

Sec. 3—New States

Cl. 1—Admission of New States to Union

ceded it to the United States. To maintain any other doctrine, is to deny that Alabama has been admitted into the union on an equal footing with the original states, the constitution, laws, and compact, to the contrary notwithstanding. . . . [T]o Alabama belong the navigable waters and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; *and no compact that might be made between her and the United States could diminish or enlarge these rights.*"²⁶⁹

Finally, in 1911, the Court invalidated a restriction on the change of location of the state capital, which Congress had imposed as a condition for the admission of Oklahoma, on the ground that Congress may not embrace in an enabling act conditions relating wholly to matters under state control.²⁷⁰ In an opinion, from which Justices Holmes and McKenna dissented, Justice Lurton argued: "The power is to admit 'new States into this Union,' 'This Union' was and is a union of States, equal in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. To maintain otherwise would be to say that the Union, through the power of Congress to admit new States, might come to be a union of States unequal in power, as including States whose powers were restricted only by the Constitution, with others whose powers had been further restricted by an act of Congress accepted as a condition of admission."²⁷¹

The equal footing doctrine is a limitation only upon the terms by which Congress admits a state.²⁷² That is, states must be admitted on an equal footing in the sense that Congress may not exact conditions solely as a tribute for admission, but it may, in the enabling or admitting acts or subsequently impose requirements that would be or are valid and effectual if the subject of congressional

²⁶⁹ Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 228–29 (1845) (emphasis supplied). See also *id.* at 222–23. A unanimous Court explained the rule on state ownership of navigable waters in PPL Montana, LLC v. Montana, 565 U.S. ___, No. 10–218, slip op. (2012). Under the equal footing doctrine, a State, upon entering the Union, gains title to the beds of waters then navigable or tidally influenced, subject only to federal powers under the Constitution (*e.g.*, the Commerce Clause). By contrast, the United States retains any title vested in it to lands beneath waters not then navigable or tidally influenced. For the distinct purpose of the equal footing doctrine, "navigable waters" are those waters used, or susceptible to use, for trade and travel by customary means at the time of statehood. Furthermore, the "navigability" of rivers is determined on a segment-by-segment basis, and lands under portions of a stream that were impassable at statehood were not conveyed by force of the doctrine.

²⁷⁰ Coyle v. Smith, 221 U.S. 559 (1911).

²⁷¹ 221 U.S. at 567.

²⁷² South Carolina v. Katzenbach, 383 U.S. 301, 328–29 (1966). There is a broader implication, however, in Baker v. Carr, 369 U.S. 186, 226 n.53 (1962).