

# Interstate Compacts: An Overview

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The Compact Clause ([Article 1, Section 10, Clause 3](#)) provides that “No State shall, without the Consent of Congress, ... enter into Any Agreement or Compact with another State, or with a foreign Power.” Although straightforward on its face, the Compact Clause serves multiple functions. It protects the national interest by requiring Congress’s consent for interstate compacts while, at the same time, empowering states to negotiate and use compacts as a tool to address problems that cross state lines. Along with interstate compacts, the Compact Clause also requires congressional approval for any state agreement “with a foreign Power” (i.e., a foreign government). States’ pacts with foreign governments and other limits on states’ power to engage in foreign affairs are discussed in a separate Legal Sidebar.

The Compact Clause does not prescribe all elements of the compact-making process, and the Supreme Court has not always interpreted the requirement that Congress consent to “any” interstate compact literally. This Sidebar discusses the Supreme Court’s Compact Clause jurisprudence and provides an overview of Congress’s approval practice for interstate compacts and agreements.

## What Are Agreements and Compacts?

The Compact Clause requires congressional approval for “Agreements” and “Compacts” but does not elaborate on the distinction between the terms. According to the Supreme Court, both terms refer to contracts between state governments stipulating “[the conduct or claims of the parties](#).” There is little difference between the terms except that a compact may reflect a more “[formal and serious engagement](#)” than an agreement. When Congress approves an agreement or compact, its consent [transforms](#) the pact into federal law. As a result, interstate compacts have dual functions: They operate simultaneously as contracts between states and, once approved by Congress, as federal law.

## Purpose of Congressional Consent Requirement

The ability to form compacts with other governments is a defining [characteristic of sovereignty](#), and the Compact Clause is meant to balance federal and state control over this power. By allowing states to negotiate compacts but requiring congressional approval, the Compact Clause [adapts](#) the traditional compact-making power to the American constitutional system in which [both the federal government and the states](#) possess sovereignty authority. The clause [safeguards](#) national interests by giving Congress the ability to control matters that cross state borders but are not suitable for direct federal regulation. It also

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[protects](#) states' interests by regulating an individual state's ability to unilaterally form compacts that might disadvantage other regional or state interests.

## Subject Matter of Interstate Compacts

For much of American history, [boundary disputes](#) were the [predominant](#) subject of interstate compacts. Beginning in the 1920s, states developed compacts as a tool for solving more complex regional problems. States made compacts to [apportion](#) interstate water bodies and to manage interstate resources and properties, such as [oil and gas](#), [fisheries](#), and [parks](#). They also began to use compacts to carry out major public undertakings and infrastructure projects, such as the [Port of New York and New Jersey](#). Later in the 20<sup>th</sup> century, interstate compacts addressed an even wider range of issues, with Congress approving interstate compacts on subjects as varied as [education](#), [urban planning](#), [historical preservation](#), [taxes](#), [emergency aid](#), [fire prevention](#), [transportation](#), [sewage disposal](#), and [radioactive waste management](#).

Some interstate compacts create administrative bodies and empower those bodies to implement the compact. For example, in *West Virginia ex rel. Dyer vs. Sims*, the Supreme Court addressed the [Ohio River Valley Sanitation Compact](#), which authorized an interstate commission to issue orders requiring compliance with the compact's sewage disposal restrictions. A West Virginia state court deemed the compact invalid under the theory that it unlawfully delegated the state's sovereign authority (known as its [police power](#)) to a body outside the state. The Supreme Court, however, [held](#) that states could delegate their police power to an interstate compact commission because the Framers of the Constitution intended the Compact Clause to allow the states to resolve interstate problems in diverse and creative ways.

## When Consent Is Required

One of the most [common questions](#) to arise under the Compact Clause is whether congressional consent is required for a particular state commitment. A [literal reading](#) of the Compact Clause would require congressional approval for *any* interstate compact, but the Supreme Court has not endorsed that approach in interstate compacts cases. Instead, the Court [adopted](#) a [functional interpretation](#) in which only interstate compacts that increase the political power of the states while undermining federal sovereignty require congressional consent.

The Supreme Court first expressed doubt that Congress must approve every interstate compact in *Virginia v. Tennessee*—an 1893 case about the constitutionality of a boundary settlement agreement. Congress had not given express consent to the boundary-setting agreement in *Virginia*, but the Supreme Court held that Congress had given its implied consent to the agreement by using the same boundary lines in later legislation. Even without that implied consent, the Court in *Virginia* reasoned that congressional approval was unnecessary in the first place. The Court saw no reason for congressional consent for compacts with which the United States would have no objection or desire to interfere. Rather than require congressional approval in every case, the Court in *Virginia* [stated](#) that interstate compacts need Congress's consent only if they could lead to an "increase of political power in the [s]tates, which may encroach upon or interfere with the just supremacy of the United States."

The Supreme Court [repeated](#) *Virginia*'s test for determining when congressional consent is necessary in [several](#) later [cases](#) and clarified how the test applies to modern interstate compacts. For example, in *U.S. Steel Corp. v. Multistate Tax Commission*, the Supreme Court held that a compact creating uniform rules for state taxation of multistate corporations did not require congressional consent even though it increased the states' bargaining power in relation to the taxed companies. The Court [explained](#) that *Virginia*'s test does not focus on whether the compact makes the states more influential in general but only whether it could enhance the states' power in relation to the federal government.

The Supreme Court has also suggested that some engagements between states do not qualify as agreements or compacts at all. In *Northeast Bancorp, Inc. v. Board of Governors of Federal Reserve System*, the Supreme Court addressed a constitutional challenge to a system of reciprocal state legislation that limited acquisition of banks in Massachusetts and Connecticut. The Court determined that congressional consent was not required because the reciprocal state legislation scheme lacked four “classic indicia of a compact,” which are:

1. Creation of a joint organization or body;
2. Conditioning one state’s action on the actions of other states;
3. Restricting states’ power to modify or repeal their laws unilaterally; and
4. A requirement for reciprocal constraints among all states.

The Court in *Northeast Bancorp, Inc.* also held that, even if it assumed a compact existed, the scheme was authorized under existing federal banking law and therefore could not infringe federal supremacy under the *Virginia* standard.

Viewed collectively, the Supreme Court’s interstate compact jurisprudence appears to establish a two-part inquiry for determining whether congressional consent is necessary: (1) Is the arrangement at issue an agreement or compact for constitutional purposes, and, (2) if so, does it belong in that class of compacts described in *Virginia* that require congressional approval because it affects federal supremacy?

## Methods for Congressional Consent

The Constitution does not define a process for when or how Congress should consent to a compact. The Supreme Court has interpreted this silence to mean that Congress may use its wisdom and discretion to choose the manner of authorization. According to the Court, Congress can consent to a compact in advance or after the states have negotiated and joined in agreement. The Supreme Court has also held that Congress’s consent need not be expressly stated and may be inferred from the circumstances.

In practice, Congress frequently approves specific compacts, but it has also given advance approval to broad classes of compacts. Additionally, Congress has given consent for an indefinite period of time and has provided an end date for its authorization. When approving a compact, Congress can impose conditions on its consent provided the conditions are “appropriate to the subject” and do not exceed a constitutional limitation, such as infringing individual rights to exercising an authority exclusively assigned to another branch of government. Congress imposed a complex set of conditions, for example, in its legislation authorizing regional interstate compacts for radioactive waste disposal.

## Interpretation and Effect of Interstate Compacts

The Supreme Court has stated that it has final authority to interpret interstate compacts. The Court often hears interstate compact cases under its authority in Article III, Section 2, Clause 2, of the Constitution, which gives the Supreme Court original jurisdiction over disputes between states. Original jurisdiction cases go directly to the Supreme Court without proceedings in lower courts. For example, the Court is currently considering an original action over whether New Jersey can unilaterally withdraw from the Waterfront Commission Compact with New York, which Congress approved in 1953. New Jersey passed a state statute instructing its governor to carry out the withdrawal process, but New York argues that only Congress can repeal a congressionally approved compact. The Supreme Court temporarily halted New Jersey’s withdrawal while it considers the case’s merits.

The Supreme Court views its role in original jurisdiction cases as different from its more standard disputes on appellate review. It approaches original jurisdiction cases in an “untechnical spirit” that allows the Court to mold the process in a way that “will best promote the purposes of justice.” When

private litigants are parties to interstate compact disputes, the cases do not fall under the Supreme Court's original jurisdiction but may be heard in a federal court (rather than in a state court), because congressionally approved compacts, which are [federal laws](#), raise [federal questions](#).

As federal law, congressionally approved compacts can [preempt](#) inconsistent state law, and no court [may order relief](#) inconsistent with a compact's terms unless the terms violate the Constitution. Even though the Supreme Court [ordinarily defers](#) to state courts' interpretations of their own state law, the Supreme Court held in *West Virginia ex rel. Dyer vs. Sims* that it is not required to defer to state courts' views on whether an interstate compact comports with state law and that those rulings do not bind the Supreme Court. In that case, the Supreme Court declined to adopt the highest state court in West Virginia's interpretation of whether an interstate compact complied with the West Virginia state constitution.

Along with their status as federal law, interstate compacts [function as contracts](#) between states. As a result, the Supreme Court has used contract law [principles and remedies](#) in some interstate compact cases. For example, in *Green v. Biddle*, the Court held that interstate compacts fall under the protection of the [Contract Clause](#) of the Constitution, which prohibits states from passing laws that impair contract rights. At the same time, there are limits on how far the Supreme Court will treat compacts as ordinary contracts. In *Alabama v. North Carolina*, the Court declined to read an implied duty of good faith and fair dealing into an interstate compact even though the Court acknowledged that every contract imposes that duty.

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