

Sec. 10—Powers Denied to the States Cl. 3—Tonnage Duties and Interstate Compacts

Legal Effect of Interstate Compacts

Whenever, by the agreement of the states concerned and the consent of Congress, an interstate compact comes into operation, it has the same effect as a treaty between sovereign powers. Boundaries established by such compacts become binding upon all citizens of the signatory states and are conclusive as to their rights.²¹⁷² Private rights may be affected by agreements for the equitable apportionment of the water of an interstate stream, without a judicial determination of existing rights.²¹⁷³ Valid interstate compacts are within the protection of the Contract Clause,²¹⁷⁴ and a “sue and be sued” provision therein operates as a waiver of immunity from suit in federal courts otherwise afforded by the Eleventh Amendment.²¹⁷⁵ The Supreme Court in the exercise of its original jurisdiction may enforce interstate compacts following principles of general contract law.²¹⁷⁶ Congress also has authority to compel compliance with such compacts.²¹⁷⁷ Nor may a state read herself out of a compact which she has ratified and to which Congress has consented by pleading that under the state’s constitution as interpreted by the highest state court she had lacked power to enter into such an agreement and was without power to meet certain obligations thereunder. The final construction of the state constitution in such a case rests with the Supreme Court.²¹⁷⁸

²¹⁷² *Poole v. Fleeger*, 36 U.S. (11 Pet.) 185, 209 (1837); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 725 (1838).

²¹⁷³ *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104, 106 (1938).

²¹⁷⁴ *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 13 (1823); *Virginia v. West Virginia*, 246 U.S. 565 (1918). *See also* *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. (13 How.) 518, 566 (1852); *Olin v. Kitzmiller*, 259 U.S. 260 (1922).

²¹⁷⁵ *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275 (1959).

²¹⁷⁶ *Texas v. New Mexico*, 482 U.S. 124 (1987). If the compact makes no provision for resolving impasse, then the Court may exercise its jurisdiction to apportion waters of interstate streams. In doing so, however, the Court will not rewrite the compact by ordering appointment of a third voting commissioner to serve as a tie-breaker; rather, the Court will attempt to apply the compact to the extent that its provisions govern the controversy. *Texas v. New Mexico*, 462 U.S. 554 (1983).

²¹⁷⁷ *Virginia v. West Virginia*, 246 U.S. 565, 601 (1918).

²¹⁷⁸ *Dyer v. Sims*, 341 U.S. 22 (1951).