

The legislatures of several states entered into an agreement in which each state pledged to curb its pollution emissions. The agreement authorized a commission that contained a representative of each state to investigate how the states could reach their pollution emission goals and propose solutions for the states to adopt. The commission determined that each state needed to commit a fixed percentage of its energy consumption to clean energy sources, and each state enacted legislation that implemented the commission's suggestion. As a result, the states' demand for electricity produced by a company that uses coal-burning plants has significantly declined.

The company has filed suit against the commission in a federal district court, seeking a declaratory judgment that the states' agreement is unconstitutional.

Assume that no federal statute applies.

What action should the federal court take?

- A. Dismiss the suit without reaching the merits, because the Eleventh Amendment bars suits of this kind in federal court.
- B. Dismiss the suit without reaching the merits, because the suit presents a nonjusticiable political question.
- C. Invalidate the states' agreement, because the states failed to obtain congressional consent.
- D. Uphold the states' agreement, because the states validly entered into an interstate compact.

## Explanation:

### Congressional consent for interstate compacts

**Required** States' political power increased at federal government's expense—eg, states:

- cede territory to each other
- exercise powers they cannot exercise on own

**Not required** States do *not* encroach on federal government supremacy—eg, states:

- enact reciprocal legislation for benefit of each state's residents (eg, state college tuition reciprocity)
- form administrative body to study joint problems and make recommendations
- create entity to operate transportation facility (eg, port authority)

States generally may enter into agreements with each other (ie, **interstates compacts**) without permission from the federal government.\* However, the **compact clause requires** that states obtain **Congress's consent** for interstate compacts that **increase the compacting states' political power** at the expense of the federal government. This situation arises when the compact grants states or an administrative body powers that they could not exercise on their own.

Here, several states entered into an interstate compact to curb pollution emissions and created a commission that suggested that each state commit a fixed percentage of its energy consumption to clean energy sources. Each state did so. Since each state could have adopted energy guidelines without the commission's suggestion, the compact does not grant power to the states at the expense of the federal government. As a result, congressional consent was not required, and the federal court is likely to uphold the states' agreement (**Choice C**).

\*The compact clause also permits states to enter into agreements with foreign governments if Congress consents.

**(Choice A)** The [Eleventh Amendment](#) generally bars suits in federal court against state governments. However, it does not prohibit suits against commissions created by interstate compacts (as seen here).

**(Choice B)** The [political-question doctrine](#) prevents federal courts from hearing the merits of suits that present issues that (1) are reserved to the executive or legislative branch or (2) lack judicially manageable standards for resolution—neither of which are seen here.

**Educational objective:**

The compact clause requires states to obtain Congress's consent for agreements between the states (ie, interstate compacts) that increase the political power of the compacting states at the expense of the federal government.

### **References**

- U.S. Const. art. I, § 10, cl. 3 (compact clause).
- U.S. Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 473–76 (1978) (holding that congressional consent was not required when an interstate compact granted powers that compacting states could exercise on their own).
- 72 Am. Jur. 2d States, Territories, and Dependencies § 10 (2020) (explaining when congressional consent is required for an interstate compact).

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