Developments in Interstate Compact Law and Practice 2023

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The year 2023 marked a sea change for interstate compacts. The Supreme Court's decision in *New York v. New Jersey* allowed New Jersey to unilaterally withdraw from the Waterfront Commission of New York Harbor compact in the absence of an express term in the compact specifying otherwise.[1] This decision may destabilize the many compacts that do not have a termination or withdrawal provision. In other cases, two New Jersey courts overthought jurisdiction in state court and implied too much importance to federal court precedent when interpreting interstate compacts. Relatedly, a federal court questioned whether the party states were necessary parties in a case between a landowner and the Tahoe Regional Planning Agency, which involved the interpretation of the Tahoe Regional Planning Compact. Finally, we have seen the usual panoply of courts applying and misapplying important principles of interpreting interstate compacts.

Administrative developments included compact agencies continuing to take advantage of federal funding opportunities in the 2021 Infrastructure Investment and Jobs Act. The Act supports some cooperative actions. Two water compacts made news when states took controversial actions to implement them. Also notable, the Columbia River Gorge Commission began work with the Columbia River Gorge Compact states to amend the compact to add a withdrawal provision and revise a few other implementation items.

Legislative highlights included the growing use of professional licensing compacts. The Interstate Teacher Mobility Compact became active within one year of the model legislation's release and states began enacting two other newly released model licensing

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1. New York v. New Jersey, 598 U.S. 218, 227–28 (2023).

compacts. Several states have amended their enactment of the Interstate Compact on Educational Opportunity for Military Children to correct a scrivener's error discussed last year in this article. Following the U.S. Supreme Court's decision in *New York v. New Jersey*, New Jersey withdrew and thus terminated the Waterfront Commission of New York Harbor compact, which had been in existence for seventy years. Vermont withdrew from the Interstate Oil and Gas Compact, which it had curiously enacted without having any significant oil or gas development within the state. Washington enacted a bill authorizing interstate agreements relating to cross-jurisdictional cannabis business and delivery, joining Oregon and California on the West Coast with similar authority. Finally, Indiana enacted a bill that would automatically withdraw from interstate compacts that have been inactive for two years or more.

This article discusses a wide range of judicial, administrative, and legislative developments in interstate compact law in 2023.[2] We examine reported and unreported cases, as both show how courts apply or distinguish principles of compact law. We review enacted and unenacted bills illustrating policy conversations involving interstate compacts. Discussions of many cases, agency actions, and legislative actions present principles of law, administrative and legislative context associated with the reported developments, and citations for further reading.

Interstate compacts are legislation and contracts between the states.[3] They are not one of the traditional local, state, or federal governments, but more than 260 current compacts address subjects as varied as social services delivery; child placement; education policy; emergency and disaster assistance; corrections, law enforcement, and supervision; professional licensing; water allocation; land use planning; environmental protection and natural resources management; and transportation and urban infrastructure management. Most professionals who work in these policy areas will encounter one or more interstate compacts from time to time, or regularly. When interacting with compacts, these professionals must know the unique principles of law applicable to compacts and compact

2. Between 2008 and 2019, this annual Developments article was published in the ABA Section of Administrative Law and Regulatory Practice's annual book, *Developments in Administrative Law and Regulatory Practice*. The Administrative Law section ceased publication of that book after the 2019 edition. Beginning in 2020, *The Urban Lawyer* has graciously continued to publish this overview.

3. *See* MICHAEL L. BUENGER ET AL., THE EVOLVING LAW AND USE OF INTERSTATE COMPACTS 35 (Am. Bar Ass'n, 2d ed. 2016).

agencies, as well as the limitations on federal, state, and local officials when navigating or administering a compact.

Studying this most formal type of intergovernmental agreement also provides a framework for thinking about other forms of intergovernmental cooperation, including intergovernmental agreements that state agencies and municipalities commonly use. Finally, because compacts and compact agencies are largely separate from and independent of federal and state governments, scholars may wish to study how these agencies develop and apply their own governance practices and how they observe elements of state and federal legal requirements, which often require unique solutions foreign to federal and state laws and agencies.

I. Judicial Developments

A. Applying the Compact Clause of the U.S. Constitution

The Compact Clause of the U.S. Constitution states, "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another state, or with a foreign Power . . . ."[4] Despite the apparent requirement for consent for all compacts, the U.S. Supreme Court has concluded that consent is needed only for compacts that increase the power of the compacting states that could encroach upon federal powers[5] or that could affect the non-compacting states.[6] Common legal issues involving the Compact Clause include whether a particular compact requires consent or has received consent; permissible conditions of congressional consent; and whether a grant of consent limits the ability of the federal government to legislate in the policy area of the compact.[7] No cases in 2023 involved the application of the Compact Clause in any significant way.

However, relevant to several cases discussed next is the principle that an interstate compact is federal law if it has received Congress's consent and is a subject matter appropriate for federal legislation. The Supreme Court's decision in *Cuyler v. Adams*[8] made this clear,

4. U.S. Const. art. I, § 10, cl. 3.
5. U.S. Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 460 (1978).
6. Ne. Bancorp, Inc. v. Bd. of Governors, 472 U.S. 159, 176 (1985).
7. For a thorough discussion of these and other legal issues and leading case law and scholarship, see Buenger et al., *supra* note 3, at 68–86; Jeffrey B. Litwak, Interstate Compact Law: Cases and Materials 37–82 (Semaphore Press, 4th ed. 2020).
8. Cuyler v. Adams, 449 U.S. 433 (1981).

referring to it as the "law of the Union" doctrine, and reciting its historical decisions establishing this principle of compact law.[9]

B. Jurisdiction and Reviewability

One such case involving the "law of the Union" doctrine is *Delaware River Joint Toll Bridge Commission v. George Harms Construction Co*.[10] In that case, the New Jersey Appellate Division of the Superior Court questioned whether it had jurisdiction over the construction of the interstate compact, which had obtained Congress's consent. *Citing Cuyler v. Adams*,[11] the court noted that federal courts clearly have jurisdiction and that no provision in the Delaware River Joint Toll Bridge Commission compact expressly gives jurisdiction to the states' courts.[12] However, the court noted that "state courts have not been barred from construing compacts concerning bi-state agencies"[13] and cited article II(b) and (h) of the compact, which states that the compact has the force and effect of state statute. The court concluded that it was satisfied that it had jurisdiction.[14] The detailed discussion of jurisdiction is surprising because state courts generally have jurisdiction to resolve claims arising under federal law and commonly interpret interstate compacts that have obtained Congress's consent. This article discusses the merits of that case below.[15]

In another case in which the court questioned its jurisdiction, *Harrosh v. Tahoe Regional Planning Agency*,[16] the court ordered the parties to file supplemental briefs on several questions, including whether Nevada and California (the parties to the Tahoe Regional Planning Compact), their subdivisions, and their agencies and officers must and can be joined under the federal rules as necessary parties. The court specifically requested:

> In their responses to this question the parties should address whether California and Nevada must be joined because "a district court cannot adjudicate an attack on the terms of a negotiated agreement without jurisdiction over the parties to

9. *Id*. at 438–40.
10. Del. River Joint Toll Bridge Comm'n v. George Harms Constr. Co., 293 A.3d 210 (N.J. Super. Ct. App. Div. 2023).
11. *See supra* notes 7–8 and accompanying text.
12. *Delaware River Joint Toll Bridge Comm'n*, 293 A.3d at 223.
13. *Id*. at 222.
14. *Id*. at 223.
15. *See infra* notes 70–82 and accompanying text.
16. Order [directing parties to file supplemental briefs], Harrosh v. Tahoe Reg'l Planning Agency, No. 2:21-cv-01969-KJM-JDP, 2023 U.S. Dist. LEXIS 158954 (E.D. Cal. Sept. 6, 2023) (court also asking three additional questions on the same theme).

> that agreement." *Clinton v. Babbitt*, 180 F.3d 1081, 1088 (9th Cir. 1999); *see also, e.g.*, *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 628 (2013) ("Interstate compacts are construed as contracts under the principles of contract law.").[17]

The court's introduction to the order noted that the parties "advance competing interpretations of the Tahoe Regional Planning Compact."[18] The court is correct that compacts are contracts; however, they are also statutes,[19] and state courts routinely interpret statutes in cases involving private parties where the states are not parties. Indeed, the court reached this very conclusion in the *George Harms Construction* case discussed above. Quite simply, states are not usually necessary parties to every case involving interpretation of state statutes. Rather than address that broad point, California and Nevada filed amicus briefs in response to the court's order, both of which argued that California and Nevada were satisfied with the Tahoe Regional Planning Agency handling this case but leaving open that they may be necessary parties or want to participate in future cases involving the interpretation and application of the compact.[20] As of the end of 2023, the court had not issued any new order resolving its inquiry.

C. What Is an Interstate Compact and Compact Agency?

Interstate compacts are one of many tools that states use to cooperate across state lines. Other common tools are intergovernmental agreements between state agencies or officials and uniform or model laws.[21] States, courts, and litigants often mistakenly refer to these and other forms of cooperation as interstate compacts, and they continued to do so in 2023. In *Buckner v. Luzerne County Family Court*,[22] the court referred to the Uniform Child Custody Jurisdiction and Enforcement Act as an interstate compact.[23] Nearly 100 years ago, scholars explained that interstate compacts are not uniform or

17. *Id.* at *2.
18. *Id.* at *1.
19. *See* Buenger et al., *supra* note 3, at 35–36; Litwak, *supra* note 7, at 25–26.
20. Brief of Amicus Curiae, State of California, Harrosh v. Tahoe Reg'l Planning Agency, No. 2:21-cv-01969-KJM-JDP, 2023 U.S. Dist. LEXIS 158954 (E.D. Cal. Oct. 23, 2023), ECF No. 109; Brief of Amicus Curiae, State of Nevada, Harrosh v. Tahoe Reg'l Planning Agency, No. 2:21-cv-01969-KJM-JDP, 2023 U.S. Dist. LEXIS 158954 (E.D. Cal. Oct. 24, 2023), ECF No. 111.
21. *See* Buenger et al., *supra* note 3, at 36–42; Litwak, *supra* note 7, at 2–14.
22. Buckner v. Luzerne Cty. Family Court, No. 3:23-CV-1314, 2023 U.S. Dist. LEXIS 138785 (M.D. Pa. Aug. 8, 2023).
23. *Id.* at *2.

model laws,[24] and when courts actually must distinguish between a compact and a uniform law, the courts typically conclude that they are different forms of interstate cooperation.[25] Organizations, such as the Uniform Law Commission, draft model laws and uniform laws to assist states with drafting legislation where some level of uniformity better achieves the policy intent. States do not have to consider or enact uniform laws, and, despite the name, the states do not have to enact the uniform text.[26] This outcome differs from compacts where the contractual nature of a compact requires substantive sameness in the states' enactments.[27] Amending a compact also requires all party states to amend their compact enactments. In contrast, uniform laws are enactments by each state independent of other states, so a state may amend or repeal a uniform law without consideration of other states' enactments of that uniform law.[28]

Other types of "compacts" in addition to interstate compacts exist, and, occasionally, courts will use interstate compact law as an analogy to help resolve a legal question involving these other compacts. This occurred in 2023 in *Wichita & Affiliated Tribes v. Stitt*[29] in which the court stated, "A tribal-state gaming compact under IGRA [the Indian Gaming Regulatory Act (IRGA)] is like a "congressionally sanctioned interstate compact the interpretation of which presents a question of federal law"[30] and cited several cases involving interpretation of an interstate compact. Courts sometimes use principles for interpreting interstate compacts under IGRA,[31]

24. *See, e.g.*, Note, *A Reconsideration of the Nature of Interstate Compacts*, 35 COLUM. L. REV. 76, 77 n.8 (1935) ("[I]t has never been suggested that a compact results from the enactment of uniform laws. . . . The absence of an interstate promise is a primary distinction between repealable reciprocal legislation and a compact" and citing sources); Elmer Wollenberg, *The Columbia River Fish Compact*, 18 OR. L. REV. 88, 96 n.2 (1939) ("The Columbia River Fish Compact is a stage beyond the uniform law in interlegislative cooperation. It tends in the direction of a confederation region.").

25. *E.g.*, Landes v. Landes, 135 N.E.2d 562 (N.Y. 1956) (concluding that reciprocity in a uniform law did not necessarily suggest a compact between the states); Taylor v. Steele, 372 F. Supp. 3d 800 (E.D. Mo. 2019) (determining that the Uniform Mandatory Disposition of Detainers Law is not an interstate compact despite the plaintiff's repeated assertions). *But see, e.g.*, *In re* S.R.C.-Q., 367 P.3d 1276, 1279 (Kan. Ct. App. 2019) (referring to the Interstate Compact on the Placement of Children as a uniform law).

26. *See* BUENGER ET AL., *supra* note 3, at 37.

27. *See Id.* at 44–47, 272.

28. *Id.* at 36–38.

29. Wichita & Affiliated Tribes v. Stitt, No. CIV-19-1198-D, 2023 U.S. Dist. LEXIS 30931 (W.D. Okla. Feb. 24, 2023).

30. *Id.* at *16.

31. *See, e.g.*, Pueblo of Santa Ana v. Kelly, 104 F.3d 1546 (10th Cir. 1997); Flathead Irrigation Dist. v. Jewell, 121 F. Supp. 3d 1008, 1024 (D. Mont. 2015). For an

but more often they explain that interpretation of compacts under IGRA raise questions of "federal common law."[32] Nevertheless, reference to compact law principles in such cases illustrates the importance of interstate compact jurisprudence in the greater context of intergovernmental agreements and cooperation. An appeal has been filed in the *Wichita & Affiliated Tribes* case,[33] but it is unlikely that the analogy to interstate compacts will be an issue before the Tenth Circuit.

In addition to questions about whether to characterize a specific agreement as an interstate compact, courts also often seem confused about how to characterize a bistate or multistate agency created by an interstate compact.[34] Principally, the problem arises with a claim that the compact agency is a state or federal agency for the purpose of applying a specific statute. In 2023, in *ACLU Foundation v. Washington Metropolitan Area Transit Authority*,[35] the court concluded that the *Accardi* doctrine, which allows a claim under the federal Administrative Procedure Act (APA) to require federal administrative agencies to follow their "existing valid regulations,"[36] does not apply to the Transit Authority because, "as the product of an interstate compact, [the Washington Metropolitan Area Transit Authority (WMATA)] is not a federal administrative agency and is therefore not subject to the APA."[37] No court has concluded that a compact agency is a federal agency,[38] but that has not stopped such claims.

In a variation on the question of whether a compact agency is a state or federal agency, in *Fennell v. Port Authority of New York*

introduction to analogies and differences between interstate compacts and tribal-state gaming compacts, see Rebecca Tsosie, *Negotiating Economic Survival, The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act*, 29 Ariz. L.J. 25 (1997).

32. *E.g.*, Citizen Potawatomi Nation v. Oklahoma, 881 F.3d 1226, 1238–39 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 375 (2018); Cachil Dehe Band of Wintun Indians v. California, 618 F.3d 1066 (9th Cir. 2010); Kennewick Irrigation Dist. v. United States, 880 F.2d 1018, 1032 (9th Cir. 1989).

33. Wichita & Affiliated Tribes v. Stitt, No. CIV-19-1198-D, 2023 U.S. Dist. LEXIS 30931 (W.D. Okla. Feb. 24, 2023), *appeal docketed*, No. 23-6041 (10th Cir. Mar. 28, 2023).

34. For examples of terms that compact texts use to describe the entities that they create, see Litwak, *supra* note 7, at 120–23.

35. ACLU Found. v. Wash. Metro. Area Transit Auth., No. 17-1598, 2023 U.S. Dist. LEXIS 131445 (D.D.C. July 28, 2023).

36. United States *ex rel.* Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954).

37. *ACLU Found.*, 2023 U.S. Dist. LEXIS 131445 at *9.

38. *See* Litwak, *supra* note 7, at 132–45.

& New Jersey,[39] the court referred to the Port Authority as a "local government" in determining whether the Port Authority is a "person" within the meaning of 42 U.S.C. § 1983. Compact agencies are not local governments even if they fulfill traditionally municipal duties. Quite simply, compacts are not created under municipal authority statutes. This is not the first time that a court has referred to the Port Authority as a municipality. In another case, *Mack v. Port Authority of New York & New Jersey*,[40] the court stated, "Although the Port Authority, a bi-state agency, is not technically a municipality, courts have treated it as such and have analyzed claims against it under the standards governing municipal liability under Section 1983." This correctly states that the Port Authority is not a municipality, but one of the three cases cited in *Mack* in support of this statement expressly states, "As a municipal agency, the Port Authority . . . ."[41]

D. Relationship Between a Compact and State Laws and Constitutions

One of the original and still enforceable principles of interstate compact law is that a state may not impose state law on a compact agency unless that law is reserved in the compact. The U.S. Supreme Court articulated this principle in its first compact case in 1823, concluding that Kentucky could not enact real property law that conflicted with the Virginia-Kentucky Compact of 1789, which preserved the application of Virginia's real property law.[42] Since then, courts have applied the principle with few deviations but many variations on how they explain the principle.[43] This is so for both compacts that are silent about when states may impose new laws on a compact agency[44] and for compacts that specify that a state may impose new duties or state law on a compact agency when "concurred in" by the other state.[45] Some introduction to the way courts apply a "con-

39. Fennell v. Port Auth. of New York & New Jersey, No. 22-4545, 2023 U.S. Dist. LEXIS 60324 (D.N.J. Apr. 4, 2023).

40. Mack v. Port Auth. of New York & New Jersey, 225 F. Supp. 2d 376, 382 n.7 (S.D.N.Y. 2002).

41. Settecase v. Port Auth. of New York & New Jersey, 13 F. Supp. 2d 530, 537 (S.D.N.Y. 1998).

42. Green v. Biddle, 21 U.S. 1, 92–93 (1823).

43. *See* BUENGER ET AL., *supra* note 3, at 54–66; LITWAK, *supra* note 7, at 255–96.

44. *E.g.*, Columbia River Gorge Compact, OR. REV. STAT. § 196.150 (2023) & WASH. REV. CODE § 43.97.015 (2023).

45. *E.g.*, Port Authority of New York and New Jersey compact, N.J. STAT. ANN. § 32:1-4 (2023); McKinney's Unconsol. Laws of N.Y. § 6404 (as added by L. 1921 c 154, § 1); Delaware River Port Authority compact, art. IV(q) (N.J.S.A. 32:3-5; PA..

curred in" provision is necessary because some of the cases this year seemed to dissolve established patterns.

Federal courts apply a "concurred in" provision, using an express intent standard, which requires the states' laws to be substantially similar and the states' legislatures to expressly specify that they intend the law to apply to the compact agency.[46] Generally, New York state courts also apply the express intent standard.[47] In contrast, New Jersey state courts do not use the express intent standard.[48] Instead, New Jersey state courts apply state law under a "concurred in" provision when the law to be applied is "complementary and parallel" to law in the other state. New Jersey state courts do not have a single standard for determining when laws are "complementary and parallel." In different cases, New Jersey state courts have concluded laws are "complementary and parallel" when they are substantially similar,[49] when they are somewhat similar,[50] when regulations do not conflict with regulations in the other state,[51] and when laws express similar public policy.[52]

In past years, this article has explained a notable exception to New York's express intent standard just for the Port Authority of New York and New Jersey. New York state courts have held state law applicable to the Port Authority when the law regulates the external conduct of the Port Authority. Conversely, state law does not apply when it would regulate only the internal conduct of the Port Authority. This unique test for the Port Authority first appeared in

STAT. ANN. tit. 36, § 3503); Tahoe Regional Planning Compact, art. X(b) (Cal. Gov't Code § 66801; Nev. Rev. Stat. § 277.200; Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101- 505, tit. 1, art. VIII, § 1(a), 104 Stat. 1300, 1303 (1990)).

46. *E.g.*, Int'l Union of Operating Eng'rs, Local 542 v. Delaware River Joint Toll Bridge Comm'n, 311 F.3d 273 (3d Cir. 2002) (giving a long recitation of the express intent standard).

47. *E.g.*, Malverty v. Waterfront Comm'n of New York Harbor, 524 N.E.2d 421 (N.Y. 1988).

48. *But see* Alpha Painting & Constr. Co. v. Delaware River Port Auth., No. 1:16-cv-05141-NLH-AMD, 2018 U.S. Dist. LEXIS 104695, at *19 (D.N.J. June 22, 2018) (mentioning the lack of Pennsylvania's intent as evidenced by Pennsylvania's lack of express language applying its Sunshine Law to the Delaware River Port Authority).

49. Int'l Union of Operating Eng'rs, Local 68 v. Delaware River & Bay Auth., 688 A.2d 589, 574–75 (N.J. 1997).

50. Bunk v. Port Auth. of New York & New Jersey, 676 A.2d 118, 122 (N.J. 1996).

51. Ampro Fisheries v. Yaskin, 606 A.2d 1099, 1104 (N.J. 1992).

52. Textar Painting Corp. v. Delaware River Port Auth., 686 A.2d 795, 798 (N.J. Super. Ct. Law Div. 1996).

Agesen v. Catherwood,[53] and New York state courts seem to continue applying *Agesen* reflexively rather than for any specific reason. No decision has explained why New York state courts started using the *Agesen* test or why they only apply it to the Port Authority, and no other court uses the *Agesen* approach.[54]

In the past several years, the Supreme Court of New York and its appellate division consistently rejected the Port Authority's express arguments asking the court to apply the express intent standard rather than *Agesen*,[55] but in 2022, in *McKenzie v. Port Authority of New York & New Jersey*,[56] the New York Supreme Court Appellate Division concluded that a law did not apply to the Port Authority, reasoning, in part, that "New Jersey has not enacted identical legislation, and bistate entities created by compact are not subject to the unilateral control of any one state."[57] As of the end of 2023, no reported cases have followed or rejected *McKenzie*. Not surprisingly, New Jersey courts have rejected the Port Authority's arguments and continued to apply its "complementary and parallel" standard.[58]

In contrast to the "express intent" and "complementary and parallel" approaches, on the other side of the country, a federal district court applied a different approach to the Tahoe Regional Planning Compact, which has a "concurred in" provision.[59] That court concluded that "application [of a state law] is precluded unless the Compact reserves to [the state] the right to impose such requirements on

53. Agesen v. Catherwood, 260 N.E.2d 525 (1970).

54. In Granados v. Port Auth. of New York & New Jersey, No. 714754/2017, 2018 N.Y. Misc. LEXIS 2995, at *3 (Sup. Ct. Queens Cty. Mar. 9, 2018), the court stated that federal courts have embraced the *Agesen* approach. But the cases cited by the court seem to show that the federal courts applied *Agesen* only because federal courts apply state law in state law cases, not because they endorse *Agesen*.

55. *See* Wortham v. Port Auth. of New York & New Jersey, No. 155687/2017, 2018 N.Y. Misc. LEXIS 2190, at *4 (Sup. Ct. N.Y. Cty. May 30, 2018), *aff'd*, 110 N.Y.S.3d 539 (App. Div. 2019); *In re* Lopez v. Port Auth. of New York & New Jersey, 98 N.Y.S.3d (App. Div. 2019); Rosario v. Port Auth. of New York & New Jersey, 114 N.Y.S.3d 219 (App. Div. 2020); Ayars v. Port Auth. of New York & New Jersey, 115 N.Y.S.3d 896 (App. Div. 2020); Ray v. Port Auth. of New York & New Jersey, 124 N.Y.S.3d 189 (App. Div. 2020); Latteri v. Port Auth. of New York & New Jersey, No. 33226/2018E, 2021 N.Y. Misc. LEXIS 4152 (Sup. Ct. Bronx Cty. June 1, 2021).

56. McKenzie v. Port Auth. of New York & New Jersey, 157 N.Y.S.3d 714 (App. Div. 2022).

57. *Id*. (citations omitted). This case was discussed in Jeffrey B. Litwak & Marisa Fiat, *Developments in Interstate Compact Law and Practice 2022*, 52 URB. LAW. 1, 8–9 (2023).

58. *See* Port Auth. of New York & New Jersey v. Port Auth. of New York & New Jersey Police Benevolent Ass'n, 209 A.3d 897 (N.J. App. Div. 2019).

59. Tahoe Regional Planning Compact, art. X(b) (CAL. GOV'T CODE § 66801; NEV. REV. STAT. § 277.200).

the bi-state agency."[60] Subsequently, the Ninth Circuit adopted that approach in *Seattle Master Builders Ass'n v. Pacific Northwest Electrical Power & Conservation Planning Council*,[61] concluding that "[a] state can impose state law on a compact organization only if the compact specifically reserves its right to do so."[62] The compact creating the Northwest Power and Conservation Council[63] is silent on the application of state law, so the Ninth Circuit's approach has become the default standard for federal and state courts within the Ninth Circuit, most of which do not have a "concurred in" provision.[64] And there are many variations in between all these approaches.[65] With that background, the following cases will make more sense.

In *Landa v. Port Authority of New York & New Jersey*,[66] the U.S. District Court for the District of New Jersey held, "The law of an individual state 'may only be imposed on the bi-state entity when the Compact itself states that the entity is subject to single state jurisdiction."[67] This holding applies the *Seattle Master Builders* approach in the Ninth Circuit. Working back through the precedent cited in *Landa* for this statement of law, the apex decision, *Eastern Paralyzed Veterans Ass'n v. Camden*,[68] cited the original Tahoe Regional Planning Compact decision[69] (on which *Seattle Master Builders* was based) but ultimately applied the "complementary and parallel" standard. New Jersey courts have used the *Seattle Master Builders* approach in just a handful of cases; this *Landa* case probably does not signal a shift away from the "complementary and parallel" standard, but it illustrates that the variations when courts apply state law to a compact agency are intertwined and not immutable.

60. California Dep't of Transp. v. City of South Lake Tahoe, 466 F. Supp. 527, 537 (E.D. Cal. 1978).

61. *Seattle Master Builders Ass'n v. Pacific Nw. Elec. Power & Conserv. Planning Council*, 786 F.2d 1359 (9th Cir. 1986).

62. *Id*. at 1371.

63. The Council shortened its name in 2003. *See* Nw Power & Conserv. Council, Council Brief 2021 81 (2021), https://www.nwcouncil.org/sites/default/files/2020-8.pdf.

64. *E.g.*, Salmon For All v. Dep't of Fisheries, 821 P.2d 1211, 1215–16 (1992) (Columbia River Fish Compact); Klickitat Cty. v. State, 862 P.2d 629, 633–34 (1993) (Columbia River Gorge Compact).

65. *See* Buenger et al., *supra* note 3, at 54–66; Litwak, *supra* note 7, at 255–96.

66. Landa v. Port Auth. of New York & New Jersey, No. 2:22-cv-05210 (WJM), 2023 U.S. Dist. LEXIS 69044 (D.N.J. Apr. 20, 2023).

67. *Id*. at *7.

68. Eastern Paralyzed Veterans Ass'n v. Camden, 111 N.J. 389 (1988).

69. California Dep't of Transp. v. City of South Lake Tahoe, 466 F. Supp. 527, 537 (E.D. Cal. 1978).

Another New Jersey case illustrates the intertwined standards for when to apply state law to a compact agency. In *Delaware River Joint Toll Bridge Commission v. George Harms Construction Co.*,[70] the court concluded that the Commission did not have authority to require a project labor agreement (PLA) when seeking bids for a bridge upgrade project. The bid proposal package "required all bidding contractors and subcontractors to enter into a PLA with certain named unions affiliated with the local building and construction trades councils, recognizing those unions as the sole and exclusive bargaining representatives of the bidder's project workforce."[71]

The court gave extensive background on New Jersey and Pennsylvania law concerning PLAs and the Commission's authority under its compact, including, specifically, public bidding requirements. The court summarized:

> [B]oth New Jersey and Pennsylvania have purposefully made the Commission subject to public bidding laws in their respective legislation amending the interstate compact, however the compact is silent on PLAs. Therefore, we look to the two states' treatment of PLAs, which is divergent, as discussed. New Jersey has the PLA Act, but Pennsylvania governs PLAs under case law emanating from the Commonwealth Court. The current Pennsylvania case law disfavors PLAs unless the project involves "extraordinary circumstances" and the PLA treats union and nonunion contractors evenly.[72]

The court then recounted the Third Circuit's "express intent" approach[73] and New Jersey's "complementary and parallel" approach and stated that Pennsylvania follows the New Jersey approach in merely looking for "substantially similar laws," citing two Pennsylvania cases.[74] But the court may have been too hasty in that statement. The Third Circuit's expression of the express intent standard cites one of the same Pennsylvania cases as lending support to the express

70. Delaware River Joint Toll Bridge Comm'n v. George Harms Constr. Co., 293 A.3d 210 (N.J. Super. Ct. App. Div. 2023).
71. *Id.* at 216.
72. *Id.* at 230.
73. *Id.* at 231–32 (citing Int'l Union of Operating Eng'rs, Local 542 v. Delaware River Joint Toll Bridge Comm'n, 311 F.3d 273 (3d Cir. 2002)).
74. *Id.* at 232 (citing Delaware River Port Auth. v. Commonwealth, State Ethics Comm'n, 585 A.2d 587, 588 n. 5 (Pa. Commw. Ct. 1991) (finding New Jersey and Pennsylvania did not have substantially similar ethics laws)); Nardi v. Delaware River Port Auth., 490 A.2d 949, 952 n.10 (Pa. Commw. Ct. 1985) (finding New Jersey and Pennsylvania did not have substantially similar disability compensation laws but identical legislation was not required).

intent test.[75] In that Pennsylvania case, *Nardi v. Delaware River Port Authority*,[76] the court focused on legislative intent, explaining:

> [T]here is on the face of the statute itself an indication that the New Jersey legislature did not intend to grant an additional benefit to the employees of the Authority, but, on the contrary, intended to impose a limitation on the power already possessed by the Authority to provide benefits to its employees. . . . The Pennsylvania legislature has demonstrated that it does not concur with such a limitation by specifically providing that benefits are to be granted until an employee's disability has ceased.[77]

Even the New Jersey Supreme Court recognizes that Pennsylvania's approach to applying state law to a compact agency is different from New Jersey's approach. In *Ballinger v. Delaware River Port Authority*,[78] the New Jersey Supreme Court stated, "Courts applying Pennsylvania law do not necessarily agree with this Court's holding that '[t]he corollary of the proposition that neither state may individually impose its will on the bi-state agency is that the agency may be made subject to complementary or parallel state legislation.'"[79] Still, the court in *George Harms Construction* relied on *Ballinger* in reasoning that Pennsylvania applies state law to compact agencies in the same manner as New Jersey.[80]

While the court in the *George Harms Construction* case could have refined its description of the appropriate test for applying state law to a compact agency, it ultimately concluded that New Jersey's PLA law could not be imposed on the Commission. That conclusion is nothing special. There are dozens of cases in which New Jersey and Pennsylvania courts apply some test to determine whether to apply state law to a compact agency.

But what is most interesting about this *George Harms Construction* case is the court's brief discussion about whether the Commission impliedly consented to the application of one state's law. The court stated:

> Implied consent is found when either the bi-state entity voluntarily cooperates with the exercise of single-state jurisdiction or agrees to meet the requirements of that state's law. The Commission's October 31, 2016 meeting notes do not reflect the commissioners discussed the states' laws or the Commission's

75. *Intl Union of Operating Eng'rs, Local 542*, 311 F.3d at 280–81.
76. Nardi v. Delaware River Port Authority, 490 A.2d 949 (Pa. Commw. Ct. 1985).
77. *Id.* at 952.
78. Ballinger v. Delaware River Port Auth., 800 A.2d 97 (N.J. 2002).
79. *Id.* at 101.
80. Delaware River Joint Toll Bridge Comm'n v. George Harms Constr. Co., 293 A.3d 210, 233 (N.J. Super. Ct. App. Div. 2023).

> authority before they authorized [the Commission's executive director] to enter into the mandatory PLA.[81]

In effect, the court held that the Commission needed to expressly consider the states' laws before it could impliedly consent to the application of one of those laws. The court cited no authority for this approach, and the authors of this article are unaware of any precedent. While a discussion of the states' laws and a decision to use one over another may be reasonable where a compact involves two or a small handful of states, where the compact has ten or twenty or fifty state members, such a discussion and decision could be prohibitively complex.

The appellate court's decision will not be the final word on whether the Commission may impose a PLA requirement. The New Jersey Supreme Court granted certification in this case.[82] As of the end of 2023, the case has not been set for oral argument.

Back across the country, in *Zimmerly v. Columbia River Gorge Commission*,[83] the U.S. District Court for the Western District of Washington concluded that the states' public records disclosure laws do not apply to the bistate Gorge Commission. Principally, the court observed that the Columbia River Gorge Compact authorizes the states to create a "regional agency," not a state agency, and that the states' public records disclosure laws apply to "state agencies."[84] The court further wrote more generally:

> Unlike state agencies, "[r]egional agencies created by interstate compacts are generally recognized to be neither categorically state nor federal in nature; instead, they are hybrids." Indeed, in *Hess* [*v. Port Auth. Trans-Hudson*, 513 U.S. 30, 115 S. Ct. 394, 130 L. Ed. 2d 245 (1994)], the Supreme Court explained that "[t]he States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are the creations of three discrete sovereigns: two States and the Federal Government." 513 U.S. at 40.[85]

The court's reference to how a compact describes the compact agency follows a common approach,[86] as does the court's other reasoning. But what makes this holding interesting is that Congress's consent to the Columbia River Gorge Compact specifies:

81. *Id*. at 232–33.
82. Del. River Joint Toll Bridge Comm'n v. George Harms Constr. Co., No. 088194, 2023 N.J. LEXIS 816 (N.J. July 19, 2023) (order granting petition for certification).
83. Zimmerly v. Columbia River Gorge Comm'n, No. 3:22-cv-05209-BHS, 2023 U.S. Dist. LEXIS 49645 (W.D. Wash. Mar. 23, 2023).
84. *Id*. at *11–12.
85. *Id*. (some citations omitted).
86. *See* BUENGER ET AL., *supra* note 3, at 119–22; LITWAK, *supra* note 7, at 120–23.

> For the purposes of providing a uniform system of laws, which . . . are applicable to the Commission, the Commission shall adopt regulations relating to administrative procedure, the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Commission, advisory committees, and disclosure of information consistent with the more restrictive statutory provisions of either State.[87]

This federal *Zimmerly* case, discussed earlier, was one of two cases in 2023 in which a court expressly concluded that the states' transparency laws do not directly apply to the bistate Gorge Commission through the above provision of Congress's consent. Two weeks earlier, in a related case, *ZP#5 v. Columbia River Gorge Commission*,[88] a state trial court concluded that the Washington Open Public Meetings Act did not apply to the Gorge Commission. The court's final order and judgment was summary and did not express its conclusion, but the parties' briefing made similar points in the *ZP#5* and federal *Zimmerly* cases.[89] The published federal decision should bring closure to this question of how to apply the above provision of Congress's consent, which has bedeviled courts for more than 30 years. For example, in an earlier unreported decision, a Washington state superior court judge concluded that the Washington State Administrative Procedure Act (APA) did not directly apply to the Gorge Commission under that provision reasoning, in part that that provision of Congress's consent only requires the Commission to adopt administrative rules for its own internal operation and thus does not provide a cause of action under the Washington APA.[90]In a related state court case, entitled *Zimmerly v. Columbia River Gorge Commission*,[91] the Washington Court of Appeals concluded that Washington's Land Use Petition Act (LUPA), Chapter 36.70C RCW, does not apply to review of local government decisions related to the implementation of the National Scenic Area

87. 16 U.S.C. § 544c(b). Article I(a) of the Columbia River Gorge Compact incorporates Congress's consent statute by reference. Or. Rev. Stat. § 196.150; Wash. Rev. Code § 43.97.015.

88. ZP#5 v. Columbia River Gorge Comm'n, No. 20-2-02402-06 (Clark Cty. Super. Ct. Apr. 4, 2023) (ZP#5 was a newer corporate entity for the Zimmerly family).

89. One of the authors of this article was a lead attorney in both cases. The briefs are on file with the authors.

90. Transcript of Oral Opinion, Handy v. Columbia River Gorge Comm'n, No. 91-2-01139-4 at 3–4 (Wash. Sup. Ct., Thurston Cnty., July 29, 1991) (on file with author).

91. Zimmerly v. Columbia River Gorge Comm'n, 527 P.3d 84 (Wash. Ct. App. 2023).

Act. The court noted that the National Scenic Area Act assigns that review task to the Gorge Commission[92] and that LUPA:

> "shall be the exclusive means of judicial review of land use decisions," with exceptions such as "[l]and use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board." RCW 36.70C.030(1)(a)(ii). The Commission was created by a mixture of state and federal legislation: the Compact and the Act.

This case also directly applied Washington's statutory Appearance of Fairness doctrine to the Gorge Commission,[93] which would seem to be incorrect under the federal *Zimmerly* case and the *ZP#5* case but is actually correct because the Gorge Commission's rules direct members of the Gorge Commission to comply with Washington's Appearance of Fairness doctrine.[94]

E. Application of Federal Law

One consequence of a compact being federal law when it has received Congress's consent is that courts tend to apply federal law methods of judicial review, including deference regimes. This occurred in *Bryan v. Tahoe Regional Planning Agency*,[95] in which the court applied *Auer* deference to the Tahoe Regional Planning Agency (TRPA).[96] *Auer* applies to federal agencies interpreting their own regulations—i.e., federal regulations.[97] Although the Supreme Court has significantly limited *Auer* deference, such that it may be on its last breaths,[98] the citation to *Auer* in *Bryan* is remarkable as one of few cases to cite to the federal agency deference regime.[99] While TRPA is not a federal agency, its regulations are the product of an interstate compact that is itself federal law.[100] Several, but not an overwhelming number of cases have described compact agency

92. 16 U.S.C. § 544m(a)(2).
93. *Zimmerly*, 527 P.3d at 101–02.
94. Columbia River Gorge Comm'n Rule 350-16-017, https://www.gorgecommission.org/about-crgc/legal-authorities.
95. Bryan v. Tahoe Reg'l Planning Agency, No. 2:21-cv-2340 TLN AC PS, 2023 U.S. Dist. LEXIS 11897 (E.D. Cal. Jan. 24, 2023).
96. *Id*. at *21.
97. Auer v. Robbins, 519 U.S. 452 (1997) (finding that an agency's interpretation of its own regulation is "controlling unless it is 'plainly erroneous or inconsistent with the regulation.'").
98. *See* Kisor v. Wilkie, 139 S. Ct. 2400 (2019).
99. For another example in which a court applied *Auer* deference, see Friends of the Columbia Gorge v. Columbia River Gorge Comm'n, 213 P.3d 1164, 1189 (Or. 2009).
100. *See supra* notes 7–8 and accompanying text (discussing *Cuyler v. Adams*).

regulations as federal.[101] So the court may have cited *Auer* in a belief that TRPA's regulations are or are like federal regulations, or the court may have cited *Auer* reflexively, simply because it is the common rule for review of agency decisions in federal courts.

In *Delaware Riverkeeper Network v. Delaware River Basin Commission*,[102] the court considered the federal APA as a guide and not binding authority:

> The Compact does not, however, detail a standard of review for courts to apply, nor do any of the related regulations. Thus, although the Commission is not governed by the APA, courts have utilized a similar standard of review to the APA "arbitrary and capricious" standard or the "substantial evidence standard" in evaluating decisions by the Commission. The parties to this action similarly rely on APA caselaw in support of their summary judgment briefing. Accordingly, this Court will consider cases interpreting the APA as a guide, but not binding authority.[103]

Similarly, in *Harrosh v. Tahoe Regional Planning Agency*,[104] the court applied standards of review from the federal APA by analogy. The court noted:

> The parties both rely on federal decisions interpreting the Administrative Procedure Act to support their positions. The APA applies to federal agencies. The Tahoe Regional Planning Agency is not a federal agency, so the Compact "provides the applicable standard of review," not the APA. *Sierra Club v. Tahoe Reg'l Plan. Agency*, 840 F.3d 1106, 1114 (9th Cir. 2016).[105]

Nevertheless, the court observed that the standard of review in the TRPA compact was like the federal APA and applied federal APA case law to resolve the issue. The *Delaware Riverkeeper Network* and *Harrosh* decisions are consistent with the *ACLU Foundation* decision discussed earlier, in which the court concluded that the federal APA does not apply to WMATA.[106]

The application of the federal APA has long been a thorny question for courts, and this approach of using case law interpreting and applying the federal APA as an analogy is not unusual. For example, WMATA enacted a "Public Access to Records" policy (PARP) that requires WMATA to interpret its PARP consistent with the federal Freedom of Information Act (FOIA). In two cases in 2020, the U.S.

101. *See* Buenger et al., *supra* note 3, at 96; Litwak, *supra* note 7, at 161–63.
102. Del. Riverkeeper Network v. Del. River Basin Comm'n, No. 21-cv-01108 (RBK), 2023 U.S. Dist. LEXIS 56370 (D.N.J. Mar. 31, 2023).
103. *Id.* at *15 (internal citations omitted).
104. Harrosh v. Tahoe Reg'l Planning Agency, No. 2:21-cv-01969-KJM-JDP, 2023 U.S. Dist. LEXIS 60017 (E.D. Cal. Apr. 5, 2023).
105. *Id.* at 2-3.
106. *See supra* notes 35–37 and accompanying text.

District Court for the District of Columbia construed and applied the PARP, being careful not to directly apply FOIA, but rather to use FOIA as guidance for applying PARP.[107] In contrast, other cases have directly applied the standards of review in the federal APA where a compact did not specify any standards of review, apparently because the court simply needed some standards of review to apply.[108]

F. Interpretation of Interstate Compacts

Interpretation of compacts is more complex than interpreting statutes and contracts. Although the goal is the same—to find the intent of the legislatures as the parties to the compact—considering and applying precedent from other members' courts is a common practice generally. Indeed, it is critically important in compact cases because it helps ensure a uniform interpretation to an interstate compact, which might otherwise be elusive because federal and state courts in different states interpret and apply the same compact text.[109] Where there is an inconsistency, some courts attempt to resolve it. For example, several years ago in *Proctor v. Washington Metropolitan Area Transit Authority*,[110] the Maryland Supreme Court overruled a decision from the Appellate Court of Maryland that was contrary to decisions from the Virginia and District of Columbia courts. The Maryland Supreme Court expressly noted that the decisions from the other states' courts were "highly persuasive" and that, because the appellate court's decision was contrary to the other Transit Authority jurisdictions, the district court "quite reasonably in our view, had reservations whether [the appellate court decision] was decided correctly."[111] Alas, the cases in which courts do not consider uniformity make the best cases for discussion here.

In *State v. Amer*,[112] the New Jersey Supreme Court needed to interpret the Interstate Agreement on Detainers (IAD). Its method for

107. Brown v. Wash. Metro. Area Transit Auth., No. 19-cv-2853 (BAH), 2020 U.S. Dist. LEXIS 27076 (D.D.C. Feb. 18, 2020); Unsuck DC Metro v. Wash. Metro. Area Transit Auth., No. 1:19-cv-01242 (CJN), 2020 U.S. Dist. LEXIS 89519 (D.D.C. May 21, 2020); *see* Jeffrey B. Litwak & John Mayer, *Developments in Interstate Compact Law and Practice 2020*, 51 URB. LAW. 99, 107 (2021).

108. *E.g.*, Old Town Trolley Tours of Wash., Inc. v. Wash. Metro. Area Transit Comm'n, 129 F.3d 201, 203–05 (D.C. Cir. 1997).

109. *See* BUENGER ET AL., *supra* note 3, at 187–96; LITWAK, *supra* note 7, at 303–15.

110. Proctor v. Wash. Metro. Area Transit Auth., 990 A.2d 1048 (Md. 2010).

111. *Id.* at 1056.

112. State v. Amer, 297 A.3d 364 (N.J. 2023).

interpretation makes this case worth discussing here. Citing appropriate precedent, the court stated, "The IAD 'is a federal law subject to federal construction,' and the interpretation of its terms 'presents a question of federal law.'"[113] These are well-established principles and the court cited appropriate authority. But then the court concluded, "Accordingly, we look to decisions of the United States Supreme Court and federal courts for guidance in interpreting the IAD."[114] This conclusion that only federal cases are precedent is just plain wrong. If true, it would mean that no state court—not even the highest courts of the party states—could definitively interpret any interstate compact that has received Congress's consent and become federal law.[115] But this has never been a consequence of the "law of the Union" doctrine, and it makes especially little sense in the case of the IAD. The IAD has been adopted by forty-eight states,[116] Puerto Rico, the Virgin Islands, the District of Columbia, and the federal government. The federal government, as a signatory, is just one of fifty-two equal parties. Why should only one party's precedent matter, and did the New Jersey Supreme Court really intend to suggest that its own decisions do not definitively interpret the IAD in New Jersey?

Furthermore, one need only read a sampling of the cases discussed in this article to debunk the New Jersey Supreme Court's assertion that it should only consider federal court precedent. Indeed, in *Delaware River Joint Toll Bridge Commission v. George Harms Construction Co.*, a New Jersey appellate division case discussed above,[117] the New Jersey Supreme Court cited to New Jersey and Pennsylvania state court precedent throughout its interpretation of the compact at issue in that case (which was also federal law).

In *Williams v. Washington Metropolitan Area Transit Commission*,[118] the court rejected another court's application of the Transit Compact, while adopting local precedent. The decision noted, "The Court finds that this out-of-district opinion is inconsistent with the approach adopted by at least one judge in the District of Maryland

113. *Id.* at 373 (citations omitted).
114. *Id.*
115. For discussion of compacts as federal law (aka the "law of the Union" doctrine), see *supra* notes 7–8 and accompanying discussion.
116. As of 2021, Louisiana and Mississippi have not adopted the IAD.
117. *See supra* notes 10–14 & 70–82 and accompanying text.
118. Williams v. Wash. Metro. Area Transit Comm'n, No. GLS-21-2373, 2023 U.S. Dist. LEXIS 118732 (D. Md. July 10, 2023).

[the local district]."[119] The district court did not further explain why the "out-of-district" opinion was otherwise inapposite.

A notable unresolved split in the states' interpretation of a compact involves the Interstate Compact on the Placement of Children (ICPC), in which the states are roughly evenly split on whether the ICPC applies to non-custodial, out-of-state parents. In 2010, in *In re C.B.*, the California Court of Appeal noted the split and lamented, "We are publishing this opinion . . . to point out that the resulting lack of uniformity is dysfunctional, that courts and rule makers have not been able to fix it, and hence that it may call for a multistate legislative response."[120] The court of appeal concluded that the ICPC does not apply to out-of-state, non-custodial parents, which curiously some California courts still do not observe, and more curiously the court of appeal does not correct. For example, in *In re Z.B.*,[121] the California Court of Appeal noted without comment that the trial court had ordered an evaluation of the father's Iowa home pursuant to ICPC.[122] In 2023, in *In re Doe*,[123] the Idaho Supreme Court concluded that its reading of the plain language of the ICPC means that Idaho's enactment of the ICPC does not apply to non-custodial parents.

Harrosh v. Tahoe Regional Planning Agency[124] presented a different interesting question involving interpretation and application of the Tahoe Regional Planning Compact (Tahoe compact). The Tahoe compact requires a double majority vote to approve a development "project," comprising at least nine of the fourteen voting members of the TRPA Governing Board, including five from the state in which the project is located.[125] The Tahoe compact also specifies that if a project does not garner the necessary votes, "upon a motion of approval, an action of rejection shall be deemed to have been taken."[126] In this case, the TRPA Governing Board made its decision with only four members of the California delegation voting.

119. *Id.* at *12.
120. *In re* C.B., 116 Cal. Rptr. 3d 294, 296 (Ct. App. 2010).
121. *In re* Z.B., No. D080050, 2022 Cal. App. Unpub. LEXIS 4964 (Cal. Ct. App. Aug. 12, 2022).
122. *Id.* at *4. This is not a single incident. In 2021, in *K.R. v. T.R.*, No. B300269, B305038, 2021 Cal. App. Unpub. LEXIS 99, at *12 (Jan. 8, 2021), the California Court of Appeal noted without comment that a trial court ordered an ICPC home study on an out-of-state father.
123. *In re* Doe, 525 P.3d 715 (Idaho 2023).
124. Harrosh v. Tahoe Reg'l Planning Agency, No. 2:21-cv-1969-KJM-JDP, 2022 U.S. Dist. LEXIS 205603 (E.D. Cal. Nov. 10, 2022).
125. Tahoe Regional Planning Compact, art. III(g)(2).
126. *Id.*

Two of the seven seats on the California delegation were vacant, and one California board member recused herself.[127] Thus only four members of the California delegation were available to vote. Harrosh challenged the TRPA Governing Board's decision. The district court denied TRPA's motion to dismiss, concluding that Harrosh had stated a claim.[128]

TRPA does not appear to have raised the Rule of Necessity in its proceeding. The Rule of Necessity is a common doctrine that allows an otherwise recused member of a decision-making body to participate if necessary to reach a decision; the rule ensures that the parties have a forum. The Tahoe Compact does not expressly state that the Rule of Necessity may apply, and TRPA regulations and procedures do not mention the Rule of Necessity. If, indeed, the TRPA authorities are silent on the Rule of Necessity, the Tahoe Compact allows state law to apply to TRPA if concurred in by the other state.[129] The application of the Rule of Necessity in this case is a moot point because California has now filled the two vacant seats, so even if the court remands the case back to TRPA, at least five members of the California delegation could vote on the project.

In *Metropolitan Washington Airports Authority v. Pan*,[130] the U.S. District Court for the Eastern District of Virginia noted that the Metropolitan Washington Airports Authority compact was silent as to the authority of the states to enforce their labor laws, indicated that the court would not look beyond the four corners of the compact, and concluded that silence in the compact suggested that Virginia purposefully surrendered its unilateral regulatory authority over labor issues.[131] This holding seems to follow established precedent, except in one respect. The district court cited the Supreme Court's recent decision in *New York v. New Jersey*[132] as authority for the well-established precedent that an interstate compact that is federal law under the Compact Clause preempts conflicting state laws under the Supremacy Clause.[133] It is curious that, in *New York v. New Jersey*, the Waterfront Commission of New York Harbor

127. *Harrosh*, 2022 U.S. Dist. LEXIS 205603, at *7.
128. *Id.* at *32.
129. Tahoe Regional Planning Compact, art. X(b).
130. Metro. Wash. Airports Auth. v. Pan, No. 1:21-cv-01245-MSN-WEF, 2023 U.S. Dist. LEXIS 111072 (E.D. Va. June 27, 2023).
131. *Id*. at *8–9.
132. New York v. New Jersey, 143 S. Ct. 918 (2023). For additional discussion of the aftermath of this case, see *infra* text at notes 255–58.
133. *See supra* text at notes 7–8.

compact at issue was silent about withdrawal and the Supreme Court looked beyond the four corners of the compact in concluding that New Jersey had not surrendered its authority to unilaterally withdraw. Numerous Supreme Court and circuit court cases hold that a federal law compact supersedes conflicting state law; thus, the district court in *Pan* could have—and probably should have—chosen different precedent instead of citing a case that held the opposite of the court's own holding.[134]

Finally, courts continued to conclude that state governors' COVID-19 orders did not create new causes of action. The Maryland Court of Appeals concluded that statewide suspension of jury trials in response to the COVID-19 pandemic tolled the requirement in the Interstate Agreement on Detainers to bring a prisoner to trial within 180 days.[135] This decision is consistent with several other decisions concluding the same in 2020, 2021, and 2022.[136] In *Espinal v. Port Authority of New York & New Jersey*,[137] the court concluded that Governor Cuomo's executive order suspending the commencement, filing, or service of any legal action tolled the one-year time period to bring claims against the Port Authority of New York and New Jersey even though the governor of New Jersey did not do the same for claims brought in New Jersey courts. In another case, *ZP#5 v. Columbia River Gorge Commission*,[138] the trial court concluded that the bistate Gorge Commission did not violate the Washington governor's COVID-19 proclamation limiting public meetings under the Washington Open Public Meetings Act because that state law does not directly apply to the Gorge Commission. The difference in outcomes between the Port Authority and Gorge Commission cases results from the scope of the governors' orders. The New York executive order applied to all state courts,[139] whereas the Washington proclamation only applied to public agencies subject to the state's Open Public Meetings Act.[140]

134. Special thanks to Sheldon Laskin, now retired attorney for the Multistate Tax Commission, for pointing out this conflict. Email from Sheldon Laskin to author (Aug. 30, 2023, 14:30 PST) (on file with author).

135. Timberlake v. State, 289 A.3d 793 (Md. Ct. App. 2023).

136. *See* State v. Reeves, 268 A.3d 281, 289–90 (Me. 2022) (citing cases); Brown v. State, No. 1210172, 2022 Ala. LEXIS 51 (June 17, 2022); *In re* Davis, No. 10-21-00074-CR, 2022 Tex. App. LEXIS 3385 (May 18, 2022).

137. Espinal v. Port Auth. of New York & New Jersey, 184 N.Y.S.3d 98 (App. Div. 2023).

138. ZP#5 v. Columbia River Gorge Comm'n, No. 20-2-02402-06 (Clark Cnty. Sup. Ct. Mar. 24, 2023) (Final Order and Judgment).

139. *See Espinal*, 184 N.Y.S.3d at 104.

140. Proclamation No. 20-28 (Wash. Gov. Jay Inslee, Mar. 24, 2020).

G. Withdrawal from and Termination of Interstate Compacts

In 2023, the U.S. Supreme Court issued one of its most consequential decisions involving interstate compacts in decades, *New York v. New Jersey*.[141] In this case, New York objected to New Jersey unilaterally withdrawing from, and thus terminating, the Waterfront Commission of New York Harbor compact. Briefly, in 2018, then New Jersey Governor Christie signed a bill directing the governor to send notice of intent to withdraw from the Waterfront Compact after ninety days.[142] The Waterfront Commission sought to enjoin the New Jersey Governor from implementing that law (from sending notice of intent to withdraw), which the U.S. District Court granted,[143] but the Third Circuit reversed, holding that the Waterfront Commission's suit was effectively a suit against the state, prohibited by the Eleventh Amendment.[144] New York subsequently filed a bill of complaint in the U.S. Supreme Court, which the Court granted. In holding that New Jersey could withdraw from the compact, the Court gave two principal reasons. First, the court reasoned, "Under the default contract-law rule at the time of the Compact's 1953 formation, as well as today, a contract (like this Compact) that contemplates 'continuing performance for an indefinite time is to be interpreted as stipulating only for performance terminable at the will of either party.'"[145] Second, the Court stated that New Jersey did not waive its sovereignty in the compact's silence on withdrawal.[146]

This case did not address one of the lingering questions of compact law—when courts should use a statutory construction approach to interpreting compact and when courts should use the contract law approach. The Court did not address its prior holding that a compact is a federal statute to which courts cannot interpret to add terms.[147] Applying that principle here, the Court could have held that presuming a right to withdraw (New Jersey's position) or no right

141. New York v. New Jersey, 143 S. Ct. 918 (2023).

142. Act of Jan. 16, 2018, 2017 N.J. Laws ch. 324 (codified at N.J. Stat. Ann. § 32:23-230).

143. Waterfront Comm'n of New York Harbor v. Murphy, No. 18-560 (SDW) (LDW), 2019 U.S. Dist. LEXIS 89956 (D.N.J. May 29, 2019).

144. Waterfront Comm'n of New York Harbor v. Governor of New Jersey, 961 F.3d 234 (3d Cir. 2020).

145. *New York*, 143 S. Ct. at 924.

146. *Id.* at 925. For one analysis on this point, see Sheldon H. Laskin, *The Curious Incident of the Dog in the Nighttime: Interstate Compacts and Textual Silence*, 51 Rutgers L. Rec. 1 (2023).

147. Alabama v. North Carolina, 560 U.S. 330, 352 (2010) (Court would not imply the default contract law covenant of good faith and fair dealing).

to withdraw (New York's position) would have been the equivalent of adding a withdrawal provision to the compact. The consequence of this would have been to return the dispute to the states to resolve, just as the Court did in a prior case, *Texas v. New Mexico*.[148]

One point to watch for in future cases is the Court's distinction between withdrawal and the compact provision requiring the other state's concurrence before amending the compact, reasoning that withdrawal from the compact (and thus its termination) was not an amendment to the compact.[149] This is an important distinction, which hopefully the Court will adhere to over time. As explained above, courts nearly universally conclude that state law does not apply to a compact unless the compact provides so—in other words, one state cannot unilaterally alter its obligations to a compact.[150] For compacts that are silent on when a state may apply its own law to a compact, applying the Court's sovereignty reasoning would turn the presumption against the application of state law to a presumption that state law can always apply, thus eliminating the uniform, reciprocal, and contractual nature of compacts.

II. Administrative Developments

With more than 250 interstate compacts, it is difficult to capture the range of administrative activities undertaken by compact agencies and those that intersect with compact agencies. A comprehensive review of the developments of each compact entity exceeds the scope of this article. Instead, this section aims to highlight developments that offer learning opportunities for other compact agencies and individuals studying interstate compacts.

A. Compacts Continue Seeking Funding from the Infrastructure Investment and Jobs Act of 2021

The 2021 federal Infrastructure Investment and Jobs Act (IIJA)[151] benefitted compact agencies, as many are involved in developing and operating multistate infrastructure systems. Last year, this article noted that the Federal Railway Administration (FRA) was in

148. *See* Texas v. New Mexico, 462 U.S. 554 (1983).
149. *New York*, 143. S. Ct. at 924.
150. *See supra* notes 42–65 and accompanying text.
151. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

the process of developing an Interstate Rail Compact Grant Program.[152] In 2023, the FRA published its notice and procedures for acquiring funding under that program.[153] The new program will help fund the creation of new rail compacts, activities of existing compacts, and substantive rail services provided by compacts. The FRA closed its grant application in July 2023.[154] For one proposal, Amtrak collaborated with the Southern Rail Commission and the City of Shreveport in seeking federal funding for an analysis of a potential new route that would extend a segment of the popular Amtrak Crescent train. The extension would span from Meridian, Mississippi, through Louisiana to Texas, along Interstate 20, creating a connection between New York City, Atlanta, and Dallas/Fort Worth.[155]

B. Controversy in Water Compacts

Scrutiny of the Great Lakes-St. Lawrence River Basin Water Resources Compact intensified this year as the City of Waukesha, Wisconsin, began diverting water from Lake Michigan to its citizens.[156] Under the compact, water diversion requests from the Great Lakes require approval pursuant to the compact, which generally prohibits water diversions to outside the Great Lakes Basin, with certain limited exceptions.[157] As required by the compact, the Water Resources Compact Commission and the Wisconsin Department of Natural Resources approved the Waukesha diversion.[158] Those

152. Litwak & Fiat, *supra* note 57, at 18 (citing Infrastructure Investment and Jobs § 22910).

153. Notice of Funding Opportunity for Interstate Rail Compacts, 88 Fed. Reg. 12,345 (May 9, 2023); Notice of Funding Opportunity for Rail Research and Development Center of Excellence, 88 Fed. Reg. 56,789 (May 2, 2023).

154. *Id.*

155. *Amtrak and Southern Rail Commission to Seek Federal Study for New Long-Distance Service Across Mississippi and Louisiana to Texas*, Amtrak (Mar. 10, 2023), https://media.amtrak.com/2023/03/amtrak-and-southern-rail-commission-to-seek-federal-study-for-new-long-distance-service-across-mississippi-and-louisiana-to-texas.

156. Garrett Ellison, *Lake Michigan Water Now Flowing into Wisconsin Suburb Taps*, MLive (Oct. 11, 2023, 12:01 p.m.), https://www.mlive.com/public-interest/2023/10/lake-michigan-water-now-flowing-into-wisconsin-suburb-taps.html.

157. Great Lakes-St. Lawrence River Basin Water Resources Compact, art. 4, § 4.9.

158. *Id.* § 4.9.3 (Waukesha is outside the basin, but within a "straddling county"); Wisc. Dep't of Nat. Res., Findings of Fact Conclusions of Law and Diversion Approval (Jun. 29, 2021); Great Lakes-St. Lawrence River Basin Water Resources Council, *In re* Application by the City of Waukesha, Wisconsin for a Diversion of Great Lakes Water from Lake Michigan and an Exception to Allow the Diversion, No. 2016-1 (Jun. 21, 2016). Copies of the approvals are available online,

approvals were controversial, so the attention on the actual diversion of water beginning in 2023 was inevitable.

The Waukesha diversion was not the only controversial Great Lakes diversion in the news in 2023. In April, the City of Chicago and City of Joliet announced a 100-year agreement for Chicago to sell treated Lake Michigan water to Joliet.[159] The agreement stipulates that Lake Michigan water will be delivered to Joliet taps by 2030.[160] Observers call the agreement a "stark warning for [the] Great Lakes Compact"; while the compact terms prohibit the sale of Great Lakes water to outsiders, a carve-out for Chicago allows it to divert water resources without limitation, leading compact experts and the other compacting states to express concern with the scope of the exception.[161]

Colorado also found itself in a rocky situation this year regarding the South Platte River Compact. In September, Nebraska Governor Pete Ricketts announced Nebraska's plans to construct a $500 million canal and water reservoir system, alleging that Colorado's current water policy violates the terms of the compact.[162] The statement followed Colorado's passage of HB1220,[163] which requires a study detailing potential strategies for it to meet its requirements under another water compact between the two states, the Republican River Compact.[164] In carrying out that study, professors at Colorado State University's College of Agricultural Sciences acknowledged that the state is currently on a trajectory to reach noncompliance with the Republican River Compact by 2029 and discussed the consequences of not meeting the state's obligations under its water compacts.[165]

https://dnr.wisconsin.gov/sites/default/files/topic/WaterUse/Waukesha/DNRApproval20210629.pdf.

159. City of Chicago and City of Joliet, Water Supply Agreement (Apr. 13, 2023), https://joliet.legistar1.com/joliet/meetings/2023/4/1732_A_Pre-Council_Meeting_23-04-17_Meeting_Agenda.pdf

160. *Id.* § 8.4.A.

161. Editorial, *100-Year Joliet Water Diversion Deal Offers Stark Warning for Great Lakes Compact* (May 24, 2023, 5:51 a.m.), https://www.cleveland.com/opinion/2023/05/100-year-joliet-water-diversion-deal-offers-stark-warning-for-great-lakes-compact-editorial.html.

162. Fred Knapp, *After 100 Years, Nebraska Revives Plans to Build a Canal, Stirring Controversy with Colorado*, NEB. PUB. MEDIA (Oct. 2, 2023, 12:00 a.m.), https://nebraskapublicmedia.org/en/news/news-articles/after-100-years-nebraska-revives-plans-to-build-a-canal-stirring-controversy-with-colorado.

163. H.B. 23-1220, 74th Colo. Gen. Assemb., 1st Reg. Sess. (2023) (codified at COLO. REV. STAT. § 23-31-804).

164. *Id.* §§ 3–4.

165. *See* Stacy Nick, *If the Wells Run Dry: CSU Researchers Analyze What Could Happen If Colorado Fails to Meet Deadline,* THE AUDIT (Sept. 28, 2023),

John Tracy, the director of the Colorado Water Center, cautioned that, moving forward, participating states should approach water compacts with careful consideration. He emphasized that attempting to prescribe fixed water allocations for each state may not be a viable approach moving forward due to the current unpredictability in water resources. Tracy advised, "Such determinations cannot be made on a yearly or even decade-by-decade basis."[166]

C. Guam Joins the Western Regional Education Compact

Some exciting changes are afoot for citizens of Guam. The Western Regional Education Compact is administered by the Western Interstate Commission for Higher Education (WICHE), which opened its Professional Student Exchange Program (PSEP) to citizens of Guam, enabling Guamanian medical students to apply for funding to attend any of WICHE's sixty participating university programs.[167] In exchange for academic stipends, medical students are required to return to Guam post-graduation and practice in their chosen field of study in an aim to address "the obstacles of the high cost of tuition for professional healthcare degrees" and encourage "[Guam's] kids to come back home to Guam and serve [Guam's] communities' healthcare needs."[168] Guam is the second territory, following the Commonwealth of the Northern Mariana Islands (CMNI), to join ten Western states in receiving financial aid for healthcare professional programs.[169] Participation in the Western Regional Education Compact has offered students from the U.S. Pacific Territories and Freely Associated States hundreds of millions of dollars of funding for education, fostered regional collaboration, and encouraged resource sharing between the territories and the continental United States.[170] No case law addresses the authority of territories to join interstate compacts; however, each of the

https://source.colostate.edu/republican-river-compact-significance/#1695741959679-52ca02e3-e4da.

166. *Id.*

167. W. Interstate Comm'n for Higher Educ., *Guam Community College Opens WICHE PSEP Office*, https://www.wiche.edu/resources/guam-community-college-opens-wiche-psep-office (last visited Nov. 20, 2023).

168. *Id.*

169. W. Interstate Comm'n for Higher Educ., *Guam Community College Opens WICHE PSEP Institutions and Programs*, https://www.wiche.edu/tuition-savings/psep/institutions (last visited Nov. 20, 2023).

170. W. Interstate Comm'n for Higher Educ., *U.S. Pacific Territories and Freely Associated States*, https://www.wiche.edu/our-region/u-s-pacific-territories-and-freely-associated-states (last visited Nov. 20, 2023).

territories is undisputedly a member of one or more compacts. For example, Guam is a member of the Interstate Medical Licensure Compact and Nurse Licensure Compact.[171] By analogy, there has been little question that the District of Columbia may join interstate compacts.[172]

D. Gorge Commission Responds to U.S. Supreme Court's New York v. New Jersey *Decision*

In 2023, in response to the U.S. Supreme Court's *New York v. New Jersey* decision,[173] the Columbia River Gorge Commission voted to begin working with its compact states, Oregon and Washington, to amend the Columbia River Gorge Compact.[174] Like the Waterfront Commission Compact at issue in *New York v. New Jersey*, the Columbia River Gorge Compact does not contain a withdrawal provision.[175] While the Gorge Commission receives strong support from the states and no state has discussed withdrawal, the Gorge Commission is recommending that the states address withdrawal at this time to provide an orderly process for terminating the compact if necessary. The Gorge Commission staff presented recommendations for a withdrawal and termination clause, such as requiring the states to enact substantially similar terms for withdrawal and providing a two-year winding up period to allow time for legislation to address unexpected legal and administrative issues in terminating the compact.[176]

The Gorge Commission discussed other legal issues with the Columbia River Gorge Compact and the states' implementing laws that also could be addressed, including uniform standards of review for judicial review of Gorge Commission decisions and actions and

171. GUAM CODE ANN. tit. 10, §§ 122A01–122A24 (Interstate Medical Licensure Compact); GUAM CODE ANN. tit. 10, §§ 123A01–122A11 (Nurse Licensure Compact).

172. *E.g.*, Kerpen v. Metro. Wash. Airports Auth., 260 F. Supp. 3d 567, 576 (E.D. Va. 2017) (noting "little doubt that Congress delegated to the District [of Columbia] the power to enter into agreements with states generally").

173. *See supra* notes 141–50 and accompanying text.

174. Columbia River Gorge Comm'n, Meeting Minutes, at 12 (Sept. 12, 2023), https://www.gorgecommission.org/images/uploads/minutes/Approved_Meeting_Minutes_-_09.12.2023.pdf.

175. *See* Columbia River Gorge Compact, OR. REV. STAT. § 196.150; WASH. REV. CODE, § 43.97.015.

176. Memo from Jeff Litwak & Krystyna Wolniakowski to Columbia River Gorge Comm'n (Sept. 12, 2023), https://www.gorgecommission.org/images/uploads/meetings/Staff_Report_-_Legislative_Concepts_for_Amendments_to_the_Columbia_River_Gorge_Compact_and_State_Implementing_Laws.pdf.

an unexpected issue with the Gorge Commission's rulemaking in which the Oregon Secretary of State publishes the Gorge Commission's rules in the Oregon Administrative Code compilation but the Washington Code Reviser does not publish these rules because the Gorge Commission is not a state agency.[177] In one case, this discrepancy caused the Washington Court of Appeals to erroneously conclude that it could not rely on the Gorge Commission's rules.[178] In 2024, the Gorge Commission will work with the states' governor offices and other stakeholders to develop a consensus package of compact and legislative amendments with an eye toward the states' 2025 legislative sessions.[179]

E. States Pull Out of the Electronic Registration Information Center, but Is It Even a Compact?

Speaking of withdrawal, once a rapidly growing organization with thirty-four member states (including Washington, D.C.) in 2022, the Electronic Registration Information Center (ERIC) had eight states withdraw from its organization in 2023.[180] Established in 2012, ERIC was formed to tackle an enduring concern garnering bipartisan legislative attention—the maintenance of accurate voter rolls.

Commonly mistaken for an interstate compact,[181] ERIC is a multistate "nonpartisan membership organization" aimed at preventing and detecting fraudulent voting, as well as facilitating voter registration.[182] It should come as no surprise that many, including state legislators, confuse ERIC with an interstate compact because it is governed by an advisory board, it uses the term "member," it manages large amounts of confidential information, and it charges

177. *Id.*

178. Friends of the Columbia Gorge v. Columbia River Gorge Comm'n, 108 P.3d 134, 136 n.1 (Wash. 2005).

179. Columbia River Gorge Comm'n, *supra* note 174, at 10–11.

180. Wendy Underhill, *More Withdrawals from Voter Data Group ERIC Likely*, NCSL (June 20, 2023), https://www.ncsl.org/state-legislatures-news/details/more-withdrawals-from-voter-data-group-eric-likely.

181. *See, e.g.*, Sarah Rankin, *After Leaving Bipartisan Voting Information Group, Virginia Announces New Data-Sharing Agreements*, AP (Sept. 20, 2023), https://apnews.com/article/glenn-youngkin-virginia-eric-voting-rolls-150f3b774fa19e56ab1b1b9952dac831 (referring to ERIC as a "data-sharing interstate compact); Zach Montellaro, *Election Deniers Set Sights on Next Target*, Politico (Jan. 23, 2023, 4:30 a.m.), https://www.politico.com/news/2023/01/23/election-deniers-2022-00078859 (calling ERIC "an obscure interstate compact").

182. *What Is ERIC?*, ERIC, https://ericstates.org/about (last visited Nov. 20, 2023).

membership dues.[183] However, it lacks the necessary hallmarks of an interstate compact.[184] Principally, ERIC was created and is run by state election officials, not by statute; states are not required to pass legislation to join the organization; and current member states may vote on whether to admit a new jurisdiction. Jurisdictions that want to participate in ERIC need only apply to the Executive Director.[185]

III. Legislative Developments

A. Federal Legislation

Federal lawmakers introduced several bills that would have affected interstate compacts. While none of the bills progressed, some would have significantly altered the compact landscape. Despite their failure to advance, these bills highlight ongoing trends and the federal interest in reducing barriers to professional licensing and amending compacts.

In April 2023, Congressman Clay Higgins (R-LA) introduced the Racehorse Health and Safety Act of 2023 (RHSA).[186] RHSA was drafted in response to perceived shortcomings of the Horseracing Integrity and Safety Act (HISA),[187] included in the 2020 omnibus bill.[188] HISA's stated objective is to introduce consistency to the horse racing sector by establishing a comprehensive set of regulations to be administered and upheld by the Horseracing Integrity and Safety Authority, a private self-regulatory organization.[189] Industry organizations have voiced their concerns, with some critics contending that HISA has "turned horseracing upside down."[190] Following HISA's full implementation in May 2023, Churchill Downs

183. *Id.*; *see also* ERIC, Bylaws Art. II § 5, Art. IV § 5, https://ericstates.org/wp-content/uploads/documents/ERIC-Bylaw-MA-FINAL.pdf.

184. For a thorough discussion of the hallmarks of a compact, see BUENGER ET AL., *supra* note 3, at 73–74; LITWAK, *supra* note 7, at 25–35.

185. ERIC Bylaws, *supra* note 183.

186. H.R. 5693, 118th Cong. (2023).

187. Consolidated Appropriations Act 2021, H.R. 133, 116th Cong. § 1203 (2020).

188. Press Release, Clay Higgins, United States Congress, Higgins Will Introduce Legislation to Fight Against Federal Overreach and Oppressive Mandates to Improve Integrity of Horse Racing (Sept. 26, 2023).

189. *See Our Mission*, HISA, https://hisaus.org/about-us (last visited Nov. 20, 2023).

190. Clay Higgins, *Congress Must Overturn Ineffective, Oppressive Horseracing Safety and Integrity Act*, THE HILL (Oct. 27, 2023, 4:30 p.m.), https://thehill.com/opinion/congress-blog/4279827-congress-must-overturn-ineffective-oppressive-horseracing-safety-and-integrity-act.

Racetrack, renowned as the home of the Kentucky Derby, experienced a heartbreaking season with twelve horse fatalities in just six weeks. Surprisingly, despite the HISA Authority acknowledging that the racetrack was in "full compliance" with its safety rules, Churchill Downs was forced to close temporarily, and races were relocated to another track.[191] This incident was not an isolated one; under the HISA Authority's oversight, additional racing fatalities occurred at Triple Crown racetracks and other prominent facilities in Maryland and New York. Even with a substantial budget of $66.5 million allocated this year, the HISA Authority has failed to identify the root causes of these problems.[192]

In response, industry leaders and lawmakers are seeking a regulatory solution for the challenges facing the horse racing industry. Congressman Higgins argued that an interstate compact to establish uniform nationwide regulations for the scientific management of medication and safety standards at horse racing tracks is the best approach.[193] He recently sung RHSA's praises, noting its focus on the interests of individual horsemen and its strong stance against federal and bureaucratic interference.[194]

Illustrating the bipartisan nature of this issue, the State of New York seems to share Congressman Higgins's concern. New York state legislators introduced bills in the Assembly and Senate that would join the existing Interstate Compact on Anti-Doping and Drug Testing Standards.[195] To date, only two states are members of the Anti-Doping Compact.[196] The compact creates a compact commission with rulemaking authority and focuses on regulating the use of drugs and medications in standardbred horse racing.[197] As of the end of 2023, neither bill has progressed.

It is worth noting that there is another active interstate compact devoted to horse racing regulation. The Interstate Compact on Licensure of Participants in Live Racing with Pari-Mutuel Wagering,

191. *IT'S WAR: HORSEMEN v HISA*, Horse Racing Insider (Sept. 26, 2023, 1:23 p.m.), https://www.horseraceinsider.com/racing-wants-to-police-itself-again.
192. *Id.*
193. Higgins, *supra* note 188.
194. *Id.*
195. A.B. A7586, 2023–2024 Reg. Sess. (N.Y. 2023); S.B. S7556, 2023–2024 Reg. Sess. (N.Y. 2023).
196. Maryland adopted the Interstate Anti-Doping and Drug Testing Standards Compact, 2018 Md. Laws ch. 521. Delaware adopted the compact at Del. Code tit. 3, sec. 10181. Pennsylvania introduced a bill in 2018 to join the compact, H.B. 2659, 2018 Sess. (Pa. 2018), but it did not progress.
197. A.B. A7586, *supra* note 195, § 1117.a. (Art. V.A. of the compact).

also called the Racing License Compact, has been adopted in fifteen states and recognized in eleven others.[198] The Racing License Compact aims to establish a standardized framework for regulating and overseeing racing licenses and operations across multiple states. The compact was established in 2000 to promote consistency and cooperation among participating states in managing racing events and licensing participants, facilitating a more uniform and efficient approach for the benefit of participants and the racing industry in those states.[199] No side-by-side comparison examines whether Congressman Higgins's bill conflicts with the Racing License Compact.

Congress continues to introduce bills that would enable health care providers to practice telehealth and in other states. In 2023, a bill entitled the "Compacts, Access, and Responsible Expansion for Mental Health Professionals Act" or the "C.A.R.E. for Mental Health Professionals Act" was introduced in the House and Senate.[200] The Act requires the Secretary of Health and Human Services to establish a grant program to create a

> Mental Health Licensure Portability Program to award grants to eligible entities for projects to—
>
> (1) incentivize counselors to practice in States that have entered into interstate compacts for the purpose of expanding the workforce of credentialed mental health professionals; and
>
> (2) develop, operate, or maintain interstate compact commissions authorized to effectuate the provisions of interstate compacts entered into by such States.[201]

This is the second year in row that this bill was introduced.[202] In 2022, the bill did not progress after introduction.

Another bill, the Temporary Reciprocity to Ensure Access to Treatment Act or the TREAT Act, was reintroduced to temporarily authorize reciprocity of licenses for health care providers for

198. Arizona, California, Delaware, Florida, Kentucky, Louisiana, Maryland, Nebraska, New Jersey, New York, Ohio, Oklahoma, Virginia, Washington, and West Virginia have adopted the compact, while Arkansas, Illinois, Iowa, Michigan, Minnesota, New Mexico, Ontario, Pennsylvania, Texas, and Wyoming have officially recognized it. *Participating Commissions*, NATIONAL RACING COMPACT, http://www.racinglicense.com/accepted.html.

199. National Racing Compact, *Model Legislation*, http://www.racinglicense.com/modellegislation.html#:~:text=This%20interstate%20compact%20is%20proposed,of%20participants%20in%20those%20states (last visited Nov. 20, 2023).

200. H.R. 2438, 118th Cong. (2023); S. 1075, 118th Cong. (2023).

201. *Id.* § 2(a).

202. *See* S. 2058, 117th Cong. (2022).

telehealth and interstate treatment.[203] The bill expressly recognizes health care professionals licensed through an interstate compact and specifies that those professionals are subject to the requirement of the compact, not the bill.[204] The bill was previously introduced in 2021,[205] and similarly did not progress.

As licensure compacts grow in number,[206] there is growing concern with challenges related to background checks. Under current law, state agencies responsible for issuing licenses are unable to disclose specific criminal history information provided by the FBI to inquiring compact commissions. Instead, agencies may only provide evidence that a background check was conducted, like when an employer requests a reference for a job applicant and receives a mere confirmation of the check rather than a report of the individual's personal details.[207]

In response to this background check issue, in 2023, a bipartisan group of representatives introduced the States Handling Access to Reciprocity for Employment Act (SHARE Act).[208] Presently under committee consideration, the SHARE Act aims to facilitate professional mobility by enabling states to exchange information regarding background check completion. This simplifies the process for professionals seeking to work across state borders and deliver healthcare to underserved regions, particularly those with limited access to doctors.[209] Additionally, it supports the utilization of innovative healthcare technologies like telehealth, benefiting all states within the compact. The SHARE Act is supported by several industry groups and compact organizations, including the Interstate Medical Licensure Compact Commission (IMLCC), the American Occupational Therapy Association, American Physical Therapy Association, and the Council of State Governments.[210]

203. H.R. 5541, 118th Cong. (2023).
204. *Id.* § 3(h).
205. H.R. 708, 117th Cong. (2021); S. 168, 117th Cong. (2021).
206. 57 licensure compact bills were enacted in 2023, and 290 have been enacted since 2016. 3 Jessica Thomas & Kaitlyn Bison, *Bipartisan Support Drives Interstate Compact Growth, Success*, Cap. Ideas 8 (2023), https://issuu.com/csg.publications/docs/ci_issue_3_2023_10-3.
207. 34 U.S.C. § 41101.
208. H.R. 1380, 118th Cong. (2023) (introduced Mar. 1, 2023).
209. *Id.*
210. Letter of Support from the American Occupational Therapy Ass'n, American Physical Therapy Ass'n, and The Council of State Governments (2023), https://www.imlcc.org/wp-content/uploads/2023/02/SHARE-Act-Sign-On-Letter-of-Support.pdf.

Finally, Congressman Scott Perry (R-PA) introduced the "Denying Regulatory Interference with Landowners and Legislatures Now Act" or the "DRILL Now Act" to prohibit three interstate compact commissions from "finaliz[ing], implement[ing], or enforc[ing] any regulation relating to hydraulic fracturing that is issued pursuant to any authority other than that of the state in which the regulation is to be implemented or enforced."[211] This bill would have the effect of altering Congress's prior consent to these compacts, an authority that two Circuit Courts of Appeals have questioned whether Congress possesses.[212] Additionally, if the bill passes, the change might also require the states to amend their compacts before it becomes effective.[213]

B. State Legislation

This section a summarizes significant 2023 state bills and enacted laws relating to interstate compacts.

1. NEW INTERSTATE COMPACTS

The enactment of professional licensure compacts continued in 2023, with fifty seven pieces of legislation enacting various licensure compacts passed, totaling 290 enactments since 2016.[214] Interstate licensure compacts are particularly beneficial for military families facing frequent relocations, leading the U.S. Department of Defense (DoD) to take an active role in supporting these initiatives to enhance the portability of professional licenses for military spouses.[215]

The Interstate Teacher Mobility Compact (ITMC) officially launched this year, marking a significant milestone in facilitating teacher mobility. The compact provides an efficient pathway for educators to become licensed when they relocate to a different state and want to continue teaching. In June, Oregon became the tenth

211. H.R. 1217, § 2, 118th Cong. (2023).

212. Tobin v. United States, 306 F.2d 270, 274 (D.C. Cir. 1962); Mineo v. Port Auth. of New York & New Jersey, 779 F.2d 939, 948 (3d Cir. 1985). For additional discussion on Congress's authority to alter its prior consent to a compact, see LITWAK, *supra* note 7, at 55–59.

213. There is no authority for this, but at least once before, Congress addressed this legal question. In 1950, Congress amended its consent to the Atlantic States Marine Fisheries Compact to remove its initial fifteen-year time limitation for the life of the compact and approve the addition of new states and concurrently specified that the states did not need to submit their amendments to the compact for further consent. Act of Aug. 10, 1950, Pub. L. No. 81-721, § 2, 64 Stat. 467.

214. Thomas & Bison, *supra* note 206.

215. *Id.*

state, alongside Colorado, Utah, Kentucky, Oklahoma, Kansas, Florida, Alabama, Nebraska, and Nevada, to enact the compact legislation.[216] With ten states signed on, the compact is now in effect, meaning that after completing a state-approved licensing program, a teacher holding a bachelor's degree and possessing a valid teaching license is eligible to obtain an equivalent license from another state participating in the compact.[217] It is worth noting that the ITMC was adopted by the threshold number of states in just one legislative session, highlighting the urgent demand for accelerated teacher licensing.

Model legislation for the Interstate Massage Compact (IMpact)[218] was finalized in January 2023. Facilitated by The Council of State Governments (CSG), the compact uses a mutual recognition model to simplify and streamline massage-therapist licensing across member states. In June 2023, Nevada became the first state to enact IMpact.[219] Funded by a grant from the DoD and administered by CSG, the compact will become active after enactment by seven states.[220]

Model legislation for the Social Work Licensure Compact, another licensure compact that CSG facilitated, also was finalized in January 2023. In July 2023, Missouri became the first state to enact the compact.[221] Also funded by a grant from the DoD and administered by CSG, this compact will similarly become active after enactment by seven states.[222]

The American Association for Respiratory Care (AARC) received a DoD grant financing the development of a new interstate compact for respiratory therapists.[223] Administered through CSG, the

216. *See* Interstate Teacher Mobility Compact, *Compact Map*, https://teachercompact.org/. The website provides a link to each state's enacting legislation.

217. Interstate Teacher Mobility Compact, art. XI.A. A copy of the model legislation is available online, https://teachercompact.org/wp-content/uploads/sites/28/2023/02/ITMC-Model-Legislation-Updated.pdf.

218. Interstate Massage Compact, *Interstate Massage Compact Finalized* (2024), https://massagecompact.org/2023/03/30/impact-finalized.

219. 2023 Nev. Stat. ch. 385, § 7 (2023).

220. Interstate Massage Compact, art. 12.A. A copy of the model legislation is available online at https://massagecompact.org/wp-content/uploads/sites/32/2023/02/Spr23_Interstate-Massage-Compact-Model-Legislation.pdf.

221. S.B. 157, 102d Gen. Assem. (Mo. 2023).

222. Social Work Licensure Compact, § 14.A.1. A copy of the model legislation is available online, https://swcompact.org/wp-content/uploads/sites/30/2023/04/Social-Work-Licensure-Compact-Final_May-2023.pdf.

223. *AARC Receives Grant to Support Development of an Interstate Compact*, Am. Ass'n for Respiratory Care (Sept. 7, 2023), https://www.aarc.org/an23-aarc-receives-grant-to-support-development-of-an-interstate-compact.

grant will assist AARC in developing model legislation for multistate licensure that simplifies the process for respiratory therapists to work across state lines and jurisdictions.[224] When developed, the respiratory therapist licensing compact will join the growing ranks of licensure compacts designed to streamline professional licensing processes, reduce administrative burdens, and enhance workforce mobility.

Related to healthcare, but not professional licensing, in 2023 New Hampshire introduced legislation outlining an interstate compact for universal healthcare.[225] The bill is timely, as healthcare availability and affordability are hot issues in the current political climate. Legislators in almost a dozen states have introduced bills making health coverage available to all residents;[226] however, New Hampshire's bill is the first and only to suggest doing so through an interstate compact. The Interstate Compact for Universal Healthcare would provide residents of New Hampshire and participating states with comprehensive healthcare coverage focused on cost savings and quality improvement. The compact would be governed by a board, with the number of members determined by the number of states in the compact.[227] Board members would be elected either by the state's voters or appointed by the state's legislature.

In what feels like déjà vu, three states, Arizona, Hawaii, and Rhode Island, introduced legislation to improve economic development and address corporate incentives.[228] The proposed legislation suggests the creation of an interstate agreement aimed at setting standards for economic development. Under this agreement, member states would be restricted from offering or granting company-specific tax incentives or grants to entice companies to move to their respective states.

Arizona's bill is entitled "Compact to establish best practices in economic development," while Hawaii's is entitled "Interstate Compact to Phase Out Corporate Welfare," and Rhode Island's bill calls for an "agreement" rather than an interstate compact.[229] Regrettably,

224. *Id.*
225. H.B. 353, 2023 Reg. Sess. (N.H. 2023).
226. Rich Glass, *Universal Coverage Debate Heating Up in Several States*, MERCER, https://www.mercer.com/en-us/insights/us-health-news/universal-coverage-debate-heating-up-in-several-states (last visited Nov. 20, 2023).
227. H.B. 353.
228. *See* S.B. 1481, 56th Leg., 1st Reg. Sess. (Ariz. 2023); S.B. 13, 32d Leg. (Haw. 2023); H5319, 2023 Sess. (R.I. 2023).
229. S.B. 1481, 56th Leg., 1st Reg. Sess. (Ariz. 2023); S.B. 13, 32d Leg. (Haw. 2023); H5319, 2023 Sess. (R.I. 2023).

the three states seem to be repeating historical mistakes, as this identical legislation has surfaced repeatedly across various states, each adopting disparate titles and inconsistent substantive provisions. As this article noted in 2021, interstate compacts cannot be formed in this manner.[230] Unlike uniform laws, the contractual nature of interstate compacts requires uniformity among the substantive terms of the enabling legislation.[231] Despite the notable disparities in the proposed legislation, legislators in more than a dozen states have introduced a version of this compact over the years.[232]

Finally, amidst a clash between the western and eastern regions of Oregon, state Senator Bill Linthicum introduced a joint memorial soliciting the State of Idaho to enter into an interstate compact in order to modify its border to "mak[e] Eastern Oregon part of Idaho."[233] In 2023, Wallowa County became the twelfth Oregon county to approve a local ballot measure allowing Eastern Oregon to secede from the state and join Idaho.[234] This "Greater Idaho" movement probably requires congressional approval, an issue that the proponents of the movement have not widely discussed. The authors of this article are unaware of any boundary compacts that did not require congressional approval.

2. STATES JOINING COMPACTS

New York legislators introduced a bill to join the Interstate Insurance Product Regulation. While a state joining an existing compact is usually unremarkable, this particular action is notable, as New York is one of the last states to adopt the compact and has a significant amount of the premium volume in the country; participation in the compact has been widespread amongst states for the past decade and a half, and California, Florida, and South Dakota are currently the only other non-member states.[235] Notably, South Carolina was a

230. Jeffrey B. Litwak & Elie Steinberg, *Developments in Interstate Compact Law and Practice 2021*, 51 Urb. Law. 283, 314 (2022).

231. *See* Buenger et al., *supra* note 3, at 27; Litwak, *supra* note 7, at 11 (comparing compacts and uniform laws).

232. Litwak & Steinberg, *supra* note 230 at 314.

233. S.J.M. 2, 82d Legis. Assemb., 2023 Reg. Sess. (Or. 2023).

234. Matt Vasilogambros, *An Eastern Oregon Effort to Join Idaho Reflects the Growing American Divide,* Wash. St. Standard (Sept. 6, 2023, 10:30 a.m.), https://washingtonstatestandard.com/2023/09/06/an-eastern-oregon-effort-to-join-idaho-reflects-the-growing-american-divide.

235. Insurance Compact, *Membership*, https://www.insurancecompact.org/regulator-resources/membership (last visited Nov. 20, 2023).

member of the compact but withdrew in 2022 after a conflict arose between the compact terms and a newly enacted state statute.[236]

The National Popular Vote Interstate Compact (NPVIC) elicited substantial interest in 2023. It was introduced this year in ten states,[237] which are highly coveted swing states.[238] Over the summer, Minnesota adopted the compact, bringing its total membership to seventeen states plus Washington, D.C.[239] The compact becomes effective when enacted by states possessing 270 electoral votes.[240] Minnesota's enactment brings the compact to a total electoral vote count of 205, just 65 electoral votes short of the threshold needed to activate the compact.

Some states, on the other hand, are not particularly enthusiastic about the prospect of abandoning the Electoral College. Idaho expressed its vehement opposition to the compact, passing a resolution in March 2023 that its legislators remain "steadfastly against" the compact and stand by the Electoral College's "balance between rural and urban interests."[241] Similarly, the South Carolina General Assembly introduced a concurrent resolution calling upon the state's governor and attorney general to "litigate aggressively against any effort to repeal or nullify [the Electoral College]."[242] Following introduction of the National Popular Vote bill in Maine,[243] in April, 2023, some legislators immediately introduced a bill in response prohibiting the state from adopting the compact, but the latter bill was ultimately voted down in the Senate.[244]

3. MODIFICATIONS TO EXISTING COMPACTS

The Interstate Compact on Educational Opportunity for Military Children facilitates the enrollment of students of military families following military relocation. All fifty states and the District of Columbia are members of the compact. Last year, this article

236. *See* Litwak & Fiat, *supra* note 57, at 27.
237. *See* National Popular Vote, https://www.nationalpopularvote.com. A "State status" ribbon at the top of the National Popular Vote Compact website provides details about each state's legislative history regarding the National Popular Vote movement.
238. *Id.*
239. 2023 Minn. Laws ch. 62.
240. Agreement Among the States to Elect the President by National Popular Vote, art. IV-1.
241. H. Con. Res. 2, 67th Leg., 1st Reg. Sess. (Idaho 2023).
242. H.B. 3183, 124th Gen. Assemb., Reg. Sess. (S.C. 2023).
243. L.D. 1578, 131st Leg., 1st Spec. Sess. (Maine 2023).
244. H.B. 1502, 131st Leg., 1st Spec. Sess. (Maine 2023).

discussed a scrivener's error in the compact that seems to exclude the application of the compact to students of active members of the National Guard and Reserve.[245] A series of legal opinions from the compact commission's (MIC3) counsel recommended that the states amend their statutory enactments of the compact and prescribed a plan for MIC3 to work with the states in three tiers based on the number of National Guard and Reserve children in that state.[246] Consistent with that plan, states began enacting their amendments this year. Arkansas,[247] Arizona,[248] Connecticut,[249] Florida,[250] and Washington[251] enacted the proposed amendments in 2023, while Kentucky,[252] Massachusetts,[253] and New Mexico[254] introduced but did not enact such amendments.

4. WITHDRAWAL FROM COMPACTS

As a result of the Supreme Court's decision in *New York v. New Jersey*,[255] New Jersey withdrew from the bistate Waterfront Commission Compact pursuant to its 2017 legislation authorizing the withdrawal and charging New Jersey State Police with enforcing law on the New Jersey side of the New York-New Jersey waterfront.[256] New York responded by amending its enactment of the Waterfront Commission Compact to create a New York Waterfront Commission.[257] New Jersey's withdrawal legislation did not address many administrative, legal, and employment issues, leaving the states to address them administratively, through individual legislation, or through non-compact intergovernmental agreements. For example, New York enacted legislation amending its retirement and social security laws to expand coverage to former Waterfront Commission employees under the state's twenty-year retirement plan for police officers.[258]

245. Litwak & Fiat, *supra* note 57, at 20.
246. *Id.*
247. 2023 Ark. Acts no. 638.
248. 2021 Ariz. Sess. Laws ch. 151.
249. 2023 Conn. Acts 160, § 34 (Reg. Sess.).
250. 2023 Fla. Laws ch. 165.
251. 2023 Wash. Sess. Laws ch. 470, § 3022.
252. H.B. 63, 23d Leg., Reg. Sess. (Ky. 2023).
253. H. 3504, 193rd Gen. Ct. (Mass. 2023).
254. S.B. 212, 55th Leg. Reg. Sess. (N.M. 2023).
255. *See supra* notes 141–50 and accompanying text.
256. 2017 N.J. Laws ch. 324 (codified at N.J. Stat. Ann. § 32:23-230).
257. 2023 N.Y. Laws ch. 58, pt. EEE.
258. 2023 N.Y. Laws ch. 187.

While there are many lessons to learn from this withdrawal, two stand out. First, New Jersey's unilateral approach to withdrawal left unaddressed a significant number of administrative, legal, and personnel issues. States contemplating a withdrawal or termination must work with the other member states and the interstate compact commission to address the necessary points in a withdrawal or termination. Second, New Jersey's ninety-day winding up period was woefully short for the New Jersey State Police and the State of New York to each assume their respective responsibilities from the bistate commission. The winding up period for a bistate agreement and entity should include time for new issues arising during withdrawal or compact termination, which may require additional legislative authority, direction, or prohibitions, and possibly state agencies to prepare to take over the tasks of the former interstate commission. More than ever, the Supreme Court's decision in *New York v. New Jersey* and the states' experience in winding up the bistate Waterfront Commission illustrate that states should address withdrawal from and termination of the compact in the compact text itself at the time of enactment or as amendments to existing compacts.

Vermont repealed its Natural Gas and Oil Resources Board and Statutory Framework, a statute that, among other things, authorized its governor to enter into the Compact to Conserve Oil and Gas.[259] The compact is a major one, with thirty-eight member states and eight Canadian provinces as affiliates.[260] Vermont's entry into the Oil and Gas Compact has always been a head-scratcher, as the state has never produced oil or gas.[261] It appears that, for some unknown reason, the Vermont legislature enacted an Oil and Gas Act and then never implemented it. In fact, the state made history as the first state to enact legislation banning hydraulic fracturing, often called "fracking."[262] It seems that the authority was revoked as part of the state's

259. 2023 Vt. Acts & Resolves no. 53. For a thoughtful analysis of this repeal, see Roman V. Sidortsov, *Vermont*, 19 Tex. WESLEYAN L. REV. 613 (2013).

260. Interstate Oil & Gas Commission, *Member States*, https://iogcc.ok.gov/member-states (last visited Nov. 20, 2023).

261. Sidortsov, *supra* note 259 at 614–15.

262. 2012 Vt. Acts & Resolves no. 152; Kate Sinding, *Vermont Becomes First State to Ban Fracking*, NRDC (May 18, 2012), https://www.nrdc.org/bio/kate-sinding/vermont-becomes-first-state-ban-fracking.

Sunset Advisory Commission's 2023 recommendations to eliminate any board or commission that "it deems no longer necessary."[263]

5. OTHER STATE LEGISLATION INVOLVING INTERSTATE COMPACTS

States periodically enact bills to create a compact on politically charged subjects. Such bills are more akin to political statements rather than serious attempts to create interstate compacts. In 2023, Texas enacted legislation authorizing its governor to enter into interstate compacts to promote border security.[264] This legislation calls for a multistate compact requiring the sharing of information about illegal activities, constructing barriers and surveillance systems, and pooling law enforcement resources to enhance border protection.[265] Surprisingly, the legislation explicitly asserts that it does not need congressional approval. This assertion seems dubious, as the "compact" would pertain to immigration, which could encroach on the powers of the federal government involved in immigration.[266]

In April 2023, Washington enacted a new law that authorizes its governor to enter into interstate compacts to facilitate cross-jurisdictional cannabis business and delivery.[267] The bill follows in the footsteps of Oregon and California, which adopted similar legislation in 2019 and 2022, respectively.[268] These bills generally follow a 2020 recommendation from the Alliance of Sensible Markets, which this article discussed in 2020.[269] Because marijuana is not recognized as legal by the federal government, the effective date of Washington's law is contingent upon federal action legalizing the transport of cannabis across state lines. The law specifies that that action could come from (a) an amendment to federal law allowing for the interstate transfer of cannabis between authorized cannabis-related businesses or (b) the U.S. Department of Justice issuing an opinion

263. Vt. Stat. tit. 3 § 268 (2023); Tim Devlin, Vermont Legislature, Draft Summary of H 215 (Mar. 3, 2023), https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Appropriations/Bills/H.125/Drafts,%20Amendments,%20and%20Legal%20Documents/H.125~Tim%20Devlin~Summary%20-%20Draft%202.1~3-22-2023.pdf.

264. S.B. 1403, 88th Reg. Sess. (Tex. 2023).

265. *Id.*

266. *See supra* note 5 and accompanying text.

267. 2023 Wash. Sess. Laws. ch. 264.

268. 2023 Or. Laws ch 464; 2022 Cal. Stat. ch. 396.

269. Jeffrey B. Litwak & John Mayer, *Developments in Interstate Compact Law and Practice 2020*, 51 Urb. Law. 99, 128 (2021).

or memorandum allowing or tolerating the interstate transfer of cannabis between authorized cannabis-related businesses.[270]

Indiana has passed a law making interstate compacts not implemented within two years automatically obsolete.[271] This action follows the 2022 enactment of HB 1075, which mandates periodic legislative assessments to determine the state's continued membership in various compacts.[272] These bills raise questions about Indiana's objectives and possible consequences of its participation in interstate compacts moving forward, as other states may want more assurance that Indiana is committed to the compacts that it enacts.

Legislators in Massachusetts introduced a bill authorizing the state's Secretary of Transportation to negotiate interstate compacts with Connecticut, New York, and Vermont to establish permanent commuter rail services.[273] The new rail lines would run between various cities, including New Haven, Brattleboro, Worcester, Albany, and several stops in between. The compacts aim to promote commuter rail connections in western Massachusetts, emphasizing cooperation among the participating states to ensure the success of these programs. A similar compact already exists, the 1968 Passenger Services of New York, New Haven, and Hartford Railroad Compact between Connecticut and New York.[274] The legislation and public information about Massachusetts's 2023 bill do not discuss this existing compact or why it cannot be a framework for including Massachusetts and Vermont cities. All four states have released an individual long-term transportation plan, with each proposal relying on "program coordination" and "complimentary" goals and elements.[275] Rather than requiring each state to independently develop a program fitting within the contours of the others, adopting an interstate compact would offer planning efficiency, increased transparency, and sound implementation.

270. 2023 Wash. Sess. Laws. ch 264, § 2.
271. 2023 Ind. Acts no. 138.
272. 2022 Ind. Acts no. 114 § 1.
273. S.B. 2266, 193d Reg. Sess. (Mass. 2023).
274. 1968 Conn. Acts no. 52; N.Y. Unconsol. Laws ch 110-B. The compact has congressional consent. Connecticut-New York Railroad Passenger Transportation Compact, Pub. L. No. 91-159, 83 Stat. 441 (1969)
275. AECOM, *Connecticut State Rail Plan (2022–2026)*, CONN. DEP'T OF TRANSP. (Sept. 2022), https://portal.ct.gov/-/media/DOT/documents/dplansprojectsstudies/plans/State_Rail_Plan/CTStateRailPlan2022-2026.pdf.

IV. One (almost) Final Thing

2023 was a big year for Metrobus, the multistate bus service operated by WMATA. In February 2023, the nation's sixth-largest bus service marked its fiftieth anniversary.[276] In honor of this milestone, Metrobus unveiled its "Better Bus Initiative," a comprehensive plan to revamp the bus network and enhance the Metrobus system for the long term.[277] This initiative encompasses the introduction of new bus facilities, the adoption of zero-emission buses, the expansion of bus lanes, and the implementation of signal priority measures. WMATA has focused its priorities on sustainability and modernization and has dedicated itself to fun and community involvement. In honor of Earth Day, Metrobus unveiled three buses wrapped in original artwork created by local students from kindergarten through sixth grade.[278] The initiative also invited customers to participate in a survey allowing the public to submit and vote on new route names for the modernized bus system.[279] As of the end of 2023, WMATA had not released the suggested route names. Hopefully, WMATA's experience will not mirror England's National Oceanographic Centre's attempt to crowdsource the naming of its new polar research vessel, for which there was overwhelming support for the name "Boaty McBoatface."[280]

V. And One More

The year 2023 marks the ninetieth anniversary of The Council of State Governments (CSG). CSG has been instrumental in developing and advising interstate compacts for nearly its entire life.[281]

276. WMATA, *Metrobus Celebrates 50 Years of Serving Customers in the National Capital Region* (Feb. 23, 2023), https://www.wmata.com/about/news/Metrobus-50th-annivesary.cfm.

277. *Id.*

278. WMATA, *Metro Unveils 'Earth Day' Metrobuses Featuring Artwork Created by Young Artists* (Apr. 24, 2023), https://www.wmata.com/about/news/Metro-Unveils-Earth-Day-Metrobuses-Featuring-Artwork-Created-by-Young-Artists.cfm.

279. WMATA, *Name That Route, Metro Wants to Create Better Names for a Better Bus Network* (Sept. 15, 2023), https://www.wmata.com/about/news/Better-Bus-Better-Names-survey.cfm#:~:text=Over%20the%20past%20year%2C%20Metro,easier%2C%20and%20developing%20a%20simpler.

280. Katy Rogers, *Boaty McBoatface: What You Get When You Let the Internet Decide*, N.Y. Times (Mar. 21, 2016), https://www.nytimes.com/2016/03/22/world/europe/boaty-mcboatface-what-you-get-when-you-let-the-internet-decide.html.

281. *See, e.g.*, Council of State Governments, 1949 Suggested St. Legis. 65 (1949) (recommendation for interstate crime control legislation, which is the consent statute for many interstate compacts).

A feature unique to CSG is its bipartisan support, which has contributed substantially to its success. Carl Stenberg, CSG's executive director during the mid to late 1980s, eloquently stated, "It is an organization that represents all three branches of government, not just one of them. No other organization has that reach."[282] No other organization has been so involved with the study and creation of interstate compacts. We wish CSG many more years in its compact work.

282. 2 Troy Delida, *CSG Celebrates 90 Years*, CAP. IDEAS 8 (2023), https://issuu.com/csg.publications/docs/ci_issue2_2023_final.