New York Times Campaign Tracker

`http://politics.nytimes.com/election-guide/2008/schedules/pastevents/index.html#candidate1`

Los Angeles Times Interactive Electoral Map

`http://www.latimes.com/news/politics/la-pn-electoral-college-10-states-matter-20120525,0,90732.story`

Politico Campaign Tracker

`http://www.politico.com/2012-election/candidate-map/`

Uniform State Laws

The National Conference of Commissioners on Uniform State Laws (NCCUSL) maintains a web site on uniform state laws at

`http://www.nccusl.org`

NCCUSL is an advocate for a proposal for a uniform state law concerning faithful presidential electors.

Federal Election Commission

The web site of the Federal Election Commission (FEC) on the Electoral College is at

`http://www.fec.gov/pages/ecmenu2.htm`

FairVote (formerly The Center for Voting and Democracy)

www.FairVote.org

National Popular Vote

www.NationalPopularVote.com

***Every Vote Equal* Web Site for This Book**

www.every-vote-equal.com

APPENDIX Y: NATIONAL POPULAR VOTE BILL IN VERMONT

H.103

Introduced by Representatives Jerman of Essex, Aswad of Burlington, Atkins of Winooski, Bartholomew of Hartland, Bissonnette of Winooski, Bohi of Hartford, Branagan of Georgia, Burke of Brattleboro, Cheney of Norwich, Consejo of Sheldon, Courcelle of Rutland City, Dakin of Chester, Davis of Washington, Deen of Westminster, Donahue of Northfield, Donovan of Burlington, Edwards of Brattleboro, Emmons of Springfield, Evans of Essex, Fisher of Lincoln, Font-Russell of Rutland City, Frank of Underhill, French of Shrewsbury, French of Randolph, Gilbert of Fairfax, Grad of Moretown, Haas of Rochester, Head of South Burlington, Heath of Westford, Hooper of Montpelier, Howrigan of Fairfield, Kitzmiller of Montpelier, Klein of East Montpelier, Krebs of South Hero, Kupersmith of South Burlington, Lanpher of Vergennes, Larson of Burlington, Lenes of Shelburne, Lippert of Hinesburg, Lorber of Burlington, Macaig of Williston, Malcolm of Pawlet, Marek of Newfane, Martin of Springfield, Martin of Wolcott, Masland of Thetford, McCullough of Williston, Miller of Shaftsbury, Minter of Waterbury, Mitchell of Barnard, Moran of Wardsboro, Mrowicki of Putney, Munger of South

Burlington, Nease of Johnson, Nuovo of Middlebury, O'Brien of Richmond, Obuchowski of Rockingham, Partridge of Windham, Peltz of Woodbury, Poirier of Barre City, Potter of Clarendon, Pugh of South Burlington, Ram of Burlington, Shand of Weathersfield, Sharpe of Bristol, South of St. Johnsbury, Spengler of Colchester, Stevens of Waterbury, Stevens of Shoreham, Taylor of Barre City, Till of Jericho, Toll of Danville, Waite-Simpson of Essex, Webb of Shelburne, Weston of Burlington, Wilson of Manchester, Wizowaty of Burlington, Wright of Burlington, Yantachka of Charlotte and Young of Albany

Referred to Committee on

Date:

Subject: Elections; president; national popular vote; agreement among the states

Statement of purpose: This bill proposes to adopt the Agreement Among the States to Elect the President by National Popular Vote.

An act relating to the Agreement Among the States to Elect the President by National Popular Vote

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 17 V.S.A. chapter 58 is added to read:

CHAPTER 58. AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY NATIONAL POPULAR VOTE

§ 2751. ARTICLE I–MEMBERSHIP

Any state of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

§ 2752. ARTICLE II–RIGHT OF THE PEOPLE IN MEMBER STATES TO VOTE FOR PRESIDENT AND VICE PRESIDENT

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

§ 2753. ARTICLE III–MANNER OF APPOINTING PRESIDENTIAL ELECTORS IN MEMBER STATES

(a) Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a "national popular vote total" for each presidential slate.

(b) The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the "national popular vote winner."

(c) The presidential elector certifying official of each member state shall certify the appointment in that official's own state of the elector slate nominated in that state in association with the national popular vote winner.

(d) At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

(e) The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by Congress.

(f) In event of a tie for the national popular vote winner, the presidential elector-certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.

(g) If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate

on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

(h) The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

(i) This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

§ 2754. ARTICLE IV–OTHER PROVISIONS

(a) This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

(b) Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

(c) The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and

has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

(d) This agreement shall terminate if the electoral college is abolished.

(e) If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

§ 2755. ARTICLE V–DEFINITIONS

For purposes of this agreement:

(1) "Chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate.

(2) "Chief executive" shall mean the governor of a state of the United States or the mayor of the District of Columbia.

(3) "Elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate.

(4) "Presidential elector" shall mean an elector for President and Vice President of the United States.

(5) "Presidential elector certifying official" shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors.

(6) "Presidential slate" shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state.

(7) "State" shall mean a state of the United States and the District of Columbia; and

(8) "Statewide popular election" shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

APPENDIX Z: HISTORY OF THE NATIONAL POPULAR VOTE BILL

August 8, 2011	California Governor Jerry Brown signed the National Popular Vote bill, making California the ninth jurisdiction to enact the bill, and giving the bill 49% of the electoral votes (132 out of 270) needed to bring it into effect.
June 7, 2011	The Republican-controlled New York Senate passed the National Popular Vote bill by a 47–13 margin.
April 22, 2011	Vermont Governor Peter Schumlin signed the National Popular Vote bill, making Vermont the eighth jurisdiction to enact the bill.
October 12, 2010	Mayor Adrian Fenty of the District of Columbia signed the National Popular Vote bill, making the District of Columbia the seventh jurisdiction to enact the bill.
August 4, 2010	Massachusetts Governor Deval Patrick signed the National Popular Vote bill, making Massachusetts the sixth state to enact the bill.
June 7, 2010	The Democratic-controlled New York Senate passed the National Popular Vote bill in a 52–7 roll call.
June 24, 2009	The Delaware House of Representatives passed the National Popular Vote bill.
May 12, 2009	The Connecticut House of Representatives passed the National Popular Vote bill.
April 28, 2009	Washington State Governor Chris Gregoire signed the National Popular Vote bill, making Washington the fifth state to enact the bill.
April 21, 2009	The Nevada Assembly passed the National Popular Vote bill.
March 17, 2009	The Colorado House of Representatives passed the National Popular Vote bill.
March 12, 2009	The Oregon House of Representatives passed the National Popular Vote bill.
February 20, 2009	The New Mexico House of Representatives passed the National Popular Vote bill.
December 11, 2008	The Michigan House of Representatives passed the National Popular Vote bill.
June 20, 2008	The Rhode Island House passed the National Popular Vote bill.
May 27, 2008	The Rhode Island Senate passed the National Popular Vote bill.

May 1, 2008	The National Popular Vote bill was enacted into law in Hawaii, making Washington State the fourth state to enact the bill.
April 7, 2008	Illinois Governor Rod R. Blagojevich signed the National Popular Vote bill, making Illinois the third state to enact the legislation.
April 2, 2008	The Maine Senate passed the National Popular Vote bill.
January 13, 2008	New Jersey Governor Jon Corzine signed the National Popular Vote Bill into law. New Jersey thus became the second state to enact the legislation.
May 14, 2007	The North Carolina Senate passed the National Popular Vote bill.
April 10, 2007	Maryland Governor Martin O'Malley signed the National Popular Vote bill, making Maryland the first state to enact the interstate compact entitled the "Agreement Among the States to Elect the President by National Popular Vote" proposed by National Popular Vote.
March 21, 2007	The Arkansas House passed the National Popular Vote bill.
January 24, 2007	National Popular Vote announced that its bill had sponsors in 45 states for the 2007 state legislative sessions.
April 2006	The Colorado State Senate passed the National Popular Vote bill, becoming the first legislative chamber in the country to pass the bill.
March 2006	The National Popular Vote bill was endorsed in editorials by *Chicago Sun Times*, *New York Times*, and *Minneapolis Star-Tribune*.
February 23, 2006	National Popular Vote held its initial press conference in Washington, D.C. and released the first edition of its book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. The press conference featured former Congressmen John Anderson (R-Illinois and Independent presidential candidate) and John Buchanan (R-Alabama), former Senator Birch Bayh (D-Indiana), Common Cause President Chellie Pingree, FairVote Executive Director Rob Richie, National Popular Vote President Barry Fadem, and Dr. John R. Koza, originator of the plan.

APPENDIX AA: U.S. SUPREME COURT DECISION IN *VIRGINIA V. TENNESSEE* (1893)

U.S. Supreme Court
148 U.S. 503
State of Virginia v. State of Tennessee
April 3, 1893

R. Taylor Scott, R. W. Ayers, and W. F. Rhea, for complainant.

G. W. Pickle, N. M. Taylor, Thos. Curtin, C. J. St. John, A. L. Demoss, and A. S. Colyer, for defendant.

Mr. Justice FIELD delivered the opinion of the court.

This is a suit to establish by judicial decree the true boundary line between the states of Virginia and Tennessee. It embraces a controversy of which this court has original jurisdiction, and in this respect the judicial department of our government is distinguished from the judicial department of any other country, drawing to itself by the ordinary modes of peaceful procedure the settlement of questions as to boundaries and consequent rights of soil and jurisdiction between states, possessed, for purposes of internal government, of the powers of independent communities, which otherwise might be the fruitful cause of prolonged and harassing conflicts.

The state of Virginia, as the complainant, summoning her sister state, Tennessee, to the bar of this court,—a jurisdiction to which the latter promptly yields,—sets forth in her bill the sources of her title to the territory embraced within her limits, and also of the title to the territory embraced by Tennessee.

The claim of Virginia is that by the charters of the English sovereigns, under which the colonies of Virginia and North Carolina were formed, the boundary line between them was intended and declared to be a line running due west from a point on the Atlantic ocean on the parallel of latitude 36 deg. and 30 min. N., and that the state of Tennessee, having been created out of the territory formerly constituting a part of North Carolina, the same boundary line continued between her and Virginia; and the contention of Virginia is that the boundary line claimed by Tennessee does not follow this parallel of latitude, but varies from it by running too far north, so as to unjustly include a strip of land about 113 miles in length, and varying from 2 to 8 miles in width, over which she asserts and unlawfully exercises sovereign jurisdiction.

On the other hand, the claim of Tennessee is that the boundary line, as declared in the English charters, between the colonies of Virginia and North Carolina, was run and established by commissioners appointed by Virginia and Tennessee after they became states of the Union, by Virginia in 1800, and by Tennessee in 1801, and that the line they established was subsequently approved in 1803 by the legislative action of both states, and has been recognized and acted upon as the true and real boundary between them ever since, until the commencement of this suit, a period of over 85 years; and the contention of Tennessee is that the line thus established and acted upon is not

open to contestation as to its correctness at this day, but is to be held and adjudged to be the real and true boundary line between the states, even though some deviations from the line of the parallel of latitude 36 deg. and 30 min. N. may have been made by the commissioners in the measurement and demarcation of the line.

In order to clearly understand and appreciate the force and effect to be accorded to the respective claims and contentions of the parties, a brief history of preceding measures should be given, with reference to the charters and legislation under which they were taken.

On the 23d of May, 1609, James the First of England, by letters patent, reciting previous letters, gave to Robert, Earl of Salisbury, Thomas, Earl of Suffolk, and divers other persons associated with them, a charter which organized them into a corporation by the name of the 'Treasurer & Company of Adventurers & Planters of the City of London,' for the first colony of Virginia, and granted to them all those lands and territories lying 'in that part of America called 'Virginia,' from the point of land called 'Cape or Point Comfort,' along the seacoast to the northward 200 miles, and from the said point of Cape Comfort along the seacoast to the southward 200 miles, and all that space and circuit of land lying from the seacoast of the precinct aforesaid up into the land throughout, from sea to sea, west and northwest;' and 'also all the islands lying within 100 miles along the coast of both seas of the precinct aforesaid.' On the 24th of March, 1663, Charles the Second of England granted to Edward, Earl of Clarendon, and others of his subjects, all that territory within his dominion of America 'extending from the north end of the island called 'Lucke Island,' which lieth in the Southern Virginia seas, and within six and thirty degrees of the northern latitude, and to the west as far as the South seas, and so southerly as far as the river Mathias, which bordereth upon the coast of Florida, and within one and thirty degrees of northern latitude, and so west in a direct line as far as the South seas aforesaid,' and gave them full authority to organize and govern the territory granted under the name of the 'Province of Carolina.'

On the 30th of May, 1665, Charles the Second granted to the above proprietors of Carolina a charter, confirming the previous grant, and enlarging the same so as to include the following described territory: All that province and territory within America 'extending north and eastward as far as the north end of Currituck river or inlet, upon a straight westerly line to Wyonoke creek, which lies within or about the degrees of thirty-six and thirty minutes northern latitude; and so west in a direct line as far as the South seas; and south and westward so far as the degrees of twenty-nine inclusive of northern latitude; and so west in a direct line as far as the South seas.'

The northern and southern settlements of Carolina were separated from each other by nearly 300 miles, and numerous Indians resided upon the intervening territory; and, though the whole province belonged to the same proprietors, the legislation of the settlements was by different assemblies, acting at times under different governors. Early in 1700 the northern part of the province was sometimes called the 'Colony

of North Carolina,' although the province was not divided by the crown into North and South Carolina until 1732. Story, Const. 137. Previously to this division the settlements on the borders of Virginia, and of what was called the 'Colony of North Carolina,' had largely increased, and disputes and altercations frequently occurred between the settlers, growing out of the unlocated boundary between the provinces. Virginians were charged with taking up lands, under titles of the crown, south of the proper limits of their province, and Carolinians were charged with taking up lands which belonged to the crown with warrants from the proprietors. The troubles arising from this source were the occasion of much disturbance to the communities, and various attempts were made by parties in authority in the two provinces to remove the cause of them. Previously to January, 1711, commissioners were appointed on the part of Virginia and North Carolina to run the boundary line between them, and proclamations were made forbidding surveys of the grounds until that line within the disputed limits should be marked. But these efforts for the settlement of the difficulties were unavailing.

In January, 1711, commissioners were again appointed, but failed, for want of the requisite means to accomplish their intended object.

In 1728 an attempt to settle the difficulties was renewed, but, as on previous occasions, it failed. The commissioners of the colonies met, but they could not agree at what place to fix the latitude 36 deg. 30 min. N., nor upon the place called 'Wyonoke,' and they broke up without doing anything. The governors of North Carolina and Virginia then entered into a convention upon the subject of the boundary between the two provinces, and transmitted it to England for approval. The king and council approved of it, and so did the lords and proprietors, and returned it to the governors to be executed. The agreement was as follows:

> 'That from the mouth of Currituck river, setting the compass on the north shore thereof, a due west line shall be run and fairly marked; and, if it happen to cut Chowan river between the mouth of Nottaway river and Wiccacon creek, then the same direct course shall be continued towards the mountains, and be ever deemed the dividing line between Virginia and Carolina; but, if the said west line cuts Chowan river to the southward of Wiccacon creek, then from that point of intersection the bounds shall be allowed to continue up the middle of Chowan river to the middle of the entrance into said Wiccacon creek, and from thence a due west line shall divide the two governments. That, if said west line cuts Blackwater river to the northward of Nottaway river, then from the point of intersection the bounds shall be allowed to be continued down the middle of said Blackwater to the middle of the entrance into said Nottaway river, and from thence a due west line shall divide the two governments.
>
> 'That, if a due west line shall be found to pass through islands, or cut out small slips of land, which might much more conveniently be included in

> one province or other, by natural water bounds, in such case the persons appointed for running the line shall have the power to settle the natural bounds, provided the commissioners on both sides agree thereto, and that all variations from the west line be punctually noted on the premises or plats, which they shall return to be put upon the record of both governments.'

Commissioners were appointed by Virginia and North Carolina to carry this agreement into effect. They met at Currituck inlet in March, 1728. The variation of the compass was then found to be 3 deg. 1 min. and 2 sec. W. nearly, and the latitude 36 deg. 31 min. The dividing line between the provinces struck Blackwater 176 poles above the mouth of Nottaway. The variation of the compass at the mouth of Nottaway was 2 deg. 30 min. The line was afterwards extended to Steep Rock creek, 320 miles from the coast, by Commissioners Joshua Fry and Peter Jefferson, on the part of Virginia, and Daniel Weldon and William Churton, on the part of North Carolina.

In 1778 and 1779, Virginia and North Carolina, having become, by their separation in 1776 from the British crown, independent states, again took up the question of the boundary between them, and appointed commissioners to extend and complete the line from the point at which the previous commissioners, Fry and Jefferson and others, had ended their work, on Steep Rock creek, to Tennessee river. The commissioners undertook the work with which they were charged, but they could not find the line on Steep Rock creek, owing, as they supposed, to the large amount of timber which had decayed since it was marked. The report of their labors was signed only by the Virginia commissioners. Their report was, in substance, that after running the line as far as Carter's valley, 45 miles west of Steep Rock creek, the commissioners of Carolina conceived the idea that the line was further south than it ought to be, and, on trial, it appeared that there was a slight variation of the needle, which the Virginia commissioners thought arose from their proximity to some iron ore, that various expedients to harmonize the action of the commissioners were unavailing, and the Carolina commissioners, agreeing that they were more than two miles too far south of the proper latitude, measured off that distance directly north, and ran the line eastwardly from that place, superintended by two of the Carolina and one of the Virginia commissioners, while from the same place it was continued westwardly, superintended by the others, for the sake of expediting the business. The Virginia commissioners subsequently became satisfied that the first line run by them was correct, and they therefore continued it from Carter's valley, where it had been left, westward to Tennessee river. The North Carolina commissioners carried their line as far as Cumberland mountains, protesting against the line run by the Virginia commissioners.

This was in 1779 and 1780. The line adopted by the Virginia commissioners was known as the 'Walker Line,' and the line adopted by the commissioners of North Carolina was known as the 'Henderson Line.' Walker's line was approved by the leg-

islature of Virginia in 1791, but it never received the approval of the legislature of Tennessee. Previously to the appointment of these commissioners, and on the 6th of May, 1776, the state of Virginia, in a general convention, with that generous public spirit which on all occasions since has characterized her conduct in the disposition of her claims to territory under different charters from the English government, had declared that the territories within the charters erecting the colonies of Maryland, Pennsylvania, North Carolina, and South Carolina were thereby ceded and forever confirmed to the people of those colonies, respectively. On the 25th of February, 1790, North Carolina ceded to the United States the territory which afterwards became the state of Tennessee, and which was admitted into the Union on the 1st of June, 1796. Subsequently the states of Virginia and Tennessee both took steps for the final settlement of the controversy as to the boundary between them. On the 10th of January, 1800, the house of delegates of the general assembly of Virginia adopted the following resolution:

> 'Whereas, it is represented to the present general assembly that the people living between what are called 'Walker's' and 'Henderson's' lines, so far as the same run between the state of Tennessee and this state, do not consider themselves under either the jurisdiction of that or this state, and therefore refuse the payment of any taxes to either of said states, or to the collectors of either for the general government, because the state of North Carolina, on the 25th of February, 1790, ceded the said state of Tennessee, then called the 'Southwestern Territory,' to the government of the United States; and therefore the act entitled 'An act concerning the southern boundary of this state,' passed on the 7th of December, 1791, in this legislature, to establish the line commonly called 'Walker's Line' as the boundary between North Carolina and this state, could only bind the state of North Carolina as far as her territorial limits extended on the line of this state, and could not bind the said Southwestern Territory, which had previously been conveyed, as aforesaid; and
>
> 'Whereas, since the said cession, the general government hath erected the said Southwestern Territory into an independent state, by their act, June 1st, 1796, whereby it has become the duty of the said state of Tennessee and of this state to settle all differences between them with respect to the said boundary line:
>
> 'Resolved, therefore, that the executive be authorized and requested to appoint three commissioners, whose duty it shall be to meet commissioners to be appointed by the state of Tennessee, to settle and adjust all differences concerning the said boundary line, and to establish the one or the other of the said lines, as the case may be, or to run any other line which may be agreed on, for settling the same; and that the executive be also re-

> quested to transmit a copy of this resolution to the executive authority of the state of Tennessee.'

On the 13th of January, 1800, this resolution was agreed to by the senate.

On the 13th day of November, 1801, the general assembly of Tennessee passed an act on the same subject, the first section of which is these words:

> 'Be it enacted by the general assembly of the state of Tennessee, that the governor, for the time being, is hereby authorized and required, as soon as may be convenient after the passing of this act, to appoint three commissioners on the part of this state, one of whom shall be a mathematician capable of taking latitude, who, when so appointed, are hereby authorized and empowered, or a majority of them, to act in conjunction with such commissioners as are or may be appointed by the state of Virginia to settle and designate a true line between the aforesaid states.'

The second section is as follows:

> 'And whereas, it may be difficult for this legislature to ascertain with precision what powers ought of right to be delegated to the said commissioners: Therefore,
>
> 'Be it enacted, that the governor is hereby authorized and required, from time to time, to issue such power to the commissioners as he may deem proper for the purpose of carrying into effect the object intended by this act, consistent with the true interest of the state.'

On the 22d day of January, 1803, a report having been made by the commissioners, which is copied into the act, the legislature of Virginia ratified what had been done in the following act:

> 'Whereas, the commissioners appointed to ascertain and adjust the boundary line between this state and the state of Tennessee, in conformity to the resolution passed by the legislature of this state for that purpose, have proceeded to the execution of that business, and made a report thereof in the words following, to wit: "The commissioners for ascertaining and adjusting the boundary line between the states of Virginia and Tennessee appointed pursuant to public authority on the part of each, namely, General Joseph Martin, Creed Taylor, and Peter Johnson, for the former, and Moses Fisk, General John Sevier, and General George Rutledge, for the latter, having met at the place previously appointed for that purpose, and not uniting, from the general result of their astronomical observations, to establish either of the former lines called 'Walker's' and 'Henderson's,' unanimously agreed, in order to end all controversy respecting the subject, to run a due west line equally distant from both, beginning on the summit of

the mountain generally known by the name of 'White Top Mountain,' where the northeastern corner of Tennessee terminates, to the top of Cumberland mountain, where the southwestern corner of Virginia terminates, which is hereby declared to be the true boundary line between the said states, and has been accordingly run by Brice Martin and Nathan B. Markland, the surveyors duly appointed for that purpose, and marked under the directions of the said commissioners, as will more at large appear by the report of the said surveyors, hereto annexed, and bearing equal date herewith.

"(2) And the said commissioners do further unanimously agree to recommend to their respective states that individuals having claims or titles to lands on either side of the said line, as now fixed and agreed on, and between the lines aforesaid, shall not, in consequence thereof, in anywise be prejudiced or affected thereby; and that the legislatures of their respective states should pass mutual laws to render all such claims or titles secure to the owners thereof.

"(3) And the said commissioners do further agree unanimously to recommend to their states, respectively, that reciprocal laws should be passed confirming the acts of all public officers, whether magistrates, sheriffs, coroners, surveyors, or constables, between the said lines, which would have been legal in either of the said states had no difference of opinion existed about the true boundary line.

"(4) This agreement shall be of no effect until ratified by the legislatures of the states aforesaid. Given under our hands and seals, at William Robertson's, near Cumberland Gap, December the eighth, eighteen hundred and two. (Dec. 8th, 1802.)

"Jos. Martin. [L. S.]
"Creed Taylor. [L. S.]
"Peter Johnson. [L. S.]
"John Sevier. [L. S.]
"Moses Fisk. [L. S.]
"George Rutledge. [L. S.]'

'(5) And whereas, Brice Martin and Nathan B. Markland, the surveyors duly appointed to run and mark the said line, have granted their certificate of the execution of their duties, which certificate is in the words following, to wit: 'The undersigned surveyors, having been fully appointed to run the boundary line between the states of Virginia and Tennessee, as directed by the commissioners for that purpose, have agreeably to their orders run the same, beginning on the summit of the White Top mountain, at the termination of the northeastern corner of the state of Tennessee, a due west course to the top of the Cumberland mountains, where the southwestern corner

of Virginia terminates, keeping at an equal distance from the lines called 'Walker's' and 'Henderson's,' and have had the new line run as aforesaid marked with five chops, in the form of a diamond, as directed by the said commissioners. Given under our hands and seals, this eighth day of December, eighteen hundred and two. (8th December, 1802.)

"B. Martin. [L. S.]
"Nat. B. Markland. [L. S.]

'And it is deemed proper and expedient that the said boundary line, so fixed and ascertained as aforesaid, should be established and confirmed on the part of this commonwealth:

'(6) Be it therefore enacted by the general assembly of the commonwealth of Virginia, that said boundary line between this state and the state of Tennessee, as laid down, fixed, and ascertained by the said commissioners above named in their said report above recited, shall be, and is hereby, fully and absolutely, to all intents and purposes whatsoever, ratified, established, and confirmed on the part of this commonwealth as the true, certain, and real boundary line between the said states.

'(7) All claims or titles derived from the government of North Carolina or Tennessee which said lands, by the adjustment and establishment of the line aforesaid, have fallen into this state, shall remain as secure to the owners thereof as if derived from the government of Virginia, and shall not be in any wise prejudiced or affected in consequence of the establishment of the said line.

'(8) The acts of all public officers, whether magistrates, sheriffs, coroners, surveyors, or constables, heretofore done or performed in that portion of the territory between the lines called 'Walker's' and 'Henderson's' lines which has fallen into this state by the adjustment of the present line, and which would have been legal if done or performed in the states of North Carolina or Tennessee, are hereby recognized and confirmed.

'(9) This act shall commence and be in force from and after the passing of a like law on the part of the state of Tennessee.'

And on the 3d of November, 1803, Tennessee passed the following ratifying act:

'Whereas, the commissioners appointed to settle and designate the true boundary between this state and the state of Virginia, in conformity to the act passed by the legislature of this state for the purpose, on the thirteenth day of November, one thousand eight hundred and one, have proceeded to the execution of said business, and made a report thereof in the words following, to wit:
'[Here follows the report named in the Virginia act.]

> 'And it is deemed proper and expedient that the said boundary line, so fixed and ascertained as aforesaid, should be established and confirmed on the part of this state:
>
> '(1) Be it enacted by the general assembly of the state of Tennessee, that the said boundary line between this state and the state of Virginia, as laid down, fixed, and ascertained by the said commissioners above named in their said report above recited, shall be, and is hereby, fully and absolutely, to all intents and purposes whatsoever, ratified, established, and confirmed on the part of this state as the true, certain, and real boundary line between the said states.
>
> '(2) Be it enacted, that all claims or titles to lands derived from the government of Virginia, which said lands, by the adjustment and establishment of the line aforesaid have fallen into this state, shall remain as secure to the owners thereof as if derived from the government of North Carolina or Tennessee, and shall not be in anywise prejudiced or affected in consequence of the establishment of the said line.
>
> '(3) Be it enacted, that the acts of all officers, whether magistrates, sheriffs, coroners, surveyors, or constables, heretofore done or performed in that portion of territory between the lines called 'Walker's' and 'Henderson's' lines which has fallen into this state by the adjustment of the present line, and which would have been legal if done or performed in the state of Virginia, are hereby recognized and confirmed.'

This line thus run was accepted by both states as a satisfactory settlement of a controversy which had, under their governments and that of the colonies which preceded them, lasted for nearly a century. As seen from the acts recited, both states, through their legislatures, declared in the most solemn and authoritative manner that it was fully and absolutely ratified, established, and confirmed as the true, certain, and real boundary line between them; and this declaration could not have been more significant had it added, in express terms, what was plainly implied, that it should never be departed from by the government of either, but be respected, maintained, and enforced by the governments of both. All modes of legislative action which followed it indicated its approval. Each state asserted jurisdiction on its side up to the line designated, and recognized the lawful jurisdiction of the adjoining state up to the line on the opposite side. Both states levied taxes on the lands on their respective sides, and granted franchises to the people resident thereon. The people on the south side voted at state and municipal elections for representatives and officers of Tennessee, and the people on the north side at such state and municipal elections voted for representatives and officers of Virginia. The courts of the two states exercised jurisdiction, civil and criminal, on their respective side, and enforced their process up to that line; and the legislation of congress, in the designation of districts for the jurisdiction of courts,

and in prescribing limits for collection districts and for purposes of election, made no exception to the boundary as thus established. 12 St. pp. 432, 433.

The line was marked with great care by the commissioners of the states, with five chops on the trees, in the form of a diamond, at such intervals between them as they deemed sufficient to identify and trace the line. Not a whisper of fraud or misconduct is made by either side against the commissioners for the conclusions they reached and the line they established. It is true that in the year 1856 (54 years after the line was thus settled) Virginia, reciting that the line as marked by the commissioners in 1802 had, by lapse of time, the improvement of the country, natural waste and destruction, and other causes, become indistinct, uncertain, and to some extent unknown, so that many inconveniences and difficulties occurred between the citizens of the respective states, and in the administration of their governments, passed an act for the appointment of commissioners, to meet commissioners to be appointed by Tennessee, to again run and mark said line, not to run and mark a new line; and provided that where there was no growing timber on any part of the line by which it might be plainly marked, if the old marks were gone, the commissioners should cause monuments of stone to be permanently planted on the line, at least one at every five miles or less, where it might seem best to the commissioners to do so, that the line might be readily identified for its entire length. The whole purpose of the act, as is evident on its face, was not to change the old boundary line, but only to more perfectly identify it. Tennessee responded to that invitation, and appointed commissioners to act with those from Virginia. The commissioners together re-ran and re-marked the line as it was established in 1802, and planted such additional monuments as were deemed necessary; and they reported to their respective legislatures that they had 'accurately run, re-marked, and measured the old line of 1802, with all its offsets and irregularities as shown in the surveyor's report' therein incorporated, and on the accompanying map therewith submitted. The legislature of Tennessee approved of the action of the commissioners, but Virginia withheld her approval and called for a new appointment of commissioners to re-run and re-mark the line, which was refused by Tennessee as unnecessary. No complaint as to the correctness of the line run and established in 1802 was made by Virginia until within a recent period. She now by her bill asks that the compact entered into between her and the state of Tennessee, as set forth in the act of the general assembly of Virginia of January 22, 1803, and which became operative by similar action of the legislature of Tennessee on the 3d of November following, be declared null and void, as having been entered into between the states without the consent of congress; and prays that this court will establish the true boundary line between those states due east and west, in latitude 36 deg. and 30 min. N., in accordance with what it alleges to be the ancient chartered rights of that commonwealth, and the laws creating the state of Tennessee and admitting it into the Union.

The constitution provides that '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 agree-

ment 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.'

Is the agreement, made without the consent of congress, between Virginia and Tennessee, to appoint commissioners to run and mark the boundary line between them, within the prohibition of this clause? The terms 'agreement' or 'compact,' taken by themselves, are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting states, so as to encroach upon or impair the supremacy of the United States, or interfere with their rightful management of particular subjects placed under their entire control.

There are many matters upon which different states may agree that can in no respect concern the United States. If, for instance, Virginia should come into possession and ownership of a small parcel of land in New York, which the latter state might desire to acquire as a site for a public building, it would hardly be deemed essential for the latter state to obtain the consent of congress before it could make a valid agreement with Virginia for the purchase of the land. If Massachusetts, in forwarding its exhibits to the World's Fair at Chicago, should desire to transport them a part of the distance over the Erie canal, it would hardly be deemed essential for that state to obtain the consent of congress before it could contract with New York for the transportation of the exhibits through that state in that way. If the bordering line of two states should cross some malarious and disease-producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of congress for the bordering states to agree to unite in draining the district, and thus removing the cause of disease. So, in case of threatened invasion of cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened states could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of congress, which might not be at the time in session. If, then, the terms 'compact' or 'agreement' in the constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of congress must be obtained, to what compacts or agreements does the constitution apply? We can only reply by looking at the object of the constitutional provision, and construing the terms 'agreement' and 'compact' by reference to it. It is a familiar rule in the construction of terms to apply to them the meaning naturally attaching to them from their context. 'Noscitur a sociis' is a rule of construction applicable to all written instruments. Where any particular word is obscure or of doubtful meaning, taken by itself, its obscurity or doubt may be removed by reference to associated words; and the meaning of a term may be enlarged or restrained by reference to the object of the whole clause in which it is used.

Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evi-

dent that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States. Story, in his Commentaries, (section 1403,) referring to a previous part of the same section of the constitution in which the clause in question appears, observes that its language 'may be more plausibly interpreted from the terms used, 'treaty, alliance, or confederation,' and upon the ground that the sense of each is best known by its association ('noscitur a sociis') to apply to treaties of a political character; such as treaties of alliance for purposes of peace and war, and treaties of confederation, in which the parties are leagued for mutual government, political co-operation, and the exercise of political sovereignty, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges;' and that 'the latter clause, 'compacts and agreement,' might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other.' And he adds: 'In such cases the consent of congress may be properly required, in order to check any infringement of the rights of the national government; and, at the same time, a total prohibition to enter any compact or agreement might be attended with permanent inconvenience or public mischief.

Compacts or agreements—and we do not perceive any difference in the meaning, except that the word 'compact' is generally used with reference to more formal and serious engagements than is usually implied in the term 'agreement'—cover all stipulations affecting the conduct or claims of the parties. The mere selection of parties to run and designate the boundary line between two states, or to designate what line should be run, of itself imports no agreement to accept the line run by them, and such action of itself does not come within the prohibition. Nor does a legislative declaration, following such line, that is correct, and shall thereafter be deemed the true and established line, import by itself a contract or agreement with the adjoining state. It is a legislative declaration which the state and individuals affected by the recognized boundary line may invoke against the state as an admission, but not as a compact or agreement. The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it; for example, as made upon a similar declaration of the border or contracting state. The mutual declarations may then be reasonably treated as made upon mutual considerations. The compact or agreement will then be within the prohibition of the constitution, or without it, according as the establishment of the boundary line may lead or not to the increase of the political power or influence of the states affected, and thus encroach or not upon the full and free exercise of federal authority. If the boundary established is so run as to cut off an important and valuable portion of a state, the political power of the state enlarged would be affected by the settlement of the boundary; and to an

agreement for the running of such a boundary, or rather for its adoption afterwards, the consent of congress may well be required. But the running of a boundary may have no effect upon the political influence of either state; it may simply serve to mark and define that which actually existed before, but was undefined and unmarked. In that case the agreement for the running of the line, or its actual survey, would in no respect displace the relation of either of the states to the general government. There was, therefore, no compact or agreement between the states in this case which required, for its validity, the consent of congress, within the meaning of the constitution, until they had passed upon the report of the commissioners, ratified their action, and mutually declared the boundary established by them to be the true and real boundary between the states. Such ratification was mutually made by each state in consideration of the ratification of the other.

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, as where it is to lay a duty of tonnage, to keep troops or ships of war in time of peace, or to engage in war. 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. 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; and observes that where a state is admitted into the Union, notoriously upon a compact made between it and the state of which it previously composed a part, there the act of congress admitting such state into the Union is an implied consent to the terms of the compact. Knowledge by congress of the boundaries of a state and of its political subdivisions may reasonably be presumed, as much of its legislation is affected by them, such as relate to the territorial jurisdiction of the courts of the United States, the extent of their collection districts, and of districts in which process, civil and criminal, of their courts may be served and enforced.

In the present case the consent of congress could not have preceded the execution of the compact, for until the line was run it could not be known where it would lie, and whether or not it would receive the approval of the states. The preliminary agreement was not to accept a line run, whatever it might be, but to receive from the commissioners designated a report as to the line which might be run and established by them. After its consideration each state was free to take such action as it might judge expedient upon their report. 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. The line established was treated by that body as the true boundary between the states in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and as included in territory in which federal elections were to be held, and for which appointments were to be made by federal authority in that state, and in the assignment of

territory south of it as a portion of districts set apart for judicial and revenue purposes in Tennessee, and as included in territory in which federal elections were to be held, and for which federal appointments were to be made for that state. Such use of the territory on different sides of the boundary designated in a single instance would not, perhaps, be considered as absolute proof of the assent or approval of congress to the boundary line; but the exercise of jurisdiction by congress over the country as a part of Tennessee on one side, and as a part of Virginia on the other, for a long succession of years, without question or dispute from any quarter, furnishes as conclusive proof of assent to it by that body as can usually be obtained from its most formal proceedings.

Independently of any effect due to the compact as such, a boundary line between the states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary. Lord Hardwicke, in *Penn v. Lord Baltimore*, 1 Ves. Sr. 444, 448; *Boyd v. Graves*, 4 Wheat. 513; *Rhode Island v. Massachusetts*, 12 Pet. 657, 734; *U.S. v. Stone*, 2 Wall. 525, 537; *Kellogg v. Smith*, 7 Cush. 375, 382; *Chenery v. Waltham*, 8 Cush. 327; Hunt, Bound. (3d Ed.) 306.

As said by this court in the recent case of the *State of Indiana v. Kentucky*, 136 U.S. 479, 516, 10 S. Sup. Ct. Rep. 1051, it is a principle of public law, universally recognized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. In the case of *Rhode Island v. Massachusetts*, 4 How. 591, 639, this court, speaking of the long possession of Massachusetts, and the delays in alleging any mistake in the action of the commissioners of the colonies, said: 'Surely this, connected with the lapse of time, must remove all doubts as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change; and this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of states or individuals, long possession under a claim of title is protected; and there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.'

Vattel, in his Law of Nations, speaking on this subject, says: 'The tranquility of the people, the safety of states, the happiness of the human race, do not allow that the possessions, empire, and other rights of nations should remain uncertain, subject to dispute and ever ready to occasion bloody wars. Between nations, therefore, it becomes necessary to admit prescription founded on length of time as a valid and incontestable title.' Book 2, c. 11, 149. And Wheaton, in his International Law, says: 'The writers on natural law have questioned how far that peculiar species of presumption, arising

from the lapse of time, which is called 'prescription,' is justly applicable as between nation and nation; but the constant and approved practice of nations shows that, by whatever name it be called, the uninterrupted possession of territory or other property for a certain length of time by one state excludes the claim of every other in the same manner as, by the law of nature and the municipal code of every civilized nation, a similar possession by an individual excludes the claim of every other person to the article of property in question.' Part 2, c. 4, 164.

There are also moral considerations which should prevent any disturbance of long recognized boundary lines,—considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life.

Notwithstanding the legislative declaration of Virginia in 1803 that the line marked by the joint commissioners of the two states was ratified as the true and real boundary between them, and the repeated reaffirmation of the same declaration in her laws since that date, notably in the Code of 1858, in the Code of 1860, and in the Code of 1887; notwithstanding that the state has in various modes attested to the correctness of the boundary, by solemn affirmations in terms, by legislation, in the administration of its government, in the levy of taxes and the election of officers, and in its acquiescence for over 85 years, embracing nearly the lives of three generations,—she now, by her bill, seeks to throw aside the obligation from her legislative declaration, because, as alleged, not made upon the express consent in terms of congress, although such consent has been indicated by long acquiescence in the assumption of the validity of the proceedings resulting in the establishment of the boundary, and to have a new boundary line between Virginia and Tennessee established running due east and west on latitude 36 deg. 30 min. N. But to this position there is, in addition to what has already been said, a conclusive answer in the language of this court in *Poole v. Fleeger*, 11 Pet. 185, 209. In that case Mr. Justice Story, after observing that 'it is a part of the general right of sovereignty belonging to independent nations to establish and fix the disputed boundaries between their respective territories, and the boundaries so established and fixed by compact between nations become conclusive upon all the subjects and citizens thereof, and bind their rights, and are to be treated, to all intents and purposes, as the true and real boundary,' adds: 'This is a doctrine universally recognized in the law and practice of nations. It is a right equally belonging to the states of this Union, unless it has been surrendered under the constitution of the United States. So far from there being any pretense of such a general surrender of the right, it is expressly recognized by the constitution, and guarded in its exercise by a single limitation or restriction, requiring the consent of congress.' The constitution in imposing this limitation plainly admits that with such consent a compact as to boundaries may be made between two states; and it follows that when thus made it has full validity, and all the terms and conditions of it are equally obligatory upon the citizens of both states.

The compact in this case, having received the consent of congress, though not in express terms, yet impliedly, subsequently, which is equally effective, became obligatory and binding upon all the citizens of both Virginia and Tennessee. Nor is it any objection that there may have been errors in the demarcation of the line which the states thus by their compact sanctioned. After such compacts have been adhered to from years, neither party can be absolved from them upon showing errors, mistakes, or misapprehension of their terms, or in the line established; and this is a complete and perfect answer to complainant's position in this case.

It may also be stated that if the work of the joint commissioners, under the laws of 1800 and 1801, approved by the legislative action of both states in 1803, could be left out of consideration, and a new line run, it would not follow that the parallel of latitude 36 deg. 30 min. N. would be strictly followed. The charter of Charles the Second designates the northern boundary line of the province of North Carolina as extending from Currituck river or inlet upon a straight westerly line to Wyonoke creek, which lies within or about 36 deg. 30 min. N. latitude, from which it is evident that that parallel was only to be the general direction of the line, not one to be strictly and always followed without any variations from it. The purpose of the declaration in the charter of Charles the Second was only that the northern boundary line was to be run in the neighborhood of that parallel. The condition of the country at the time the charter was granted (1665) would have made the running of a boundary line strictly on that parallel a matter of great difficulty, if not impossible. Nor did the needs of grantor or chartered proprietors call for any such strict adherence to the parallel of latitude designated. That neither party expected it is evident from the agreement made between the governors of Virginia and North Carolina as to running the boundary line between them, and sent to England for approval by the king and council. That agreement provided that, if the west line run should be found to pass through islands or to cut small slips of land, which might much more conveniently be included in one province than the other by natural water bounds, in such case the persons appointed to run the line should have power to settle natural water bounds, provided the commissioners on both sides agreed, and that all variations from the west line should be noted on the premises, or on plats which they should return, to be put on record by both governors. A possible—indeed, a probable—variation from the line of the parallel of latitude, or the straight line, designated, was contemplated by both Virginia and Tennessee. With full knowledge of the line actually designated, and of the ancient charter to Carolina, and of the description in the constitution of Tennessee, in appointing the joint commissioners, they provided that they should settle and adjust all differences concerning the boundary line, and establish either the Walker or Henderson line, or run any other line which might be agreed on for settling the same; and that means any line run and measured with or without deviations from time to time from a straight line, or the line of latitude mentioned as might in their judgment be most convenient as the proper boundary for both states. It was made with numerous variations from a straight line,

and from the line of the designated parallel of latitude for the convenience of the two states, and, with the full knowledge of both, was ratified, established, and confirmed as the true, certain, and real boundary line between them. And when, 56 years afterwards, in consequence of the line thus marked becoming indistinct, it was re-run and re-marked, by new commissioners under the directions of the statutes of 1800 and 1801, in strict conformity with the old line. The compact of the two states establishing the line adopted by their commissioners, and to which congress impliedly assented after its execution, is binding upon both states and their citizens. Neither can be heard at this date to say that it was entered into upon any misapprehension of facts. No treaty, as said by this court, has been held void on the ground of misapprehension of facts, by either or both of the parties. *Rhode Island v. Massachusetts*, 4 How. 635.

The general testimony, with hardly a dissent, is that the old line of 1802 can be readily traced throughout its whole length; and, moreover, that line has been recognized by all the residents near it, except those in the triangle at Denton's valley and in another district of small dimensions, in which it is stated that the people have voted as citizens of Virginia, and have recognized themselves as citizens of that state. That fact, however, cannot affect the potency and conclusiveness of the compact between the states by which the line was established in 1803. The small number of citizens whose expectations will be disappointed by being included in Tennessee are secured in all their rights of property by provisions of the compact passed especially for the protection of their claims.

Some observations were made upon the argument of the case upon the propriety and necessity, if the line established in 1803 be sustained, of having it re-run and re-marked, so as hereafter to be more readily identified and traced. But a careful examination of the testimony of the numerous witnesses in the case (most of them residing in the neighborhood of the boundary line) as to the marks and identification of the line originally established in 1802, and re-run and re-marked in 1859, satisfy us that no new marking of the line is required for its ready identification. The commissioners appointed under the act of Virginia of 1856, and under the act of Tennessee of 1858, found all the old marks upon the trees in the forest through which the line established ran, in the form of a diamond; and whenever they were indistinct, or, in the judgment of the commissioners, too far removed from each other, new marks were made upon the trees, or, if no trees were found at particular places to be marked, monuments in stone were planted. Besides this, the state of Virginia does not ask that the line agreed upon in 1803 shall be re-run or re-marked, but prays that a new boundary line be run on the line of 36 deg. 30 min. Tennessee does not ask that the line of 1803 be re-run or re-marked. Nevertheless, under the prayer of Virginia for general relief, there can be no objection to the restoration of any marks which may be found to have been obliterated or become indistinct upon the line as herein defined.

Our judgment, therefore, is that the boundary line established by the states of Virginia and Tennessee by the compact of 1803 is the true boundary between them,

and that, on a proper application, based upon a showing that any marks for the identification of that line have been obliterated or have become indistinct, an order may be made at any time during the present term for the restoration of such marks without any change of the line. A decree will therefore be entered declaring and adjudging that the boundary line established between the states of Virginia and Tennessee by the compact of 1803 is the real, certain, and true boundary between the said states, and that the prayer of the complainant to have the said compact set aside and annulled, and to have a new boundary line run between them on the parallel of 36 deg. 30 min. N. latitude should be and is denied, at the cost of the complainant.

And it is so ordered.

APPENDIX BB: U.S. SUPREME COURT DECISION IN *U.S. STEEL V. MULTISTATE TAX COMMISSION* (1978)

U.S. Supreme Court
434 U.S. 452
U.S. Steel v. Multistate Tax Commission
February 21, 1978

The Multistate Tax Compact was entered into by a number of States for the stated purposes of (1) facilitating proper determination of state and local tax liability of multistate taxpayers; (2) promoting uniformity and compatibility in state tax systems; (3) facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and (4) avoiding duplicative taxation. To these ends, the Compact created the appellee Multistate Tax Commission. Each member State is authorized to request that the Commission perform an audit on its behalf, and the Commission may seek compulsory process in aid of its auditing power in the courts of any State specifically permitting such procedure. Individual States retain complete control over all legislative and administrative action affecting tax rates, the composition of the tax base, and the means and methods of determining tax liability and collecting any taxes due. Each member State is free to adopt or reject the Commission's rules and regulations, and to withdraw from the Compact at any time. Appellants, on behalf of themselves and all other multistate taxpayers threatened with Commission audits, brought this action in District Court against appellees (the Commission, its members, and its Executive Director) challenging the constitutionality of the Compact on the grounds, *inter alia*, that (1) it is invalid under the Compact Clause of the Constitution (which provides: "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State"); (2) it unreasonably burdens interstate commerce; and (3) it violates the rights of multistate taxpayers under the Fourteenth Amendment. A three-judge court granted summary judgment for appellees. Held:

> "1. The Multistate Tax Compact is not invalid under the rule of *Virginia v. Tennessee*, 148 U.S. 503, 519, that the application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.' Pp. 459–478.
>
> "(a) The Compact's multilateral nature and its establishment of an ongoing administrative body do not, standing alone, present significant potential for conflict with the principles underlying the Compact Clause. The number of parties to an agreement is irrelevant if it does not impermissibly enhance state power at the expense of federal supremacy, and the powers delegated

to the administrative body must also be judged in terms of such enhancement. P. 472.

"(b) Under the test of whether the particular compact enhances state power *quoad* the Federal Government, this Compact does not purport to authorize member States to exercise any powers they could not exercise in its absence, nor is there any delegation of sovereign power to the Commission, each State being free to adopt or reject the Commission's rules and regulations and to withdraw from the Compact at any time. Pp. 472–473.

"(c) Appellants' various contentions that certain procedures and requirements of the Commission encroach upon federal supremacy with respect to interstate commerce and foreign relations and impair the sovereign rights of nonmember States, are without merit, primarily because each member State could adopt similar procedures and requirements individually without regard to the Compact. Even if state power is enhanced to some degree, it is not at the expense of federal supremacy. Pp. 473–478.

"2. Appellants' allegations that the Commission has abused its powers by harassing members of the plaintiff class in that it induced several States to issue burdensome requests for production of documents and to deviate from state law by issuing arbitrary assessments against taxpayers who refuse to comply with such orders, do not establish that the Compact violates the Commerce Clause or the Fourteenth Amendment. But even if such allegations were supported by the record, they are irrelevant to the facial validity of the Compact, it being only the individual State, not the Commission, that has the power to issue an assessment, whether arbitrary or not. Pp. 478–479.

"417 F. Supp. 795, affirmed."

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, MARSHALL, REHNQUIST, and STEVENS, J., joined. WHITE, J., filed a dissenting opinion, in which BLACKMUN, J., joined, post, p. 479.

Erwin N. Griswold argued the cause for appellants. With him on the briefs were Thomas McGanney, Richard A. Hoppe, and Todd B. Sollis.

William D. Dexter argued the cause for appellees. With him on the brief was Samuel N. Greenspoon.*

MR. JUSTICE POWELL delivered the opinion of the Court.

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* A brief of amici curiae urging affirmance was filed for their respective States by William J. Baxley, Attorney General of Alabama; Bruce E. Babbitt, Attorney General of Arizona; Carl R. Ajello, Attorney General of Connecticut; Robert L. Shevin, Attorney General of Florida; Arthur K. Bolton, Attorney General of Georgia; William J. Scott, Attorney General of Illinois; Francis B. Burch, Attorney General of Maryland; Francis X. Bellotti, Attorney General of Massachusetts; Rufus L. Edmisten, Attorney General of North Carolina; Warren R. Spannaus, Attorney General of Minnesota; Brooks McLemore, Attorney General of Tennessee; Chauncey H. Browning, Jr., Attorney General of West Virginia; and for the State of Louisiana by David Dawson.

John H. Larson filed a brief for the County of Los Angeles as amicus curiae.

The Compact Clause of Art. I, 10, cl. 3, of the Constitution provides: "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign Power. . . ." The Multistate Tax Compact, which established the Multistate Tax Commission, has not received congressional approval. This appeal requires us to decide whether the Compact is invalid for that reason. We also are required to decide whether it impermissibly encroaches on congressional power under the Commerce Clause and whether it operates in violation of the Fourteenth Amendment.

I

The Multistate Tax Compact was drafted in 1966 and became effective, according to its own terms, on August 4, 1967, after seven States had adopted it. By the inception of this litigation in 1972, 21 States had become members.[1] Its formation was a response to this Court's decision in *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), and the congressional activity that followed in its wake.

In *Northwestern States*, this Court held that net income from the interstate operations of a foreign corporation may be subjected to state taxation, provided that the levy is nondiscriminatory and is fairly apportioned to local activities that form a sufficient nexus to support the exercise of the taxing power. This prompted Congress to enact a statute, Act of Sept. 14, 1959, Pub. L. 86-272, 73 Stat. 555, which sets forth certain minimum standards for the exercise of that power.[2] It also authorized a study for the purpose of recommending legislation establishing uniform standards to be observed by the States in taxing income of interstate businesses. Although the results of the study were published in 1964 and 1965,[3] Congress has not enacted any legislation dealing with the subject.[4]

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[1] Those States were: Alaska, Alaska Stat. Ann. 43.19.010 (1977); Arkansas, Ark. Stat. Ann. 84-4101 (Supp. 1977); Colorado, Colo. Rev. Stat. 24-60-1301 (1973); Florida, Fla. Stat. 213.15 (1971); Haw. Rev. Stat. 255-1 (Supp. 1976); Idaho, Idaho Code 63-3701 (1976); Illinois, Ill. Rev. Stat., ch. 120, 871 (1973); Indiana, Ind. Code 6-8-9-101 (1972); Kansas, Kan. Stat. Ann. 79-4301 (1969); Michigan, Mich. Comp. Laws 205.581 (1970); Missouri, Mo. Rev. Stat. 32.200 (1969); Montana, Mont. Rev. Codes Ann. 84-6701 (Supp. 1977); Nebraska, Neb. Rev. Stat. 77-2901 (1943); Nevada, Nev. Rev. Stat. 376.010 (1973); New Mexico, N. M. Stat. Ann. 72-15A-37 (Supp. 1975); North Dakota, N. D. Cent. Code 57-59-01 (1972); Oregon, Ore. Rev. Stat. 305.655 (1977); Texas, Tex. Rev. Civ. Stat. Ann., Art. 7359a (Vernon Supp. 1977); Utah, Utah Code Ann. 59-22-1 (1953 and Supp. 1977); Washington, Wash. Rev. Code 82.56.010 (1974); Wyoming, Wyo. Stat. 39-376 (Supp. 1975).

Since the suit began, four States—Florida, Illinois, Indiana, and Wyoming—have withdrawn from the Compact, see 1976 Fla. Laws, ch. 76-149, 1; 1975 Ill. Laws, No. 79-639, 1; 1977 Ind. Acts, No. 90; 1977 Wyo. Sess. Laws, ch. 44, 1. Two others—California and South Dakota—have joined it, see Cal. Rev. & Tax. Code Ann. 38001 (West Supp. 1977); S. D. Comp. Laws Ann. 10-54-1 (Supp. 1977), for a current total of 19 members.

[2] Title I of Pub. L. 86-272, codified as 15 U.S.C. 381-384, essentially forbids the imposition of a tax on a foreign corporation's net income derived from activities within a State, if those activities are limited to the solicitation of orders that are approved, filled, and shipped from a point outside the State.

[3] H. R. Rep. No. 1480, 88th Cong., 2d Sess. (1964); H. R. Rep. No. 565, 89th Cong., 1st Sess. (1965); H. R. Rep. No. 952, 89th Cong., 1st Sess. (1965).

[4] There have been several unsuccessful attempts. H. R. 11798, 89th Cong., 1st Sess. (1965); H. R. 16491, 89th Cong., 2d Sess. (1966); S. 317, 92d Cong., 1st Sess. (1971); H. R. 1538, 92d Cong., 1st Sess. (1971); S. 1245, 93d Cong., 1st Sess. (1973); H. R. 977, 93d Cong., 1st Sess. (1973); S. 2080, 94th Cong., 1st Sess. (1975); H. R. 9, 94th Cong., 1st Sess. (1975).

While Congress was wrestling with the problem, the Multistate Tax Compact was drafted.[5] It symbolized the recognition that, as applied to multistate businesses, traditional state tax administration was inefficient and costly to both State and taxpayer. In accord with that recognition, Art. I of the Compact states four purposes: (1) facilitating proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes; (2) promoting uniformity and compatibility in state tax systems; (3) facilitating taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration; and (4) avoiding duplicative taxation.

To these ends, Art. VI creates the Multistate Tax Commission, composed of the tax administrators from all the member States. Section 3 of Art. VI authorizes the Commission (i) to study state and local tax systems; (ii) to develop and recommend proposals for an increase in uniformity and compatibility of state and local tax laws in order to encourage simplicity and improvement in state and local tax law and administration; (iii) to compile and publish information that may assist member States in implementing the Compact and taxpayers in complying with the tax laws; and (iv) to do all things necessary and incidental to the administration of its functions pursuant to the Compact.

Articles VII and VIII detail more specific powers of the Commission. Under Art. VII, the Commission may adopt uniform administrative regulations in the event that two or more States have uniform provisions relating to specified types of taxes. These regulations are advisory only. Each member State has the power to reject, disregard, amend, or modify any rules or regulations promulgated by the Commission. They have no force in any member State until adopted by that State in accordance with its own law.

Article VIII applies only in those States that specifically adopt it by statute. It authorizes any member State or its subdivision to request that the Commission perform an audit on its behalf. The Commission, as the State's auditing agent, may seek compulsory process in aid of its auditing power in the courts of any State that has adopted Art. VIII. Information obtained by the audit may be disclosed only in accordance with the laws of the requesting State. Moreover, individual member States retain complete control over all legislation and administrative action affecting the rate of tax, the composition of the tax base (including the determination of the components of taxable income), and the means and methods of determining tax liability and collecting any taxes determined to be due.

Article X permits any party to withdraw from the Compact by enacting a repealing statute. The Compact's other provisions are of less relevance to the matter before us.[6]

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[5] The model Act proposed as the Multistate Tax Compact, with minor exceptions, has been adopted by each member State.

[6] Article II consists of definitions. Article III permits small taxpayers—those whose only activities within the jurisdiction consist of sales totaling less than $100,000—to elect to pay a tax on gross sales in lieu of a levy

In 1972, appellants brought this action on behalf of themselves[7] and all other multistate taxpayers threatened with audits by the Commission. They named the Commission, its individual Commissioners, and its Executive Director as defendants. Their complaint challenged the constitutionality of the Compact on four grounds: (1) the Compact, never having received the consent of Congress,[8] is invalid under the Compact Clause; (2) it unreasonably burdens interstate commerce; (3) it violates the rights of multistate taxpayers under the Fourteenth Amendment; and (4) its audit provisions violate the Fourth and Fourteenth Amendments. Appellants sought a declaratory judgment that the Compact is invalid and a permanent injunction barring its operation.

The complaint survived a motion to dismiss. 367 F. Supp. 107 (SDNY 1973). After extensive discovery, appellees moved for summary judgment. A three-judge District Court, convened pursuant to 28 U.S.C. 2281, rejected appellants' claim that the record would not support summary judgment. 417 F. Supp. 795, 798 (SDNY 1976). Turning to the merits, the District Court first rejected the contention that the Compact Clause requires congressional consent to every agreement between two or more States. The court cited *Virginia v. Tennessee*, 148 U.S. 503 (1893), and *New Hampshire v. Maine*, 426 U.S. 363 (1976), in support of its holding that consent is necessary only in the case of a compact that enhances the political power of the member States in relation to the Federal Government. The District Court found neither enhancement of state political power nor encroachment upon federal supremacy. Concluding that appellants' Commerce Clause, Fourth Amendment, and Fourteenth Amendment claims also lacked merit, the District Court granted summary judgment for appellees.

Before this Court, appellants have abandoned their search-and-seizure claim. Although they preserved their claim relating to the propriety of summary judgment, we find no reason to disturb the conclusion of the court below on that point. We have before

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on net income. The Uniform Division of Income for Tax Purposes Act, contained in Art. IV, allows multistate taxpayers to apportion and allocate their income under formulae and rules set forth in the Compact or by any other method available under state law. It was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1957. Article V deals with sales and use taxes. Article IX provides for arbitration of disputes, but is not in effect. Article XI disclaims any attempt to affect the power of member States to fix rates of taxation or limit the jurisdiction of any court. Finally, Art. XII provides for liberal construction and severability.

[7] The action was filed by United States Steel Corp., Standard Brands Inc., General Mills, Inc., and the Procter & Gamble Distributing Co. On February 5, 1974, the court below permitted Bethlehem Steel Corp., Bristol Myers Co., Eltra Corp., Goodyear Tire & Rubber Co., Green Giant Co., International Business Machines Corp., International Harvester Co., International Paper Co., International Telephone & Telegraph Corp., McGraw-Hill, Inc., NL Industries, Inc., Union Carbide Corp., and Xerox Corp. to intervene as plaintiffs. The court below ordered that the suit proceed as a class action. International Business Machines and Xerox withdrew as intervenor plaintiffs before decision.

[8] Congressional consent has been sought, but never obtained. See S. 3892, 89th Cong., 2d Sess. (1966); S. 883, 90th Cong., 1st Sess. (1967); S. 1551, 90th Cong., 1st Sess. (1967); H. R. 9476, 90th Cong., 1st Sess. (1967); H. R. 13682, 90th Cong., 1st Sess. (1967); S. 1198, 91st Cong., 1st Sess. (1969); H. R. 6246, 91st Cong., 1st Sess. (1969); H. R. 9873, 91st Cong., 1st Sess. (1969); S. 1883, 92d Cong., 1st Sess. (1971); H. R. 6160, 92d Cong., 1st Sess. (1971); S. 3333, 92d Cong., 2d Sess. (1972); S. 2092, 93d Cong., 1st Sess. (1973).

us, therefore, appellant's contentions under the Compact Clause, the Commerce Clause, and the Fourteenth Amendment. We consider first the Compact Clause contention.

II

Read literally, the Compact Clause would require the States to obtain congressional approval before entering into any agreement among themselves, irrespective of form, subject, duration, or interest to the United States. The difficulties with such an interpretation were identified by Mr. Justice Field in his opinion for the Court in *Virginia v. Tennessee*, supra. His conclusion that the Clause could not be read literally was approved in subsequent dicta,[9] but this Court did not have occasion expressly to apply it in a holding until our recent decision in *New Hampshire v. Maine*, supra.

Appellants urge us to abandon *Virginia v. Tennessee* and *New Hampshire v. Maine*, but provide no effective alternative other than a literal reading of the Compact Clause. At this late date, we are reluctant to accept this invitation to circumscribe modes of interstate cooperation that do not enhance state power to the detriment of federal supremacy. We have examined, nevertheless, the origin and development of the Clause, to determine whether history lends controlling support to appellants' position.

Article I, 10, cl. 1, of the Constitution—the Treaty Clause—declares: "No State, shall enter into Any Treaty, Alliance or Confederation. . . ." Yet Art. I, 10, cl. 3—the Compact Clause—permits the States to enter into "agreements" or "compacts," so long as congressional consent is obtained. The Framers clearly perceived compacts and agreements as differing from treaties.[10] The records of the Constitutional Convention, however, are barren of any clue as to the precise contours of the agreements and com-

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[9] E. g., *Wharton v. Wise*, 153 U.S. 155, 168–170 (1894); *North Carolina v. Tennessee*, 235 U.S. 1, 16 (1914).

[10] The history of interstate agreements under the Articles of Confederation suggests the same distinction between "treaties, alliances, and confederations" on the one hand, and "agreements and compacts" on the other. Article VI provided in part as follows:

> "No State without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any confe[r]ence, agreement, alliance or treaty, with any king, prince or state. . . .
>
> "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."

Congressional consent clearly was required before a State could enter into an "agreement" with a foreign state or power or before two or more States could enter into "treaties, alliances, or confederations." Apparently, however, consent was not required for mere "agreements" between States. "The articles inhibiting any treaty, confederation, or alliance between the States without the consent of Congress . . . were not designed to prevent arrangements between adjoining States to facilitate the free intercourse of their citizens, or remove barriers to their peace and prosperity. . . ." *Wharton v. Wise*, *supra*, at 167.

For example, the Virginia-Maryland Compact of 1785, which governed navigation and fishing rights in the Potomac River, the Pocomoke River, and the Chesapeake Bay, did not receive congressional approval, yet no question concerning its validity under Art. VI ever arose. As the Court noted in *Wharton v. Wise*, in reference to the 1785 Compact, "looking at the object evidently intended by the prohibition of the Articles of Confederation, we are clear they were not directed against agreements of the character expressed by the compact under consideration. Its execution could in no respect encroach upon or weaken the general authority of Congress under those articles. Various compacts were entered into between Pennsylvania and New Jersey and between Pennsylvania and Virginia, during the Confederation, in reference to boundaries between them,

pacts governed by the Compact Clause.[11] This suggests that the Framers used the words "treaty," "compact," and "agreement" as terms of art, for which no explanation was required[12] and with which we are unfamiliar. Further evidence that the Framers ascribed precise meanings to these words appears in contemporary commentary.[13]

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and to rights of fishery in their waters, and to titles to land in their respective States, without the consent of Congress, which indicated that such consent was not deemed essential to their validity." 153 U.S., at 170–171.

[11] On July 25, 1787, the Convention created a Committee of Detail composed of John Rutledge, James Wilson, Edmund Randolph, Nathaniel Gorham, and Oliver Elsworth. The Convention then adjourned until August 6 to allow the Committee to prepare a draft. 2 M. Farrand, Records of the Federal Convention of 1787, pp. 97, 128 (1911). Section 10 of the Committee's first draft provided in part: "No State shall enter into any Treaty, Alliance or Confederation with any foreign Power nor witht. Const. of U.S. into any agreemt. or compact wh another State or Power. . . ." *Id.*, at 169 (abbreviations in original). On August 6, the Committee submitted a draft to the Convention containing the following articles:

> "XII No State shall . . . enter into any treaty, alliance, or confederation. . . .
>
> "XIII No State, without the consent of the Legislature of the United States, shall . . . enter into any agreement or compact with another State, or with any foreign power. . . ." *Id.*, at 187.

The Committee of Style, created to revise the draft, reported on September 12, id., at 590, but nothing appears to have been said about Art. I, 10, which contained the treaty and compact language incorporated into the Constitution as approved on September 17. The records of the state ratification conventions also shed no light. Publius declared only that the prohibition against treaties, alliances, and confederation, "for reasons which need no explanation, is copied into the new Constitution," while the portion of Art. I, 10, containing the Compact Clause fell "within reasonings which are either so obvious, or have been so fully developed, that they may be passed over without remark." The *Federalist*, No. 44, pp. 299, 302 (J. Cooke ed. 1961) (J. Madison).

[12] Some commentators have theorized that the Framers understood those terms in relation to the precisely defined categories, fashionable in the contemporary literature of international law, of accords between sovereigns. See, e. g., Engdahl, Characterization of Interstate Arrangements: When Is a Compact Not a Compact?, 64 Mich. L. Rev. 63 (1965); Weinfeld, What Did the Framers of the Federal Constitution Mean by "Agreements or Compacts"?, 3 U. Chi. L. Rev. 453 (1936). The international jurist most widely cited in the first 50 years after the Revolution was Emmerich de Vattel. 1 J. Kent, Commentaries on American Law 18 (1826). In 1775, Benjamin Franklin acknowledged receipt of three copies of a new edition, in French, of Vattel's Law of Nations and remarked that the book "has been continually in the hands of the members of our Congress now sitting. . . ." 2 F. Wharton, United States Revolutionary Diplomatic Correspondence 64 (1889), cited in Weinfeld, supra, at 458.

Vattel differentiated between "treaties," which were made either for perpetuity or for a considerable period, and "agreements, conventions, and pactions," which "are perfected in their execution once for all." E. Vattel, Law of Nations 192 (J. Chitty ed. 1883). Unlike a "treaty" or "alliance," an "agreement" or "paction" was perfected upon execution:

> "[T]hose compacts, which are accomplished once for all, and not by successive acts,—are no sooner executed then they are completed and perfected. If they are valid, they have in their own nature a perpetual and irrevocable effect. . . ." *Id.*, at 208.

This distinction between supposedly ongoing accords, such as military alliances, and instantaneously executed, though perpetually effective, agreements, such as boundary settlements, may have informed the drafting in Art. I, 10. The Framers clearly recognized the necessity for amicable resolution of boundary disputes and related grievances. See *Virginia v. West Virginia*, 246 U.S. 565, 597–600 (1918); Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 *Yale L. J.* 685, 692–695 (1925). Interstate agreements were a method with which they were familiar. *Id.*, at 694, 732–734. Although these dispositive compacts affected the interests of the States involved, they did not represent the continuing threat to the other States embodied in a "treaty of alliance," to use Vattel's words. E. Vattel, supra, at 192.

[13] St. George Tucker, who along with Madison and Edmund Randolph was a Virginia commissioner to the Annapolis Convention of 1786, drew a distinction between "treaties, alliances, and confederations" on the one hand, and "agreements or compacts" on the other:

> "The former relate ordinarily to subjects of great national magnitude and importance, and are often perpetual, or made for a considerable period of time; the power of making these is altogether

Whatever distinct meanings the Framers attributed to the terms in Art. I, 10, those meanings were soon lost. In 1833, Mr. Justice Story perceived no clear distinction among any of the terms.[14] Lacking any clue as to the categorical definitions the Framers has ascribed to them, Mr. Justice Story developed his own theory. Treaties, alliances, and confederations, he wrote, generally connote military and political accords and are forbidden to the States. Compacts and agreements, on the other hand, embrace "mere private rights of sovereignty; such as questions of boundary; interests in land situate in the territory of each other; and other internal regulations for the mutual comfort and convenience of States bordering on each other." 2 J. Story, *Commentaries on the Constitution of the United States* 1403, p. 264 (T. Cooley ed. 1873). In the latter situations, congressional consent was required, Story felt, "in order to check any infringement of the rights of the national government." *Ibid.*

The Court's first opportunity to comment on the scope of the Compact Clause, *Holmes v. Jennison*, 14 *Pet.* 540 (1840), proved inconclusive. Holmes had been arrested in Vermont on a warrant issued by Jennison, the Governor. The warrant apparently reflected an informal agreement by Jennison to deliver Holmes to authorities in Canada, where he had been indicted for murder. On a petition for habeas corpus, the Supreme Court of Vermont held Holmes' detention lawful. Although this Court divided evenly on the question of its jurisdiction to review the decision, Mr. Chief Justice Taney, in an opinion joined by Mr. Justice Story and two others, addressed the merits of Holmes' claim that Jennison's informal agreement to surrender him fell within the scope of the Compact Clause. Mr. Chief Justice Taney focused on the fact that the agreement in question was between a State and a foreign government. Since

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prohibited to the individual states; but agreements, or compacts, concerning transitory or local affairs, or such as cannot possibly affect any other interest but that of the parties, may still be entered into by the respective states, with the consent of congress." 1 W. Blackstone, Commentaries, Appendix 310 (S. Tucker ed. 1803) (footnotes omitted).

Tucker cited Vattel as authority for his interpretation of Art. I, 10.

[14] Mr. Justice Story found Tucker's view, see n. 13, supra, unilluminating:

"What precise distinction is here intended to be taken between treaties, and agreements, and compacts, is nowhere explained, and has never as yet been subjected to any exact judicial or other examination. A learned commentator, however, supposes, that the former ordinarily relate to subjects of great national magnitude and importance, and are often perpetual, or for a great length of time; but that the latter relate to transitory or local concerns, or such as cannot possibly affect any other interests but those of the parties [citing Tucker]. But this is at best a very loose and unsatisfactory exposition, leaving the whole matter open to the most latitudinarian construction. What are subjects of great national magnitude and importance? Why may not a compact or agreement between States be perpetual? If it may not, what shall be its duration? Are not treaties often made for short periods, and upon questions of local interest, and for temporary objects?" 2 J. Story, *Commentaries on the Constitution of the United States* 1402, p. 263 (T. Cooley ed. 1873) (footnotes omitted).

In *Green v. Biddle*, 8 *Wheat.* 1 (1823), the Court, including Mr. Justice Story, had been presented with a question of the validity of the Virginia-Kentucky Compact of 1789, to which Congress had never expressly assented. Henry Clay argued to the Court that the Compact Clause extended "to all agreements or compacts, no matter what is the subject of them. It is immaterial, therefore, whether that subject be harmless or dangerous to the Union." *Id.*, at 39. The Court did not address that issue, however, for it held that Congress' consent could be implied. *Id.*, at 87.

the clear intention of the Framers had been to cut off all communication between the States and foreign powers, *id.*, at 568–579, he concluded that the Compact Clause would permit an arrangement such as the one at issue only if "made under the supervision of the United States . . . ," *id.*, at 578. In his separate opinion, Mr. Justice Catron expressed disquiet over what he viewed as Mr. Chief Justice Taney's literal reading of the Compact Clause, noting that it might threaten agreements between States theretofore considered lawful.[15]

Despite Mr. Justice Catron's fears, courts faced with the task of applying the Compact Clause appeared reluctant to strike down newly emerging forms of interstate cooperation.[16] For example, in *Union Branch R. Co. v. East Tennessee & G. R. Co.*, 14 Ga. 327 (1853), the Supreme Court of Georgia rejected a Compact Clause challenge to an agreement between Tennessee and Georgia concerning the construction of an interstate railroad. Omitting any mention of *Holmes v. Jennison*, the Georgia court seized upon Story's observation that the words "treaty, alliance, and confederation" generally were known to apply to treaties of a political character. Without explanation, the court transferred this description of the Treaty Clause to the Compact Clause, which it perceived as restraining the power of the States only with respect to agreements "which might limit, or infringe upon a full and complete execution by the General Government, of the powers intended to be delegated by the Federal Constitution. . . ." 14 Ga., at 339.[17] A broader prohibition could not have been intended, since it was unnecessary to protect the Federal Government.[18] Unless this view was taken, said the court:

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[15] Notwithstanding Mr. Justice Catron's unease, Mr. Chief Justice Taney's opinion in *Jennison* is not inconsistent with the rule of *Virginia v. Tennessee*. At some length, Taney emphasized that the State was exercising the power to extradite persons sought for crimes in other countries, which was part of the exclusive foreign relations power expressly reserved to the Federal Government. He concluded, therefore, that the State's agreement would be constitutional only if made under the supervision of the United States.

After the *Jennison* case had been disposed of by the Court, the Vermont court discharged Holmes. It concluded from an examination of the five separate opinions in the case that a majority of this Court believed the Governor had no power to deliver Holmes to Canadian authorities. *Holmes v. Jennison*, 14 Pet. 540, 597 (1840) (Reporter's Note).

[16] See generally Abel, Interstate Cooperation as a Child, 32 *Iowa L. Rev.* 203 (1947); Engdahl, supra, n. 12, at 86.

[17] The court failed to mention that Story described the terms of the Treaty Clause, not the Compact Clause, as political. It was the political character of treaties, in his view, that led to their absolute prohibition. Story theorized that the Compact Clause dealt with "private rights of sovereignty," see supra, at 464, but that congressional consent was required to prevent possible abuses.

[18] Taking a similar view of the Compact Clause, and also ignoring *Holmes v. Jennison*, were *Dover v. Portsmouth Bridge*, 17 N. H. 200 (1845), and *Fisher v. Steele*, 39 La. Ann. 447, 1 So. 882 (1887). *Holmes v. Jennison* apparently was not cited in a case relating to the Compact Clause until 1917, 14 years after Mr. Justice Field formulated the rule of *Virginia v. Tennessee*. See *McHenry County v. Brady*, 37 N. D. 59, 70, 163 N. W. 540, 544 (1917).

Mr. Chief Justice Taney may have shared the Georgia court's view of compacts which, unlike the "agreement" in *Holmes v. Jennison*, did not implicate the foreign relations power of the United States. A year after *Union Branch R. Co.* was decided, he suggested in dictum that the Compact Clause is aimed at an accord that is "in its nature, a political question, to be settled by compact made by the political departments of the government." *Florida v. Georgia*, 17 How. 478, 494 (1855). The purpose of the Clause, he declared, is "to

> "We must hold that a State, without the consent of Congress, can make no sort of contract, whatever, with another State. That it cannot sell to another state, any portion of public property, . . . though it may so sell to individuals. . . .
> "We can see no advantage to be gained by, or benefit in such a provision; and hence, we think it was not intended." *Id.*, at 340.

It was precisely this approach that formed the basis in 1893 for Mr. Justice Field's interpretation of the Compact Clause in *Virginia v. Tennessee*. In that case, the Court held that Congress tacitly had assented to the running of a boundary between the two States. In an extended dictum, however, Mr. Justice Field took the Court's first opportunity to comment upon the Compact Clause since the neglected essay in *Holmes v. Jennison*. Mr. Justice Field, echoing the puzzlement expressed by Story 60 years earlier, observed:

> "The terms 'agreement' or 'compact' taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or have any interest in interfering with, as well as to those which may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control." 148 U.S., at 517–518.

Mr. Justice Field followed with four examples of interstate agreements that could in "no respect concern the United States": (1) an agreement by one State to purchase land within its borders owned by another State; (2) an agreement by one State to ship merchandise over a canal owned by another; (3) an agreement to drain a malarial district on the border between two States; and (4) an agreement to combat an immediate threat, such as invasion or epidemic. As the Compact Clause could not have been intended to reach every possible interstate agreement, it was necessary to construe the terms of the Compact Clause by reference to the object of the entire section in which it appears:[19]

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guard the rights and interests of the other States, and to prevent any compact or agreement between any two States, which might affect injuriously the interest of the others." A similar concern with agreements of a political nature may be found in a dictum of Mr. Chief Justice Marshall:

> "It is worthy of remark, too, that these inhibitions [of Art. I, 10] generally restrain state legislation on subjects entrusted to the general government, or in which the people of all the states feel an interest.
> "A state is forbidden to enter into any treaty, alliance or confederation. If these compacts are with foreign nations, they interfere with the treaty making power which is conferred entirely on the general government; if with each other, for political purposes, they can scarcely fail to interfere with the general purpose and intent of the constitution." *Barron v. Baltimore*, 7 *Pet.* 243, 249 (1833).

[19] In support of this conclusion, Mr. Justice Field misread Story's Commentaries in precisely the same way as the Georgia court did in *Union Branch R. Co.* See n. 17, supra.

> "Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." *Id.*, at 519.

Mr. Justice Field reiterated this functional view of the Compact Clause a year later in *Wharton v. Wise*, 153 U.S. 155, 168–170 (1894).

Although this Court did not have occasion to apply Mr. Justice Field's test for many years, it has been cited with approval on several occasions. *Louisiana v. Texas*, 176 U.S. 1, 17 (1900); *Stearns v. Minnesota*, 179 U.S. 223, 246–248 (1900); *North Carolina v. Tennessee*, 235 U.S. 1, 16 (1914).[20] Moreover, several decisions of this Court have upheld a variety of interstate agreements effected through reciprocal legislation without congressional consent. E.g., *St. Louis & S. F. R. Co. v. James*, 161 U.S. 545 (1896); *Hendrick v. Maryland*, 235 U.S. 610 (1915); *Bode v. Barrett*, 344 U.S. 583 (1953); *New York v. O'Neill*, 359 U.S. 1 (1959). While none of these cases explicitly applied the *Virginia v. Tennessee* test, they reaffirmed its underlying assumption: not all agreements between States are subject to the strictures of the Compact Clause.[21] In *O'Neill*, for example, this Court upheld the Uniform Law to Secure the Attendance of Witnesses from Within or Without the State in Criminal Proceedings, which had been enacted in 41 States and Puerto Rico. That statute permitted the judge of a court of any enacting State to invoke the process of the courts of a sister State for the purpose of compelling the attendance of witnesses at criminal proceedings in the requesting State. Although

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[20] State courts repeatedly have applied the test in confirming the validity of a variety of interstate agreements. E.g., *McHenry Country v. Brady*, supra; *Dixie Wholesale Grocery, Inc. v. Martin*, 278 Ky. 705, 129 S. W. 2d 181, cert. denied, 308 U.S. 609 (1939); *Ham v. Maine-New Hampshire Interstate Bridge Authority*, 92 N. H. 268, 30 A. 2d 1 (1943); *Roberts Tobacco Co. v. Department of Revenue*, 322 Mich. 519, 34 N. W 2d 54 (1948); *Bode v. Barrett*, 412 Ill. 204, 106 N. E. 2d 521 (1952), aff'd, 344 U.S. 583 (1953); *Landes v. Landes*, 1 N. Y. 2d 358, 135 N. E. 2d 562, appeal dismissed, 352 U.S. 948 (1956); *Ivey v. Ayers*, 301 S. W. 2d 790 (Mo. 1957); *State v. Doe*, 149 Conn. 216, 178 A. 2d 271 (1962); *General Expressways, Inc. v. Iowa Reciprocity Board*, 163 N. W. 2d 413 (Iowa, 1968); *Kinnear v. Hertz Corp.*, 86 Wash. 2d 407, 545 P. 2d 1186 (1976). See also *Henderson v. Delaware River Joint Toll Bridge Comm'n*, 362 Pa. 475, 66 A. 2d 843 (1949); *Opinion of the Justices*, 344 Mass. 770, 184 N. E. 2d 353 (1962); *State v. Ford*, 213 Tenn. 582, 376 S. W. 2d 486 (1964); *Dresden School Dist. v. Hanover School Dist.*, 105 N. H. 286, 198 A. 2d 656 (1964); *Colgate-Palmolive Co. v. Dorgan*, 225 N. W. 2d 278 (N. D. 1974).

[21] One commentator has noted the relevance of reciprocal-legislation cases, particularly those involving reciprocal tax statutes, to Compact Clause adjudication:

> "Compact clause adjudication focuses on a federalism formula suggested in an 1893 Supreme Court case [*Virginia v. Tennessee*]: congressional consent is required to validate only those compacts infringing upon 'the political power or influence' of particular states and 'encroaching . . . upon the full and free exercise of Federal authority.' Reciprocal tax statutes, which provide the paradigm instance of arrangements not deemed to require the consent of Congress, illustrate this principle in that they neither project a new presence onto the federal system nor alter any state's basic sphere of authority." Tribe, Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies about Federalism, 89 *Harv. L. Rev.* 682, 712 (1976) (footnotes omitted).

no Compact Clause question was directly presented, the Court's opinion touched upon similar concerns:

> "The Constitution did not purport to exhaust imagination and resourcefulness in devising fruitful interstate relationships. It is not to be constructed to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual States with a view to increasing harmony within the federalism created by the Constitution. Far from being divisive, this legislation is a catalyst of cohesion. It is within the unrestricted area of action left to the States by the Constitution." 359 U.S., at 6.

The reciprocal-legislation cases support the soundness of the *Virginia v. Tennessee* rule, since the mere form of the interstate agreement cannot be dispositive. Agreements effected through reciprocal legislation[22] may present opportunities for enhancement of state power at the expense of the federal supremacy similar to the threats inherent in a more formalized "compact." Mr. Chief Justice Taney considered this point in *Holmes v. Jennison*, 14 Pet., at 573:

> "Can it be supposed, that the constitutionality of the act depends on the mere form of the agreement? We think not. The Constitution looked to the essence and substance of things, and not to mere form. It would be but an evasion of the constitution to place the question upon the formality with which the agreement is made."

The Clause reaches both "agreements" and "compacts," the formal as well as the informal.[23] The relevant inquiry must be one of impact on our federal structure.

This was the status of the *Virginia v. Tennessee* test until two Terms ago, when we decided *New Hampshire v. Maine*, 426 U.S. 363 (1976). In that case we specifically applied the test and held that an interstate agreement locating an ancient boundary did not require congressional consent. We reaffirmed Mr. Justice Field's view that the "application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.'" *Id.*, at 369, quoting *Virginia v. Tennessee*, 148 U.S., at 519. This rule states the proper balance between federal and state power with respect to compacts and agreements among States.

Appellants maintain that history constrains us to limit application of this rule to

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[22] See also Frankfurter & Landis, supra, n. 12, at 690–691.

[23] Although there is language in *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951), that could be read to suggest that the formal nature of a "compact" distinguishes it from reciprocal legislation, that language, properly understood, does not undercut our analysis. Referring in dictum to the compact at issue in Dyer, Mr. Justice Frankfurter observed that congressional consent had been required, "as for all compacts." The word "compact" in that phrase must be understood as a term of art, meaning those agreements falling within the scope of the Compact Clause. Cf. Frankfurter & Landis, supra n. 12, at 690, and n. 22a. Otherwise, the word "agreement" is read out of Art. I, 10, cl. 3, entirely.

bilateral agreements involving no independent administrative body. They argue that this Court never has upheld a multilateral agreement creating an active administrative body with extensive powers delegated to it by the States, but lacking congressional consent. It is true that most multilateral compacts have been submitted for congressional approval. But this historical practice, which may simply reflect considerations of caution and convenience on the part of the submitting States, is not controlling.[24] It is also true that the precise interstate mechanism involved in this case has not been presented to this Court before. *New York v. O'Neill*, supra, however, involving analogous multilateral arrangements, stands as an implicit rejection of appellants' proposed limitation of the *Virginia v. Tennessee* rule.

Appellants further urge that the pertinent inquiry is one of potential, rather than actual, impact upon federal supremacy. We agree. But the multilateral nature of the agreement and its establishment of an ongoing administrative body do not, standing alone, present significant potential for conflict with the principles underlying the Compact Clause. The number of parties to an agreement is irrelevant if it does not impermissibly enhance state power at the expense of federal supremacy. As to the powers delegated to the administrative body, we think these also must be judged in terms of enhancement of state power in relation to the Federal Government. See *Virginia v. Tennessee*, supra, at 520 (establishment of commission to run boundary not a "compact"). We turn, therefore, to the application of the *Virginia v. Tennessee* rule to the Compact before us.

III

On its face the Multistate Tax Compact contains no provisions that would enhance the political power of the member States in a way that encroaches upon the supremacy of the United States. There well may be some incremental increase in the bargaining power of the member States *quoad* the corporations subject to their respective taxing jurisdictions. Group action in itself may be more influential than independent actions by the States. But the test is whether the Compact enhances state power *quoad* the National Government. This pact does not purport to authorize the member States to exercise any powers they could not exercise in its absence. Nor is there any delegation of sovereign power to the Commission; each State retains complete freedom to adopt or reject the rules and regulations of the Commission. Moreover, as noted above, each State is free to withdraw at any time. Despite this apparent compatibility of the

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[24] Appellants describe various Compacts, including the Interstate Compact to Conserve Oil and Gas Act of 1935, 49 Stat. 939, and the Interstate Compact to Conserve Oil and Gas (Extension) of 1976, 90 Stat. 2365, and attempt to show that they are similar to the Compact before us. They then point out that the Compacts they describe received the consent of Congress and argue from this fact that the Multistate Tax Compact also must receive congressional consent in order to be valid. These other Compacts are not before us. We have no occasion to decide whether congressional consent was necessary to their constitutional operation, nor have we any reason to compare those Compacts to the one before us. It suffices to test the Multistate Tax Compact under the rule of *Virginia v. Tennessee*.

Compact with the interpretation of the Clause established by our cases, appellants argue that the Compact's effect is to threaten federal supremacy.

A

Appellants contend initially that the Compact encroaches upon federal supremacy with respect to interstate commerce. This argument, as we understand it, has four principal components. It is claimed, first, that the Commission's use in its audits of "unitary business" and "combination of income" methods[25] for determining a corporate taxpayer's income creates a risk of multiple taxation for multistate businesses. Whether or not this risk is a real one, it cannot be attributed to the existence of the Multistate Tax Commission. When the Commission conducts an audit at the request of a member State, it uses the methods adopted by that State. Since appellants do not contest the right of each State to adopt these procedures if it conducted the audits separately,[26] they cannot be heard to complain that a threat to federal supremacy arises from the Commission's adoption of the unitary-business standard in accord with the wishes of the member States. Indeed, to the extent that the Commission succeeds in promoting uniformity in the application of state taxing principles, the risks of multiple taxation should be diminished.

Appellants' second contention as to enhancement of state power over interstate commerce is that the Commission's regulations provide for apportionment of nonbusiness income. This allegedly creates a substantial risk of multiple taxation, since other States are said to allocate this income to the place of commercial domicile.[27] We note first that the regulations of the Commission do not require the apportionment of nonbusiness income. They do define business income, which is apportionable under the regulations, to include elements that might be regarded as nonbusiness income

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[25] The "unitary business" technique involves calculating a corporate tax-payer's net income on the basis of all phases of the operation of a single enterprise (e.g., production of components, assembly, packing, distribution, sales), even if located outside the jurisdiction. The portion of that income attributable to activities within the taxing State is then determined by means of an apportionment formula. See, e.g., *Underwood Typewriter Co. v. Chamberlain*, 254 U.S. 113 (1920). "Combination of income" involves applying the unitary business concept to separately incorporated entities engaged in a single enterprise. See *Edison California Stores, Inc. v. McColgan*, 30 Cal. 2d 472, 183 P. 2d 16 (1947).

[26] Individual States are free to employ the unitary-business standard. *Underwood Typewriter Co. v. Chamberlain*, supra; accord, *Bass, Ratcliff & Gretton, Ltd. v. State Tax Comm'n*, 266 U.S. 271 (1924). Nor do appellants claim that individual States could not employ the combination method of determining taxpayer income. Cf. *Edison California Stores*, supra.

[27] Taxable income deemed apportionable is that which is not considered to have its source totally within one State. It is distributed by means of an apportionment formula among the States in which the multistate business operates. Taxable income deemed allocable is that which is considered as having its source within one State and is assigned entirely to that State for tax purposes. See generally Sharpe, State Taxation of Interstate Business and the Multistate Tax Compact: The Search for a Delicate Uniformity, 11 *Colum. J. Law & Soc. Prob*. 231, 233–239 (1975). "Business income" is defined generally as income arising from activities in the regular course of the taxpayer's business. See, e.g., Uniform Division of Income for Tax Purposes Act 1 (a). Definitions of income arising in the regular course of business vary from one State to another. For example, rents and royalties may be considered business income in one State, but not in another. See generally *Sharpe*, supra, at 233–239.

in some States. *P-H State & Local Tax Serv.* 6100–6286 (1973). But again there is no claim that the member States could not adopt similar definitions in the absence of the Compact. Any State's ability to exact additional tax revenues from multistate businesses cannot be attributed to the Compact; it is the result of the State's freedom to select, within constitutional limits, the method it prefers.

The third aspect of the Compact's operation said to encroach upon federal commerce power involves the Commission's requirement that multistate business under audit file data concerning affiliated corporations. Appellants argue that the costs of compiling financial data of related corporations burden the conduct of interstate commerce for the benefit of the taxing States. Since each State presumably could impose similar filing requirements individually, however, appellants again do not show that the Commission's practices, as auditing agent for member States, aggrandize their power or threaten federal control of commerce. Moreover, to the extent that the Commission is engaged in joint audits, appellants' filing burdens well may be reduced.

Appellants' final claim of enhanced state power with respect to commerce is that the "enforcement powers" conferred upon the Commission enable that body to exercise authority over interstate business to a greater extent than the sum of the States' authority acting individually. This claim also falls short of meeting the standard of *Virginia v. Tennessee*. Article VIII of the Compact authorizes the Commission to require the attendance of persons and the production of documents in connection with its audits. The Commission, however, has no power to punish failures to comply. It must resort to the courts for compulsory process, as would any auditing agent employed by the individual States. The only novel feature of the Commission's "enforcement powers" is the provision in Art. VIII permitting the Commission to resort to the courts of any State adopting that Article. Adoption of the Article, then, amounts to nothing more than reciprocal legislation for providing mutual assistance to the auditors of the member States. Reciprocal legislation making the courts of one State available for the better administration of justice in another has been upheld by this Court as a method "to accomplish fruitful and unprohibited ends." *New York v. O'Neill*, 359 U.S., at 11. Appellees make no showing that increased effectiveness in the administration of state tax laws, promoted by such legislation,[28] threatens federal supremacy. See n. 21, supra.

B

Appellants further argue that the Compact encroaches upon the power of the United States with respect to foreign relations. They contend that the Commission

[28] For example, appellants raise no challenge to the many reciprocal statutes providing for recovery of taxes owing to one State in the courts of another. A typical statute is Tennessee's: "Any state of the United States or the political subdivisions thereof shall have the right to sue in the courts of Tennessee to recover any tax which may be owing to it when the like right is accorded to the state of Tennessee and its political subdivisions by such state." Tenn. Code Ann. 20-1709 (1955). See generally Leflar, Out-of-State Collection of State and Local Taxes, 29 *Vand. L. Rev.* 443 (1976).

has conducted multinational audits in which it applied the unitary business method to foreign corporate taxpayers, in conflict with federal policy concerning the taxation of foreign corporations.[29]

This contention was not presented to the court below and in any event lacks substance. The existence of the Compact simply has no bearing on an individual State's ability to utilize the unitary business method in determining the income of a particular multinational taxpayer. *Bass, Ratcliff & Gretton, Ltd. v. State Tax Comm'n*, 266 U.S. 271 (1924). The Commission, as auditing agent, adopts the method only at the behest of a State requesting an audit. To the extent that its use contravenes any foreign policy of the United States, the facial validity of the Compact is not implicated.

C

Appellants' final Compact Clause argument charges that the Compact impairs the sovereign rights of nonmember States. Appellants declare, without explanation, that if the use of the unitary business and combination methods continues to spread among the Western States, unfairness in taxation—presumably the risks of multiple taxation—will be avoidable only through the efforts of some coordinating body. Appellants cite the belief of the Commission's Executive Director that the Commission represents the only available vehicle for effective coordination,[30] and conclude that the Compact exerts undue pressure to join upon nonmember States in violation of their "sovereign right" to refuse.

We find no support for this conclusion. It has not been shown that any unfair taxation of multistate business resulting from the disparate use of combination and other methods will redound to the benefit of any particular group of States or to the harm of others. Even if the existence of such a situation were demonstrated, it could not be ascribed to the existence of the Compact. Each member State is free to adopt the auditing procedures it thinks best, just as it could if the Compact did not exist. Risks of unfairness and double taxation, then, are independent of the Compact.

Moreover, it is not explained how any economic pressure that does exist is an affront to the sovereignty of nonmember States. Any time a State adopts a fiscal or administrative policy that affects the programs of a sister State, pressure to modify those programs may result. Unless that pressure transgresses the bounds of the Commerce Clause or the Privileges and Immunities Clause of Art. IV, 2, see, e.g., *Austin v. New*

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[29] Tax Convention with the United Kingdom of Great Britain and Northern Ireland, 94th Cong., 2d Sess. (1976) (as published in Message from President submitting Convention); Protocol to the 1975 Tax Convention with the United Kingdom of Great Britain and Northern Ireland, 94th Cong., 2d Sess. (1976) (as published in Message from President submitting Protocol); Second Protocol to the 1975 Tax Convention with the United Kingdom of Great Britain and Northern Ireland, 95th Cong., 1st Sess. (1977) (as published in Message from President submitting Second Protocol). Article 9, 4, of the treaty, which is currently pending before the Senate, would prohibit the combination of the income of any enterprise doing business in the United States with the income of related enterprises located in the United Kingdom.

[30] Corrigan, Interstate Corporate Income Taxation—Recent Revolutions and a Modern Response, 29 *Vand. L. Rev.* 423, 441–442 (1976).

Hampshire, 420 U.S. 656 (1975), it is not clear how our federal structure is implicated. Appellants do not argue that an individual State's decision to apportion nonbusiness income—or to define business income broadly, as the regulations of the Commission actually do—touches upon constitutional strictures. This being so, we are not persuaded that the same decision becomes a threat to the sovereignty of other States if a member State makes this decision upon the Commission's recommendation.

IV

Appellants further challenge, on relatively narrow grounds, the validity of the Multistate Tax Compact under the Commerce Clause and the Fourteenth Amendment.[31] They allege that the Commission has abused its powers by conducting a campaign of harassment against members of the plaintiff class. Specifically, they claim that the Commission induced eight States to issue burdensome requests for production of documents and to deviate from the provisions of state law by issuing arbitrary assessments against taxpayers who refuse to comply with these harassing production orders.

These allegations do not establish that the Compact is in violation either of the Commerce Clause or the Fourteenth Amendment. We observe first that this contention was not presented to the court below. The only evidence of record relating to the allegations are statements in the affidavit of appellants' counsel and an ambiguous excerpt from a letter of the Commission to the Director of Taxation of the State of Hawaii, quoted therein. App. 51–53. On this fragile basis, we hardly would be justified in making an initial finding of fact that appellees engaged in the campaign sketched in the affidavit.

Even if appellants' factual allegations were supported by the record, they would be irrelevant to the facial validity of the Compact. As we have noted above, it is only the individual State, not the Commission, that has the power to issue an assessment—whether arbitrary or not. If the assessment violates state law, we must assume that state remedies are available.[32] E.g., *Colgate-Palmolive Co. v. Dorgan*, 225 N. W. 2d 278 (N. D. 1974).

V

We conclude that appellants' constitutional challenge to the Multistate Tax Compact fails.[33] We affirm the judgment of the District Court.

Affirmed.

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[31] Appellants do not specify in their brief which Clause of the Fourteenth Amendment is violated. Our conclusion makes it unnecessary to consider each one.

[32] Appellants conceded this point in the hearing before the three-judge court. Tr. of Hearing, Feb. 3, 1976, pp. 16–18. Cf. *State Tax Comm'n v. Union Carbide Corp.*, 386 F. Supp. 250 (Idaho 1974).

[33] The dissent appears to confuse potential impact on "federal interests" with threats to "federal supremacy." It dwells at some length on the unsuccessful efforts to obtain express congressional approval of this Compact, relying on the introduction of bills that never reached the floor of either House. This history of congressional inaction is viewed as "demonstrat[ing] . . . a federal interest in the rules for apportioning

MR. JUSTICE WHITE, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The majority opinion appears to concede, as I think it should, that the Compact Clause reaches interstate agreements presenting even potential encroachments on federal supremacy. In applying its Compact Clause theory to the circumstances of the Multistate Tax Compact, however, the majority is not true to this view. For if the Compact Clause has any independent protective force at all, it must require the consent of Congress to an interstate scheme of such complexity and detail as this. The majority states it will watch for the mere potential of harm to federal interests, but then approves the Compact here for lack of actual proved harm.

I

The Constitution incorporates many restrictions on the powers of individual States. Some of these are explicit, some are inferred from positive delegations of power to the Federal Government. In the latter category falls the federal authority over interstate commerce.[1] The individual States have long been permitted to legislate, in a nondiscriminatory manner, over matters affecting interstate commerce, where Congress has not exerted its authority, and where the federal interest does not require a uniform rule. *Cooley v. Board of Wardens*, 12 How. 299 (1852); *Southern Pacific Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761 (1945).

It is not denied by any party to this case that the apportionment of revenues, sales, and income of multistate and multinational corporations for taxation purposes is an area over which the Congress could exert authority, ousting the efforts of any States

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multistate and multinational income," and as showing "a potential impact on federal concerns." Post, at 488, 489. That there is a federal interest no one denies.

The dissent's focus on the existence of federal concerns misreads *Virginia v. Tennessee* and *New Hampshire v. Maine*. The relevant inquiry under those decisions is whether a compact tends to increase the political power of the States in a way that "may encroach upon or interfere with the just supremacy of the United States." *Virginia v. Tennessee*, 148 U.S., at 519. Absent a threat of encroachment or interference through enhanced state power, the existence of a federal interest is irrelevant. Indeed, every state cooperative action touching interstate or foreign commerce implicates some federal interest. Were that the test under the Compact Clause, virtually all interstate agreements and reciprocal legislation would require congressional approval.

In this case, the Multistate Tax Compact is concerned with a number of state activities that affect interstate and foreign commerce. But as we have indicated at some length in this opinion, the terms of the Compact do not enhance the power of the member States to affect federal supremacy in those areas.

The dissent appears to argue that the political influence of the member States is enhanced by this Compact, making it more difficult—in terms of the political process—to enact pre-emptive legislation. We may assume that there is strength in numbers and organization. But enhanced capacity to lobby within the federal legislative process falls far short of threatened "encroach[ment] upon or interfer[ence] with the just supremacy of the United States." Federal power in the relevant areas remains plenary; no action authorized by the Constitution is "foreclosed," see post, at 491, to the Federal Government acting through Congress or the treaty-making power.

The dissent also offers several aspects of the Compact that are thought to confer "synergistic" powers upon the member States. Post, at 491–493. We perceive no threat to federal supremacy in any of those provisions. See, e.g., *Virginia v. Tennessee*, supra, at 520.

[1] The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States. . . ." U.S. Const., Art. I, 8.

in the field. To date, however, the Federal Government has taken only limited steps in this context.[2] No federal legislation has been enacted, nor tax treaties ratified, that would interfere with any State's efforts to apply uniform apportionment rules, unitary business concepts, or single multistate audits of corporations. Hence, leaving to one side appellants' contentions that these matters inherently require uniform federal treatment, there is obstacle in the Commerce Clause to such action by an individual State.

The Compact Clause, however, is directed to joint action by more than one State. If its only purpose in the present context were to require the consent of Congress to agreements between States that would otherwise violate the Commerce Clause, it would have no independent meaning. The Clause must mean that some actions which would be permissible for individual States to undertake are not permissible for a group of States to agree to undertake.

There is much history from the Articles of Confederation to support that conclusion.[3] In framing the Constitution the new Republic was at pains to correct the divisive

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[2] Title 15 U.S.C. 381–384, passed in 1959 as Pub. L. No. 86–272, 73 Stat. 555, limits the jurisdictional bases open to States whereby taxation authority may be exerted. More comprehensive federal regulation of this area has often been proposed; see ante, at 456 n. 4.

[3] Under the Articles of Confederation, dealings of the States with foreign governments and among themselves were separately treated. Article VI of the Articles of Confederation provided:

> "1. No State, without the Consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any confe[r]ence, agreement, alliance, or treaty, with any king, prince or State. . . ."

Thereafter, in that same Article, it was provided:

> "2. 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."

There was thus no requirement that mere "agreements" between States be subjected to the approval of Congress. That the framers of the Articles recognized a distinction between treaties, alliances, and confederations on the one hand and agreements on the other is demonstrated by the differing language in the two paragraphs above quoted, taken from the same Article.

David Engdahl, in Characterization of Interstate Arrangements: When is a Compact not a Compact?, 64 *Mich. L. Rev.* 63, 81 (1965), has suggested a perceptive rationale for this difference in treatment. Article IX, 2, of the Articles of Confederation provided:

> "The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever. . . ."

And it specified an elaborate system by which the Congress would constitute a court for the resolution of interstate disputes. Hence, if there were a disagreement over a compact that had been reached between two or more States, it could be adjudicated amicably before the Congress without risk of disrupting the Union. Treaties with foreign states, on the other hand, were much more dangerous and could embroil a State in serious obligations and even war. Of almost the same level of seriousness were alliances between the States, of potential long duration and obliging one State to treat two sister States in different fashion. For these reasons, prior approval by the Congress was required.

As Madison's commentary quoted in the text indicates, there was dissatisfaction with the way in which the Articles of Confederation provided for interstate compacts. The Constitution adopted an absolute prohibition against treaties, alliances, or confederations by the States; and imposed the requirement of congressional approval for "any Agreement or Compact with another State, or with a foreign Power." U.S. Const., Art. I, 10.

factors of the Government under the Articles; and among the most important of these were "compacts with. the consent of Congs. as between Pena. and N. Jersey, and between Virga. & Maryd." James Madison, "Preface to Debates in the Convention of 1787," 3 M. Farrand, *Records of the Federal Convention of 1787*, p. 548 (1937). A compact between two States necessarily achieved some object unattainable, or attainable less conveniently, by separate States acting alone. Such effects were jealously guarded against, lest "the Fedl authy [be] violated." Ibid. It was the Federal Government's province to oversee conduct of a greater effect than a single State could accomplish, to protect both its own prerogative and that of the excluded States.[4]

Compacts and agreements between States were put in a separate constitutional category, and purposefully so. Nor is the form used by the agreeing States important; as the majority correctly observes:

> "Agreements effected through reciprocal legislation may present opportunities for enhancement of state power at the expense of the federal supremacy similar to the threats inherent in a more formalized 'compact.' . . . The Clause reaches both 'agreements' and 'compacts,' the formal as well as the informal. The relevant inquiry must be one of impact on our federal structure." Ante, at 470–471 (footnotes omitted).
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> "Appellants further urge that the pertinent inquiry is one of potential, rather than actual, impact upon federal supremacy. We agree." Ante, at 472.

This is an apt recognition of the important distinction between the Compact Clause and the Commerce Clause. States may legislate in interstate commerce until an actual impact upon federal supremacy occurs. For individual States, the harm of potential impact is insufficiently upsetting to require prior congressional approval. For States acting in concert, however, whether through informal agreement, reciprocal legislation, or formal compact, "potential . . . impact upon federal supremacy" is enough to invoke the requirement of congressional approval.[5]

To this point, my views do not diverge from those of the majority as I understand them. But we do differ markedly in the application of those views to the Multistate Tax Compact.

II

Congressional consent to an interstate compact may be expressed in several ways. In the leading case of *Virginia v. Tennessee*, 148 U.S. 503 (1893), congressional consent to a compact setting a boundary was inferred from years of acquiescence to

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[4] See infra, at 493–496.

[5] The frequent circumstance of potential impact would make that standard unworkable in the Commerce Clause context since the result is pre-emption of state effort; but where the result is merely the requirement that Congress be consulted about the State's effort, as is the case with the Compact Clause, the application of that standard is not nearly so obstructive.

that line by the Congress in delimiting federal judicial and electoral districts. *Id.*, at 522. Congressional consent may also be given in advance of the adoption of any specific compacts, by general consent resolutions, as was the case for the highway safety compacts, 72 Stat. 635, and the Crime Control Compact Consent Act of 1934, ch. 406, 48 Stat. 909.

Congress does not pass upon a submitted compact in the manner of a court of law deciding a question of constitutionality. Rather, the requirement that Congress approve a compact is to obtain its political judgment:[6] Is the agreement likely to interfere with federal activity in the area, is it likely to disadvantage other States to an important extent, is it a matter that would better be left untouched by state and federal regulation?[7] It comports with the purpose of seeking the political consent Congress affords that such consent may be expressed in ways as informal as tacit recognition[8] or prior approval, that Congress be permitted to attach conditions upon its consent,[9] and that congressional approval be a continuing requirement.[10]

In the present case, it would not be possible to infer approval from the congressional reaction to the Multistate Tax Compact. Indeed, the history of the Congress and the Compact is a chronicle of jealous attempts of one to close out the efforts of the other.[11]

On the congressional side of this long-lived battle, bills to approve the Compact

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[6] See n. 3, supra.

[7] The pioneer article in the compact literature, Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 *Yale L. J.* 685 (1925), recognized the preferability of compacts to litigation in light of the political factors that could be balanced in the process of submitting and approving a compact. See *id.*, at 696, 706–707. This Court has also observed the peculiar amenability of some problems to settlement by compact rather than litigation. See *Colorado v. Kansas*, 320 U.S. 383, 392 (1943). See also F. Zimmermann & M. Wendell, *The Interstate Compact Since 1925*, pp. 102–103 (1951).

[8] A statute-of-limitations type of approach to the necessary duration of congressional silence before consent may be inferred has been suggested by one commentator. Note, The Constitutionality of the Multistate Tax Compact, 29 *Vand. L. Rev.* 453, 460 (1976). The National Association of Attorneys General has also declared its support for the use of informal procedures. F. Zimmermann & M. Wendell, *The Law and Use of Interstate Compacts* 25 (1961).

[9] In *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951), this Court commented favorably on the provisions of the Compact involved which allowed continuing participation by the Federal Government through the President's power to designate members of the supervisory commission. The Port of New York Authority Compacts of 1921 and 1922 were among the first to provide for direct continuing supervisory authority by Congress. See Celler, Congress, Compacts, and Interstate Authorities, 26 *Law & Contemp. Prob.* 682, 688 (1961) (hereinafter Celler). It has been suggested that the imposition of conditions and the continuing nature of Congress' supervision are perceived as drawbacks by compacting States, and have led to a hesitancy to submit interstate agreements to Congress. See Note, supra, n. 8, at 461.

[10] This Court has held that Congress must possess the continuing power to reconsider terms approved in compacts, lest "[C]ongress and two States . . . possess the power to modify and alter the [C]onstitution itself." *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421, 433 (1856). See also Celler 685, and authorities cited therein.

[11] An excellent summary of the several battles in this war is recounted in Hellerstein, State Taxation Under the Commerce Clause: An Historical Perspective, 29 *Vand. L. Rev.* 335, 339–342 (1976). See also Sharpe, State Taxation of Interstate Businesses and the Multistate Tax Compact: The Search for a Delicate Uniformity, 11 *Colum. J. L. & Soc. Prob.* 231, 240–244 (1975) (hereinafter Sharpe).

have been introduced 12 separate times,[12] but all have faltered before arriving at a vote. Congress took the first step in the field of interstate tax apportionment with Pub. L. No. 86-272, 73 Stat. 555, passed the same year that this Court's opinion in *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), approved state taxation of reasonably identified multistate corporate income. A special subcommittee (the Willis Committee) was established which reported five years later with specific recommendations for federal statutory solution to the interstate allocation problem. In the Multistate Tax Commission's own words:

> "The origin and history of the Multistate Tax Compact are intimately related and bound up with the history of the states' struggle to save their fiscal and political independence from encroachments of certain federal legislation introduced in [C]ongress during the past three years. These were the Interstate Taxation Acts, better known as the Willis Bills."[13]

A special meeting of the National Association of Tax Administrators was called in January 1966; that gathering was the genesis of the Multistate Tax Compact. Over the course of 11 years, numerous bills have been introduced in the Congress as successors to the original Willis Bills, but none has ever become law.[14]

For its part, the Multistate Tax Commission has made no attempt to disguise its purpose. In its First Annual Report, the Commission spoke proudly of "bottling up the Willis Bill [alternative federal legislation] for an extended period," but warned that "it cannot be said that the threat of coercive, restrictive federal legislation is gone." 1 Multistate Tax Commission Ann. Rep. 10 (1968). In the most recent annual report, the tone has not changed. The Commission lists as one of its "major goals" the desire to "guard against restrictive federal legislation and other federal action which impinges upon the ability of state tax administrators to carry out the laws of their states effectively." 9 Multistate Tax Commission Ann. Rep. 1 (1976). The same report pledged continued opposition to specific bills introduced in Congress restricting the States' utilization of the unitary-business concept and providing alternatives to the Compact's recommended method of apportioning multistate corporate earnings to the various States.[15] Even more importantly, the Commission denounced the tax treaty already signed with Great Britain (though not yet ratified),[16] for its prohibition of the unitary-business concept, the practice whereby a State combines for tax purposes the incomes from several related companies belonging to a single parent, even when the business carried on in a particular State is conducted by only one of the related companies. The President has negotiated this treaty in the diplomatic interest of the United States;

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[12] See ante, at 458 n. 8.

[13] 1 Multistate Tax Commission Ann. Rep. 1 (1968).

[14] See ante, at 456 n. 4.

[15] See also 7 Multistate Tax Commission Ann. Rep. 3 (1974).

[16] See ante, at 476 n. 29.

but acting together through their joint agency, the Multistate Tax Commission, the Compact States are opposing its ratification. Of course, the Compact States have every right, in their own interest, to petition the branches of the Federal Government. Still, it cannot be disputed that the action of over 20 States, speaking through a single, established authority, carries an influence far stronger than would 20 separate voices.

A hostile stalemate characterizes the present position of the parties: the Multistate Tax Compact States opposing the Federal Congress and, since the proposed new tax treaty, the Federal Executive as well. No one could view this history and conclude that the Congress has acquiesced in the Multistate Tax Compact.

But more is demonstrated by this long dispute underlying the present case: Not only has Congress failed to acquiesce in the Multistate Tax Compact, but both Congress and the Executive have clearly demonstrated that there is a federal interest in the rules for apportioning multistate and multinational income. The Executive cannot constitutionally express his federal sovereign interest in the matter any more unambiguously. He has negotiated a treaty with a foreign power and submitted that treaty to the Senate. As for the Congress, its federal sovereign interest in the topic was early established in Pub. L. No. 86-272. While the following years have produced no new legislation, the activity over the Willis Report, the Willis Bills, the successor bills, and the dozen shelvings of compact ratification bills establish at the very least that the Congress believes a federal interest is involved.[17] That a potential impact on federal concerns is at stake is indisputable.

It might be argued that Congress could more clearly have expressed its federal interest by passing a statute pre-empting the field, possibly in the form of an alternative apportionment formula. To hold Congress to the necessity of such action, however, accords no force to the Compact Clause independent of the Commerce Clause, as explained above. If the way to show a "potential federal interest" requires an exercise of the actual federal commerce power, then the purposes of the Compact Clause, and the Framers' deep-seated and special fear of agreements between States, would be accorded absolutely no respect.

III

Virginia v. Tennessee[18] quite clearly holds that not all agreements and compacts must be submitted to the Congress. The majority's phraseology of the test as "potential impact upon federal supremacy" incorporates the *Virginia v. Tennessee* standard. Nor do I disagree that many interstate agreements are legally effective without congressional consent. "Potential impact upon federal supremacy" requires some demonstration of a federal interest in the matter under consideration, and a threat to that interest. In very few cases, short of a direct conflict, will the record of congressional and executive action demonstrate as clearly as the record in the present case that

[17] For contrasting examples, where Congress perceived no federal interest, see Zimmermann & Wendell, supra, n. 8, at 21.

[18] See also *Wharton v. Wise*, 153 U.S. 155 (1894), applying the *Virginia v. Tennessee* dicta.

the Federal Government considers itself to have a valid interest in the subject matter. Examples of compacts over which no federal concern was inferable have already been suggested.[19]

It seems to me, however, that even if a realistic potential impact on federal supremacy failed to materialize at one historic moment, that should not mean that an interstate compact or agreement is forever immune from congressional disapproval on an absolute or conditional basis. Yet the majority's approach appears to be that, because the instant agreement is, in the majority's view, initially without the Clause, it will never require congressional approval. The majority would approve this Compact without congressional ratification purely on the basis of its form: that no power is conferred upon the Multistate Tax Commission that could not be independently exercised by a member State. Such a view pretermits the possibility of requiring congressional approval in the future should circumstances later present even more clearly a potential federal interest, so long as the form of the Compact has not changed. That consequence fails to provide the ongoing congressional oversight that is part of the Compact Clause's protections.[20]

IV

For appellants' many suggestions of extraordinary authority wielded by the Multistate Tax Commission, the majority has but one repeated answer: that each member State is free to adopt the procedures in question just as it could as if the Compact did not exist.

This cannot be an adequate answer even for the majority, which holds that "[a]greements effected through reciprocal legislation may present opportunities for enhancement of state power at the expense of the federal supremacy similar to the threats inherent in a more formalized 'compact.'" Ante, at 470 (footnote omitted). Reciprocal legislation is adopted by each State independently, yet derives its force from the knowledge that other States are acting in identical fashion. In recognizing Compact Clause concerns even in reciprocal legislation, the majority correctly lays the premise that the absence of an autonomous authority would not be controlling.

So here, that the Compact States act in concerted fashion to foreclose federal law and treaties on apportionment of income, multistate audits, and unitary-business concepts[21] tells us at the least that a potential impact on federal supremacy exists.

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[19] See ante, at 471–472, n. 24 (discussion of Interstate Compact to Conserve Oil and Gas).

[20] See n. 10, supra. Frankfurter and Landis found great value in interstate compacts because of their "[c]ontinuous and creative administration." See Frankfurter & Landis, supra, n. 7, at 707. By excluding Congress from the administration of the Multistate Tax Compact, the majority opinion restricts this facet of the Compact's attractiveness.

[21] For a detailed analysis of the complex taxation issues underlying each of these terms, see Carlson, State Taxation of Corporate Income from Foreign Sources, Department of Treasury Tax Policy Research Study Number Three, *Essays in International Taxation*: 1976, pp. 231, 235–252. For a thorough treatment of the income-allocation problem in the multinational setting, see Note. Multinational Corporations and Income Allocation Under Section 482 of the Internal Revenue Code, 89 *Harv. L. Rev.* 1202 (1976).

No realistic view of that impact could maintain that it is no greater than if individual States, acting purely spontaneously and without concert, had taken the same steps. It is pure fantasy to suggest that 21 States could conceivably have arrived independently at identical regulations for apportioning income, reciprocal subpoena powers, and identical interstate audits of multinational corporations, in the absence of some agreement among them.

Further, it is not clear upon reading the majority's opinion that appellants' suggestions of actual synergistic powers in the Multistate Tax Commission have been adequately answered. The Commission does have some life of its own. Under Art. VIII, providing for interstate audits, the Commission is given authority to offer to conduct audits even if no State has made a request.

> "If the Commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party States or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the Commission." Multistate Tax Compact, Art. VIII, 5.

If not for the Commission's acting on its own, in the absence of a suggestion from any State, the audit would not come about, even if the States subsequently approve. That implies some effects can be achieved beyond what the individual States themselves would have achieved, since, by hypothesis, no State would have proposed the audit on its own.

Other troubling provisions are Art. III, 1, requiring that all member States must allow taxpayers to apportion their income in accord with Art. IV (the substance of which is similar to the Uniform Division of Income for Tax Purposes Act); and Art. III, 2, requiring that all member States must offer a short-form option for small-business income tax.[22] If Compact States have no choice in the matter, these sections unquestionably go beyond the mere advisory role in which the majority would cast the Multistate Commission.

On its face, the Compact also provides in Art. IX for compulsory arbitration of allocation disputes among the member States at the option of any taxpayer electing to apportion his income in accord with Art. IV. Although Art. IX is not now operative (it requires passage of a regulation by the Commission to revive the arbitration mechanism), it was in effect for two and a half years. This provision binds the member States' participation, even against their will in any particular case. In two final respects, the Compact also differs significantly from reciprocal legislation. The subpoena power which the Compact makes possible (auditors can obtain subpoenas in any one of the

[22] There is some question as to whether this Article is as mandatory as its language suggests. Several States in the Compact do not provide the option, and several others have not adopted the requisite rates to accompany the option. See Sharpe 245 n. 55. However, most of the member States have complied.

States which have adopted Art. VIII of the Compact) is far different from what would be accomplished through reciprocal laws, in that it places an unusual "all-or-nothing" pressure on the non-Compact States. The usual form of reciprocal law is a statute passed by State Y, saying that any other State which accords Y access to its courts for the enforcement of tax obligations likewise will have access to the courts of Y. This Compact says that an outsider State will obtain reciprocal subpoena powers only as part of a package of Art. VIII Compact States—its own courts must be opened to all these States, and in return it will obtain Compact-wide access for judicial process needed in its own tax enforcement.

Lastly, the very creation of the Compact sets it apart from separate state action. The Compact did not become effective in any of the ratifying States until at least seven States had adopted it. Thus, unlike reciprocal legislation, the Compact provided a means by which a State could assure itself that a certain number of other States would go along before committing itself to an apportionment formula.

V

One aspect of the *Virginia v. Tennessee* test for congressional approval of interstate compacts requires specific emphasis. The *Virginia v. Tennessee* opinion speaks of whether a combination tends "to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States," 148 U.S., at 519, and later, whether a compact or agreement would "encroach or not upon the full and free exercise of Federal authority." *Id.*, at 520.

The majority properly notes that any agreement among the States will increase their power, and focuses on the critical question of whether such an increase will enhance "state power *quoad* the National Government." Ante, at 473. A proper understanding of what would encroach upon federal authority, however, must also incorporate encroachments on the authority and power of non-Compact States.

In *Rhode Island v. Massachusetts*, 12 *Pet.* 657, 726 (1838), this Court held that the purpose of requiring the submission to Congress of a compact (in that case, regarding a boundary) between two States was "to guard against the derangement of their federal relations with the other states of the Union, and the federal government; which might be injuriously affected, if the contracting states might act upon their boundaries at their pleasure." See also *Florida v. Georgia*, 17 *How.* 478, 494 (1855). There is no want of authority for the conclusion that encroachments upon non-compact States are as seriously to be guarded against as encroachments upon the federal authority,[23]

[23] See, e.g., *United States v. Tobin*, 195 F. Supp. 588, 606 (DC 1961); Tribe, Intergovernmental Immunities in Litigation, Taxation, and Regulation: Separation of Powers Issues in Controversies About Federalism, 89 Harv. L. Rev. 682, 712 (1976); Sharp 265–272 (specifically observing state complaints about the Multistate Tax Compact); Zimmermann & Wendell, supra, n. 8, at 23; Celler 684 (purpose of Compact Clause "'to prevent undue injury to the interests of noncompacting states,'" quoting *United States v. Tobin*, supra); and Frankfurter & Landis, supra, n. 7, at 694–695. The Frankfurter and Landis treatment is perhaps the clearest

nor is that surprising in view of the federal Government's pre-eminent purpose to protect the rights of one State against another. If the effect of a compact were to put non-compact States at a serious disadvantage, the federal interest would thereby be affected as well.

The majority appears to recognize that allegations of harmful impact on other States is a cognizable challenge to a compact. See ante, at 477–478, 462–463, n. 12. The response the majority opinion provides is by now a familiar one: "Each member State is free to adopt the auditing procedures it thinks best, just as it could if the Compact did not exist." Ante, at 477–478. The criticism of this reasoning offered above, in the context of encroachment on federal power, is applicable here as well. Judging by effect, not form, it is obvious that non-Compact States can be placed at a competitive disadvantage by the Multistate Tax Compact.

One example is in the attraction of multistate corporations to locate within a certain State's borders. Before the Multistate Tax Compact, "nonbusiness" dividend income was most commonly allocated to the State where a corporation was domiciled.[24] Under the Compact's "advisory" regulations, this type of income is apportioned among the several States where the company conducts its business. Hence, a non-Compact State will run the risk of taxing a domiciliary multistate corporation on more than 100% of its nonbusiness income, unless, of course, the State agrees to follow the rule of the Compact. Another way to view the impact on a nonmember State is that if it wished to attract a multistate corporation to become a domiciliary, it might offer not to tax nonbusiness income. But with such income being apportioned by several other States anyway, the lure of the domicile State's exemption is effectively dissipated.

None of these results is necessarily "bad." The only conclusion urged here is that the effect on non-Compact States be recognized as sufficiently serious that Congress should be consulted. As the constitutional arbiter of political differences between States, the Congress is the proper body to evaluate the extent of harm being imposed on non-Compact States, and to impose ameliorative restrictions as might be necessary.

The Compact Clause is an important, intended safeguard within our constitutional structure. It is functionally a conciliatory rather than a prohibitive clause. All it requires is that Congress review interstate agreements that are capable of affecting

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expression of how the protection of federal and noncompact state interests blend in the rationale for the Compact Clause:

> "But the Constitution plainly had two very practical objectives in view in conditioning agreement by States upon consent of Congress. For only Congress is the appropriate organ for determining what arrangements between States might fall within the prohibited class of 'Treaty, Alliance, or Confederation,' and what arrangements come within the permissive class of 'Agreement or Compact.' But even the permissive agreements may affect the interests of State other than those parties to the agreement: the national, and not merely a regional, interest may be involved. Therefore, Congress must exercise national supervision through its power to grant or withhold consent, or to grant it under appropriate conditions." Ibid.

[24] See Sharpe 269.

federal or other States' rights. In the Court's decision today, a highly complex multi-state compact, detailed in structure and pervasive in its effect on the important area of interstate and international business taxation, has been legitimized without the consent of Congress. If the Multi-state Tax Compact is not a compact within the meaning of Art. I, 10, then I fear there is very little life remaining in that section of our Constitution.

I respectfully dissent.

APPENDIX CC: RESULTS OF 2000 PRESIDENTIAL ELECTION

STATE	BUSH	GORE	BUSH MARGIN	GORE MARGIN	BUSH EV	GORE EV
Alabama	944,409	695,602	248,807		9	
Alaska	167,398	79,004	88,394		3	
Arizona	781,652	685,341	96,311		8	
Arkansas	472,940	422,768	50,172		6	
California	4,567,429	5,861,203		1,293,774		54
Colorado	883,745	738,227	145,518		8	
Connecticut	561,094	816,015		254,921		8
D.C.	137,288	180,068		42,780		3
Delaware	18,073	171,923		153,850		3
Florida	2,912,790	2,912,253	537		25	
Georgia	1,419,720	1,116,230	303,490		13	
Hawaii	137,845	205,286		67,441		4
Idaho	336,937	138,637	198,300		4	
Illinois	2,019,421	2,589,026		569,605		22
Indiana	1,245,836	901,980	343,856		12	
Iowa	634,373	638,517		4,144		7
Kansas	622,332	399,276	223,056		6	
Kentucky	872,492	638,898	233,594		8	
Louisiana	927,871	792,344	135,527		9	
Maine	286,616	319,951		33,335		4
Maryland	813,797	1,145,782		331,985		10
Massachusetts	878,502	1,616,487		737,985		12
Michigan	1,953,139	2,170,418		217,279		18
Minnesota	1,109,659	1,168,266		58,607		10
Mississippi	573,230	404,964	168,266		7	
Missouri	1,189,924	1,111,138	78,786		11	
Montana	240,178	137,126	103,052		3	
Nebraska	433,862	231,780	202,082		5	
Nevada	301,575	279,978	21,597		4	
New Hampshire	273,559	266,348	7,211		4	
New Jersey	1,284,173	1,788,850		504,677		15
New Mexico	286,417	286,783		366		5
New York	2,403,374	4,107,907		1,704,533		33
North Carolina	1,631,163	1,257,692	373,471		14	
North Dakota	174,852	95,284	79,568		3	
Ohio	2,351,209	2,186,190	165,019		21	
Oklahoma	744,337	474,276	270,061		8	
Oregon	713,577	720,342		6,765		7
Pennsylvania	2,281,127	2,485,967		204,840		23
Rhode Island	130,555	249,508		118,953		4
South Carolina	786,426	566,039	220,387		8	
South Dakota	190,700	118,804	71,896		3	
Tennessee	1,061,949	981,720	80,229		11	
Texas	3,799,639	2,433,746	1,365,893		32	
Utah	515,096	203,053	312,043		5	
Vermont	119,775	149,022		29,247		3
Virginia	1,437,490	1,217,290	220,200		13	
Washington	1,108,864	1,247,652		138,788		11
West Virginia	336,475	295,497	40,978		5	
Wisconsin	1,237,279	1,242,987		5,708		11
Wyoming	147,947	60,481	87,466		3	
Total	**50,460,110**	**51,003,926**			**271**	**267**

APPENDIX DD: RESULTS OF 2004 PRESIDENTIAL ELECTION

STATE	BUSH	KERRY	BUSH MARGIN	KERRY MARGIN	BUSH EV	KERRY EV
Alabama	1,176,394	693,933	482,461		9	
Alaska	190,889	111,025	79,864		3	
Arizona	1,104,294	893,524	210,770		10	
Arkansas	572,898	469,953	102,945		6	
California	5,509,826	6,745,485		1,235,659		55
Colorado	1,101,255	1,001,732	99,523		9	
Connecticut	693,826	857,488		163,662		7
D. C.	21,256	202,970		181,714		3
Delaware	171,660	200,152		28,492		3
Florida	3,964,522	3,583,544	380,978		27	
Georgia	1,914,254	1,366,149	548,105		15	
Hawaii	194,191	231,708		37,517		4
Idaho	409,235	181,098	228,137		4	
Illinois	2,345,946	2,891,550		545,604		21
Indiana	1,479,438	969,011	510,427		11	
Iowa	751,957	741,898	10,059		7	
Kansas	736,456	434,993	301,463		6	
Kentucky	1,069,439	712,733	356,706		8	
Louisiana	1,102,169	820,299	281,870		9	
Maine	330,201	396,842		66,641		4
Maryland	1,024,703	1,334,493		309,790		10
Massachusetts	1,071,109	1,803,800		732,691		12
Michigan	2,313,746	2,479,183		165,437		17
Minnesota	1,346,695	1,445,014		98,319		10
Mississippi	684,981	458,094	226,887		6	
Missouri	1,455,713	1,259,171	196,542		11	
Montana	266,063	173,710	92,353		3	
Nebraska	512,814	254,328	258,486		5	
Nevada	418,690	397,190	21,500		5	
New Hampshire	331,237	340,511		9,274		4
New Jersey	1,670,003	1,911,430		241,427		15
New Mexico	376,930	370,942	5,988		5	
New York	2,962,567	4,314,280		1,351,713		31
North Carolina	1,961,166	1,525,849	435,317		15	
North Dakota	196,651	111,052	85,599		3	
Ohio	2,859,768	2,741,167	118,601		20	
Oklahoma	959,792	503,966	455,826		7	
Oregon	866,831	943,163		76,332		7
Pennsylvania	2,793,847	2,938,095		144,248		21
Rhode Island	169,046	259,760		90,714		4
South Carolina	937,974	661,699	276,275		8	
South Dakota	232,584	149,244	83,340		3	
Tennessee	1,384,375	1,036,477	347,898		11	
Texas	4,526,917	2,832,704	1,694,213		34	
Utah	663,742	241,199	422,543		5	
Vermont	121,180	184,067		62,887		3
Virginia	1,716,959	1,454,742	262,217		13	
Washington	1,304,894	1,510,201		205,307		11
West Virginia	423,778	326,541	97,237		5	
Wisconsin	1,478,120	1,489,504		11,384		10
Wyoming	167,629	70,776	96,853		3	
Total	**62,040,610**	**59,028,439**			**286**	**252**

APPENDIX EE: RESULTS OF 2008 PRESIDENTIAL ELECTION

STATE	MCCAIN	OBAMA	MCCAIN MARGIN	OBAMA MARGIN	MCCAIN EV	OBAMA EV
Alabama	1,266,546	813,479	453,067		9	
Alaska	193,841	123,594	70,247		3	
Arizona	1,230,111	1,034,707	195,404		10	
Arkansas	638,017	422,310	215,707		6	
California	5,011,781	8,274,473		3,262,692		55
Colorado	1,073,589	1,288,576		214,987		9
Connecticut	629,428	997,773		368,345		7
Delaware	152,374	255,459		103,085		3
D.C.	17,367	245,800		228,433		3
Florida	4,045,624	4,282,074		236,450		27
Georgia	2,048,759	1,844,123	204,636		15	
Hawaii	120,566	325,871		205,305		4
Idaho	403,012	236,440	166,572		4	
Illinois	2,031,179	3,419,348		1,388,169		21
Indiana	1,345,648	1,374,039		28,391		11
Iowa	682,379	828,940		146,561		7
Kansas	699,655	514,765	184,890		6	
Kentucky	1,048,462	751,985	296,477		8	
Louisiana	1,148,275	782,989	365,286		9	
Maine	295,273	421,923		126,650		4
Maryland	959,862	1,629,467		669,605		10
Massachusetts	1,108,854	1,904,097		795,243		12
Michigan	2,048,639	2,872,579		823,940		17
Minnesota	1,275,409	1,573,354		297,945		10
Mississippi	724,597	554,662	169,935		6	
Missouri	1,445,814	1,441,911	3,903		11	
Montana	242,763	231,667	11,096		3	
Nebraska	452,979	333,319	119,660		4	1[1]
Nevada	412,827	533,736		120,909		5
New Hampshire	316,534	384,826		68,292		4
New Jersey	1,613,207	2,215,422		602,215		15
New Mexico	346,832	472,422		125,590		5
New York	2,752,728	4,804,701		2,051,973		31
North Carolina	2,128,474	2,142,651		14,177		15
North Dakota	168,601	141,278	27,323		3	
Ohio	2,677,820	2,940,044		262,224		20
Oklahoma	960,165	502,496	457,669		7	
Oregon	738,475	1,037,291		298,816		7
Pennsylvania	2,655,885	3,276,363		620,478		21
Rhode Island	165,391	296,571		131,180		4
South Carolina	1,034,896	862,449	172,447		8	
South Dakota	203,054	170,924	32,130		3	
Tennessee	1,479,178	1,087,437	391,741		11	
Texas	4,479,328	3,528,633	950,695		34	
Utah	596,030	327,670	268,360		5	
Vermont	98,974	219,262		120,288		3
Virginia	1,725,005	1,959,532		234,527		13
Washington	1,229,216	1,750,848		521,632		11
West Virginia	397,466	303,857	93,609		5	
Wisconsin	1,262,393	1,677,211		414,818		10
Wyoming	164,958	82,868	82,090		3	
Total	**59,948,240**	**69,498,216**			**173**	**365**

Source: David Leip's *Atlas of U.S. Presidential Elections*

[1] Nebraska awards electoral votes by congressional district.

APPENDIX FF: THREE-JUDGE FEDERAL COURT DECISION IN *WILLIAMS V. VIRGINIA STATE BOARD OF ELECTIONS* (1968)

This decision was affirmed by U.S. Supreme Court at 393 U.S. 320 (1969) (per curiam).

United States District Court—Eastern District at Alexandria

J. Harvie Williams et al., Plaintiffs,

v.

Virginia State Board of Elections, etc., et al., Defendants

Civ. A. No. 4768-A.

288 F.Supp. 622 (1968)

United States District Court E. D. Virginia, at Alexandria.

July 16, 1968.

Howard S. Spering, Washington, D.C., Robert L. Montague, III, Alexandria, Va., for plaintiffs.

Robert Y. Button, Atty. Gen. of Virginia, Richmond, Va., Robert D. McIlwaine, III, Richard N. Harris, Asst. Attys. Gen. of Virginia, Richmond, Va., for defendants.

Before BRYAN, Circuit Judge, and LEWIS and MERHIGE, District Judges.

ALBERT V. BRYAN, Circuit Judge:

Presidential electors provided for in Article II of the Constitution of the United States cannot be selected, plaintiffs charge, by a statewide general election as directed by the Virginia statute.[1] Under it *all* of the State's electors are collectively chosen in the Presidential election by the greatest number of votes cast throughout the entire State, instead of choosing them by Congressional districts, *one* elector for each, exclusively by the votes cast in that district.

Unfairness is imputed to the plan because it gives the choice of *all* of the electors to the statewide plurality of those voting in the election—"winner take all"—and accords no representation among the electors to the minority of the voters. An additional prejudice is found in the result of the system as between voters in different States. We must reject these contentions.

The Constitution provides for the election of the President and Vice President by electors in these words:

> Article II
>
> "Section 1. . . . He [the President] shall . . . together with the Vice President . . . be elected, as follows:
>
> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . ."

[1] *Code of Va.*, 1950, Section 24-7, quoted infra. The same general plan now prevails in every State.

Article XII [Twelfth Amendment]

"The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. . . . "

Plaintiffs' proposition is advanced on three counts: (1) the intendment of Article II, Section 1, providing for the appointment of electors is that they be chosen in the same manner as Senators and Representatives, that is two at large and the remainder by Congressional or other equal districts; (2) the general ticket method violates the "one-person, one-vote" principle of the Equal Protection Clause of the Fourteenth Amendment, i.e., the weight of each citizen's vote must be substantially equal to that of every other citizen. *Gray v. Sanders*, 372 U.S. 368, 381, 83 S.Ct. 801, 9 L.Ed. 2d 821 (1963); *Wesberry v. Sanders*, 376 U.S. 1, 18, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964); and (3) the general ticket system gives a citizen in a State having a larger number of electors than Virginia the opportunity to effectuate by his vote the selection of more electors than can the Virginian. On these bases the plaintiffs pray for a declaration that the Virginia statute is invalid and for an injunction against its use by the defendant State election officials.

The Code of Virginia, 1950, Section 24-7 directs:

"§ 24-7. Electors for President and Vice President.—There shall be chosen by the qualified voters of the Commonwealth, . . . at elections to be held on the Tuesday after the first Monday in November in each fourth year [after 1948], so many electors for President and Vice President of the United States as this State shall be entitled to at the time of such election under the Constitution and laws of the United States. Each voter may vote for one elector from each congressional district of the State, as the same shall be constituted and apportioned for the election of representatives in the Congress of the United States from this State at the time when such election shall be held, and for two electors from the State at large; . . . "

Congress has prescribed that henceforth the Representatives from each State, when more than one, be chosen by districts, 2 U.S.C. §§ 2a, 2c. Similar provision is made by Article IV, Section 55 of the Constitution of Virginia as well as by statute, *Code of Va.*, Section 24-4. Virginia has ten Representatives besides two Senators. Save to analogize the selection of electors with the selection of Senators and Representa-

tives the plaintiffs make no point, of course, against the election statewide of the two electors corresponding to the Senators. Our discussion, therefore, will refer solely to those electors who are the counterparts of Representatives in Congress.

Throughout, it must be kept constantly in mind that the wisdom of the continued use of the electoral college for choosing the President and Vice President is not at issue here. As here posed the question recognizes the predominance of that Constitutional design. The inquiry is whether Article II, Section 1 considered alone or with Constitutional safeguards, permits the selection of the electors by a general election in which the entire electorate of the State may collectively vote at one time upon all of the electors.

Plaintiffs are ten in number, one from each of the Congressional districts of Virginia, and all of them qualified to vote in their respective districts in the coming fall election. Their brief describes their purpose:

> "This action is brought to protect and restore the full benefit of plaintiffs' right to vote. Plaintiffs seek to elect one presidential elector in, and solely by a plurality of the votes cast in, their own respective Congressional districts. They seek thereby to prevent the dilution of their own votes, and the denial of any possibility of their having any electoral representation when not part of the state-wide plurality, that now result from counting the votes of all voters throughout the state in determining the plurality of votes for the election of the one presidential elector that has been apportioned to the people resident in their respective Congressional district by virtue of their numbers. Thus, they seek to prevent the votes of residents in other Congressional districts of Virginia from being counted in determining the plurality of votes for the election of one presidential elector in, by, and from their own respective Congressional district."

We think they have the requisite standing to maintain the suit they plead; that it is an acceptable class action; that the defendants, save the Governor of Virginia, are proper parties, as the officials entrusted with the conduct of the election of presidential electors; and that this court has jurisdiction of the complaint. *Flast et al. v. Cohen, Secretary of Health, et al.*, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (June 10, 1968); 28 U.S.C. § 1343; 42 U.S.C. § 1983; 42 U.S.C. § 1988; *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed.2d 663 (1962); *Gray v. Sanders*, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963); *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964); *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); F.R.Civ.P. 23. Because of its special circumstances, we do not think *Penton v. Humphrey*, 264 F.Supp. 250 (S.D.Miss.1967 —3-judge court) dictates rejection of the present action; nor do we believe on reading of the pleadings in *State of Delaware v. State of New York*, 385 U.S. 895, 87 S.Ct. 198, 17 L.Ed.2d 129 (1966), cited by the defendants, that it forecloses entertainment of plaintiffs' plaint.

I.

The first argument of the plaintiffs is that the college of electors was envisaged by the Constitution as delegates of the people—although to exercise their own judgment—in naming the President and Vice President, thus according the people a truer representation in the choosing of these officers. The electors, they aver, were to be as directly and immediately representative of the people as the college method permitted.

To this extent and to this end, a voice in selection of the President and Vice President, the argument is, was avouched the people in the same measure as is assured them in picking members of the legislative branch of the Federal government. If, continue plaintiffs, Representatives in Congress are—in fairness to the people—chosen by districts, so should be electors.

Primary citation for this position is the parallelism drawn by the Constitution in the numerical correspondence of electors with the State's total of Senators and Representatives. This conformity is marked also by the requirement of varying the number of electors as the number of Representatives change.

Admittedly, the designation of all presidential electors by the ballot of all who voted throughout the State does not produce a group as representative of the people as would an election of one elector by each district alone. For instance, as the plaintiffs demonstrate, while in 1960 the popular vote in Virginia for the Republican nominee was only 52.4%, and the Democratic nominee received 47%, of the vote cast, the Republican was credited with 100% of Virginia's electoral votes and the Democrat with none. With the popular count reversed, the candidates in 1964 were favored and unfavored in electoral votes by the same formula. If plaintiffs' contention for single-elector district voting had prevailed, it would have been possible for the Democratic and Republican parties to have had proportionate representation among Virginia's electors in the same degree as they shared in the statewide tally.

Many of the Brahmins of the Constitutional Convention, such as Thomas Jefferson, James Madison and James Wilson, held the district plan more advisable. Indeed, Virginia and several of the other States for some years chose electors by district. However, it was Jefferson who advised Virginia to switch to the general ticket. His advice sprang from a desire to protect his State against the use of the general ticket by other States. He found that when chosen by districts, Virginia's representation among the electors was divided, while other States made their votes mean more in the college by adoption of the general ticket scheme of selection. This contention is no less true today.[2]

Thus, it cannot be safely said that the draftsmen of Article II, Section 1 believed that the electors must be chosen by congressional or other districts, as plaintiffs here contend. The clause literally leaves to the State legislature the appointment of elec-

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[2] For a comprehensive and thoughtful disquisition upon the election of electors, consult Peirce, *The People's President* (1968), and the Memorandum of the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, United States Senate, October 10, 1961.

tors "in such manner" as it may direct. Bestowal of this discretion is emphasized in *McPherson v. Blacker*, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed. 869 (1892). There the history of Article II is so fully traced that repetition of it may well be omitted. Nevertheless, that decision did no more than hold permissible and valid Michigan's determination to select electors by districts. Anything in the opinion appearing to rule on the acceptableness of some other plan is obiter; it is not authority for the assertion that the manner a State legislature adopts to appoint electors is beyond judicial review.

II.

On the contrary, in our opinion the authorization of each State by Article II to "appoint, in such manner as the Legislature thereof may direct," is "subject to possible constitutional limitations." *Ray v. Blair*, 343 U.S. 214, 227, 72 S.Ct. 654, 96 L.Ed. 894 (1952). In short, the manner of appointment must itself be free of Constitutional infirmity.

It is on this premise that plaintiffs, in their second argument, ask us to declare the general ticket system invalid as "debasing, abridging or misrepresenting the weight of the votes of citizens of the United States in presidential elections unconstitutionally." Principal reliance for this argument is the "one-person, one-vote" doctrine announced in *Gray v. Sanders*, supra, 372 U.S. 368, 381, 83 S.Ct. 801 (1953) and reaffirmed in *Wesberry v. Sanders*, supra, 376 U.S. 1, 18, 84 S.Ct. 526 (1964). Clearly, these decisions do condemn any such trespass. *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

However, in our judgment the general ticket does not come within the brand of these decisions. Actually, the system is but another form of the unit rule. A familiar application is in the casting of a constituency's single vote by its several delegates in a convention. It also appears in Article II (Twelfth Amendment) making provision for the election of the President by the House of Representatives when no majority is obtained in the electoral college. Representatives cast the vote of their State according as the greater number of them vote.

We see nothing in the unit rule offensive to the Constitution. Concededly, its effect is exceptionable in many aspects. Some are enumerated in the Memorandum of the Subcommittee on Constitutional Amendments of the Committee on the Judiciary, United States Senate, at p. 22, supra footnote 2. Among possible objectionable results it listed disfranchisement of voters and the possibility of "minority presidents," that is one having a majority of electoral votes but not having a larger count in the popular vote than one of his opponents. Added to these detractions is the greater opportunity for the creation of "splinter" parties.

Discussing the disfranchisement defect, the Memorandum continues, p. 23, in this language:

> "Above the minimum of three, additional electoral votes to which a State is entitled are based upon population. Nevertheless as much as 49 percent of a

> State's voters may see the portion of its electoral votes attributable to them cast for a candidate whom they oppose. It is not merely that their votes are wasted in the sense that they were cast for a loser, the unit rule not only extinguishes the voice of State minorities, but it allows State majorities to speak for them. . . .
>
> . . .
>
> "Some defenders of the unit-rule system dispute the logic of this argument. They answer that no votes are lost when validly cast in an election; that they are actually counted toward the final decision and if, insufficient for victory, they have simply exhausted their power as votes.
>
> "However, the effect of the unit rule is to exhaust the power of millions of individual votes at the State level before the election is actually determined at the national level. They lose their effect on the outcome at a preliminary stage in the counting. These voters are disfranchised in the sense that their votes have no bearing on the national electoral vote totals which determine the winner.
>
> "It is sometimes said that the thousands or millions of voters in a State whose candidate was defeated in its popular election might as well not have voted at all because the State's electoral vote would have gone the same way if they had stayed at home. This is not totally realistic. If they had not voted at all, one vote would have been sufficient to deliver the State's electoral vote for the opposing candidate. By voting, the minority party voters have set a figure which must be matched and exceeded by opposing voters before the State's electoral vote bloc is awarded to the opponent."

Many other reputable authorities have inveighed against the system when applied to the selection of electors. Their strictures include excoriation of the electoral college both as an original and current institution.

Notwithstanding, it is difficult to equate the deprivations imposed by the unit rule with the denial of privileges outlawed by the one-person, one-vote doctrine or banned by Constitutional mandates of protection. In the selection of electors the rule does not in any way denigrate the power of one citizen's ballot and heighten the influence of another's vote. Admittedly, once the electoral slate is chosen, it speaks only for the element with the largest number of votes. This in a sense is discrimination against the minority voters, but in a democratic society the majority must rule, unless the discrimination is invidious. No such evil has been made manifest here. Every citizen is offered equal suffrage and no deprivation of the franchise is suffered by anyone.

Furthermore, adoption of the general election system in Virginia is grounded on what has historically been deemed to her best interests in the workings of the electoral college. The legislature of the Commonwealth had the choice of appointing electors in a manner which will fairly reflect the popular vote but thereby weaken the potential

impact of Virginia as a State in the nationwide counting of electoral ballots, or to allow the majority to rule and thereby maximize the impact of Virginia's 12 electoral votes in the electoral college tally. The latter course was taken, and we cannot say unwisely.

Reverting to the unit rule, it has never been rejected as unfair in the election of members of the United States House of Representatives when two or more or all are running at large, that is statewide. In the midst of the one-person, one-vote decisions, this practice was noticed without any question of its validity. In *Wesberry v. Sanders*, supra, 376 U.S. 1, 7, 84 S.Ct. 526, 530, the Court said:

> "We hold that, construed in its historical context, the command of Art. I, § 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's. This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history." (Footnotes omitted.)

In this consideration it is notable that Congress in its amendments of the statute relating to the election of Representatives by districts, has expressly countenanced the election of them from the "State at large." 2 U.S.C. §§ 2a and 2c, supra. Presumably Congress would not have done so if it meant a breach of the one-person, one-vote principle, by then securely established. If the plan is legally permissible in the selection of Congressmen, it may hardly be stigmatized as unlawful in choosing electors.

III.

Further instances of inequality in the ballot's worth between them as Virginia citizens, plaintiffs continue, and citizens of other States, exists as a result of the assignment of electors among the States. To illustrate, New York is apportioned 43 electors and the citizen there, in the general system plan, participates in the selection of 43 electors while his Virginia compatriot has a part in choosing only 12. His ballot, if creating a plurality for his preference, wins the whole number of 43 electors while the Virginian in the same circumstances could acquire only 12. Again, party-wise, it is alleged that on a national basis, the State unit system's cancellation of States' minority votes causes inequities and distortions of voting rights among citizens of the several States, by arbitrarily isolating the effects of votes cast by persons of a particular political persuasion or party in one State, from those cast by voters of the same persuasion or party in other States.

Disparities of this sort are to be found throughout the United States wherever there is a State numerical difference in electors. But plainly this unevenness is directly traceable to the Constitution's presidential electoral scheme and to the permissible unit system.

For these reasons the injustice cannot be corrected by suit, especially one in

which but a single State is impleaded. Litigation of the common national problem by a joinder of all the States was evidently unacceptable to the Supreme Court. *State of Delaware v. State of New York*, supra, 385 U.S. 895, 87 S.Ct. 198. Readily recognizing these impediments, plaintiffs point to the district selection of electors as a solution, or at least an amelioration, of this interstate inequality of voters. However, to repeat, this method cannot be forced upon the State legislatures, for the Constitution gives them the choice, and use of the unit method of tallying is not unlawful.

Adverting to certain procedural points made by the parties, the Governor of Virginia, in view of his detachment from the election machinery in the State, we find is neither a necessary nor a proper defendant here, and should be dropped as a party; we overrule all objections which have been reserved in the admission of evidence on the hearing of this cause.

The merits and advantages of the plaintiffs' thesis are readily recognizable. We do not discount or deride their motives, but we are of the opinion that a compulsory compliance with their demand or any other proposed limitation on the selection by the State of its presidential electors would require a Constitutional amendment. Also, we observe, that the change to a district system would not, for the reasons expressed by Jefferson, warrant Virginia or any other State to adopt an individual plan. Whatever the pattern, to succeed it must be nationwide. As was aptly stated by Professor Robert G. Dixon, " . . . any modification of the electoral college system should be on a uniform national basis in order to avoid creating additional inequities on an interstate basis."[3]

As Virginia's design for selecting presidential electors does not disserve the Constitution, we decline to place an injunction upon its effectuation. Plaintiffs' complaint will be dismissed.

ORDER ON OPINION

Upon consideration of the pleadings, the stipulations of counsel, the exhibits and the entire record in this action, as well as the arguments thereon of counsel orally and on brief, the court for the reasons stated in its opinion filed herewith finds, adjudges and orders as follows:

1. That the Governor of Virginia be, and he is hereby, dropped as a party defendant herein;

2. That the prayers of the complaint be, and they are hereby denied, and that the complaint herein be, and it is hereby, dismissed; and

3. That the defendants recover of the plaintiffs the costs of this action, and nothing further remaining to be done in the cause, it be stricken from the docket.

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[3] Remarks before the Subcommittee on Constitutional Amendments of the Senate Committee on the Judiciary, July 14, 1967, regarding proposed amendments to the Constitution relating to nomination and election of the President and Vice President.

APPENDIX GG: CALIFORNIA APPEALS COURT DECISION IN *GILLETTE V. FRANCHISE TAX BOARD* (2012)

Filed 7/24/12

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE GILLETTE COMPANY et al.,
Plaintiffs and Appellants,
v.
FRANCHISE TAX BOARD,
Defendant and Respondent.

A130803

(San Francisco City & County Super. Ct. Nos. CGC-10-495911, CGC-10-495912, CGC-10-495916, CGC-10-496437, CGC-10-496438, CGC-10-499083)

California is a signatory to the Multistate Tax Compact (Compact). (Rev. & Tax. Code,[1] § 38001, California's enactment of the Compact.) This binding, multistate agreement obligates member states to offer its multistate taxpayers the option of using either the Compact's three-factor formula to apportion and allocate income for state income tax purposes, or the state's own alternative apportionment formula. (§ 38006, art. III, subd. 1.) This is one of the Compact's key mandatory provisions designed to secure a baseline level of uniformity in state income tax systems, a central purpose of the agreement.

Prior to 1993, California subscribed to a single method of apportioning and allocating income, the Compact formula, which ascribed equal weight to three factors: property, payroll and sales. (Former § 25128, as added by Stats. 1966, ch. 2, § 7, p. 179.) Then, in 1993 the Legislature amended section 25128 to give double weight to the sales factor for most business activity, specifying that "[n]otwithstanding Section 38006, all

[1] Unless noted otherwise, all statutory references are to the Revenue and Taxation Code.

business income shall be apportioned to this state by multiplying the [business] income by a fraction, the numerator of which is the property factor plus the payroll factor *plus twice the sales factor*, and the denominator of which is four . . . ." (Former § 25128, subd. (a), italics added, as amended by Stats. 1993, ch. 946, § 1, p. 5441.)[2]

These consolidated appeals brought by appellants the Gillette Company and its subsidiaries, and other corporate entities (Taxpayers),[3] present the issue of whether, for the tax years at issue since 1993, Taxpayers were entitled to elect the Compact formula, or, as respondent Franchise Tax Board (FTB) asserts, did the 1993 amendment to section 25128 repeal and supersede that formula, thereby making the state formula mandatory? We conclude that the Compact is a valid multistate compact, and California is bound by it and its apportionment election provision unless and until California withdraws from the Compact by enacting a statute that repeals section 38006. Accordingly, since California has not repealed section 38006 and withdrawn from the Compact, we reverse the trial court's order sustaining the FTB's demurrer without leave to amend.[4]

I. BACKGROUND

A. *Historical Context Leading to Enactment of the Compact*

Recognizing the need for uniformity in the apportionment of corporate income for tax purposes among the various taxing states, in 1957 the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Division of Income for

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[2] For purposes of this appeal, the current version of section 25128, subdivision (a) is similar in all material respects to the 1993 amendment, reading as follows: "Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four . . . ."

[3] Other appellants are Procter & Gamble Manufacturing Company; Kimberly-Clark Worldwide, Inc., and its subsidiaries; Sigma-Aldrich, Inc.; RB Holdings (USA) Inc., and Jones Apparel Group, Inc.

[4] Despite the absence of a judgment of dismissal, we deem the order to incorporate such judgment because the trial court sustained a demurrer to all causes of action, and all that remains to render the order appealable is the formality of entering a judgment of dismissal. (*Melton v. Boustred* (2010) 183 Cal.App.4th 521, 527-528, fn. 1.)

Tax Purposes Act (UDITPA). (7A pt. 1 West's U. Laws Ann. (2002) pp. 141-142 & § 9.) To apportion a multistate corporation's business income among the various taxing states, UDITPA uses a three-factor, equally weighted formula consisting of property, payroll and sales receipts. (*Id*., § 9.) California adopted the UDITPA in 1966. (§ 25120 et seq.; Stats. 1966, ch. 2, § 7, pp. 177-181.)

By 1959, only a few states had adopted the UDITPA. (7A pt. I, West's U. Laws Ann., *supra*, p. 141.) That year, the United States Supreme Court delivered its decision in *Northwestern Cement Co. v. Minn.* (1959) 358 U.S. 450, 452 (*Northwestern Cement*), holding that "net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same." *Northwestern Cement* raised concerns in the business community and within weeks of the decision, Congress commenced hearings, culminating in the passage of Public Law No. 86-272 as an emergency, temporary measure some six months later. This law was intended to restrict the application of *Northwestern Cement* and created a subcommittee to study state business taxes and recommend legislation establishing uniform standards which states would observe in taxing income of interstate companies. (Fatale, Federalism and State Business Activity Tax Nexus; Revisiting Public Law No. 86-272 (Spring 2002) 21 Va. Tax Review, 435, 475-476; *U.S. Steel Corp. v. Multistate Tax Comm'n* (1978) 434 U.S. 452, 455 (*U.S. Steel*).) The subsequent study, commonly referred to as the "Willis Report" after Congressman Edwin E. Willis who chaired the subcommittee,[5] called for federal legislation that would have limited state authority to tax interstate business operations and imposed a uniform apportionment regime on the states. (State Taxation of Interstate Commerce, Rep. of the Special Subcommittee on State Taxation of Interstate Commerce of the Com. on the Judiciary, House of Representatives (Sept. 2, 1965) vol. 4, chs. 38, 39, pp. 1135-1136, 1143, 1161.)

[5] Fatale, *supra*, at page 477.

In the wake of the Willis Report, Congress introduced a number of bills incorporating its recommendations. (*U.S. Steel*, *supra*, 434 U.S. at p. 456, fn. 4; Sharpe, *State Taxation of Interstate Businesses and the Multistate Tax Compact: The Search for a Delicate Uniformity* (1974) 11 Colum. J. of Law and Social Problems, 231, 242 & n. 43.) To stave off federal encroachment on their taxing powers and devise workable alternatives that would eliminate the need for congressional action, state tax administrators and other state leaders drafted the Compact; by June 1967, nine states had enacted the Compact, which by its terms became effective after seven states had adopted it. (Multistate Tax Com., First Ann. Rep. (1968) pp. 1-2; § 38006, art. X, subd. 1.)

B. *Compact Provisions*

California enacted the Compact in 1974. (§ 38001, Stats. 1974, ch. 93, § 3, p. 193.) Its purposes are to "1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes. [¶] 2. Promote uniformity or compatibility in significant components of tax systems. [¶] 3. Facilitate taxpayer convenience and compliance in the filing of tax returns . . . . [¶] 4. Avoid duplicative taxation." (§ 38006, art. I.)

Article IV adopts the UDITPA and its equally weighted, three-factor apportionment formula, stating in part: "All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three." (§ 38006, art. IV, subd. 9.) However, article III allows taxpayers the option of apportioning and allocating income pursuant to the UDITPA formula *or* pursuant to a given state's alternative apportionment provisions: "Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State . . . may elect to apportion and allocate his income in the manner provided by the laws of such State . . . without reference to this compact, or may elect to apportion and allocate in accordance with Article IV." (§ 38006, art. III, subd. 1.) As

noted in the Multistate Tax Commission's Third Annual Report (1969-1970),[6] "The Multistate Tax Compact makes UDITPA available to each taxpayer on an optional basis, thereby preserving for him the substantial advantages with which lack of uniformity provides him in some states. Thus a corporation which is selling into a state in which it has little property or payroll will want to insist upon the use of the three-factor formula (sales, property and payroll) which is included in UDITPA because that will substantially reduce his tax liability to that state below what it would be if a single sales factor formula were applied to him[;] on the other hand, he will look with favor upon the application of the single sales factor formula to him by a state from which he is selling into other states, since that will reduce his tax liability to that state. The Multistate Tax Compact thus preserves the right of the states to make such alternative formulas available to taxpayers even though it makes uniformity available to taxpayers where and when desired." (*Id*. at p. 3.)

Article V sets out the rules for sales and use tax credits and exemptions, therein obligating each party state to provide a full credit to taxpayers who previously paid sales or use tax to another state with respect to the same property, and to honor sales and use tax exemption certificates from other states. (§ 38006, art. V, subd. 1.)

The Compact leaves other matters entirely to state control. For example, it reserves to the states control over the rate of tax (§ 38006, art. XI, subd. (a)), and simply does not address the composition of a corporation's tax base.

As well, the Compact creates the Multistate Tax Commission (Commission) with powers to study state and local tax systems, develop and recommend proposals for greater uniformity of state and local tax laws, and compile and publish information helpful to the states. (§ 38006, art. VI, subds. 1, 3.) Each party state appoints a member to the Commission and pays its share of expenses. (*Id*., art. VI, subds. 1(a), 4(b).) The Commission may adopt uniform regulations in cases where two or more states have uniform or similar provisions relating to specific types of taxes. (*Id*., art. VII.) However,

[6] Hereafter, Third Commission Report.

such regulations are advisory only—each state makes its own decision whether to adopt the regulation in accordance with its own law. (*Id*., art. VII, subd. 3.) Additionally, the Commission may perform interstate audits, if requested by a party state; the governing article applies only in states that specifically adopt it by statute. (*Id*., art. VIII, subds. 1, 2.)

Finally, under the Compact, states are free to withdraw from the Compact at any time "by enacting a statute repealing the same." (§ 38006, art. X, subd. 2.)

C. *U.S. Steel*

In 1972, a group of multistate corporate taxpayers brought an action on behalf of themselves and all other such taxpayers threatened with audits by the Commission. The complaint challenged the constitutionality of the Compact on several grounds, including that it was invalid under the compact clause of the United States Constitution.[7] (*U.S. Steel*, *supra*, 434 U.S. at p. 458.)

The high court acknowledged that the compact clause, taken literally, would require the states to obtain congressional approval before entering into any agreement among themselves, "irrespective of form, subject, duration, or interest to the United States." (*U.S. Steel, supra*, 434 U.S. at p. 459.) However, it endorsed an interpretation, established by case law, that limited application of the compact clause " 'to agreements that are "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." [Citations.]' This rule states the proper balance between federal and state power with respect to compacts and agreements among States." (*Id*. at p. 471, initial quote from *Virginia v. Tennessee* (1893) 148 U.S. 503, 519.)

Framing the test as whether the Compact enhances state power with respect to the federal government, the court concluded it did not: "This pact does not purport to authorize the member States to exercise any powers they could not exercise in its

[7] The compact clause of article I, section 10, clause 3 of the United States Constitution states: "No state shall, without the consent of Congress, . . . enter into any agreement or compact with another state, or with a foreign power . . . ."

absence. Nor is there any delegation of sovereign power to the Commission; each State retains complete freedom to adopt or reject the rules and regulations of the Commission. Moreover . . . , each State is free to withdraw at any time." (*U.S. Steel, supra,* 434 U.S. at p. 473.) In the end the court rejected all of the plaintiffs' challenges to the constitutional validity of the Compact. (*Id*. at p. 479.)

D. *Amendment of Section 25128; Litigation*

Prior to 1993, California required corporations to apportion their business income to California using the standard UDITPA, equally weighted three-factor apportionment formula. (§ 25128, as adopted in 1966; see also § 38006, art. IV, subd. 9.) In 1993, the Legislature amended this formula to give double weight to the sales factor and specified that the new formula was mandatory, providing in relevant part: "*Notwithstanding Section 38006* [the Compact], all business income shall be apportioned to this state by multiplying the [business] income by a fraction, the numerator of which is the property factor plus the payroll factor *plus twice the sales factor*, and the denominator of which is four . . . ." (§ 25128, subd. (a), italics added; Stats. 1993, ch. 946, § 1, p. 5441.)

In January 2010, the Taxpayers lodged six complaints for the refund of taxes which the court thereafter consolidated. Therein, they argued that the amended section 25128 did not override or repeal the UDITPA formula set forth in section 38006, and sought a refund of approximately $34 million. The Taxpayers alleged that they began filing claims for refund in 2006,[8] based on their election to compute their California apportionable income "using the three-factor apportionment formula (property, payroll, and single-weighted sales) set forth in . . . § 38006." The FTB denied the refund claims for the years at issue.

The FTB demurred on grounds that the amended section 25128 mandated the exclusive use of the double-weighted sales factor, and according to its plain and unambiguous language, negated the Taxpayers' claim of entitlement to elect the UDITPA formula. The trial court agreed that section 25128 "clearly express[ed] an intention to

[8] Sigma-Aldrich, Inc., began filing refund claims in 2003; RB Holdings (USA), Inc., began filing refund claims in 2007.

take away the alternative under [section] 38006," and additionally the court in *U.S. Steel* determined that this alternative statutory scheme "could be obviated in the manner that the Legislature did." Therefore, it sustained the FTB's demurrer to the complaints without leave to amend and entered judgment accordingly.

II. DISCUSSION

A. *Introduction*

The Taxpayers are adamant that the Compact is a valid, binding compact and as such, the Legislature cannot override and eliminate the section 38006 option for taxpayers to elect the Compact's apportionment formula. The FTB maintains as a threshold matter that the Taxpayers lack standing to complain of any purported violation of the Compact. On the substantive front the FTB contends that the plain language of section 25128 mandates the exclusive use of the double-weighted sales apportionment formula, thereby eliminating use of the equally weighted three-factor apportionment formula set forth as a taxpayer option in section 38006. Further, it urges that under California statutory and contract law, the Legislature had the power, and properly enacted legislation, to repeal section 38006 to the extent necessary to impose this mandatory apportionment formula on taxpayers.

B. *Nature of Interstate Compacts*

Some background on the nature of interstate compacts is in order. These instruments are legislatively enacted, binding and enforceable agreements between two or more states. (Litwak, *Interstate Compact Law: Cases and Materials* (Semaphore Press 2011) pp. 5, 12.) Initially used to resolve boundary disputes, today interstate compacts are a staple of interstate cooperation and, in addition to taxes, span a wide range of subject matter and issues including forest firefighting; water allocation; mining regulation; storage of low level radioactive waste; transportation; environmental preservation and resource conservation; regulation of electric energy; higher education and regional cultural development. (Davis, *Interstate Compacts in Commerce and Industry* (1998) 23 Vt. L.Rev. 133, 139-143.)

As we have seen, some interstate compacts require congressional consent, but others, that do not infringe on the federal sphere, do not. Questioning whether similar statutes in two states constituted a compact, the Supreme Court has outlined what it deemed "classic indicia" of such instruments: "We have some doubt as to whether there is an agreement amounting to a compact. The two statutes are similar in that they both require reciprocity and impose a regional limitation, both legislatures favor the establishment of regional banking in New England, and there is evidence of cooperation among legislators, officials, bankers, and others in the two States in studying the idea and lobbying for the statutes. But several of the classic indicia of a compact are missing. No joint organization or body has been established to regulate regional banking or for any other purpose. Neither statute is conditioned on action by the other State, and each State is free to modify or repeal its law unilaterally. Most importantly, neither statute requires a reciprocation of the regional limitation." (*Northeast Bancorp v. Board of Governors, FRS* (1985) 472 U.S. 159, 175 (*Bancorp*).) The Ninth Circuit Court of Appeals has aptly summarized *Bancorp* as setting forth three primary indicia: "These are establishment of a joint organization for regulatory purposes; conditional consent by member states in which each state is not free to modify or repeal its participation unilaterally; and state enactments which require reciprocal action for their effectiveness." (*Seattle Master Builders v. Pacific N.W. Elec. Power* (9th Cir. 1986) 786 F.2d 1359, 1363.)

Where, as here, federal congressional consent was neither given nor required, the Compact must be construed as state law. (*McComb v. Wambaugh* (3d Cir. 1991) 934 F.2d 474, 479.) Moreover, since interstate compacts are agreements enacted into state law, they have dual functions as enforceable contracts between member states and as statutes with legal standing within each state; and thus we interpret them as both. (*Aveline v. Bd. of Probation and Parole* (1999) 729 A.2d 1254, 1257; see Broun et al., *The Evolving Use and the Changing Role of Interstate Compacts* (ABA 2006) § 1.2.2, pp. 15-24 (Broun on Compacts); 1A Sutherland, Statutory Construction (7th ed. 2009) § 32:5; *In re C.B.* (2010) 188 Cal.App.4th 1024, 1031 [recognizing that Interstate

Compact on Placement of Children shares characteristics of both contractual agreements and statutory law].)

The contractual nature of a compact is demonstrated by its adoption: "There is an offer (a proposal to enact virtually verbatim statutes by each member state), an acceptance (enactment of the statutes by the member states), and consideration (the settlement of a dispute, creation of an association, or some mechanism to address an issue of mutual interest.)" (Broun on Compacts, *supra*, § 1.2.2, p. 18.) As is true of other contracts, the contract clause of the United States Constitution shields compacts from impairment by the states. (*Aveline v. Bd. of Probation and Parole*, *supra*, 729 A.2d at p. 1257, fn. 10.) Therefore, upon entering a compact, "it takes precedence over the subsequent statutes of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." (*Ibid.*; accord, *Intern. Union v. Del. River Joint Toll Bridge* (3d Cir. 2002) 311 F.3d 273, 281.) Thus interstate compacts are unique in that they empower one state legislature—namely the one that enacted the agreement—to bind all future legislatures to certain principles governing the subject matter of the compact. (Broun on Compacts, *supra*, § 1.2.2, p. 17.)

As explained and summarized in *C.T. Hellmuth v. Washington Metro. Area Trans.* (D.Md. 1976) 414 F.Supp. 408, 409 (*Hellmuth*): "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. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories." Cast a little differently, "[i]t is within the competency of a State, which is a party to a compact with another State, to legislate in respect of matters covered by the compact so long as such legislative action is in approbation and not in reprobation of the compact." (*Henderson v. Delaware River Joint Toll Bridge Com'm* (1949) 66 A.2d 843, 849-450.) Nor may states amend a compact by enacting legislation

that is substantially similar, unless the compact itself contains language enabling a state or states to modify it through legislation " 'concurred in' " by the other states. (*Intern. Union v. Del. River Joint Toll Bridge, supra,* 311 F.3d at pp. 276-280.)

C. *Taxpayers Have Standing to Pursue These Actions*

The FTB asserts that even if California breached its obligations under the Compact, the Taxpayers have no judicial remedy, are not parties to the agreement and have no enforceable rights under it.

First, this is an action for the refund of corporate taxes paid to the state pursuant to section 19382, and without question the Taxpayers have standing in such an action to claim "that the tax computed and assessed is void in whole or in part . . . ." (*Ibid*.)

Furthermore, the Compact, at section 38006, article III, subdivision 1 explicitly gives taxpayers whose income is subject to apportionment and allocation under the laws of a party state the option to elect to apportion its taxes under UDITPA, the Compact formula. This is a right specifically extended not to the party states but to taxpayers as third parties regulated under the Compact, and as such Taxpayers may seek to enforce this right as part of its tax refund suit. Moreover, the stated purposes of the Compact explicitly embrace taxpayer interests. These purposes include facilitating (1) "proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases" and (2) "taxpayer convenience." (§ 38006, art. I, subds. 1, 3.)

Alabama v. North Carolina (2010) ___ U.S. ___ [130 S.Ct. 2295], characterized as "particularly instructive" by the FTB, is not. There, the Supreme Court ruled that the agency created by the Compact could not bring claims for breach of compact by a party state *in a stand-alone action under the Supreme Court's original jurisdiction* because it had "neither a contractual right to performance by the party States nor enforceable statutory rights under [the compact]." (*Id*. at p. 2315.) Our case has nothing to do with the unique features of federal original jurisdiction. (U.S. Const., art. III, § 2, cl. 2.)

In any event, in contrast, here the codified compact extends the right to election to appropriate taxpayers. We find the decision in *Borough of Morrisville v. Delaware Riv.*

Bas. Com'n (E.D.Pa. 1975) 399 F.Supp. 469, 472-473, footnote 3 persuasive. There, the plaintiff municipalities who used water from the Delaware River claimed that the compact commission in question exceeded its authority and violated the compact and federal law by imposing certain water charges. Resolving the standing issue in favor of the plaintiffs, the district court further stated that " '[t]o hold that the Compact is an agreement between the political signatories imputing only to those signatories standing to challenge actions pursuant to it would be unduly narrow in view of the direct impact on plaintiffs and other taxpayers.' " (*Id.* at p. 473.) This view is reinforced by commentators: "For the most part, interstate compacts have not created any privately assertable rights . . . . However, this is not invariably the case. For example, water allocation compacts, while they apportion water among states, may affect the rights of individual water users in such a way as to make them proper parties to suits. In such situations, the governing fact is that compacts are statutory law. Consequently, the assertion of private rights created or otherwise affected by a compact is procedurally similar to the assertion of such rights conferred by other statutes of the jurisdiction dealing with similar subject matter." (Zimmerman & Wendell, *The Law and Use of Interstate Compact*s (The Council of State Governments 1976) Compact Law, ch. 1, pp. 14-15.)

D. *The Compact Is a Valid, Enforceable Interstate Compact*

To reiterate, the high court in *U.S. Steel* upheld the facial validity of the Compact against various constitutional challenges. (*U.S. Steel*, *supra*, 434 U.S. at pp. 473-479.) Our own Attorney General has acknowledged the binding force of the Compact. (80 Ops.Cal.Atty.Gen. 213, 214 (1997): by virtue of enacting the Compact as part of the law of this state, the Compact makes California a member of the Commission and the only way to withdraw from commission membership is by enacting repealing legislation.)

Moreover, the Compact satisfies indicia of a compact. (See *Seattle Master Builders v. Pacific N.W. Elec. Power*, *supra*, 786 F.2d at p. 1363.) The Commission is an operational body charged with duties and powers in furtherance of the Compact's purposes. It oversees the Compact, is composed of tax administrators from all member

states, and is financed through a process of allocation and apportionment. (§ 38006, art. VI.) Meeting on at least an annual basis, and with representation from each signatory state, the Commission is a vehicle for continuing cooperative action among those states.

Additionally, the Compact builds in binding reciprocal obligations that advance uniformity. First, as we have discussed, it secures an election for multistate taxpayers to opt for apportioning their business income under UDITPA, the Compact formula, or in accordance with the state's own apportionment formula. (§ 38006, art. III, subd. 1.) The election provision is not optional for party states. Because any multistate taxpayer "may elect" either approach, the party states must make the election available. As set forth above, the Commission has explained that the mandate to make UDITPA available on an optional basis to taxpayers preserves "the substantial advantages with which lack of uniformity provides [the taxpayer] in some states." (Third Commission Report, *supra*, at p. 3.) Thus the Compact reserves to the states the right to provide taxpayers with alternative formulas, while at the same time making uniformity available when and where desired. (*Ibid*.)

As well, the Compact commits each state to provide sales and use tax credits and exemptions. (§ 38006, art. V.) Again, the sales and use tax provisions are mandatory on signatory states.

Finally, the Compact provides for a state's orderly withdrawal, namely by enacting a statute repealing the Compact. However, any repealing legislation must be prospective in nature, because it cannot "affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal." (§ 38006, art. X, subd. 2.) Although notice to sister states is not specifically required, by requiring repealing state legislation, the process itself calls for a measured, deliberative decision prior to withdrawal. Moreover, advance notice could easily be accomplished through the work of the Commission.

Nevertheless, the right to withdraw is unilateral. Citing *Bancorp*, the FTB suggests that the withdrawal provision renders the Compact something less than a binding agreement. However, this type of withdrawal provision is common in other

interstate compacts and has not been the death knell rendering them nonbinding and invalid. California is a party to a number of interstate compacts containing virtually identical withdrawal provisions, coupled with some type of notice requirement. (See Gov. Code, § 66801 (art. X, subd. (c)) [delineating withdrawal provision for Tahoe Regional Planning Compact]; Veh. Code, § 15027 [same for Driver License Compact]; Welf. & Inst. Code, § 1400, art. XI, subd. (a) [same for Interstate Compact on Juveniles]; Pen. Code, § 11180, art. XII, § A [Interstate Compact for Adult Offender Supervision]; Ed. Code, § 12510, art. VIII [Compact for Education].)

Furthermore, the situation in *Bancorp*, cited by the FTB, differs dramatically from the case at hand. There, Massachusetts and Connecticut enacted similar statutes allowing regional interstate banking acquisitions. However, unlike section 38006, these statutes were not jointly entered into as a binding agreement; they did not create an administrative body nor did they require reciprocation in key respects; and they could be changed as well as repealed at will. (*Bancorp*, *supra*, 472 U.S. at p. 175.)

The FTB also points to a recent Commission document that refers to the Compact as a "model law" and "not truly a compact."[9] The Commission's statements do not alter the reality that the Compact is binding on California. Indeed, the Compact operates as a model law as to those states that choose to be associate members, rather than signatory members. Pursuant to the Commission bylaws, the Commission may grant associate membership to states which have not enacted the Compact but which have, for example, enacted legislation that makes effective adoption of the Compact dependent on a subsequent condition. (Third Commission Report, *supra*, at p. 96.) Before the Legislature enacted the Compact, California was an associate member. Now it is a full Compact member, having enacted the Compact "into law and entered into [it] with all

[9] Multistate Tax Compact, Suggested State Legislation and Enabling Act, accessed on the Web site of the Multistate Tax Commission on July 23, 2012. <http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/About_MTC/MTC_Compact/COMPACT(1).pdf>

jurisdictions legally joining therein . . . ." (§ 38001.) That the Compact did not "enter into force" until enacted into law by seven states also distinguishes it from a model law.

The FTB also intimates that the Compact is invalid under article 13, clause 31 of our state Constitution, which states: "The power to tax may not be surrendered or suspended by grant or contract." But of course by entering the Compact, California has neither surrendered nor suspended its taxing powers. California retains full control of its tax base, tax rate and tax revenues; it simply has obligated itself to provide taxpayers with an option to use UDITPA or the state formula and can rescind that obligation by withdrawing from the Compact.

E. *California Cannot Unilaterally Repeal Compact Terms*

The thrust of the FTB on appeal is this: Confirming the Legislature's authority to amend, repeal or supersede existing statutes, it proceeds to urge as a matter of statutory construction that the Legislature's choice of the "[n]otwithstanding Section 38006" language in the 1993 amended section 25128 overrides section 38006, thus excising the taxpayer option to use UDITPA, the Compact apportionment formula. Indeed, it goes so far as to say that this language "constitutes a repeal of section 38006 to the extent necessary to impose a mandatory double-weighted sales apportionment formula upon taxpayers."

Were this simply a matter of statutory construction involving two statutes—sections 25128 and 38006—we would at least entertain the FTB's argument that section 25128 repealed the section 38006 taxpayer election to apportion under the Compact formula, and now mandates the exclusive use of the double-weighted sales apportionment formula. However, this construct is not sustainable because it completely ignores the dual nature of section 38006. Once one filters in the reality that section 38006 is not just a statute but is also the codification of the Compact, and that through this enactment California has entered a binding, enforceable agreement with the other signatory states, the multiple flaws in the FTB's position become apparent. First, under established compact law, the Compact supersedes subsequent conflicting state law. Second, the federal and state Constitutions prohibit states from passing laws that impair the

obligations of contracts. And finally, the FTB's construction of the effect of the amended section 25128 runs afoul of the reenactment clause of the California Constitution.

1. *The Compact Supersedes Section 25128*

By its very nature an interstate compact shifts some of a state's authority to another state or states. Thus signatory states cede a level of sovereignty over matters covered in the Compact in favor of pursuing multilateral action to resolve a dispute or regulate an interstate affair. (*Hess v. Port Authority Trans-Hudson Corporation* (1994) 513 U.S. 30, 42; Broun on Compacts, *supra*, § 1.2.2, p. 23.) Because the Compact is both a statute and a binding agreement among sovereign signatory states, *having entered into it, California cannot, by subsequent legislation, unilaterally alter or amend its terms*. Indeed, as an interstate compact the Compact *is superior to prior and subsequent the statutory law of member states*. (*McComb v. Wambaugh*, *supra*, 934 F.2d at p. 479; *Hellmuth*, *supra*, 414 F.Supp. at p. 409.)

This means that the Compact trumps section 25128, such that, contrary to the FTB's assertion, section 25128 *cannot override* the UDITPA election offered to multistate taxpayers in section 38006, article III, subdivision 1. It bears repeating that the Compact *requires* states to offer this taxpayer option. If a state could unilaterally delete this baseline uniformity provision, it would render the binding nature of the compact illusory and contribute to defeating one of its key purposes, namely to "[p]romote uniformity or compatibility in significant components of tax systems." (§ 38006, art. I, subd. 2.) Because the Compact takes precedent over subsequent conflicting legislation, these outcomes cannot come to pass.

The FTB offers an alternative argument, namely that the UDITPA election can be superseded and repealed pursuant to the Compact's own withdrawal provision. Specifically, it casts the withdrawal clause as a flexible tool giving member states the "means of overriding any and all of its provisions, including the election and apportionment provisions. Member states can simply utilize the unrestricted withdrawal provision . . . to repeal and withdraw from the Multistate Tax Compact, in whole or in part."

As a matter of compact law, this cannot be. Having established that the Compact is a binding, valid compact, we construe and apply it according to its terms. (*Texas v. New Mexico* (1983) 462 U.S. 554, 564.) In part because compacts are agreements among sovereign states, we will not read absent terms into them or dictate relief inconsistent with their express terms. (*Alabama v. North Carolina*, *supra*, 130 S.Ct at p. 2313.)

With these concepts in mind, it is obvious that the plain language of the withdrawal provision, enabling a party state to withdraw from the Compact "by enacting a statute repealing the same," allows only for complete withdrawal from the Compact. California has *not* withdrawn from the Compact. After withdrawal, a state remains liable for any obligations incurred prior to withdrawal. Faced with the desire to escape an obligation under the Compact, a state's only option is to withdraw completely by enacting a repealing statute. That is what the plain language says, and we will not read into that language an inconsistent term allowing for piecemeal amendment or elimination of compact provisions.

The FTB refers us to *Alabama v. North Carolina*, *supra*, involving the same compact withdrawal provision, to support its position that we should not restrictively interpret the withdrawal provisions of the Compact. The FTB focuses on the following passage: "The Compact imposes no limitation on North Carolina's exercise of its statutory right to withdraw. . . . There is no restriction upon a party State's enactment of such a law . . . ." (*Alabama v. North Carolina*, *supra*, 130 S.Ct. at p. 2313, italics omitted.) However, the FTB omits the context, which is crucial. North Carolina withdrew from the compact in question by enacting a law repealing its status as a member state, *as required by the compact*. (*Id*. at p. 2304.) The plaintiffs alleged that North Carolina withdrew *in bad faith* to avoid monetary sanctions. Holding that there was no limitation on North Carolina's exercise of its withdrawal right, the Supreme Court explained that there was nothing in the compact suggesting that there were certain purposes for which the conferred withdrawal power could not be employed. (*Id*. at p. 2313.) In context, it is apparent that the case does not support the principle of partial

withdrawal or piecemeal alteration or amendment. Rather, the withdrawal provision calls for withdrawal from the Compact by passing a law repealing the Compact, period.

In further support of its position that the withdrawal provision should be construed to permit partial repeal or unilateral amendment, the FTB interprets the severability clause as providing for liberal construction of Compact provisions. This standard clause says that if any provision is declared invalid, the remaining provisions will not be affected. In other words, if a court declares any provision unconstitutional or invalid, it will be severed to avoid invalidation of the entire Compact. (§ 38006, art. XII.) How this clause advances the FTB's cause is not apparent to this court. It has nothing to do with liberal construction or the validity of state action to alter or amend existing Compact provisions.

Taking a slightly different tact, the FTB points out that a number of parties to the Compact have adopted statutes over the years that deviate from the Compact's taxing provisions. According to materials furnished in the FTB's request for judicial notice and summarized in its brief, 14 of 20 member states have passed some variation of a *mandatory*, state-specific apportionment formula that departs from the Compact provisions. The states have accomplished this in a variety of ways.

The FTB recommends that we consider the extrinsic evidence of this "course of conduct" in ascertaining whether the Compact is reasonably susceptible to an interpretation that renders its taxing provisions nonbinding and capable of being amended, superseded and repealed, in whole or part, by member states. Both parties concur that the key is whether the Compact is reasonably susceptible to the interpretation offered. (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 980.)[10] It

[10] The FTB adds that "[i]n interpreting a compact, 'the parties' course of performance under the Compact is highly significant,' " quoting *Alabama v. North Carolina*, *supra*, 130 S.Ct. at page 2309. As a general statement this is highly misleading. The court's reference to the course of performance pertained to "whether, in terminating its efforts to obtain a license, North Carolina failed to take what the parties considered 'appropriate' steps . . . ." (*Alabama v. North Carolina*, *supra*, 130 S.Ct. at p. 2309.) The compact in question obligated the defendant to take appropriate steps to

is not. As we have demonstrated, the Compact's express, unambiguous terms require extending taxpayers the option of electing UDITPA, and set forth reciprocal repeal terms allowing a member state to cease its participation and reclaim its sovereignty.

As important, the proffered interpretation runs counter to the express purposes of the Compact, which include facilitating "equitable apportionment of tax bases" and promoting "uniformity or compatibility in significant components of tax systems." (§ 38006, art. I, subds. 1, 2.) The FTB's interpretation, that the Compact does not require states to provide multistate taxpayers with the election to use the UDITPA formula, would eviscerate the availability of a common formula for all taxpayers to use as an alternative, thereby diluting a potent uniformity provision of the Compact. Moreover, the course of performance of a contract is only relevant to ascertaining the parties' intention *at the time of contracting*. (Civ. Code, § 1636; *Cedars-Sinai Medical Center v. Shewry*, *supra*, 137 Cal.App. 4th at p. 983.) The express, stated purposes of the Compact are a much truer measure of that intent than the subsequent statutory changes to state apportionment formulae.

Similarly, the purpose of admitting course of performance evidence is grounded in common sense: "[W]hen the parties perform under a contract, without objection or dispute, they are fulfilling their understanding of the terms of the contract." (*Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 922.) The course of performance doctrine is thus premised on the assumption that one party's response to another party's action is probative of their understanding of the contract terms. But in the context of the Compact, the member states do not perform or deliver their obligations to one another, unlike a typical contract in which a party provides services or goods to the other party, who in turns monitors the first party's compliance with contract terms. Thus the foundation for finding course of performance evidence relevant and reliable is faulty.

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ensure that an application to construct and operate the facility in question was filed and issued by the proper authority. (*Id.* at p. 2303.) The issue was what constituted "appropriate steps" under the compact. Of course, in this particular context, the parties' course of performance would help flesh out that concept.

For example, in *Cedars-Sinai*, the reviewing court concluded that course of conduct performance was *not* relevant to interpret a disputed provision because the conduct in question had nothing to do with providing incentives to monitor or enforce contract compliance. (*Cedars-Sinai Medical Center v. Shewry*, *supra*, 137 Cal.App.4th at p. 983.)

F. *The FTB's Construction Violates the Federal and State Constitutional Prohibition Against Impairment of Contracts*

Our federal and state Constitutions forbid enactment of state laws that impair contractual obligations. "No state shall . . . pass any . . . law impairing the obligation of contracts . . . ." (U.S. Const., art. I, § 10, cl. 1.) "A . . . law impairing the obligation of contracts may not be passed." (Cal. Const., art. I, § 9.) This constitutional prohibition extends to interstate compacts. (*Green v. Biddle* (1823) 21 U.S. 1, 12-13, 17 [Kentucky law that narrowed rights and diminished interests of landowners under compact between Kentucky and Virginia violated compact and was unconstitutional]; (*Doe v. Ward* (W.D.Pa. 2000) 124 F.Supp.2d 900, 915, fn. 20.) A construction of section 25128 that overrides and disables California's obligation under the Compact to afford taxpayers the option of apportioning income under the UDITPA formula would be unconstitutional, violative of the prohibition against impairing contracts.

G. *The FTB's Construction Runs Afoul of the Constitutional Reenactment Rule*

The FTB is adamant that the intent of the "[n]otwithstanding Section 38006" language in section 25128 is to repeal and supersede the taxpayer election to apportion under the Compact formula. At a minimum this outcome would eliminate or rewrite article III, subdivision 1 and eliminate article IV, subdivision 9 of section 38006. However, this result flies in the face of the California Constitution, article IV, section 9, stating in part: "A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

Long ago our Supreme Court expressed the purpose of the reenactment rule as avoiding " 'the enactment of statutes in terms so blind that legislators themselves [are] sometimes deceived in regard to their effect, and the public, from the difficulty of making

the necessary examination and comparison, fail[s] to become appraised [*sic*] of the changes made in the laws.' " (*Hellman v. Shoulters* (1896) 114 Cal. 136, 152; accord *American Lung Assn. v. Wilson* (1996) 51 Cal.App.4th 743, 748.) Clearly the reenactment rule applies to acts " 'which are in terms . . . amendatory of some former act.' [Citation.]" (*American Lung Assn. v. Wilson*, *supra*, 51 Cal.App.4th at p. 749.) Its applicability does not depend on the method of amendment, but rather "on whether legislators and the public have been reasonably notified of direct changes in the law." (*Ibid*.)

The FTB's construct would trigger the reenactment statute because it posits that the newly amended section 25128 repealed and superseded the UDITPA apportionment formula. Nonetheless, the purportedly deleted UDITPA election remains in section 38006, causing confusion such that neither the public nor legislators would have adequate notice that section 38006 had been eviscerated by the later enactment.

III. DISPOSITION

The judgment of dismissal is reversed. FTB to bear costs on appeal.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.[*]

[*] Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Trial Court:	San Francisco Superior Court
Trial Judge:	Hon. Richard A. Kramer
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APPENDIX HH: RESULTS OF 2012 PRESIDENTIAL ELECTION

STATE	MCCAIN	OBAMA	REP MARGIN	DEM MARGIN	REP EV	DEM EV
Alabama	1,255,925	795,696	460,229		9	
Alaska	164,676	122,640	42,036		3	
Arizona	1,233,654	1,025,232	208,422		11	
Arkansas	647,744	394,409	253,335		6	
California	4,839,958	7,854,285		3,014,327		55
Colorado	1,185,050	1,322,998		137,948		9
Connecticut	634,892	905,083		270,191		7
Delaware	165,484	242,584		77,100		3
DC	21,381	267,070		245,689		3
Florida	4,162,341	4,235,965		73,624		29
Georgia	2,078,688	1,773,827	304,861		16	
Hawaii	121,015	306,658		185,643		4
Idaho	420,911	212,787	208,124		4	
Illinois	2,135,216	3,019,512		884,296		20
Indiana	1,420,543	1,152,887	267,656		11	
Iowa	730,617	822,544		91,927		6
Kansas	692,634	440,726	251,908		6	
Kentucky	1,087,190	679,370	407,820		8	
Louisiana	1,152,262	809,141	343,121		8	
Maine	292,276	401,306		109,030		4
Maryland	971,869	1,677,844		705,975		10
Massachusetts	1,188,314	1,921,290		732,976		11
Michigan	2,115,256	2,564,569		449,313		16
Minnesota	1,320,225	1,546,167		225,942		10
Mississippi	710,746	562,949	147,797		6	
Missouri	1,482,440	1,223,796	258,644		10	
Montana	267,928	201,839	66,089		3	
Nebraska	475,064	302,081	172,983		5	
Nevada	463,567	531,373		67,806		6
New Hampshire	329,918	369,561		39,643		4
New Jersey	1,478,088	2,122,786		644,698		14
New Mexico	335,788	415,335		79,547		5
New York	2,485,432	4,471,871		1,986,439		29
North Carolina	2,270,395	2,178,391	92,004		15	
North Dakota	188,320	124,966	63,354		3	
Ohio	2,661,407	2,827,621		166,214		18
Oklahoma	891,325	443,547	447,778		7	
Oregon	754,175	970,488		216,313		7
Pennsylvania	2,680,434	2,990,274		309,840		20
Rhode Island	157,204	279,677		122,473		4
South Carolina	1,071,645	865,941	205,704		9	
South Dakota	210,610	145,039	65,571		3	
Tennessee	1,462,330	960,709	501,621		11	
Texas	4,569,843	3,308,124	1,261,719		38	
Utah	740,600	251,813	488,787		6	
Vermont	92,698	199,239		106,541		3
Virginia	1,822,522	1,971,820		149,298		13
Washington	1,290,670	1,755,396		464,726		12
West Virginia	417,584	238,230	179,354		5	
Wisconsin	1,410,966	1,620,985		210,019		10
Wyoming	170,962	69,286	101,676		3	
Total	**60,930,782**	**65,897,727**			**206**	**332**