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# The National Popular Vote: Misusing an Interstate Compact to Bypass the Constitution

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## KEY TAKEAWAYS

America's Founders established the Electoral College so that all states could participate in electing the President—requiring campaigns to reach the entire country.

The NPV movement rejects our current system. It wants to skip amending the Constitution and allow only a handful of states to elect the President.

The NPV compact is not only bad policy but, under the Constitution's Compact Clause, is unconstitutional without the consent of Congress.

In February 1938, a Senate Judiciary subcommittee held a hearing on a joint resolution to propose the Equal Rights Amendment. Representing the National League of Women Voters, then a staunch ERA opponent, Dorothy Straus observed that "even intelligent people can become slaves of a slogan."[1]

Slogans can not only lead to bad policies, but can even be used in ways that undermine the foundation of our system of government. This *Legal Memorandum* examines how one campaign—using the slogan "national popular vote"—seeks to employ an interstate compact for an unprecedented purpose: to bypass the Constitution and change how the nation elects the President. Interstate compacts have never been used to change national policy and, without the congressional consent that the Constitution requires, this compact is unconstitutional.

## A Union of Sovereign States

Before American independence, disputes between the colonies, typically over borders, were resolved by negotiated agreements that required the approval of the English crown.[2] America's Founders, however, remained "deeply concerned both with divisive interstate disputes and collusive interstate agreements."[3] As a result, after independence, the Articles of Confederation required Congress' approval for any "treaty confederation or alliance" between states.[4]

Unlike in many other countries, the American states are not "mere administrative subdivisions of the central government," but enjoy their own "legal autonomy."[5] Interstate agreements or compacts "adapt to our Union of sovereign states the age-old treaty making power of independent sovereign nations."[6] While the states did not surrender their sovereign right to make compacts with each other,[7] the Constitution is more restrictive than the Articles of Confederation. Declaring its purposes to include forming "a more perfect union," the Constitution provides not only that "[n]o State shall enter into any Treaty, Alliance, or Confederation,"[8] but also that "[n]o State shall, without the Consent of Congress...enter into any Agreement or Compact with another State, or with a foreign Power."[9] The "primary concern of the Compact Clause was to prevent interstate agreements detrimental both to the federal government and to non-compacting states."[10]

## The Compact Clause and Congressional Consent

Three theories have been suggested to explain the meaning of the Compact Clause.

- The most restrictive "boundary" theory, even narrower than the Clause's plain language, would permit only compacts, even with congressional consent, that address boundary disputes.[11]

- The "non-political" theory would permit a broader category of interstate agreements that "do not threaten the stability of the Union," although these would still need congressional consent.[12]

- The "currently reigning" theory of the Compact Clause is the most permissive.[13] In this view, states are free to establish non-political agreements without congressional consent "because they do not affect national sovereignty or concern the core meaning of the Compact Clause. Political compacts are permitted, but only with the consent of Congress."[14]

**Which Compacts Need Consent?** The Supreme Court established the latter theory in its 1893 decision in *Virginia v. Tennessee*.[15] Virginia said that its boundary with Tennessee had been established by the "charters of the English sovereigns"[16] that formed the original colonies. Tennessee said that the original boundary was subsequently changed by a commission created by the two states and approved by their legislatures.[17] The Supreme Court had to decide whether this commission agreement was valid without congressional consent.

The Court observed that the broad terms "agreement" or "compact," if taken by themselves, could cover "all forms of stipulation, written or verbal, and relating to all kinds of subjects."[18] Despite the Compact Clause's plain language, the Court looked to the "object of the constitutional provision" to narrow the category of interstate agreements or compacts that require congressional consent.[19] To that end, the Court distinguished between compacts involving "matters upon which different states may agree that in no respect concern the United States" from those "which may tend to increase and build up the political influence of the contracting states."[20] Only the latter, the Court held, require congressional consent.

**Compacts That Do Not Require Consent.** Interstate compacts that would not need congressional consent under this theory might involve a land purchase or a plan to fight pestilence.[21] "If Massachusetts, in forwarding its exhibits to the World's Fair at Chicago, should desire to transport them a part of the distance over the Erie canal, it would hardly be deemed essential for that state to obtain the consent of congress."[22] Neither would draining a "malarious and disease-producing district" that straddled a state boundary.[23]

In *State of New Hampshire v. State of Maine*,[24] both states had agreed upon the settlement of a border dispute and filed "a proposed consent decree, based on a stipulated record."[25] The Court reaffirmed the narrow application of the Compact Clause it had established in *Virginia v. Tennessee*, concluding that by agreeing to the settlement, "neither State can be viewed as enhancing its power in any sense that threatens the supremacy of the Federal Government."[26]

In *Northwestern Cement Co. v. Minnesota*,[27] the Supreme Court held in 1959 that state taxes on companies doing interstate business must be nondiscriminatory and properly apportioned.[28] On August 4, 1967, seven states created the Multistate Tax Compact and, with it, the Multistate Tax Commission to facilitate proper determination of the tax liability of multistate businesses. The compact allows a member state to request that the commission perform an audit on its behalf.

More than 20 states had joined the compact by 1972 when U.S. Steel sued on behalf of "all other multistate taxpayers threatened with audits by the Commission."[29] They argued that the Multistate Tax Compact was invalid because it had not received the consent of Congress and asked the Supreme Court to overrule its precedents in *Virginia v. Tennessee* and *New Hampshire v. Maine*. The Court declined to do so, noting that U.S. Steel had offered "no effective alternative other than a literal reading of the Compact Clause."[30] That literal reading would "require the States to obtain congressional approval before entering any agreement among themselves, irrespective of form, subject, duration or interest of the United States."[31] The Court characterized *Virginia v. Tennessee* and subsequent decisions as taking a "functional view of the Compact Clause"[32] and affirmed their "underlying assumption" that "not all agreements between States are subject to the strictures of the Compact Clause."[33]

**Political Compacts Require Consent.** A political compact that still needs congressional consent is "a compact infringing upon federal or non-compacting state sovereignty by aggrandizing the political power of compacting states."[34] While most court decisions and commentary have focused on a compact's effect on federal interests, the Supreme Court has long recognized that requiring congressional consent "prevent[s] any compact or agreement between any two States, which might affect injuriously the interests of the others."[35] The Supreme Court, for example, held unanimously in 2018 that Congress may withhold its consent if an interstate compact would "injure the interests" of other states or regions in the United States.[36]

In *U.S. Steel*, the Supreme Court recognized that the interests of states that do not join a compact are important in determining whether it violates the Compact Clause[37] and explicitly considered this factor in *Northeast Bancorp v. Board of Governors*.[38] The Supreme Court assumed that statutes passed by Massachusetts and Connecticut regarding a bank holding company in one state acquiring a bank in the other constituted an interstate compact. Citing *Virginia v. Tennessee*, the Court held that this compact did not "enhance the *political* power of the New England States at the expense of other States."[39]

Congress consents to an interstate compact by a legislative vehicle that is presented to the President for approval or veto. The Supreme Court has held that "an interstate compact approved by Congress...is a federal law"[40] and noted "the requirement that all legislation be presented to the President before becoming law."[41] Congress, therefore, has never consented to an interstate compact *except* by a bill or a joint resolution that

was presented to the President. The Congressional Research Service has concluded that "the purpose, function, and structure of the Constitution, coupled with the sustained practice of Congress strongly suggest that legislation approving of an interstate compact is subject to the limitations of the Presentment Clause."[42]

Interstate compacts are "the only method by which states may significantly change their relationship with each other."[43] As a contract, an interstate compact is binding upon "those states that have elected to become parties to it."[44] Those that enhance the power of compacting states *in relation to federal interests or over non-compacting states* require congressional consent.[45]

## Use of Interstate Compacts

Only 35 interstate compacts, nearly all of them to settle boundary disputes, were formed between 1783 and 1920.[46] Since World War II, however, that number has grown by more than 150.[47] In modern usage, interstate compacts "are contracts between two or more states creating an agreement on a particular policy issue, adopting a certain standard or cooperating on regional or national matters."[48] These include "conservation and resource management...law enforcement, transportation... education, energy, mental health, workers compensation and low-level radioactive waste."[49] Interstate compacts are properly understood as tools for promoting "interstate cooperation without federal intervention."[50]

The Council of State Governments' National Center for Interstate Compacts divides them into three categories: border compacts, advisory compacts that create study commissions, and regulatory compacts that create administrative agencies.[51] Regulatory compacts that create administrative agencies include some familiar names. New York and New Jersey, for example, established a compact in 1921 that, in turn, created the Port Authority of New York and New Jersey.[52] Similarly, the Washington Metropolitan Area Transit Authority was created by an interstate compact that Congress approved in 1966.[53]

This brief review of interstate compacts shows that they are interstate not only in form, but also in substance. In other words, interstate compacts are more than simply collective arrangements for accomplishing something, but agreements through which states address issues or problems that occur between the states entering the compact.

## Application: National Popular Vote Compact

In the United *States* of America, the states elect the President through the Electoral College. Each state casts a number of electoral votes equal to its representatives in both houses of Congress. That calculation incorporates both the equality and the diversity of the states. The states are equal by each having two Senators; they are diverse by their populations determining their number of Representatives in the House. Today, the least populous states such as Wyoming, Vermont, or Alaska have the minimum of three electoral votes while, on the other end of the scale, California has 55, Texas has 39, and Florida and New York each have 29.

The Constitution allows each state to determine how to choose its electors, that is, how to cast its electoral votes.[54] Today, 48 states award all of their electoral votes to the winner of that state's popular vote. Maine and Nebraska award one electoral vote to the winner of the popular vote in each congressional district, and the two remaining electoral votes to the winner of the statewide popular vote. The Electoral College, therefore, is built on the same foundation as republican government itself, namely, the principle that government "derives all its powers directly or indirectly from the great body of the people."[55] In presidential elections, the popular vote is mediated through the states that make up the Union.

**Reaching "The People."** The Electoral College is consistent with republican government in another way—by forcing presidential candidates to conduct national campaigns to reach "the people." While the United States is a large, diverse country, more people are living in a smaller portion of it than ever before. The 2010 census, for example, showed that the national population was 80.7 percent urban and 19.3 percent rural,[56] the widest gap in American history.

If the President were elected only by national popular vote instead of by the states, a presidential campaign would only need to locate the highest concentrations of voters most likely to support its candidate—and ignore the rest of the country. The ability to do so has never been greater. Maintaining the Electoral College, therefore, is the only way to ensure that those who want to lead the nation seek support across the nation.

**Small Margins.** The Electoral College, with its winner-take-all formula in nearly every state, can create a situation that may be confusing to those who do not fully understand the system. A candidate can win the popular vote in enough states to win a majority of electoral votes but still lose the popular vote nationally. This has occurred in only four of the 58 presidential elections in American history.[57] In 2000, for example, President George W.

Bush lost the plurality of the popular vote (47.9 percent vs. 48.4 percent) but won 30 states with 50.4 percent of the electoral votes. The five states that Bush won by the largest margin gave him just 20 electoral votes, compared to 55 electoral votes from Al Gore's top-five states. The key to Bush's victory was that the five states he won by the smallest margin, an average of 2.3 percent, gained him 65 electoral votes, compared to 40 electoral votes from the five states that Gore barely won.

Similarly, in 2016, President Donald Trump lost the plurality of the popular vote (46.4 percent vs. 48.5 percent) but also won 30 states, which delivered 56.9 percent of the electoral votes. The five most lop-sided popular vote wins for Trump gave him 22 electoral votes, while Hillary Clinton's top-five states gave her 76 electoral votes. But the five winner-take-all states that Trump won by the smallest margin, an average of just 1.5 points, gained him 90 electoral votes, compared to 32 electoral votes from the five states that Clinton just narrowly won. Trump's 77-point electoral vote victory came from the states in which he barely won the popular vote. Bush and Trump were elected by more of the *country*, if not more of the total population.

**Constitutional Amendment Necessary.** Formally changing the system to elect the President by national popular vote rather than by the states through the Electoral College would require amending the Constitution. Changing the national charter *should always* be a difficult task. The Constitution "contains the permanent will of the people and is the supreme law of the land."[58] It is binding on judges in every state and takes precedence over state constitutions and laws.[59] In his farewell address in 1796, President George Washington said that the Constitution can be changed only by "an explicit and authentic act of the whole people."[60]

Under Article V of the Constitution, that act of the whole people requires two supermajorities. It requires two-thirds of Congress or a convention (called after application by two-thirds of the states) to propose an amendment—and three-fourths of the states to ratify it. This process forces those who seek to change the Constitution to convince the people's representatives at both the federal and state level, and ensures that any consensus behind such a change is both wide and deep.

**An End Run Around the Constitution.** The National Popular Vote movement, however, wants to achieve the result of abolishing the Electoral College without having to go through the amendment process. NPV advocates want to bypass the Constitution—and avoid the need to convince even a single supermajority to reject the plan of America's Founders.

States joining the NPV interstate compact commit to awarding their electoral votes not to the winner of their own popular vote, but to the winner

of the *national* popular vote. The compact would, according to its terms, become operational when states representing a majority of electoral votes (today, at least 270) join and, therefore, can dictate the outcome of a presidential election.

To date, 15 states and the District of Columbia have joined the NPV compact, representing a total of 196 electoral votes. In one of those states, Colorado, a bill to join the compact narrowly passed the state legislature and Governor Jared Polis (D) signed it into law on March 15, 2019. Opponents gathered enough signatures, however, to place a measure to overturn this legislative action on the November 2020 ballot.

**Rule by a Minority of States.** While Washington said that changing the Constitution requires an "explicit and authentic act of the whole people," the NPV compact would effectively abolish the Electoral College through an act of only some of the people. The words of the Constitution would remain unchanged, but their meaning and application would be radically different. While maintaining the façade of the Electoral College, the NPV compact would reduce the body of states that elect the President from the "United States of America" to the "NPV compact states." These few states would be the only ones with an actual, genuine role in electing the President. They would not simply contribute to the presidential election outcome, as every state does in the Electoral College system—but would literally dictate that outcome.

One response might be that states representing a majority of electoral votes elect the President today. That may true, at least mathematically, but the specific states constituting that majority, and actually electing the President, in a particular election are not known until after all have participated. Presidents Trump and George W. Bush, for example, each won the popular vote in a different combination of 30 states. The four states that Bush won but Trump lost had 29 electoral votes, while the four states that Trump won but Bush lost had 52 electoral votes.

In contrast, the NPV compact would identify the states that will actually elect the President in future elections. They will do so no matter how the non-NPV states allocate their electoral votes. Those states (likely a majority) would still go through the motions of choosing electors, but doing so would be, in Shakespeare's famous words, "sound and fury, signifying nothing." The selection of those electors, as well as their votes, would literally be meaningless gestures.

**A Political Cartel.** In this way, the NPV compact is like a political cartel. The *Merriam-Webster Dictionary* defines "cartel" to include "a combination of political groups for common action."[61] Another defines a cartel as

a "syndicate...formed especially to regulate...output in some field."[62] That precisely describes not only the operation, but the design and purpose, of the NPV compact.

At the same time, however, states that join the NPV compact are potentially disenfranchising their own voters. In the long run, the NPV compact would likely result in at least some states giving their electoral votes to the candidate who lost the popular vote, perhaps by a wide margin, in those states. That irony is obvious. The NPV compact was crafted so that a presidential candidate could no longer win the electoral vote without winning the popular vote at the national level. Yet that is exactly what the NPV compact would, over time, almost certainly produce at the state level.

**Consent Necessary.** The primary constitutional question regarding the NPV compact is whether it requires congressional consent. If it does, then the NPV compact cannot operate without that consent, no matter how many states join it or how many electoral votes those states control.

A report by the Law Library of Congress notes that, in the *Northeast Bancorp* case, "the Supreme Court indicated that congressional consent would be required for a compact that would increase the political power of compacting states 'at the expense of' non-compacting states."[63] That accurately describes not only the NPV compact's practical effect, but its deliberate design.[64] It fits squarely within the category of interstate compacts that, under *Virginia v. Tennessee* and *Northeast Bancorp*, requires congressional consent.

A report dated April 9, 2008, by the Connecticut legislature's Office of Legislative Research examined how the Supreme Court would evaluate the NPV compact's constitutionality. The first issue would be whether, under *Virginia v. Tennessee*, it constitutes a "political" compact.[65] If so, the primary question would be whether it "encroached on federal power or the power of non-compacting states."[66] The report notes that the Supreme Court "applied a sister state interest analysis" in both *U.S. Steel* and *Northeast Bancorp*.[67]

The interest of a state that does not join the NPV compact is that the Electoral College system work as intended—allowing each state to be a genuine participant in the election of the President. The number of each state's electoral votes reflects the same combination of equality and difference as their representation in the two houses of Congress. The participation by *all* of those states determines the outcome. The NPV compact not only compromises, but actually destroys, that interest by making the election outcome determined by "an arranged collective agreement" by only some states.[68]

**Spectators or Participants?** Once that critical mass of states representing a majority of electoral votes is reached, the other states become

spectators rather than participants. The electoral votes of non-NPV states cannot affect the outcome. Their votes would be no more relevant than if those states tried to cast them after the next President had already taken office. Although the NPV scheme would appear to retain the Electoral College system, it would be the cartel, rather than the states, that actually elects the President. It is difficult to conceive a plan that would more clearly and deliberately enhance some states' political power at the expense of others.

The NPV compact would either be prohibited altogether or require congressional consent under the Compact Clause's plain language—or *any* of the interpretive theories described above.

- Based on the Clause's plain language, the NPV compact would require consent simply because it is a compact;
- It would be prohibited altogether under the "boundary" theory because it does not involve a border dispute;
- It would require congressional consent under the "non-political" theory because it is clearly a political compact; and
- The NPV compact requires congressional consent under the current theory of *Virginia v. Tennessee* and *Northeast Bancorp* because it enhances the political power of compacting states at the expense of non-compacting states.

Significantly, since states have always had authority to determine how to allocate their electoral votes, each state has been free all along to give those votes to the winner of the national popular vote. No state, including any of the NPV compact members, has chosen to do so. It seems that this becomes their goal only when they know it will produce the result they want, the electoral version of "heads I win, tails you lose."

## Conclusion

Although the United States is a union of sovereign states, the Constitution's Compact Clause reflects the deep concern of America's Founders to prevent divisive or collusive interstate agreements. The Supreme Court has held, contrary to the plain language of the Compact Clause, that it requires congressional consent only for interstate agreements or compacts that undermine either federal or sister-state interests. Most interstate compacts

fall outside this category, addressing issues or problems that occur between states. The National Popular Vote compact, however, clearly falls in the "political" category of compacts that, even under the Supreme Court's narrow reading of the Compact Clause, require congressional consent.

NPV advocates are dissatisfied with the Electoral College system designed by America's founders, in which all states participate in electing the President. It appears, however, that they are also dissatisfied with the constitutional amendment process, in which all states participate in deciding whether to change the Constitution. NPV advocates want the result of abolishing the Electoral College in favor of the national popular vote without having to do the hard work of actually changing the Constitution. Instead, they are trying to use an interstate compact in a completely unprecedented way.

Even with congressional consent, the NPV compact is bad policy. Without that consent, it is also unconstitutional.

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## Endnotes

1. *Equal Rights for Men and Women, Hearing Before a Subcomm. of the S. Comm. on the Judiciary on S.J.Res. 65,* 75th Cong. 2 (1938) (statement of Dorothy Straus, representing National League of Women Voters).
2. Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685, 692 (1925).
3. Derek T. Muller, *The Compact Clause and the National Popular Vote Interstate Compact*, 6 Election L.J. 372, 376 (2007). See also Frankfurter & Landis, *supra* note 2, at 693 (noting the importance of "protect[ing] the new Union of States established by the Articles of Confederation, from the destructive political combination of two or more States."); Michael Greve, *Compacts, Cartels, and Congressional Consent*, 68 Mo. L. Rev. 285, 296 (2003) (The Founders were "painfully aware" of threats including that "states—of unequal size but equal sovereignty—may, through cooperation, imperil the interests of a sister state.").
4. *See* Frankfurter & Landis, *supra* note 2, at 694.
5. *Id*. at 687.
6. Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92, 104 (1938). *See also* William Kevin Voit & Nancy J. Vickers, *Interstate Compacts & Agencies 2003* (Council of State Governments, 2003), at 5 ("compacts between states are somewhat like treaties between nations").
7. Poole v. Fleeger, 36 U.S. 185, 209 (1837).
8. U.S. Const., art. I, § 10, cl. 1. *See* Brannon P. Denning, *State Treaties*, Heritage Guide to the Constitution, https://www.heritage.org/constitution/#!/articles/1/essays/69/state-treaties (last visited Sept. 30, 2020).
9. U.S. Const., art. I, § 10, cl. 3. See Michael S. Greve, *Compact Clause*, Heritage Guide to the Constitution, https://www.heritage.org/constitution/#!/articles/1/essays/75/compact-clause (last visited Sept. 25, 2020). The Supreme Court previously held that the more general term "agreement" included "every agreement, written or verbal, formal or informal[,] positive or implied, by the mutual understanding of the parties." Holmes v. Jennison, 39 U.S. 540, 572 (1840).
10. Muller, *supra* note 3, at 376.
11. *Id* at 380.
12. *Id*. at 381.
13. *Id*. at 382.
14. *Id*.
15. 148 U.S. 503 (1893).
16. *Id*. at 504.
17. *Id*. at 505.
18. *Id*. at 518.
19. Michael Greve describes this as holding that "the Compact Clause cannot possibly mean what it says." Greve, *supra* note 3, at 287.
20. 148 U.S. at 518.
21. *Id*.
22. *Id*.
23. *Id*.
24. 426 U.S. 363 (1976).
25. *Id*. at 365.
26. *Id*. at 370.
27. 358 U.S. 450 (1959).
28. *Id*. at 452.
29. *Id*. at 454.
30. *Id*. at 460.
31. *Id*. at 459.
32. *Id*. at 468. *See also* Wharton v. Wise, 153 U.S. 155,168 (1894); Greve, *supra* note 3, at 295 ("Modern Compact Clause theory, such as it is, is avowedly functional, not textual.").
33. 434 U.S. at 469.

34. Muller, *supra* note 3, at 384.
35. Florida v. Georgia, 58 U.S. 478, 494 (1854).
36. Texas v. New Mexico (March 5, 2018), slip opinion at 4.
37. *See also* 434 U.S. at 4949–5 (White, J., dissenting) ("encroachments upon non-compact States are as seriously to be guarded against as encroachments on the federal authority").
38. 472 U.S. 159 (1985).
39. *Id*. at 176 (emphasis in original). *See also* Andrew Winston, *Interstate Compacts in the United States*, Law Library of Congress (June 2018), at 4 ("the Supreme Court considers the interests of states that are not parties to an interstate compact to be an important inquiry in determining whether the interstate compact violates the Compact Clause"), https://www.loc.gov/law/help/interstate-compacts/us-interstate-compacts.pdf (last visited Sept. 25, 2020).
40. Cuyler v. Adams, 449 U.S. 433, 438 (1981). *See also* Alabama v. North Carolina, 560 U.S. 330, 251 (2010); Texas v. New Mexico, 462 U.S. 554, 564 (1983).
41. INS v. Chadha, 462 U.S. 919, 946 (1983).
42. Andrew L. Nolan, "Interstate Compacts and Presidential Presentment of Congressional Consent," *Congressional Research Service Memorandum* (March 18, 2015), at 6. The National Center for Interstate Compact database shows that Congress consented to 96 of the 191 listed interstate compacts currently in force.
43. Michael L. Beunger et al., The Evolving Law and Use of Interstate Compacts 3 (2d edition 2016).
44. Winston, *supra* note 39, at 4.
45. *See* Voit & Vickers, *supra* note 6, at 7 (congressional consent required for compacts that "arguably have a discriminatory effect on non-party states.").
46. Council of State Governments, National Center for Interstate Compacts, *Understanding Interstate Compacts*, at 2, https://gsgp.org/media/1313/understanding_interstate_compacts-csgncic.pdf#:~:text=On%20average%2C%20a%20state%20today%20belongs%20to%2025,establish%20or%20alter%20the%20boundaries%20of%20a%20state (last visited Sept. 25, 2020). *See also* Greve, *supra* note 3, at 288 (counting 36 interstate compacts prior to 1921).
47. *See* Voit & Vickers, *supra* note 6, at 7. This compilation lists 192 compacts, on 20 different subjects, and 25 additional boundary agreements. *See also* General Accountability Office, *Interstate Compacts: An Overview of the Structure and Governance of Environment and Natural Resources Compacts* (April 2007), at 1 (Seventy-six of more than 200 interstate existing compacts address environment and resource management issues, with 46 of them creating interstate commissions.).
48. Council of State Governments, *Compact FAQ*, http://www.csg.org/knowledgecenter/docs/ncic/CompactFAQ.pdf (last visited Sept, 30, 2020). The Supreme Court has long held that a compact between states is a contract. "In fact, the terms compact and contract are synonymous." Green v. Biddle, 21 U.S. 1, 92 (1823).
49. Winston, *supra* note 39, at 4.
50. Council of State Governments, *Evolution of Interstate Compacts* (May 2012), at 1.
51. Council of State Governments, *Understanding Interstate Compacts*.
52. *See* Voit & Vickers, *supra* note 6, at 23.
53. *Id*. at 117.
54. U.S. Const., art. II, § 1, cl. 2. See Einer Elhauge, *Presidential Electors*, Heritage Guide to the Constitution, https://www.heritage.org/constitution/#!/articles/2/essays/79/presidential-electors (last visited Sept. 30, 2020).
55. The Federalist No. 39 (James Madison).
56. U.S. Census Bureau, *2010 Census Urban and Rural Classification and Urban Area Criteria*, https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html (last visited Sept. 30, 2020).
57. See Hans A. von Spakovsky, "Destroying the Electoral College: The Anti-Federalist National Popular Vote Scheme," *Legal Memorandum* No. 260, February 19, 2020, at 16, https://www.heritage.org/sites/default/files/2020-02/LM260.pdf (last visited Sept. 30, 2020).
58. VanHorne's Lessee v. Dorrance, 2 U.S. 304, 308 (1795).
59. U.S. Const., art. VI, cl. 2. See Gary Lawson, *Supremacy Clause*, Heritage Guide to the Constitution, https://www.heritage.org/constitution/#!/articles/6/essays/133/supremacy-clause (last visited Sept. 30, 2020).
60. The Avalon Project, *Washington's Farewell Address 1796*, https://avalon.law.yale.edu/18th_century/washing.asp (last visited Sept, 30, 2020).
61. *Cartel, Merriam-Webster.com*, https://www.merriam-webster.com/dictionary/cartel (last visited Sept. 30, 2020).
62. *Cartel, Dictionary.com*, https://www.dictionary.com/browse/cartel (last visited Sept. 30, 2020). *See also* Greve, *supra* note 3, at 327 ("The threat of cartelization extends not only to the exploitation of natural resource advantages and bottlenecks…but also to policy arrangements.").
63. Winston, *supra* note 39, at 4.

64. Muller, *supra* note 3, at 392.
65. Meghan Reilly, "Constitutionality of Interstate Compacts," *OLR Research Reports* (April 9, 2008), https://www.cga.ct.gov/2008/rpt/2008-R-0221.htm (last visited Sept, 30, 2020).
66. *Id*.
67. *Id*.
68. *Id*.