



# National Center for Interstate Compacts

THE COUNCIL OF STATE GOVERNMENTS

## Congressional Consent for Interstate Compacts

The U.S. Constitution allows states to enter into interstate compact agreements as long as they receive consent from Congress. Article I, section 10, clause 3 of the U.S. Constitution provides in part that “no state shall, without the consent of Congress, enter into any agreement or compact with another state.” This section is commonly referred to as the **Compact Clause**.

In numerous cases<sup>123</sup>, the Supreme Court has interpreted the original intent of requiring consent as a means of preventing states from infringing upon federal authority or states that were not a party to a compact. This interpretation from the Supreme Court has allowed for compacts that do not infringe upon federal authority or other states to become active without federal consent.

In the 1893 decision of *Virginia v. Tennessee*, the Supreme Court concluded that compacts require congressional consent only when they could infringe upon federal authority or alter the federal balance of power. Many court decisions continue to cite *Virginia v. Tennessee*. In the 1838 decision of *Rhode Island v. Massachusetts*, the Supreme Court also held that the purpose of the Compact Clause was to prevent injury to non-compact states.

Any compact that has an impact on an area of mutual state-federal concern, threatens to interfere with the doctrine of federal preemption or disadvantages states that may not join a compact likely requires congressional consent. Compacts involving state authority that is clearly pre-eminent and in which all states, the District of Columbia and territories are entitled to join, such as occupational licensure compacts, do not need to have congressional consent.

There is no specific required form of congressional consent. Commonly, Congress enacts a resolution or a public law granting states the authority to create a compact. The Constitution specifies neither the means nor the timing of the required consent; thus, consent may be in advance of the states enacting the compact or after the states enact the compact. Congressional consent may also be conditional, limited or temporary, and is always subject to modification or repeal even if this right is not expressly reserved when the consent is initially given. Whether a compact requires consent or not, and regardless of the form that consent may take, no compact is immune from future invalidation by an Act of Congress.

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<sup>1</sup> *Virginia v. Tennessee*, 148 U. S. 503 (1893)

<sup>2</sup> *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951)

<sup>3</sup> *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452 (1978)