

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

of the crime problem, the problem of highway safety, the trailer problem, problems created by social security legislation, and the framing of uniform state legislation for dealing with some of these.²¹⁶⁴

Consent of Congress

The Constitution makes no provision with regard to the time when the consent of Congress shall be given or the mode or form by which it shall be signified.²¹⁶⁵ While the consent will usually precede the compact or agreement, it may be given subsequently where the agreement relates to a matter which could not be well considered until its nature is fully developed.²¹⁶⁶ The required consent is not necessarily an expressed consent; it may be inferred from circumstances.²¹⁶⁷ It is sufficiently indicated, when not necessary to be made in advance, by the approval of proceedings taken under it.²¹⁶⁸ The consent of Congress may be granted conditionally “upon terms appropriate to the subject and transgressing no constitutional limitations.”²¹⁶⁹ Congress does not, by giving its consent to a compact, relinquish or restrict its own powers, as for example, its power to regulate interstate commerce.²¹⁷⁰

Grants of Franchise to Corporations by Two States

It is competent for a railroad corporation organized under the laws of one state, when authorized so to do by the consent of the state that created it, to accept authority from another state to extend its railroad into such state and to receive a grant of powers to own and control, by lease or purchase, railroads therein and to subject itself to such rules and regulations as may be prescribed by the second state. Such legislation on the part of two or more states is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreements or compacts between states.²¹⁷¹

²¹⁶⁴ 7 U.S.C. § 515; 15 U.S.C. § 717j; 16 U.S.C. § 552; 33 U.S.C. §§ 11, 567–567b.

²¹⁶⁵ *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 85 (1823).

²¹⁶⁶ *Virginia v. Tennessee*, 148 U.S. 503 (1893).

²¹⁶⁷ *Virginia v. West Virginia*, 78 U.S. (11 Wall.) 39 (1871).

²¹⁶⁸ *Wharton v. Wise*, 153 U.S. 155, 173 (1894).

²¹⁶⁹ *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937). *See also Arizona v. California*, 292 U.S. 341, 345 (1934). When it approved the New York-New Jersey Waterfront Compact, 67 Stat. 541, Congress, for the first time, expressly gave its consent to the subsequent adoption of implementing legislation by the participating states. *DeVeau v. Braisted*, 363 U.S. 144, 145 (1960).

²¹⁷⁰ *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 433 (1856).

²¹⁷¹ *St. Louis & S.F. Ry. v. James*, 161 U.S. 545, 562 (1896).