

**No. 220156, Original**

---

---

IN THE  
**Supreme Court of the United States**

---

STATE OF NEW YORK,  
*Plaintiff,*

v.

STATE OF NEW JERSEY,  
*Defendant.*

---

**STATE OF NEW JERSEY'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS AND BRIEF IN SUPPORT**

---

MATTHEW J. PLATKIN  
*Acting Attorney General  
State of New Jersey*  
JEREMY M. FEIGENBAUM\*  
*Solicitor General*  
SUNDEEP IYER  
JEAN P. REILLY  
*Assistant Attorneys General*  
25 Market Street  
Trenton, New Jersey 08625  
(609) 414-0197  
Jeremy.feigenbaum@njoag.gov  
\*Counsel of Record

August 22, 2022

[ADDITIONAL COUNSEL LISTED ON INSIDE COVER]

EMILY M. BISNAUTH  
AMY CHUNG  
PATRICK JHOO  
NATHANIEL LEVY  
VIVEK N. MEHTA  
KRISTINA L. MILES  
DANIEL RESLER  
*Deputy Attorneys General*

---

---

IN THE  
**Supreme Court of the United States**

—————  
STATE OF NEW YORK,  
*Plaintiff,*

v.

STATE OF NEW JERSEY,  
*Defendant.*

—————  
**MOTION FOR JUDGMENT ON THE PLEADINGS**  
—————

**MOTION FOR JUDGMENT  
ON THE PLEADINGS**

The State of New Jersey respectfully moves this Court to enter judgment for New Jersey on the pleadings. The grounds for this Motion are set forth in the accompanying brief.

Respectfully submitted,

Jeremy M. Feigenbaum\*  
*Solicitor General*  
25 Market Street, P.O. Box 080  
Trenton, New Jersey 08625  
Jeremy.Feigenbaum@njoag.gov  
*\*Counsel of Record*

August 22, 2022

---

---

IN THE  
**Supreme Court of the United States**

STATE OF NEW YORK,  
*Plaintiff,*

v.

STATE OF NEW JERSEY,  
*Defendant.*

**BRIEF IN SUPPORT OF MOTION FOR  
JUDGMENT ON THE PLEADINGS**

---

**QUESTION PRESENTED**

Whether the Waterfront Commission Compact permits either signatory State to withdraw.

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
CONSTITUTIONAL, STATUTORY, AND COMPACT PROVISIONS INVOLVED .....	4
STATEMENT .....	4
SUMMARY OF ARGUMENT .....	11
ARGUMENT.....	14
I. The Waterfront Commission Compact Allows Either State To Withdraw On Its Own .....	14
A. Ordinary Principles Of Compact Interpretation Establish That Either State Can Withdraw.....	14
1. Contract Law.....	14
2. Principles of State Sovereignty .....	18
3. The Compact's Structure .....	24
B. Compact Law Imposes Important Limits On Withdrawal, But They Do Not Apply Here.....	26
II. New York's Insistence On Perpetual Unanimity Lacks Support .....	31
A. New York's Perpetual Unanimity Requirement Finds No Support In The Compact's Text .....	31

TABLE OF CONTENTS—Continued

	Page
B. New York's Perpetual Unanimity Requirement Finds No Support In Interstate Compact Principles Or Precedents.....	38
CONCLUSION .....	44
APPENDIX	
LIST OF CURRENT AND FORMER INTERSTATE COMPACTS .....	1a

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Alabama v. North Carolina</i> , 560 U.S. 330 (2010).....	31, 36
<i>Alden v. Maine</i> , 527 U.S. 706 (1999).....	1, 41
<i>Ark. Valley Town &amp; Land Co. v.</i> <i>Atchison, Topeka &amp; Santa Fe Ry. Co.</i> , 151 P. 1028 (Okla. 1915).....	18
<i>Arlington Cent. Sch. Dist. Bd. of Ed. v.</i> <i>Murphy</i> , 548 U.S. 291 (2006).....	24
<i>Ass'n of Accredited Cosmetology Sch. v.</i> <i>Alexander</i> , 979 F.2d 859 (CA7 1992).....	20
<i>Bailey v. S.S. Stafford</i> , 166 N.Y.S. 79 (N.Y. App. Div. 1917) .....	16
<i>Baldwin Piano, Inc. v.</i> <i>Deutsche Wurlitzer GmbH</i> , 392 F.3d 881 (CA7 2004) .....	17, 39
<i>Barco Urban Renewal Corp. v.</i> <i>Hous. Auth. of City of Atl. City</i> , 674 F.2d 1001 (CA3 1982) .....	30
<i>Barnes v. Gorman</i> , 536 U.S. 181 (2002).....	23, 24
<i>Bell v. Speed Queen</i> , 407 F.2d 1022 (CA7 1969) .....	17
<i>Blatchford v. Native Vill. of Noatak</i> , 501 U.S. 775 (1991).....	19

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Borough of W. Caldwell v. Borough of Caldwell, 138 A.2d 402 (N.J. 1958) .....</i>	16
<i>Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41 (1986).....</i>	12, 20, 27-28
<i>Cambee’s Furniture v. Doughboy Recreational, Inc., 825 F.2d 167 (CA8 1987) .....</i>	17
<i>Childs v. City of Columbia, 70 S.E. 296 (S.C. 1911) .....</i>	17
<i>Clear Lake City Water Auth. v. Clear Lake Utils. Co., 549 S.W.2d 385 (Tex. 1977) .....</i>	18, 30
<i>CNH Indus. N.V. v. Reese, 138 S. Ct. 761 (2018).....</i>	15
<i>Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co., 976 F.3d 239 (CA2 2020) .....</i>	16, 30
<i>Cronk v. Vogt’s Ice Cream, 15 N.Y.S.2d 649 (N.Y. Sup. Ct. 1939) .....</i>	27
<i>Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562 (2022).....</i>	23, 24
<i>Cuyler v. Adams, 449 U.S. 433 (1981).....</i>	42
<i>De Veau v. Braisted, 363 U.S. 144 (1960).....</i>	1, 4

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Delta Servs. &amp; Equip., Inc. v. Ryko Mfg. Co.</i> , 908 F.2d 7 (CA5 1990) .....	16
<i>Dorsey v. United States</i> , 567 U.S. 260 (2012).....	35
<i>Earnshaw v. United States</i> , 146 U.S. 60 (1892).....	30
<i>Echols v. New Orleans, Jackson &amp; Great N. R.R. Co.</i> , 52 Miss. 610 (1876) .....	16-17
<i>Fernandez-Vargas v. Gonzales</i> , 548 U.S. 30 (2006).....	28
<i>Fletcher v. Peck</i> , 10 U.S. 87 (1810).....	28
<i>Fulghum v. Selma</i> , 76 S.E.2d 368 (N.C. 1953).....	16
<i>Grand Lodge Hall Ass’n, I.O.O.F. v. Moore</i> , 70 N.E.2d 19 (Ind. 1946).....	16
<i>Green v. Biddle</i> , 21 U.S. 1 (1823).....	28
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	23, 24
<i>Hess v. Iowa Light, Heat &amp; Power Co.</i> , 221 N.W. 194 (Iowa 1929) .....	18
<i>Hess v. Port Auth. Trans-Hudson Corp.</i> , 513 U.S. 30 (1994).....	34
<i>Ill. Cent. R.R. v. Ill.</i> , 146 U.S. 387 (1892).....	29

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>In re Del. R.R. Tax</i> , 85 U.S. 206 (1874).....	20
<i>In re Estate of Miller</i> , 447 A.2d 549 (N.J. 1982) .....	16
<i>Jespersen v. 3M</i> , 700 N.E.2d 1014 (Ill. 1998).....	17
<i>Joliet Bottling Co. v.</i> <i>Joliet Citizens' Brewing Co.</i> , 98 N.E. 263 (Ill. 1912).....	18
<i>Kansas v. Colorado</i> , 533 U.S. 1 (2001).....	23
<i>Lichnovsky v. Ziebart Int'l Corp.</i> , 324 N.W.2d 732 (Mich. 1982) .....	17-18
<i>M&amp;G Polymers USA v. Tackett</i> , 574 U.S. 427 (2015).....	15
<i>Marcus v. Bos. Edison Co.</i> , 56 N.E.2d 910 (Mass. 1944).....	30
<i>MCI Telecomms. Corp. v. Am. Tel. &amp; Tel. Co.</i> , 512 U.S. 218 (1994).....	31-32
<i>Merrion v. Jicarilla Apache Tribe</i> , 455 U.S. 130 (1982).....	<i>passim</i>
<i>Murphy v. Keystone Steel &amp; Wire Co.</i> , 61 F.3d 560 (CA7 1995) .....	17
<i>N. Ohio Traction &amp; Light Co. v. Ohio</i> , 245 U.S. 574 (1918).....	27
<i>New Jersey v. New York</i> , 523 U.S. 767 (1998).....	18, 24

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932).....	21
<i>Newton v. Comm’rs</i> , 100 U.S. 548 (1879).....	1, 19, 21, 29
<i>Northeast Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys.</i> , 472 U.S. 159 (1985).....	43
<i>Pennhurst State School &amp; Hosp. v. Halderman</i> , 451 U.S. 1 (1981).....	23
<i>Providence Bank v. Billings</i> , 29 U.S. (4 Pet.) 514 (1830).....	12, 21
<i>R.R. Comm’n Cases</i> , 116 U.S. 307 (1886).....	20
<i>Rhode Island v. Massachusetts</i> , 37 U.S. 657 (1838).....	41
<i>Tarrant Reg’l Water Dist. v. Herrmann</i> , 569 U.S. 614 (2013).....	<i>passim</i>
<i>Texas v. New Mexico</i> , 462 U.S. 554 (1983).....	24, 25, 40
<i>Texas v. New Mexico</i> , 482 U.S. 124 (1987).....	14
<i>Town of Readsboro v. Hoosac Tunnel &amp; W.R. Co.</i> , 6 F.2d 733 (CA2 1925) .....	26
<i>United States v. Cherokee Nation of Okla.</i> , 480 U.S. 700 (1987).....	21

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Winstar Corp.</i> , 518 U.S. 839 (1996).....	1, 19, 20, 22
<i>U.S. Steel Corp. v. Multistate Tax Comm’n</i> , 434 U.S. 452 (1978).....	35, 42
<i>Virginia v. Maryland</i> , 540 U.S. 56 (2003).....	19
<i>Virginia v. West Virginia</i> , 78 U.S. 39 (1870).....	28
<i>Waterfront Comm’n of N.Y. Harbor v.</i> <i>Governor of New Jersey</i> , 961 F.3d 234 (CA3 2020) .....	10
<i>Waterfront Comm’n of N.Y. Harbor v. Murphy</i> , No. 18-cv-650 (D.N.J.).....	10
<i>Weaver v. Graham</i> , 450 U.S. 24 (1981).....	28
<i>West Virginia ex rel. Dyer v. Sims</i> , 341 U.S. 22 (1951).....	42, 43
<i>Zimco Restaurants v. Bartenders &amp;</i> <i>Culinary Workers Union, Local 340,</i> <i>AFL-CIO</i> , 331 P.2d 789 (Cal. Ct. App. 1958) .....	16
<b>CONSTITUTION</b>	
U.S. Const. art. I, § 10, cl. 1 .....	28
U.S. Const. art. I, § 10, cl. 3 .....	<i>passim</i>
U.S. Const. amend. XIV .....	28

## TABLE OF AUTHORITIES—Continued

<b>STATUTES AND COMPACTS</b>	<b>Page(s)</b>
29 U.S.C. § 158(d).....	32
42 U.S.C. § 1981(b).....	32
Act of Congress of July 7, 1798, ch. 67, 1 Stat. 578 (1798).....	41
Arizona-California Boundary Compact, Pub. L. 89-531, 80 Stat. 340 (1966).....	28
Bear River Compact, Pub. L. 85-348, 72 Stat. 38 (1958).....	28-29
Breaks Interstate Park Compact, Pub. L. 83-543, 68 Stat. 571 (1954).....	40
Goose Lake Basin Compact, Pub. L. No. 98- 334, 98 Stat. 291 (1984).....	37
Jennings Randolph Lake Project Compact, Pub. L. No. 104-176, 110 Stat. 1557 (1996).....	33-34
New York-New Jersey Port Auth. Compact, ch. 77, S.J. Res. 88, 67th Cong., 42 Stat. 174 (1921).....	5, 36
Northwest Wildland Fire Protection Agreement, Pub. L. No. 105-377, 112 Stat. 3391 (1998).....	36
Pecos River Compact, Pub. L. No. 81-91, 63 Stat. 159 (1949).....	37
Snake River Compact, Pub. L. No. 81-464, 64 Stat. 29 (1950).....	37
Upper Colorado River Basin Compact, Pub. L. No. 81-37, 63 Stat. 31 (1949).....	29

## TABLE OF AUTHORITIES—Continued

	Page(s)
Wabash Valley Compact, Pub. L. No. 86-375, 73 Stat. 694 (1959).....	36
Waterfront Commission Compact, Pub. L. No. 83-252, 67 Stat. 541 (1953).....	<i>passim</i>
2017 N.J. Sess. Laws 201.....	8, 18
2017 N.J. Sess. Laws 324.....	9, 10
N.J. Stat. Ann. § 17:48-6(c).....	32
N.Y. Exec. Law § 259-mm.....	34
N.Y. Exec. Law § 501.....	34
N.Y. Priv. Hous. Fin. Law § 1054(3).....	32
73 Pa. Stat. Ann § 701 (1965) .....	33
U.C.C. § 2-309(2) .....	14
 <b>RULES</b>	
Fed. R. Civ. P. 15.....	32
Fed. R. Civ. P. 41.....	32
 <b>COURT FILINGS</b>	
Br. for U.S. as Amicus Curiae, <i>West Virginia ex rel. Dyer v. Sims</i> , 341 U.S. 22 (1951) (No. 147) 1950 WL 78371.....	15, 29
 <b>OTHER AUTHORITIES</b>	
Bruce Ackerman & Neal Katyal, <i>Our Unconventional Founding</i> , 62 U. Chi. L. Rev. 475 (1995).....	41
Black’s Law Dictionary 106 (4th ed. 1951)..	31

## TABLE OF AUTHORITIES—Continued

	Page(s)
1 William Blackstone, <i>Commentaries on the Laws of England</i> (1765).....	19
17A C.J.S. <i>Contracts</i> (May 2022 update) ...	14
17B C.J.S. <i>Contracts</i> (May 2022 update) ...	14
1 Arthur Corbin, <i>Corbin on Contracts</i> (2022).....	32
Emerich de Vattel, <i>Law of Nations</i> (Joseph Chitty, trans. T. & J.W. Johnson, <i>Law Book-sellers</i> 6th ed. 1844).....	41
The <i>Federalist</i> No. 30 (Hamilton).....	41
The <i>Federalist</i> No. 40 (Madison) .....	17, 41
Felix Frankfurter & James M. Landis, <i>The Compact Clause of the Constitution—A Study in Interstate Adjustments</i> , 34 <i>Yale L. J.</i> 685 (1925) .....	41
Jerome C. Muys et al., <i>Utton Transboundary Resources Ctr. Model Interstate Water Compact</i> , 47 <i>Nat. Res. J.</i> 17 (2007).....	30
<i>New Jersey-New York Waterfront Comm’n Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary</i> , 83d Cong. (1953) .....	5, 35
New York Office of the Inspector Gen., <i>Investigation of the Waterfront Comm’n of N.Y. Harbor</i> (Aug. 2009), available at <a href="https://tiny url.com/ydxvbk3m">https://tiny url.com/ydxvbk3m</a> .....	8, 18, 25

## TABLE OF AUTHORITIES—Continued

	Page(s)
Notes of Debates in the Federal Convention of 1787 Reported by James Madison (Ohio Univ. Press 1966) (1840) .....	19
<i>Record of the Pub. Hearings Held by Gov. Thomas E. Dewey on the Recommendations of the N.Y. State Crime Comm'n for Remedying Conditions on the Waterfront of the Port of N.Y.</i> (N.Y. 1953) .....	5, 33
Proclamation No. 2500, 55 Stat. 1660 (Aug. 9, 1941) .....	41
Restatement (Fourth) of the Foreign Relations Law of the U.S. (2019) .....	42
Restatement (Second) of Contracts (1981) ... <i>passim</i>	
Webster's Collegiate Dictionary (5th ed. 1945) .....	31
White House Archives, <i>Pres. Trump Announces U.S. Withdrawal From The Paris Climate Accord</i> (June 1, 2017), available at <a href="https://tinyurl.com/5e8mnudy">https://tinyurl.com/5e8mnudy</a> ..	32
Williston on Contracts (4th ed. May 2022 update) .....	<i>passim</i>
Joseph F. Zimmerman, <i>Interstate Cooperation</i> (2d ed. 2012) .....	22
Joseph F. Zimmerman, <i>Interstate Relations</i> (1996) .....	33, 34

## INTRODUCTION

Since our Nation's Founding, it has been understood that "[g]overnments do not ordinarily agree to curtail their sovereign or legislative powers, and contracts must be interpreted in a commonsense way against that background understanding." *United States v. Winstar Corp.*, 518 U.S. 839, 921 (1996) (Scalia, J., concurring). There is a good reason why. "The federal system established by our Constitution preserves the sovereign status of the States." *Alden v. Maine*, 527 U.S. 706, 714 (1999). A core element of that sovereignty is the plenary authority of the Legislature to decide "at all times" how to address changing social and economic conditions and to adopt evolving approaches to the "varying circumstances and present exigencies" affecting its citizens. *Newton v. Comm'rs*, 100 U.S. 548, 559 (1879). The law thus presumes that States will not "forever waive[] the right to exercise one of [their] sovereign powers" in a contract or a compact absent an express indication to that effect. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982). Were the rule otherwise, a compact's silence could strip States of their sovereign authority in perpetuity, and the Legislature could scarcely remain accountable to the people it was elected to serve.

This case illustrates these dangers. In 1953, New York and New Jersey enacted the Waterfront Commission Compact. The Compact established a temporary bistate agency—the Waterfront Commission—to address the contemporaneous problem of organized crime at the Port of New York and New Jersey, a commercial port with docks in both States. See *De Veau v. Braisted*, 363 U.S. 144, 147-150 (1960). And the Compact delegated to the Commission ongoing authority to engage in regulatory and law-

enforcement activity at the port. But nearly 70 years have passed, and circumstances at the port have changed. As a result, the New Jersey Legislature has concluded that the Commission's approach to regulation no longer serves the public, and that it has become an impediment to economic growth. New York, however, rebuffed New Jersey's efforts to reform the Commission. As a result, in 2018, the New Jersey Legislature decided to withdraw from the Compact and reclaim its sovereign powers.

New York's original action thus presents the Court with a single interpretive question: Because the Compact does not address withdrawal, does it require the States to cede their sovereign authority to the Commission in perpetuity?

Foundational principles of contract law and state sovereignty make clear the answer is no. See *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 628, 631-632 (2013). Contract law establishes that agreements imposing a continuing duty of performance on the parties are terminable at the will of either party. See, e.g., Restatement (Second) of Contracts § 33 cmt. d (1981). That doctrine avoids holding the parties hostage to outdated agreements; empowers them to respond to changing circumstances; and fosters compromise. And those interests are magnified when the contracting parties are sovereigns. Before finding that a State has forever ceded its police powers in a compact, the Court has required "a clear indication" to that effect, rather than "inscrutable silence." *Tarrant*, 569 U.S., at 632. That principle accords with the intent of compacting States, and it ensures that States have fair notice before they give up their sovereignty forever. This Compact comes nowhere close to providing

the “clear indication” necessary to forever strip New Jersey of its authority to withdraw. *Id.*

New York’s insistence that the Compact forever demands unanimity to withdraw is untenable. Its Complaint primarily asserts that New Jersey cannot withdraw absent New York’s consent because the Compact forbids each party from adopting any “[a]mendments and supplements to this compact” without unanimous consent. Compl. App. 34a-35a. But a wide range of linguistic sources—from dictionary definitions and ordinary usage to contract law and compact practice—all make clear that withdrawal from the Compact is not an amendment of its terms. Nor can New York identify contract or compact principles allowing this Court to construe *silence* as perpetually requiring unanimous consent to withdraw. Under New York’s approach, what started as a cooperative agreement to tackle a shared, temporary problem would forever be a cudgel to bend New Jersey’s authority to its will.

To be sure, there are other compacts for which the question in this case would come out differently. For one, compacting parties can agree to express withdrawal clauses that obviate the question in this case altogether. Moreover, consistent with blackletter contract law and the rules that govern sovereigns, States cannot withdraw unilaterally from compacts that establish vested rights unless the agreement expressly gives them that authority. In other words, the rule regarding terminability is flipped for various compacts setting boundaries or apportioning water rights, given the settled legal rights at stake. But where, as here, the compact involves only the ongoing and indefinite delegation of authority to an interstate

agency, mere silence as to withdrawal gives one State no basis to hold another hostage to a compact forever.

In short, this Compact must be read to permit New Jersey to withdraw. This Court should grant New Jersey's motion for judgment on the pleadings.

### **CONSTITUTIONAL, STATUTORY, AND COMPACT PROVISIONS INVOLVED**

Pertinent constitutional, statutory, and compact provisions are reproduced in the Appendix to New York's Motion for Leave to File a Bill of Complaint. Compl. App. 1a-132a, 146a-150a.

### **STATEMENT**

1. In 1953, New Jersey and New York entered into the Waterfront Commission Compact. As part of the Compact, the States established the Waterfront Commission of New York Harbor, a bistate agency imbued with the "power to license, register, and regulate ... waterfront employment" at the Port of New York and New Jersey. *De Veau*, 363 U.S., at 149. The Commission is an "instrumentality of the States" that has been endowed with their respective "police power[s]." Compl. App. 3a (art. I.4), 6a (art. III.1). The States delegated to the Commission the authority to engage in regulatory and law-enforcement activity on the New Jersey side of the port (relying on New Jersey's police powers) and on the New York side (relying on New York's). See Compl. App. 1a-35a (describing agency's delegated authorities).

The Compact was established to handle a problem that was then in the headlines: organized crime at the port. Two years before, New York Governor Thomas Dewey created the New York Crime Commission to investigate crime, corruption, and intolerable working

conditions at the waterfront. See *New Jersey-New York Waterfront Comm'n Compact: Hearing on H.R. 6286, H.R. 6321, H.R. 6343, and S. 2383 Before Subcomm. No. 3 of the H. Comm. on the Judiciary*, 83d Cong. 19 (1953) (“Commission Compact Hearing”). The Crime Commission found that the mob had infiltrated the docks and was demanding payments from the workers and shippers through extortion and violence. See *Record of the Pub. Hearings Held by Gov. Thomas E. Dewey on the Recommendations of the N.Y. State Crime Comm'n for Remediating Conditions on the Waterfront of the Port of N.Y.* 661-663 (N.Y. 1953) (“New York Hearings”). The Crime Commission thus recommended establishing a “temporary” agency that would register and license companies at the port and that would exist only “as long as necessary” to eliminate the then-extant “evils.” *Id.*, at 665-666, 731.

Discussions between New Jersey and New York, followed by swift congressional approval, led to creation of the Commission. Under the Compact’s terms, the Commission was to serve primarily as an employment licensing and inspection agency.<sup>1</sup> The Compact barred classes of employees—pier superintendents, hiring agents, stevedores, and port watchmen—

---

<sup>1</sup> The Waterfront Commission is distinct from the Port Authority of New York and New Jersey, another agency established decades prior pursuant to a separate compact between the two States to promote “better coordination of the terminal, transportation, and other facilities of commerce in ... the port of New York.” *New York-New Jersey Port Auth. Compact*, ch. 77, S.J. Res. 88, 67th Cong., 42 Stat. 174 (1921). Today, the Port Authority manages airports, bridges, and other public infrastructure in both States. But it does not regulate employment licensing at the waterfront; that falls under the Commission’s exclusive jurisdiction. And unlike this Compact, the compact creating the Port Authority expressly limits States’ withdrawal. See *id.* art. 21.

from working at the port without a license. Compl. App. 9a-18a, 24a-26a (arts. V-VI, X); see also Compl. App. 20a-22a (art. VIII) (limiting who can qualify as a longshoreman). The Compact placed restrictions on who could qualify for a license, and placed detailed review of licensure applications in the Commission's hands. Compl. App. 9a-18a, 24a-26a (arts. V-VI, X). And the Compact granted the Commission authority to inspect the port and conduct law-enforcement investigations, Compl. App. 7a-8a (art. IV.8-11), and to conduct hearings to grant, suspend, and revoke workers' licenses, Compl. App. 27a-29a (art. XI).

Because the Commission relied on delegated regulatory powers from both States, the Compact ensured that the Commission could function only with their continued mutual assent. To that end, the two States agreed that the new Commission "shall consist of two members, one to be chosen by the State of New Jersey and one to be chosen by the State of New York," Compl. App. 6a (art. III.2); that each member "shall be appointed by the Governor of such State with the advice and consent of the Senate thereof," *id.*; and that the Commission could "act only by unanimous vote of both members thereof," *id.* (art. III.3). This structure empowered either State to veto the Commission's actions. Moreover, each State retained the authority to veto the Commission's budgets, Compl. App. 31a (art. XIII.2), which would in turn prevent the agency from raising revenue and, ultimately, from operating, *id.* (art. XIII.3) (allowing the Commission to levy assessments only to cover "budgeted expenses").

Having delegated their police powers to the Commission, the States recognized that they might wish to later adjust the terms of their agreement in ways that would bind them both. The Compact there-

fore acknowledged that “[a]mendments and supplements to this compact to implement the purposes thereof may be adopted by the action of the Legislature of either State concurred in by the Legislature of the other.” Compl. App. 34a-35a (art. XVI.1). In approving the Compact, Congress added language to confirm that it “expressly reserved” its “right to alter, amend, or repeal this Act,” Compl. App. 35a (§ 2), reflecting the truism that one Congress cannot bind future Congresses. But the Compact does not address whether either State could withdraw; its text neither authorizes nor limits their withdrawal.

2. Profound concerns with the Commission—and changed circumstances at the port—led New Jersey to withdraw from the Compact in 2018.

Developments in the industry and at the port reduced the Commission’s importance. During the late 1950s and 1960s, the advent of containerized shipping revolutionized the shipping industry. See Compl. App. 36a. Shippers began to transport cargo and goods using modular containers rather than offloading them from ships via nets. This shift towards containerized shipping led much more of the commerce at the port into New Jersey’s deep-water berths, which were better equipped to accommodate that development; as a result, as of 2018, 82% of cargo at the port was located on the New Jersey side. Compl. App. 36a-37a. Not only that, but containerized shipping also meant that fewer employees were needed to unload the ships at the port, and it meant cargo could no longer be stolen so easily. The New Jersey Legislature concluded that these “changes in the industry” lessened “organized crime’s influence” at the port and reduced the need for such unusually extensive regulation. *Id.*, at 37a.

In 2009, the New York Inspector General also issued a scathing 63-page report outlining the Commission's misconduct. See N.Y. Office of the Inspector Gen., *Investigation of the Waterfront Comm'n of N.Y. Harbor* (Aug. 2009), <https://tinyurl.com/ydxvbk3m> ("OIG Report"). The report found a "climate of abuse" at the Commission, focusing on the "lack of accountability fueled by perceived immunity from oversight by outside entities"; the "abrogation of legal responsibilities undermining the very purposes of the Commission"; and other misconduct ranging from "improper hiring and licensing to ... misuse of Homeland Security grants." *Id.*, at 1. The report also acknowledged the Commission's two-commissioner structure had led to "stalemates and inaction." *Id.*, at 6 n.4.

The New Jersey Legislature thus took steps to reform the Commission to adjust the agency to modern times and to ensure greater accountability. See, e.g., 2017 N.J. Sess. Laws 201 (previous effort by Legislature to reform Commission). In order to expand the States' oversight powers over regulations at the port, the Legislature sought to require the Commission to maintain minutes of meetings and to provide those minutes to the Governors of each State for approval or rejection. *Id.* § 1. While the Commission would have had full independence in making individual licensing decisions, *id.* § 3, the amendment would have also subjected the Commission's expenditures to closer review by the signatory States, see *id.* § 6. But New York refused New Jersey's entreaties.

Ultimately, in 2018, the New Jersey Legislature found that in light of the Commission's shortcomings and significant "changes in the industry," the agency was no longer fulfilling its mission to "investigate, deter, and combat criminal activity and influence in

the port.” Compl. App. 37a. Instead, the agency was “over-regulat[ing] the businesses at the port in an effort to justify its existence as the only waterfront commission” at any American port. *Id.* Still more, the Commission had “become an impediment to future job growth and prosperity at the port,” had “been tainted by corruption in recent years,” and had violated the Compact’s terms. *Id.* The Legislature acknowledged a need to properly “regulate port-located business to ensure fairness and safety” and to root out crime, *id.*, but found those goals better served by reclaiming its police powers and exercising them via the New Jersey State Police. See Compl. App. 37a-38a.

The Legislature thus voted to withdraw New Jersey from the Compact by enacting Chapter 324, which was signed by then-Governor Chris Christie on January 16, 2018. Compl. App. 36a-109a. The statute explicitly reclaimed New Jersey’s police powers over the portion of the port within its borders, and left to New York the sovereign police powers it had delegated. See Compl. App. 46a (reclaiming all “powers” and “duties of the commission within this State,” and delegating them to the New Jersey State Police).

The Legislature sought to make withdrawal seamless. By law, New Jersey’s withdrawal would not take effect for up to 120 days: the Governor would first provide written notice, including to New York, within 30 days, and New Jersey would reclaim its police powers 90 days later. Compl. App. 38a, 45a. During that period, the Commission and the State Police were to coordinate to ensure a smooth transition. Comp. App. 46a. Even after the transfer was complete, Chapter 324 ordered the State Police to “continu[e] the functions, contracts, obligations, and duties of the commission within this State,” mandated “[a]ll opera-

tions of the commission within this State ... continue as operations of [the State Police] until altered,” and required “[a]ll rules and regulations of the commission” to “continue in effect ... until amended, supplemented, or rescinded by” the State Police. Compl. App. 48a.

3. Following the enactment of Chapter 324, the Commission sued the New Jersey Governor, challenging the withdrawal in federal district court. Although the district court enjoined the withdrawal, the Third Circuit reversed on June 5, 2020, finding New Jersey’s sovereign immunity barred the Commission’s lawsuit. *Waterfront Comm’n of N.Y. Harbor v. Governor of New Jersey*, 961 F.3d 234 (CA3 2020). The Supreme Court subsequently denied the Commission’s petition for certiorari on November 22, 2021. As a result, on December 3, 2021, the district court lifted its injunction, which allowed New Jersey to move forward with withdrawal. *Waterfront Comm’n of N.Y. Harbor v. Murphy*, No. 18-cv-650 (D.N.J.), ECF No. 76. On December 27, 2021, New Jersey gave its formal notice of withdrawal, which triggered a transfer date of March 28, 2022. See Compl. 24 ¶84; Compl. App. 45a.

On March 14, 2022, New York filed a motion for leave to file a Bill of Complaint, motion for preliminary injunction, and motion to expedite in this Court. Ten days later, this Court granted a preliminary injunction barring New Jersey “from enforcing Chapter 324 or taking action to withdraw unilaterally from the Compact or terminate the Commission pending disposition of the motion for leave to file a bill of complaint and, if granted, disposition of the case.” Order in No. 220156 (Mar. 24, 2022). On June 21, 2022, in response to a joint motion by New Jersey and New York, this Court granted New York’s motion for leave to file a Bill of

Complaint and allowed the States to file cross-motions for judgment on the pleadings.

### SUMMARY OF ARGUMENT

I. The Waterfront Commission Compact does not prohibit New Jersey from withdrawing and reclaiming its sovereign powers within its borders.

a. Every relevant tool of compact interpretation—contract law, principles of state sovereignty, and compact structure—demonstrates that this Compact permits either State to withdraw. *First*, under hornbook contract law, contracts that require indefinite and ongoing performance permit either party to withdraw at will absent express language to the contrary. See Restatement (Second) of Contracts § 33. For good reason: contracts that perpetually require unanimous consent to withdraw hold contracting parties hostage to a dysfunctional agreement; undermine their ability to respond to new circumstances; and reduce the parties’ incentives to compromise. That rule applies here. The Compact imposes continuing obligations on the signatory States, requiring them to delegate their powers to an interstate agency indefinitely, and says nothing about either party’s ability to withdraw. It therefore allows withdrawal by either State.

*Second*, compact-specific interpretive rules that exist to protect state sovereignty likewise permit withdrawal. Before finding that a State has ceded its sovereignty in a compact, this Court has required “a clear indication” to that effect and not “inscrutable silence.” *Tarrant*, 569 U.S., at 632. That settled principle protects a critical aspect of state sovereignty at issue here: the continuing authority of each Legislature to exercise its police power to address changing circumstances. *Merrion*, 455 U.S., at 147.

That rule aligns with the intent of States. It guarantees States fair notice before they cede their authority forever. And it ensures that the Legislature can remain accountable to the people. See *Providence Bank v. Billings*, 29 U.S. (4 Pet.) 514, 561 (1830) (Marshall, C.J.).

*Third*, the structure of this Compact confirms that the signatory States can withdraw on their own. The Compact makes the operation of the Commission dependent on the continued assent of both States. It would therefore be incongruous to read the Compact as requiring New Jersey to remain in perpetuity absent New York's consent to leave.

b. Compact law does limit the set of compacts for which unilateral withdrawal is appropriate. First, if a compact expressly addresses States' withdrawal, the parties are bound to their choice. Second, unilateral withdrawal is presumed only if a compact requires ongoing and indefinite performance by the signatories. And finally, the States may not unilaterally withdraw from compacts that establish vested rights absent express text allowing them to do so, see *Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment*, 477 U.S. 41, 52 (1986), a rule that precludes unilateral withdrawal from various compacts setting boundaries or apportioning water rights. In other words, States may withdraw unilaterally only from a narrow category of compacts—those that are silent on withdrawal, limit continuing exercises of sovereign power on an indefinite basis, *and* do not involve vested rights. Few compacts satisfy these criteria. But this Compact does.

II. New York's position—that this Compact forever requires unanimous consent to withdraw—conflicts with the Compact's plain text and foundational contract and compact law.

a. New York finds no support in the text of the Compact. New York says that a separate provision requiring unanimity for “[a]mendments and supplements to this compact” governs. Compl. App. 34a-35a. But that conflicts with both the dictionary definitions and ordinary usage of “amendments” and “withdrawal”—two fundamentally distinct concepts. It contravenes accepted principles of contract law, which recognize that amendments to any contract of indefinite performance require unanimous consent but that withdrawal does not. And it conflicts with compact practice, which also distinguishes amendments from withdrawal.

b. New York likewise finds no support in any traditional tool of compact interpretation for its view that a compact’s silence means the States have ceded their sovereign authority in perpetuity absent unanimous consent to withdraw. That rule conflicts with contract law, which refuses to perpetually require unanimity in analogous circumstances. It defies bedrock principles of sovereignty. It lacks grounding in the text or original understanding of the Compact Clause, which does not cabin withdrawal. And it has no basis in this Court’s case law. Requiring New Jersey to delegate its authority in perpetuity, subject to the whims of another State, “turns the concept of sovereignty on its head.” *Merrion*, 455 U.S., at 148.

**ARGUMENT****I. The Waterfront Commission Compact Allows Either State To Withdraw On Its Own.**

Properly understood, this Compact permits either State to withdraw. That result follows from ordinary principles of compact interpretation. And while compact law imposes multiple limits on withdrawal, those limits do not apply here.

**A. Ordinary Principles Of Compact Interpretation Establish That Either State Can Withdraw.**

Every relevant tool of compact interpretation—contract law, principles of state sovereignty, and compact structure—compels judgment for New Jersey.

**1. *Contract Law.***

Contract law makes clear that this Compact permits New Jersey’s withdrawal. “Interstate compacts are construed as contracts under the principles of contract law.” *Tarrant*, 569 U.S., at 628; see also, *e.g.*, *Texas v. New Mexico*, 482 U.S. 124, 128 (1987). As a well-worn body of contract law treatises explain, contracts that require the indefinite and continuing performance of the contracting parties—like this Compact—are “commonly terminable by either party.” Restatement (Second) of Contracts § 33 cmt. d; see also, *e.g.*, 1 Williston on Contracts § 4:22 (4th ed. May 2022 update) (agreeing many cases “hold[] that a promise contemplating continuing performance for an indefinite time is to be interpreted as stipulating only for performance terminable at the will of either party”); 17B C.J.S. Contracts § 608 (May 2022 update) (“An agreement without a fixed term of duration generally is terminable at the will of either contracting party.”); cf. U.C.C. § 2-309(2) (noting if a contract for goods “is

indefinite in duration,” “it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party”).<sup>2</sup>

This Court’s teachings are in accord. As this Court has explained, this presumption in favor of terminability follows from the “traditional” contract law principle “that courts should not construe ambiguous writings to create lifetime promises.” *M&G Polymers USA v. Tackett*, 574 U.S. 427, 441 (2015). Said another way, in the absence of an express limit to the contrary, parties to a contract are not bound to continuing performance “in perpetuity” where the contract is “silent as to [its] duration.” *CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763-764 (2018) (quoting 3 Arthur Corbin, *Corbin on Contracts* § 553, p. 216 (1960)).

That principle was well-established at the time this Compact was drafted. As the United States explained in a brief to this Court three years before this Compact was signed, it was “well settled” by the 1950s that contracts “which contemplate[] continuing performance for an indefinite time” are not perpetual. Br. for U.S. as Amicus Curiae at 23-24, *West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22 (1951) (No. 147) (“U.S. *Dyer Br.*”), 1950 WL 78371 (arguing interstate compacts of indefinite performance are likewise terminable at

---

<sup>2</sup> To be clear, as cases and treatises confirm, not every contract is terminable at the will of either party. Parties are liable for breaching a contract if, for example, they withdraw from contracts that confer any vested rights or that expressly limit withdrawal. But as explained below, those exceptions do not apply. See *infra* at 26-30. Moreover, while treatises acknowledge that certain contracts are terminable only after a reasonable time has passed, that approach does not apply to contracts involving sovereigns—and regardless, only aids New Jersey given the passage of 70 years. See *infra* at 29-30 n.7.

will); see also, e.g., *Borough of W. Caldwell v. Borough of Caldwell*, 138 A.2d 402, 412 (N.J. 1958) (confirming that “[p]erpetual contractual performance is not favored”); *Zimco Restaurants v. Bartenders & Culinary Workers Union, Local 340, AFL-CIO*, 331 P.2d 789, 793 (Cal. Ct. App. 1958) (citing treatises for “general rule” that “contracts contemplating continuing performance for an indefinite time ... are terminable at will by either party”); *Fulghum v. Selma*, 76 S.E.2d 368, 370 (N.C. 1953); *Grand Lodge Hall Ass’n, I.O.O.F. v. Moore*, 70 N.E.2d 19, 22 (Ind. 1946).

Consistent with that understanding, courts in New York and New Jersey have long understood contracts that contemplate indefinite and ongoing performance as authorizing each party to withdraw. See *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, 976 F.3d 239, 245 (CA2 2020) (under New York law, a “contract of indefinite duration is terminable at will”); *In re Estate of Miller*, 447 A.2d 549, 554 (N.J. 1982) (“if a contract contains no express terms as to its duration, it is terminable at will or after a reasonable time”); *Caldwell*, 138 A.2d, at 412-13; *Bailey v. S.S. Stafford*, 166 N.Y.S. 79, 82 (N.Y. App. Div. 1917).

The important policy reasons behind this blackletter rule help explain its widespread adoption. For one, neither the parties nor the public are served by a doctrine that holds parties hostage to a contract that has subsequently become dysfunctional. See *Delta Servs. & Equip., Inc. v. Ryko Mfg. Co.*, 908 F.2d 7, 11 (CA5 1990) (goal of “promot[ing] mutually beneficial” agreements “is not fostered if the parties are required to remain” in a relationship “after it has soured,” and terminability has a “salutary effect of permitting parties to end a soured relationship without consequent litigation” (citation omitted)); *Echols v. New Orleans*,

*Jackson & Great N. R.R. Co.*, 52 Miss. 610, 614 (1876) (contrary position would “greatly fetter and embarrass the commerce of the world”). For another, allowing each party to withdraw offers greater freedom to accommodate changed circumstances. See *Jespersen v. 3M*, 700 N.E.2d 1014, 1017 (Ill. 1998) (“Forever is a long time,” and terminability gives “flexibility needed to respond to” new challenges). And it “induce[s] the other side to compromise” when faced with evolving conditions. *Baldwin Piano, Inc. v. Deutsche Wurlitzer GmbH*, 392 F.3d 881, 885 (CA7 2004) (“A combination of the need for flexibility in relational contracts and the fact that both sides have an ongoing interest in accommodating the other makes a presumption of terminability sensible.”).

A rule requiring performance absent the counterparties’ consent does just the opposite: it would limit parties’ discretion forever even without a clear statement at the outset of their perpetual obligations. Contracting parties do not typically give a counterparty a permanent veto over their withdrawal without any clear acknowledgment. See *Childs v. City of Columbia*, 70 S.E. 296, 298 (S.C. 1911) (it is “unreasonable to impute to the parties an intention to make a contract binding themselves perpetually”); see also *The Federalist* No. 40 (Madison) (noting the “absurdity of subjecting the fate of 12 States[] to the perverseness or corruption of a thirteenth”). It therefore comes as no surprise that court after court has held that contracts requiring ongoing and indefinite performance are terminable at the will of either party.<sup>3</sup>

---

<sup>3</sup> See, e.g., *Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560, 567 (CA7 1995); *Cambee’s Furniture v. Doughboy Recreational, Inc.*, 825 F.2d 167, 172 (CA8 1987); *Bell v. Speed Queen*, 407 F.2d 1022, 1024 (CA7 1969); *Lichnovsky v. Ziebart Int’l Corp.*, 324

That longstanding and widespread rule applies directly to this agreement. Though its text says nothing about withdrawal, much less in perpetuity, the Compact imposes indefinite and continuing performance obligations on the States: it requires them to cede sovereign authority to the Commission for an indefinite period, and to cede their regulatory and police powers on an ongoing basis. Compl. App. 7a-9a. And all the reasons underlying the background contract-law rule apply to this 1953 contract—including the need to prevent dysfunction, see OIG Report, *supra*, at 6 n.4 (describing “stalemates and inaction” at Commission); to better confront new conditions, see Compl. App. 37a (New Jersey Legislature identifying changes at port); and to induce compromise, see 2017 N.J. Sess. Laws 201 (unsuccessful attempt by New Jersey Legislature to improve commission oversight). The “common-law rule” that contracts requiring indefinite and continuing performance are terminable by each party thus “speaks in the silence of [this] Compact.” *New Jersey v. New York*, 523 U.S. 767, 784 (1998).

## 2. Principles of State Sovereignty.

As compelling as private parties’ withdrawal rights would be under ordinary contract principles, it is even clearer that an interstate compact of indefinite performance allows sovereign States to withdraw.

This Court’s “interpretation of interstate compacts” has long been “informed” by “[t]he background notion

---

N.W.2d 732, 738-740 (Mich. 1982); *Clear Lake City Water Auth. v. Clear Lake Utils. Co.*, 549 S.W.2d 385, 390-392 (Tex. 1977); *Hess v. Iowa Light, Heat & Power Co.*, 221 N.W. 194, 196-197 (Iowa 1929); *Ark. Valley Town & Land Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 151 P. 1028, 1032 (Okla. 1915); *Joliet Bottling Co. v. Joliet Citizens’ Brewing Co.*, 98 N.E. 263, 265 (Ill. 1912).

that a State does not easily cede its sovereignty.” *Tarrant*, 569 U.S., at 631. For good reason: the “States entered the federal system with their sovereignty intact,” *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 779 (1991), and they “rarely relinquish their sovereign powers,” *Tarrant*, 569 U.S., at 632. As a result, before finding that any State has given up its sovereignty in a compact, this Court has required “a clear indication” to that effect, “not inscrutable silence.” *Id.* Thus, when this Court has been “confronted with silence in compacts touching on the States’ authority,” it has treated that silence as preserving States’ sovereign power. *Id.*; see also, *e.g.*, *Virginia v. Maryland*, 540 U.S. 56, 67 (2003) (“If any inference at all is to be drawn from [the compact’s] silence ... we think it is that each State was left to regulate the activities of her own citizens”).

For three reasons, that settled rule of compact construction supplies an independent basis for allowing withdrawal without unanimous consent here.

*First*, this Court has made clear that one important aspect of sovereignty is the continuing authority of the legislature to exercise its police powers to address new problems and changing circumstances. It is a “centuries-old concept that one legislature may not bind the legislative authority of its successors.” *Winstar*, 518 U.S., at 872 (plurality op.) (citing 1 W. Blackstone, *Commentaries on the Laws of England* 90 (1765)); *Newton*, 100 U.S., at 559 (agreeing “[e]very succeeding legislature possesses the same jurisdiction and power ... as its predecessors”); Notes of Debates In the Federal Convention of 1787 Reported by James Madison 348 (Ohio Univ. Press 1966) (1840) (George Mason explaining during Constitutional Convention that “succeeding Legislatures having equal authority

[can] undo the acts of their predecessors”). That principle, of course, is not an immutable one “on this side of the Atlantic,” and legislatures may “under certain circumstances ... place effective limits on [their] successors” in contracts. *Winstar*, 518 U.S., at 873-874. States, for example, maintain “the power to enter contracts that confer vested rights, and the concomitant duty to honor those rights.” *Bowen*, 477 U.S., at 52.

But where a public contract does not create vested rights, this principle confirms that perpetual “surrenders of sovereign authority” must “appear in unmistakable terms.” *Winstar*, 518 U.S., at 860; *Bowen*, 477 U.S., at 52-53 (referring to “Court’s often-repeated admonitions that contracts should be construed, if possible, to avoid foreclosing exercise of sovereign authority”); *Winstar*, 518 U.S., at 874-878 (collecting decisions “extending back into the 19th century” to show silence or ambiguity cannot “be construed as a conveyance or surrender of sovereign power”);<sup>4</sup> *R.R. Comm’n Cases*, 116 U.S. 307, 326-327 (1886) (same); *In re Del. R.R. Tax*, 85 U.S. 206, 225 (1874) (same). In such cases, contractual silence is not enough to find a sovereign surrendered police powers in perpetuity. *Merrion*, 455 U.S., at 148; see also *Ass’n of Accredited Cosmetology Sch. v. Alexander*, 979 F.2d 859, 867 (CA DC 1992) (absent unmistakable statement relinquishing authority, legislative act can not only alter public contract’s terms by regulation but also terminate the contract).

---

<sup>4</sup> Although *Winstar* yielded a fractured set of opinions, none of the Justices disputed the doctrinal roots of the unmistakability doctrine. See 518 U.S., at 924 (Rehnquist, C.J., dissenting); *id.*, at 920-921 (Scalia, J., concurring).

The reason is simple: “To presume that a sovereign forever waives the right to exercise one of its sovereign powers unless it expressly reserves the right to exercise that power ... turns the concept of sovereignty on its head.” *Merrion*, 455 U.S., at 148. Legislatures must be able to revisit their approach to problems affecting the public. *Id.*; see also *Newton*, 100 U.S., at 549 (finding it “vital to the public welfare that” the legislature “should be able at all times to do whatever the varying circumstances and present exigencies touching the subject involved may require”). If the legislature concludes conditions have changed, the public and sovereign are poorly served by a rule binding them forever based only on silence. Cf. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (emphasizing importance of allowing States to engage in “experimentation” when faced with evolving “social and economic” conditions).

It is especially critical that a legislature be able to change course so that it can remain accountable to the will of the people. As Chief Justice Marshall explained for the Court two centuries ago, because “the whole community is interested in retaining” its collective authority to address problems through its elected representatives, the “community has a right to insist that abandonment” of the legislature’s power to change its policies in the future “ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear.” *Providence Bank*, 29 U.S., at 561. The people *can*, of course, expressly cede their police powers in perpetuity through a compact adopted by their legislature. But more than mere silence is needed to achieve that dramatic result. Cf. *United States v. Cherokee Nation of Okla.*, 480 U.S. 700, 707 (1987) (waiver of “sovereign authority will not be implied, but instead must be surrendered in

unmistakable terms”). This Compact’s “inscrutable silence” as to withdrawal in 1953 is insufficient to support granting New York a permanent veto over New Jersey’s sovereignty. *Tarrant*, 569 U.S., at 632.

*Second*, requiring a “clear indication” that the Compact prohibits unilateral withdrawal accords with the most likely intent of the States. As noted, this Court has explained “that a State does not easily cede its sovereignty,” and that States “rarely relinquish their sovereign powers.” *Tarrant*, 569 U.S., at 631-632; see also *Winstar*, 518 U.S., at 921 (Scalia, J., concurring) (“Governments do not ordinarily agree to curtail their sovereign or legislative powers, and contracts must be interpreted in a commonsense way against that background understanding.”). In the absence of a clear indication in the text, it thus makes little sense to presume that a compacting State would have agreed to forever “cede its sovereignty” and the power of its legislature to govern as it wishes no matter how much circumstances may change, and no matter how much the public’s views may change.

That is perhaps why fewer than two dozen of the 160 interstate compacts New Jersey has examined have expressly required unanimous consent for withdrawal. See App. 1a-43a.<sup>5</sup> Where a compact expressly addresses withdrawal, it is far more common—nearly three

---

<sup>5</sup> New Jersey has examined the former and current interstate compacts identified in Joseph F. Zimmerman, *Interstate Cooperation* 237-249 (2d ed. 2012). See App. 1a (describing methodology used to identify compacts). That source supplies the most recent comprehensive review of compacts of which New Jersey is aware. The Appendix to this brief identifies whether each of these compacts has an express withdrawal provision and, if so, whether the compact authorizes unilateral withdrawal or requires unanimity for withdrawal. See App. 1a-43a.

times more common—for the compact to permit withdrawal by either party on their own. *Id.* Although that is hardly surprising given the contract-law and sovereignty interests described above, it further reinforces that States must not be presumed to cede their sovereignty in perpetuity, and are permitted to withdraw from indefinite-performance compacts. See *Tarrant*, 569 U.S., at 633 (examining “customary practices employed in other interstate compacts”).

*Third*, requiring a clear statement that a compact mandates unanimity for withdrawal promotes a key purpose underlying this Court’s rules of compact interpretation: fair notice to States. It ensures that signatories are clearly warned before taking the momentous step of ceding their sovereign authority without any right to unilaterally reclaim their power. See *Kansas v. Colorado*, 533 U.S. 1, 13-14 (2001) (refusing to subject a State to certain liability because case law at time of compacting did not put the State “on notice” of the potential problem). Indeed, as this Court has explained in other contexts, ensuring fair notice before States cede their police powers is necessary to protect state sovereignty. See *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (noting clear-statement rule ensures the legislature “has in fact faced, and intended” to give up its sovereign authorities).

In Spending Clause cases, for example, this Court has concluded that where States participate in a program that operates “in the nature of a contract,” the States must be “on notice” as to the terms of the agreement. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1568, 1570 (2022) (quoting *Pennhurst State School & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)); see *Barnes v. Gorman*, 536 U.S. 181, 187 (2002). These cases teach that a State must

“clearly understand ... the obligations” that accompany the contract. *Arlington Cent. Sch. Dist. Bd. of Ed. v. Murphy*, 548 U.S. 291, 296 (2006). That is the only way this Court can “be confident” the State “exercised its choice knowingly, cognizant of the consequences of [its] participation.” *Cummings*, 142 S. Ct., at 1570.

Fair-notice principles strongly support New Jersey in this case. Here, the Compact’s plain text offered the signatories no indication that they were ceding sovereign law-enforcement and regulatory authority in perpetuity absent the counterparty’s approval. So there is no reason to conclude that the Legislature “ha[d] in fact faced” the question whether it was giving up its right to reclaim its sovereignty forever. *Gregory*, 501 U.S., at 461 (internal quotation marks omitted). Indeed, the opposite is true: background “contract-law rules” already made clear by 1953 that this Compact would not bind the signatory States forever. *Barnes*, 536 U.S., at 186; see also *New Jersey v. New York*, 523 U.S., at 783 (construing silence in compact in light of “the common law”). New Jersey would not have had notice—much less clear notice—that it was surrendering its sovereignty in perpetuity.

### 3. *The Compact’s Structure.*

Although the principles laid out above suffice to resolve this case, courts also consider the structure of a compact in ascertaining its meaning. See *Texas v. New Mexico*, 462 U.S. 554, 564 (1983). Here, the structure confirms that each State can withdraw on its own. Because the Compact’s structure ensures that the Commission can function only with the continuing assent of both States, it would make little sense to conclude that the Compact nevertheless binds a non-assenting State to remain in the Compact in perpetuity.

*First*, the Commission can only act if both commissioners, representing each State, assent. Article III of the Compact states that each commissioner will be “appointed by the Governor of such State with the advice and consent of the Senate.” Compl. App. 6a (art. III.2). And the Commission can “act only by unanimous vote of both members thereof.” *Id.* (art. III.3). Thus, either State can prevent the Commission from operating by having its commissioner consistently vote against the Commission’s actions. See OIG Report, *supra*, at 6 n.4 (“[T]he two commissioner structure has led to stalemates and inaction.”); see also *Texas v. New Mexico*, 462 U.S., at 564-565 (describing another interstate agency’s inability to function because the two voting commissioners could not reach unanimous agreement). It would be passing strange to conclude that a compact whose operation relies on continued assent by each State also forbids the States from voluntarily withdrawing.

*Second*, either of the State’s commissioners or Governors can unilaterally prevent the Commission from funding operations. The commissioners’ veto power applies to the Commission’s budget. See Compl. App. 6a (art. III.3). And “either Governor may ... disapprove or reduce any item or items” in the budget, and the budget “shall be adjusted accordingly.” Compl. App. 31a (art. XIII.2). That provision gives either Governor plenary authority to reject the budget. And without a budget, the agency cannot levy the assessments it ultimately needs to operate. See *id.* (art. XIII.3) (allowing agency to levy assessments to cover only “the balance of the commission’s budgeted expenses”). There is no reason to believe that the Compact somehow authorized this sort of unilateral power but that it foreclosed unilateral withdrawal.

B. Compact Law Imposes Important Limits On Withdrawal, But They Do Not Apply Here.

The same principles of compact interpretation supply clear limits on the classes of compacts for which unilateral withdrawal is appropriate. Such limits ensure a decision for New Jersey would not—contrary to New York’s claim—destabilize interstate compacts or disincentivize the creation of new ones.

*First*, where the compact expressly addresses withdrawal, the parties are bound to their choice. That is, of course, consistent with contract law. See *Tarrant*, 569 U.S., at 628 (“[A]s with any contract, we begin by examining the express terms of the Compact as the best indication of the intent of the parties.”); *Town of Readsboro v. Hoosac Tunnel & W.R. Co.*, 6 F.2d 733, 735 (CA2 1925) (Hand, J.). This Court’s rules for reading “silence in compacts touching on the States’ authority” likewise bear no relevance to such compacts. *Tarrant*, 569 U.S., at 632. And the concerns regarding implied perpetual performance fall away, as signatories are on fair notice of their choice.

A rule allowing New Jersey to withdraw therefore would not affect future compacts or the majority of interstate compacts already in effect. As to the former, States can (and likely will) address withdrawal expressly—or Congress can simply condition consent on whatever withdrawal rule it would prefer. And the effect on current compacts will be similarly slight. It is already the case that compacts can, and regularly do, define whether and how member States can withdraw. All told, most of the compacts New Jersey identified expressly address withdrawal. See App. 1a-43a. Most of them authorize unilateral withdrawal, while only a small minority require the assent of every compacting State to withdraw. For that reason alone, allowing

New Jersey to withdraw would not affect the substantial majority of compacts.

*Second*, consistent with contract law, the compact from which the State seeks to withdraw must be one requiring ongoing and indefinite performance by the sovereigns. See 1 Williston on Contracts § 4:22 (contract is “terminable at the will of either party” only if the contract “contemplat[es] continuing performance for an indefinite time”). That means unilateral withdrawal is only permitted for compacts that involve an ongoing delegation of, or limitation on, state regulatory authority—or otherwise require ongoing performance by the signatory States. See *id.* (distinguishing between “promise[s] contemplating continuing performance” and those involving one-time performance); *Merrion*, 455 U.S., at 148 (expressing concerns about *ongoing* “surrenders of sovereign authority” given future legislatures’ sovereign prerogative to regulate in the public interest on a continuing basis).

*Third*, the default rule is reversed where the compacts create vested rights. Contract law provides that parties cannot withdraw at will from contracts creating vested rights—*e.g.*, contracts that create permanent legal entitlements or grant certain possessory or property interests to the parties. See, *e.g.*, *N. Ohio Traction & Light Co. v. Ohio*, 245 U.S. 574, 576, 585 (1918) (franchise agreement for railroad that did not “specify[] any limit of time” was a “contract[] not subject to annulment”); *Cronk v. Vogt’s Ice Cream*, 15 N.Y.S.2d 649, 654 (N.Y. Sup. Ct. 1939) (no termination at will where “property rights of a permanent nature ... vest”). And cases involving sovereigns likewise make clear that States have “power to enter contracts that confer vested rights” and a “concomitant duty to honor those rights.” *Bowen*, 477 U.S., at

52. That is sensible: vested rights are settled legal entitlements that cannot be upended after the fact. See *Weaver v. Graham*, 450 U.S. 24, 29-30 (1981).

Whether a compact creates “vested rights” is a well-worn legal inquiry. See *id.* (noting role of vested rights in Contracts Clause or Due Process Clause inquiries); see also, *e.g.*, *Fletcher v. Peck*, 10 U.S. 87, 135 (1810). It turns on whether the signatories have acquired permanent property or contract entitlements under the compact. See *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37, 44 n.10 (2006).<sup>6</sup> The classic example of a compact creating vested rights is a compact setting the boundaries between States. See, *e.g.*, Arizona-California Boundary Compact, Pub. L. 89-531, 80 Stat. 340 (1966) (establishing boundary between Arizona and California along Colorado River). States thus cannot withdraw at will from such compacts. See *Virginia v. West Virginia*, 78 U.S. 39, 63 (1870) (preventing Virginia from withdrawing its consent to cede particular counties to West Virginia after that transfer vested). States also cannot withdraw at will from various compacts apportioning water rights among the signatory States. See, *e.g.*, Bear River

---

<sup>6</sup> In some situations, a third-party can acquire vested rights under a contract. See *Green v. Biddle*, 21 U.S. 1, 74-75 (1823). Whether a third party acquires vested rights likewise turns on the application of blackletter contract-law principles, which ask whether the third party is an “intended” or “incidental” beneficiary of the contract. 13 Williston on Contracts § 37:7; Restatement (Second) of Contracts § 302. This Compact, however, does not create third-party vested rights. Although it “indirectly and tangentially benefits” Commission employees and building owners from whom the Commission leases office space, 13 Williston on Contracts § 37:7, the Compact was not “made for the[ir] benefit,” *id.* § 37:10, and so the Compact “in fact and in law gives rise to no third party beneficiaries at all,” *id.* § 37:7.

Compact, Pub. L. 85-348; 72 Stat. 38 (1958) (dividing rights to specific volumes of water between the compacting states); Upper Colorado River Basin Compact, Pub. L. No. 81-37, 63 Stat. 31 (1949) (apportioning water among five States).

By contrast, this Compact does not create or assign vested rights, and New York has not alleged otherwise in its Bill of Complaint. The Compact does not create permanent contractual or property entitlements for New York or New Jersey. It does not, for example, set boundaries between the States or apportion rights to a natural resource. Instead, it delegates the States' sovereign authority to an interstate agency and limits the States' exercise of their own police powers at the waterfront. Thus, neither the signatory States nor any specific individual have a vested right to the Commission's continued existence.

In short, the default favoring unilateral withdrawal applies only to a narrow set of compacts—those that are silent on withdrawal, limit the continuing exercise of sovereign authority on an ongoing and indefinite basis, *and* do not involve any vested rights.<sup>7</sup> But even

---

<sup>7</sup> At the tail end of its motion-for-leave briefing, New York suggests that “courts may read in ‘reasonable time’ term[s] to reform perpetual agreements.” Reply Br. 9 (citing 3 Arthur Corbin, *Corbin on Contracts* § 553, at 212-213 (1960)). That much is certainly correct, see 1 Williston on *Contracts* § 4:22, but New York wisely does not argue that a reasonable-time limit applies to this case or that it would help New York in any event. Regarding the former, this Court has previously refused to apply such a limit to contracts involving sovereigns. See, e.g., *Ill. Cent. R.R. v. Ill.*, 146 U.S. 387, 455 (1892); *Newton*, 100 U.S., at 562-563; U.S. *Dyer* Br. 24 (noting, in early 1950s, that this Court treated “agreement[s] of indefinite duration” as “terminable at will” if sovereigns were involved). After all, requiring a legislature to wait a “reasonable time” before acting would limit its

for the compacts that meet those criteria, withdrawal remains unlikely. Most interstate compacts uncontroversially benefit their members, and no coercive force is needed to keep them in the compact. That is why, even for the vast majority of compacts where unilateral withdrawal is expressly allowed, withdrawals are rare. See Jerome C. Muys et al., *Utton Transboundary Resources Ctr. Model Interstate Water Compact*, 47 Nat. Res. J. 17, 35 (2007) (confirming “withdrawal by a state would be rare because ‘going it alone’ ... seems likely to be far less beneficial to a state’s interest”).

This case presents a unique set of circumstances: the conditions that led to the Compact’s creation have changed, yet one State wishes to force the other to continue delegating its sovereign powers in perpetuity—without any support in the Compact’s text, and without any vested rights at stake. In those circumstances, foundational principles of compact law require that New Jersey be permitted to withdraw.

---

“exercise of [its] governmental powers” for a set period without express support, and would subject the legislature to tremendous uncertainty regarding its sovereign powers. *Clear Lake*, 549 S.W.2d, at 391. Not only that, but even private contracts only typically implicate a reasonable-time rule if one of the parties demonstrates certain kinds of financial investments made in reliance on the contract, see *Compania*, 976 F.3d, at 246 (discussing exclusive distribution or franchise contracts), which the Bill of Complaint does not allege. In any event, this Court need not decide if this rule applies because New Jersey so clearly satisfies it anyway. See *Earnshaw v. United States*, 146 U.S. 60, 67 (1892) (resolving as matter of law); *Barco Urban Renewal Corp. v. Hous. Auth. of City of Atl. City*, 674 F.2d 1001, 1010 (CA3 1982); *Marcus v. Bos. Edison Co.*, 56 N.E.2d 910, 913 (Mass. 1944). By any measure, 70 years is a reasonable time, and New Jersey has identified no contract-law precedents requiring more.

## **II. New York's Insistence On Perpetual Unanimity Lacks Support.**

New York's contrary approach is inconsistent with the Compact's plain text, contract and compact law, and principles of state sovereignty.

### **A. New York's Perpetual Unanimity Requirement Finds No Support In The Compact's Text.**

New York's primary argument is that the Compact expressly limits New Jersey's sovereign right to withdraw. It claims to find a unanimity requirement in a provision regarding "amendments," in Congress's right to repeal the Compact, and in a series of negative inferences. None withstand scrutiny.

1. New York contends that the Compact's requirement of unanimity to adopt "amendments or supplements to [the] compact to implement [its] purposes" requires unanimity for withdrawal too. Compl. App. 34a-35a (art. XVI); see, *e.g.*, PI Br. 24. As a matter of text and compact practice, that is wrong.

Most importantly, New York's claim runs headlong into the actual words of the Compact. See *Alabama v. North Carolina*, 560 U.S. 330, 340 (2010) (agreeing words in compact must be given their "ordinary meaning"). As contemporaneous dictionary definitions establish, "amendments" to an agreement and a "withdrawal" from that agreement are distinct. See Black's Law Dictionary 106 (4th ed. 1951) (defining "amendment" as "modification or alteration" to a law); *id.*, at 1776 (defining "withdraw" as "[t]o remove"); Webster's Collegiate Dictionary 34 (5th ed. 1945) (defining "amendment" as an "alteration or change, esp. for the better"); *id.*, at 1159 (defining "withdraw" as "[t]o retire; retreat; to go away"); cf. *MCI Telecomms.*

*Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994) (discussing scope of “modify”).

Ordinary usage is clearer still. If a U.S. Senator recommends changes to a bill, she is offering an “amendment.” But if that Senator pulls her bill from consideration, her bill has been “withdrawn,” not amended. The same is true where sovereigns are involved. When the United States pulled out from the Paris Climate Accords, then-President Trump did not “amend” that agreement; instead, article after article stated that he had “withdrawn” from it. See White House Archives, *Pres. Trump Announces U.S. Withdrawal From The Paris Climate Accord* (June 1, 2017), available at <https://tinyurl.com/5e8mnudy>. It is thus unsurprising that Congress and state legislatures have long treated amendment and withdrawal or termination as distinct ideas. See, e.g., 42 U.S.C. § 1981(b) (citing contract “modification” and “termination” as distinct); 29 U.S.C. § 158(d); N.Y. Priv. Hous. Fin. Law § 1054(3); N.J. Stat. Ann. § 17:48-6(c); compare also Fed. R. Civ. Pro. 15 (limiting amendment of pleadings), with Fed. R. Civ. Pro. 41 (addressing termination of suit).

New York’s effort to conflate amendment and withdrawal is also inconsistent with blackletter contract law. As noted, a contract that is silent on withdrawal and requires the parties’ indefinite continuing performance permits either contracting party to withdraw. See *supra* at 14-18. But either party’s attempt to *amend* such a contract without the assent of the other parties is ineffective. See Restatement (Second) of Contracts § 3; 1 Corbin on Contracts § 4.13 (2022); 17A C.J.S. Contracts § 496. This distinction makes good sense: termination frees every party from the duties they would be obligated to perform in perpetuity,

whereas amendments bind counterparties to new commitments—something that cannot be done without their express consent.

Against that contract-law backdrop, New York’s argument is particularly untenable. In requiring unanimity for amendments, see Compl. App. 34a-35a (art. XVI), the Compact simply codified the default rule for amendments under contract law. It would therefore be strange to treat the *codification* of the default contract rule for amendments as strong evidence that the same parties somehow wanted to *override* the default contract rule for withdrawal by foreclosing unilateral action in these circumstances. But that is the entire premise on which New York’s theory rests.<sup>8</sup>

The history of interstate compacting likewise disproves New York’s claims. Compacts regularly distinguish amendments (which often require unanimity) from withdrawal or termination (which often do not). See Joseph F. Zimmerman, *Interstate Relations* 40 (1996) (contrasting “Compact Amendment” and “Termination,” and explaining that while amendments require “all party states [to] agree,” compacts often allow “withdrawal of a member” unilaterally). Examples abound. See, e.g., Del. Valley Urban Area Compact, 73 Pa. Stat. Ann § 701 (1965) (bistate compact stating “amendments” can be “adopted by concurrent legislation of the party states,” but “either of the parties” may “terminate it”); Jennings Randolph Lake Project Compact, Pub. L.

---

<sup>8</sup> Nor does the compact history support such an odd premise. The only reference to withdrawal indicates that the drafters understood not only that the Commission would be “temporary,” but that each State retained the right to reclaim its sovereignty. See *New York Hearings, supra*, at 665-666, 713, 815 (drafters informing New York officials that the terms of the Compact would give the “Legislature an opportunity to end this legislation”).

No. 104-176, 110 Stat. 1557 (1996) (bistate compact stating that any “amendment” requires approval of “both signatory States,” but that “[e]ither State may ... withdraw”). New York is itself party to other compacts that distinguish amendment from withdrawal. See Interstate Compact for Adult Offender Supervision, N.Y. Exec. Law § 259-mm; Compact for Juveniles, N.Y. Exec. Law § 501.

This widespread distinction between amendments and withdrawal safeguards States’ sovereignty. When a compact agency exercises multiple States’ delegated powers, a unilateral decision to change the interstate agency’s powers could allow one State to trample another State’s sovereignty without the latter’s consent. So it is no surprise that compacts (like contracts) typically require all States to agree on any amendments. See Interstate Relations, *supra*, at 40. By contrast, a decision to *withdraw* from the compact preserves the States’ authority to return to their pre-compact position within their territories. So while “bistate entities created by compact ... are not subject to the unilateral control of any of the States,” *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994), permitting the States to reclaim their sovereignty is a different matter altogether. And codifying the traditional compact and contract rules for amendments by no means suggests a desire to prohibit future legislatures from exercising their power to withdraw.

2. New York makes much of the fact that Congress can independently repeal the Compact, and suggests this implicitly means New Jersey cannot do so. See Compl. App. 35a (§ 2) (Congress reserving its “right to alter, amend, or repeal th[e] Act” when consenting to the Compact). But a standard congressional right to

repeal has nothing to do in logic or in practice with the separate issue of state withdrawal.

At the outset, a congressional repeal provision is a standard term in compacts that merely codifies a truism: Congress can always modify or repeal an interstate agreement. See *Commission Compact Hearing* at 26 (Congressman Keating, chair of the subcommittee, referred to § 2 of the federal statute approving the Compact as “the customary provision to put in these bills approving of interstate compacts”). Congress reserves plenary power to repeal consent to compacts to ensure, among other things, that the federal government can eliminate combinations via compact that “encroach upon or interfere with the just supremacy of the United States,” *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 471 (1978) (internal quotation marks omitted), and to comply with the maxim that “one Congress cannot bind a later Congress,” *Dorsey v. United States*, 567 U.S. 260, 274 (2012). But Congress’s codification of the traditional rule respecting congressional repeal is no reason to decide that the Compact overrides the traditional rules for state withdrawal. After all, withdrawal serves a different function than congressional repeal: it protects the *States’* ability to reclaim their sovereignty.

That is why the plain text of the congressional repeal provision has nothing to do with the question presented. New York’s theory is that expressly providing Congress the right to repeal the Compact means that the States cannot withdraw. But the parties in this case agree that in addition to Congress’s express repeal authority, some state withdrawal is allowed—the parties simply disagree on whether withdrawal has to be unanimous or can be unilateral. Nothing in the provision confirming Congress’s right “to alter,

amend, or repeal th[e] Act” speaks to that debate. Compl. App. 35a (§ 2). The provision is about protecting federal power, not about defending the interests of one State against the other. Simply put, the fact that Congress can terminate the Compact hardly establishes that New Jersey must accept the Commission’s exercise of police powers within its borders forever.

Consistent with that insight, longstanding interstate compact practice confirms that the mere presence of a congressional right to repeal does not say anything about conditions for state withdrawal. Interstate compacts frequently have a congressional repeal provision and a separate state withdrawal provision. See, e.g., Northwest Wildland Fire Protection Agreement, Pub. L. No. 105-377, 112 Stat. 3391 (1998); Wabash Valley Compact, Pub. L. No. 86-375, 73 Stat. 694 (1959). New York knows this well: the compact establishing the Port Authority of New York and New Jersey included a reservation of Congress’s right to repeal while separately supplying a (long-elapsed) provision allowing the States to withdraw. See New York-New Jersey Port Auth. Compact, S.J. Res. 88, 67th Cong., 42 Stat. 174 (1921). Because other compacts separately contemplate congressional repeal *and* unilateral withdrawal, the Compact’s inclusion of the former in no way forecloses the latter.

3. New York also claims that because the Compact does not expressly *authorize* withdrawal, permitting withdrawal here would introduce an “absent term[]” into the Compact. Mot. for Leave Br. 25 (citing *Alabama v. North Carolina*, 560 U.S., at 352). That argument comes up empty. The Compact neither authorizes *nor* limits a State’s right to reclaim police powers. The question is thus whether to interpret silence as permitting withdrawal (as New Jersey argues)

or prohibiting it (as New York argues). Reading a “limit” on withdrawal into the Compact, as New York proposes, would equally implicate New York’s concern.

Nor does the fact that some other interstate compacts expressly authorize unilateral withdrawal, Mot. for Leave Br. 25, support reading this Compact to implicitly prohibit it. New York ignores that other compacts, including contemporaneous ones, *limit* withdrawal. See, e.g., Pecos River Compact, Pub. L. No. 81-91, 63 Stat. 159 (1949); Snake River Compact, Pub. L. No. 81-464, 64 Stat. 29 (1950); Goose Lake Basin Compact, Pub. L. No. 98-334, 98 Stat. 291 (1984). So compacts can and do address withdrawal in each direction—authorizing or limiting it. Indeed, where States consider the issue, they widely see the benefits of allowing each sovereign to withdraw. *Supra* at 22-23.<sup>9</sup>

---

<sup>9</sup> New York also seeks to infer a unanimity requirement from the parties’ course of performance, but its search is again in vain. New York highlights that the signatory States had amended this Compact on multiple occasions through concurrent legislation. See Compl. 12 ¶42. But the States agree amendments need concurrence. That says nothing about withdrawal. *Supra* at 31-34; compare 2017 N.J. Sess. Laws 201 § 12 (New Jersey Legislature proposing amendments that “shall take effect upon the enactment of substantially similar legislation by ... New York”), with Compl. App. 36a-109a (Legislature withdrawing from the Compact without requiring approval). Nor does it matter that then-Governor Chris Christie previously vetoed withdrawal legislation in 2015 because he believed at the time that New York’s consent was necessary. Not only is that an isolated event, see 19 Williston on Contracts § 53:28 (“course of performance” involves a “sequence of conduct”), but the New Jersey Legislature disagreed and believed that such withdrawal was permissible, and overwhelmingly supported that legislation in 2015 and 2018. And on further consideration, Governor Christie himself signed the withdrawal statute in 2018.

The Compact's text thus in no way imposes a perpetual requirement of unanimity.

B. New York's Perpetual Unanimity Requirement Finds No Support In Interstate Compact Principles Or Precedents.

Lacking any support from the Compact's language, New York next claims that silence or ambiguity must be interpreted to perpetually prohibit non-unanimous withdrawal. Compl. 32 ¶112. That claim conflicts with principles of compact interpretation. It finds no support in either the text or original understanding of the Compact Clause. And it lacks a basis in precedent.

1. To start, every relevant tool of compact interpretation cuts against the remarkable proposition that an indefinite compact that is silent on withdrawal should be read to limit the signatory States' exercise of sovereign authority forever. As explained in detail above, New York's theory conflicts with widely-accepted contract law. See *supra* at 14-18. It contravenes basic rules of compact interpretation. See *supra* at 18-24. And it defies bedrock principles of sovereignty, denying States the right to reclaim sovereign powers, to decide on an ongoing basis how to police their sovereign territory, and to choose whether to continue delegating regulatory and law-enforcement authority. See *id.* That New Jersey may withdraw from this Compact follows inexorably from these rules.

Moreover, New York's approach produces the very harms that compact principles seek to avoid—and it would do so no matter how much time has passed or how much circumstances have changed. It would forever preclude States from reclaiming the police powers they had delegated, thereby robbing state legislatures of their prerogative to recalibrate the

exercise of regulatory authority in the public interest—even where a compact requires an ongoing obligation over an indefinite time period, and even if no vested rights are at stake. And because New York would impose that rule based only upon the compact’s reference to “amendments”—or, worse still, based on silence—its rule denies States fair notice that they have ceded their authority in perpetuity. Taken to its logical conclusion, New York’s approach would mean that, if a compact is silent on withdrawal, the States could be held hostage to that agreement for hundreds of years. That would “turn[] the concept of sovereignty on its head.” *Merrion*, 455 U.S., at 148.

This case illustrates the problem: even though 70 years have passed, and even though the shipping industry has evolved dramatically, see Compl. App. 36a-37a, New York is still holding New Jersey captive to a regulatory approach appropriate for 1953. But for years, New Jersey has maintained concerns regarding the Commission’s exercise of delegated police powers and the Commission’s overregulation of businesses. See Compl. App. 37a-38a. And for years, New Jersey has sought New York’s cooperation to amend the Compact to make the Commission more accountable and to tailor its role to 21st-century challenges. See *supra* at 8. Yet New York has rebuffed all these efforts because it lacks any incentive to compromise. See *Baldwin Piano*, 392 F.3d, at 885 (finding that where “both sides have a credible threat to walk away,” it “may induce the other side to compromise”).

Indeed, New York’s approach is a recipe for deadlock and dysfunction in interstate compacts. It is not uncommon for bistate compacts, including compacts that are silent on withdrawal, to create—much as this Compact does—an agency that is governed by an even

number of commissioners split between the compacting states. See, *e.g.*, Breaks Interstate Park Compact, Pub. L. 83-543, 68 Stat. 571 (1954). Because each State controls an equal share of the bistate or multistate entity, fundamental disagreements between the compacting States can lead to intractable gridlock. See, *e.g.*, *Texas v. New Mexico*, 462 U.S., at 565 (noting that, for several years, Pecos River Commission “took no action for lack of agreement between the voting Commissioners” from the two States, and “paralyzing impasses” occurred, requiring years-long Court intervention). The resulting deadlock is far more injurious to States and their citizens than allowing each of the compacting States to reclaim their sovereignty.

2. New York attempts to ground its perpetual-unanimity requirement in the “important role” of interstate compacts in “our federalism.” Mot. for Expedited Consideration 9. That argument falters right out of the gate: as noted, bedrock principles of federalism and sovereignty cut decisively against New York. See *supra* at 18-24. Those principles are reinforced by the text and history of the Compact Clause, which make plain that state withdrawal is entirely consistent with the federal system the Framers designed.

The Compact Clause provides that “[n]o State shall, without the Consent of Congress ... enter into any Agreement or Compact with another State.” U.S. Const. Art. 1, § 10, cl. 3. In other words, the Compact Clause requires the “Consent of Congress” to “enter into” compacts, but does not in any way limit States’ authority to withdraw. *Id.* After all, States retain “fundamental aspect[s] of the sovereignty which the States enjoyed before ratification ... except as altered by the plan of the Convention or certain constitutional

Amendments.” *Alden*, 527 U.S., at 713. Consent to forming a compact is therefore “the sole limitation imposed” by the Clause. *Rhode Island v. Massachusetts*, 37 U.S. 657, 725 (1838).

Nor was this because the Framers were somehow unaware that withdrawals might happen over the objections of other sovereigns. See Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L. J. 685, 692 (1925) (explaining the colonies had extensive experience with compacts before the ratification of the Constitution). For one, the Articles of Confederation itself had been described as a compact, see, e.g., Bruce Ackerman & Neal Katyal, *Our Unconventional Founding*, 62 U. Chi. L. Rev. 475, 551 (1995); The Federalist No. 30 (Hamilton), and yet the States had replaced the Articles without unanimous consent. See The Federalist No. 40 (Madison) (highlighting “the absurdity of subjecting the fate of 12 States[] to the perverseness or corruption of a thirteenth,” and noting that the “objection” that the States acted without unanimity “has been the least urged in the publications which have swarmed against the Convention”). And during the Founding era, the United States withdrew unilaterally from treaties with France. See Act of Congress of July 7, 1798, ch. 67, 1 Stat. 578 (1798); see also Emerich de Vattel, *Law of Nations*, Vol. 2, §§ 198, 200, 296 (Joseph Chitty, trans. T. & J.W. Johnson, Law Booksellers 6th ed. 1844) (discussing unilateral withdrawals from treaties).<sup>10</sup>

---

<sup>10</sup> That practice of unilateral withdrawal from treaties continues to this day. In the decade before enactment of this Compact, President Roosevelt withdrew from a spate of treaties. See, e.g., Proclamation No. 2500, 55 Stat. 1660 (Aug. 9, 1941) (declaring International Load Lines Convention of July 5, 1930

Instead, the Clause says nothing about withdrawal for a reason. In drafting the Clause, the Framers had a different concern in mind: to prevent “the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.” *Cuyler v. Adams*, 449 U.S. 433, 440 (1981). But withdrawal raises no such concerns. When interstate combinations dissolve, the parties return to their original positions as two separate sovereigns within the union, which imposes no danger of “encroach[ment] upon the supremacy of the United States.” *U.S. Steel*, 434 U.S., at 472. State withdrawal is therefore consistent with principles of federalism and the text and history of the Compact Clause.

3. New York’s efforts to cobble together a unanimity requirement from this Court’s cases fare no better. For instance, New York points to the sentence in this Court’s opinion in *Dyer* explaining that a compact cannot “be unilaterally nullified, or given final meaning by an organ of one of the contracting States.” 341 U.S., at 28. But that one line addressed a different matter: whether this Court must “defer[]” to the “highest court of a State” in construing a compact. *Id.* *Dyer* specifically recognized that there was a different question of whether a particular compact’s silence should be “read as to allow any signatory State to withdraw from its obligations at any time,” *id.*, at 26; acknowledged the U.S. Solicitor General had understood silence to

---

“inoperative in [U.S.] ports”). And in the past fifty years, the Nation “terminated dozens of treaties,” Restatement (Fourth) of the Foreign Relations Law of the U.S. §313 n.3 (2019), including a treaty that included no provision for unilateral withdrawal, see PI Opp. App. 61a (Mar. 7, 2005 letter from C. Rice advising United Nations of “withdrawal” from treaty).

permit withdrawal in this category of compact, *id.*; and expressly declined to resolve the matter, see *id.* (refusing to “be tempted by these inviting vistas” because they were not addressed below).

New York also claims that the inability of a state to “modify unilaterally or repeal the agreement” is one of the “classic indicia of a compact.” PI Br. 20 (quoting *Northeast Bancorp, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985)). But dozens of compacts expressly authorize unilateral withdrawal. See App. 1a-43a. Indeed, of the 160 compacts that New Jersey examined, compacts expressly allowing unilateral withdrawal are nearly three times more common than compacts expressly requiring universal consent. App. 1a-43a. In any event, this dicta from *Northeast Bancorp* nowhere suggests that a limit on state withdrawal can be read into a compact that does not expressly include it, and that opinion had no reason to consider the issue. Nothing in this Court’s cases rebuts the rule contract and compact law have supplied: that where a compact involves indefinite performance and no vested rights, courts will not read mere silence to require perpetual unanimity to withdraw.

Under New York’s formulation, what started as a cooperative instrument to address a mutual problem would forever be a cudgel for New York to bend New Jersey’s sovereign authority to its will. But nothing in this Compact requires New Jersey to delegate sovereign authority to the Commission in perpetuity. Consistent with contract law and sovereign principles, the New Jersey Legislature may reclaim its police powers. This Court should hold that the Waterfront Commission Compact permits New Jersey to withdraw.

**CONCLUSION**

This Court should grant New Jersey's motion for judgment on the pleadings.

Respectfully submitted,

MATTHEW J. PLATKIN

*Acting Attorney General*

*State of New Jersey*

JEREMY M. FEIGENBAUM\*

*Solicitor General*

SUNDEEP IYER

JEAN P. REILLY

*Assistant Attorneys General*

EMILY M. BISNAUTH

AMY CHUNG

PATRICK JHOO

NATHANIEL LEVY

VIVEK N. MEHTA

KRISTINA L. MILES

DANIEL RESLER

*Deputy Attorneys General*

25 Market Street

Trenton, New Jersey 08625

(609) 414-0197

Jeremy.feigenbaum@njoag.gov

\*Counsel of Record

August 22, 2022

## **APPENDIX**

**APPENDIX: LIST OF CURRENT  
AND FORMER INTERSTATE COMPACTS\***

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
1	Alabama-Co- osa-Tallapoosa River Basin Compact <sup>1</sup>	Yes	Unanimous
2	Animas-La Plata Project Compact <sup>2</sup>	No	

---

\* This Appendix sets forth a list of 160 current and former interstate compacts identified in Joseph F. Zimmerman, *Interstate Cooperation* 237-249 (2d ed. 2012). That source supplies the most recent comprehensive catalogue of compacts of which New Jersey is aware. Because that source was published in 2012, it does not include compacts signed after that date. That source identified 182 current and former compacts, but this Appendix excludes any compacts proposed by one state that New Jersey could not confirm had ever been adopted by any other State, agreements that did not exclusively involve States as parties (such as agreements between cities or ones involving foreign sovereigns), and compacts whose text New Jersey could not locate. This Appendix also excludes several duplicate entries from Zimmerman's list of compacts. For each compact, the Appendix identifies whether the compact has an express withdrawal provision and, if so, whether the compact authorizes unilateral withdrawal or requires unanimity for withdrawal.

<sup>1</sup> P.L. 105-105, 111 Stat. 2233 (1997).

<sup>2</sup> P.L. 90-537, 82 Stat. 885 (1968); Colo. Rev. Stat. Ann. § 37-64-101.

## 2a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
3	Apalachicola-Chattahoochee-Flint River Basin Compact <sup>3</sup>	Yes	Unanimous
4	Appalachian States Low-Level Radioactive Waste Compact <sup>4</sup>	Yes	Unilateral
5	Arkansas River Basin Compact of 1970 <sup>5</sup>	Yes	Unanimous
6	Arkansas River Compact of 1949 (Colorado and Kansas) <sup>6</sup>	Yes	Unanimous

---

<sup>3</sup> P.L. 105-104, 111 Stat. 2219 (1997).

<sup>4</sup> P.L. 100-319, 102 Stat. 471 (1988).

<sup>5</sup> P.L. 93-152, 87 Stat. 569 (1973).

<sup>6</sup> P.L. 81-82, 63 Stat. 145 (1949).

## 3a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
7	Arkansas River Compact of 1955 (Kansas-Oklahoma) <sup>7</sup>	Yes	Unanimous
8	Arkansas-Louisiana-Texas Compact for Removal of Raft from the Red River <sup>8</sup>	No	
9	Arkansas-Mississippi Great River Bridge Construction Compact <sup>9</sup>	Yes	Unilateral

---

<sup>7</sup> P.L. 89-789, 80 Stat. 1409 (1966).

<sup>8</sup> J. Res. 9, 37th Congress, 12 Stat. 250 (1861).

<sup>9</sup> P.L. 99-560, 100 Stat. 3146 (1986).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
10	Arkansas-Tennessee Criminal Jurisdiction over the Boundary Waters of the Mississippi River Compact of 1909 <sup>10</sup>	No	
11	Atlantic Interstate Low-Level Radioactive Waste Management Compact <sup>11</sup>	Yes	Unilateral
12	Atlantic States Marine Fisheries Compact <sup>12</sup>	Yes	Unilateral

---

<sup>10</sup> S.J. Res. 7, 60th Congress, 35 Stat. 1163 (1909); 1909 Ark. Acts 888.

<sup>11</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 227), 42 U.S.C. § 2021d.

<sup>12</sup> P.L. 77-539, 56 Stat. 267 (1942).

## 5a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
13	Bear River Compact <sup>13</sup>	Yes	Unanimous
14	Belle Fourche River Compact <sup>14</sup>	Yes	Unanimous
15	Big Blue River Compact <sup>15</sup>	Yes	Unanimous
16	Bi-State Development Agency Compact <sup>16</sup>	No	

---

<sup>13</sup> P.L. 85-348, 72 Stat. 38 (1958).

<sup>14</sup> P.L. 78-236, 58 Stat. 94 (1944).

<sup>15</sup> P.L. 92-308, 86 Stat. 193 (1972).

<sup>16</sup> P.L. 81-743, 64 Stat. 568 (1950).

## 6a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
17	Boating Offense Compact <sup>17</sup>	Yes	Unilateral
18	Breaks Interstate Park Compact <sup>18</sup>	No	
19	Bus Taxation Proration and Reciprocity Agreement <sup>19</sup>	Yes	Unilateral
20	California-Nevada Compact for Jurisdiction on Interstate Waters <sup>20</sup>	No	

---

<sup>17</sup> Or. Rev. Stat. § 830.080; Wash. Rev. Code Ann. § 88.01.010.

<sup>18</sup> P.L. 83-543, 68 Stat. 571 (1954).

<sup>19</sup> P.L. 89-11, 79 Stat. 58 (1965).

<sup>20</sup> Nev. Rev. Stat. Ann. § 171.077; Cal. Penal Code §§ 853.3-853.4.

## 7a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
21	California-Nevada Water Compact <sup>21</sup>	Yes	Unanimous
22	Canadian River Compact <sup>22</sup>	No	
23	Central Interstate Low-Level Radioactive Waste Compact <sup>23</sup>	Yes	Unilateral
24	Central Midwest Low-Level Radioactive Waste Compact <sup>24</sup>	Yes	Unilateral

---

<sup>21</sup> P.L. 84-353, 69 Stat. 675 (1955); Nev. Rev. Stat. Ann. § 538.600.

<sup>22</sup> P.L. 81-491, 64 Stat. 93 (1950); N.M. Stat. Ann. § 72-15-2.

<sup>23</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 222).

<sup>24</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 224).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
25	Chickasaw Trail Economic Development Compact <sup>25</sup>	Yes	Unilateral
26	Civil Defense and Disaster Interstate Compact <sup>26</sup>	Yes	Unilateral
27	Colorado River Compact <sup>27</sup>	Yes	Unanimous
28	Colorado River Crime Enforcement Compact <sup>28</sup>	Yes	Unilateral

---

<sup>25</sup> P.L. 105-145, 111 Stat. 2669 (1997).

<sup>26</sup> P.L. 81-920, 64 Stat. 1245 (1951).

<sup>27</sup> P.L. 67-56, 42 Stat. 171 (1921); Colo. Rev. Stat. Ann. § 37-61-101.

<sup>28</sup> Cal. Penal Code §§ 853.1-853.2; Ariz. Rev. Stat. Ann. § 37-620.11.

## 9a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
29	Colorado-New Mexico Costilla Creek Compact <sup>29</sup>	No	
30	Columbia River Fish Compact <sup>30</sup>	No	
31	Columbia River Gorge Compact <sup>31</sup>	No	
32	Connecticut - New York Railroad Passenger Transportation Compact <sup>32</sup>	No	

---

<sup>29</sup> P.L. 79-408, 60 Stat. 246 (1946).

<sup>30</sup> P.L. 65-123, 40 Stat. 515 (1918); Wash. Rev. Code Ann. §§ 77.75.010, 77.75.020; Or. Rev. Stat. § 507.010.

<sup>31</sup> P.L. 99-663, 100 Stat. 4274 (1986); Wash. Rev. Code Ann. § 43.97.015; Or. Rev. Stat. § 196.150.

<sup>32</sup> P.L. 91-159, 83 Stat. 441 (1969).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
33	Connecticut and Rhode Island Boundary Compact <sup>33</sup>	No	
34	Connecticut River Basin Atlantic Salmon Compact <sup>34</sup>	Yes	Unilateral
35	Connecticut River Valley Flood Control Compact <sup>35</sup>	No	
36	Costilla Creek Compact <sup>36</sup>	No	

---

<sup>33</sup> P.L. 50-1094, 25 Stat. 553 (1888); 1888 R.I. Pub. Laws 146.

<sup>34</sup> P.L. 98-138, 97 Stat. 866 (1983).

<sup>35</sup> P.L. 83-52, 67 Stat. 45 (1953).

<sup>36</sup> P.L. 79-408, 60 Stat. 246 (1946).

## 11a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
37	Cumbres and Toltec Scenic Railroad Compact <sup>37</sup>	No	
38	Delaware River and Bay Authority Compact <sup>38</sup>	No	
39	Delaware River Basin Compact <sup>39</sup>	Yes	Other (unilateral withdrawal permitted every 100 years)
40	Delaware River Joint Toll Bridge Compact <sup>40</sup>	No	

---

<sup>37</sup> P.L. 93-467, 88 Stat. 1421 (1974).

<sup>38</sup> P.L. 87-678, 76 Stat. 560 (1962).

<sup>39</sup> P.L. 87-328, 75 Stat. 688 (1961).

<sup>40</sup> P.L. 74-411, 49 Stat. 1051 (1935).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
41	Delaware River Port Authority Compact <sup>41</sup>	No	
42	Delaware Valley Urban Area Compact <sup>42</sup>	Yes	Unilateral
43	Delaware-New Jersey Fishery Compact <sup>43</sup>	No	
44	Drivers License Compact <sup>44</sup>	Yes	Unilateral

---

<sup>41</sup> S.J. Res. 41, 72d Congress, 47 Stat. 308 (1932).

<sup>42</sup> N.J. Stat. Ann. § 32:27-7; 73 Pa. Stat. and Cons. Stat. Ann. § 701.

<sup>43</sup> P.L. 59-394, 34 Stat. 858 (1907).

<sup>44</sup> Vt. Stat. Ann. tit. 23, § 3901-10.

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
45	Emergency Management Assistance Compact <sup>45</sup>	Yes	Unilateral
46	Georgia-South Carolina Boundary Compact <sup>46</sup>	No	
47	Goose Lake Basin Compact (California and Oregon) <sup>47</sup>	Yes	Unanimous
48	Great Lakes Basin Compact <sup>48</sup>	Yes	Unilateral

---

<sup>45</sup> P.L. 104-321, 110 Stat. 3877 (1996).

<sup>46</sup> P.L. 106-90, 113 Stat. 1307 (1999).

<sup>47</sup> P.L. 98-334, 98 Stat. 291 (1984).

<sup>48</sup> P.L. 90-419, 82 Stat. 414 (1968).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
49	Great Lakes-St. Lawrence River Basin Water Resources Compact <sup>49</sup>	Yes	Other (majority)
50	Great Plains Wildland Fire Protection Compact <sup>50</sup>	Yes	Unilateral
51	Gulf States Marine Fisheries Compact <sup>51</sup>	Yes	Unilateral
52	Historic Chattahoochee Compact <sup>52</sup>	No	

---

<sup>49</sup> P.L. 110-342, 122 Stat. 3739 (2008).

<sup>50</sup> P.L. 110-79, 121 Stat. 730 (2007).

<sup>51</sup> P.L. 81-066, 63 Stat. 70 (1949).

<sup>52</sup> P.L. 95-462, 92 Stat. 1271 (1978).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
53	Incorporation of C. & O. Canal Company in 1825 <sup>53</sup>	No	
54	International Emergency Management Assistance Memorandum of Understanding <sup>54</sup>	Yes	Unilateral
55	Interstate Agreement on Detainers <sup>55</sup>	Yes	Unilateral
56	Interstate Compact for Adult Offender Supervision <sup>56</sup>	Yes	Unilateral

---

<sup>53</sup> 64 Va. Laws 1823-24, ch. 38, p. 41.

<sup>54</sup> P.L. 110-171, 121 Stat. 2467 (2007).

<sup>55</sup> P.L. 73-293, 48 Stat. 909 (1934); N.J. Stat. Ann. § 2A:159A-1 to -15; Ariz. Rev. Stat. Ann. § 31-481.

<sup>56</sup> Idaho Code Ann. § 20-301; P.L. 73-293, 48 Stat. 909 (1934), 4 U.S.C. § 112.

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
57	Interstate Compact for Juveniles <sup>57</sup>	Yes	Unilateral
58	Interstate Compact on Adoption and Medical Assistance <sup>58</sup>	Yes	Unilateral
59	Interstate Compact on Mental Health <sup>59</sup>	Yes	Unilateral
60	Interstate Compact on Parole and Probation <sup>60</sup>	Yes	Unilateral

---

<sup>57</sup> Ala. Code § 44-2-10; P.L. 73-293, 48 Stat. 909 (1934), 4 U.S.C. § 112.

<sup>58</sup> Conn. Gen. Stat. Ann. § 17a-116d.

<sup>59</sup> Ala. Code § 22-55-1.

<sup>60</sup> Mich. Comp. Laws Ann. § 798.101; P.L. 73-293, 48 Stat. 909 (1934), 4 U.S.C. § 112.

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
61	Interstate Compact on Placement of Children <sup>61</sup>	Yes	Unilateral
62	Interstate Compact to Conserve Gas and Oil <sup>62</sup>	Yes	Unilateral
63	Interstate Corrections Compact <sup>63</sup>	Yes	Unilateral
64	Interstate Environmental Compact <sup>64</sup>	No	

---

<sup>61</sup> Colo. Rev. Stat. Ann. § 24-60-1802; Cal. Fam. Code § 7901.

<sup>62</sup> H.J. Res. 31, 76th Congress, 53 Stat. 1071 (1939); Kan. Stat. Ann. § 55-804.

<sup>63</sup> Conn. Gen. Stat. Ann. § 18-106; P.L. 73-293, 48 Stat. 909 (1934), 4 U.S.C. § 112.

<sup>64</sup> S.J. Res. 159, 74th Congress, 49 Stat. 932 (1935).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
65	Interstate High Speed Intercity Rail Passenger Network Compact <sup>65</sup>	Yes	Unilateral
66	Interstate Rail Passenger Network Compact <sup>66</sup>	Yes	Unilateral
67	Jennings Randolph Lake Project Compact <sup>67</sup>	Yes	Unilateral
68	Kansas and Missouri Metropolitan Culture District Compact <sup>68</sup>	Yes	Unilateral

---

<sup>65</sup> P.L. 98-358, 98 Stat. 399 (1984).

<sup>66</sup> P.L. 102-452, 106 Stat. 2255 (1992).

<sup>67</sup> P.L. 104-176, 110 Stat. 1557 (1996).

<sup>68</sup> P.L. 106-287, 114 Stat. 909 (2000).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
69	Kansas City Area Transportation Compact <sup>69</sup>	No	
70	Kansas-Nebraska Big Blue River Compact <sup>70</sup>	Yes	Unanimous
71	Kentucky-Tennessee Boundary Compact <sup>71</sup>	No	
72	Kentucky-Virginia Boundary Compact of 1791 <sup>72</sup>	No	

---

<sup>69</sup> P.L. 89-599, 80 Stat. 826 (1966).

<sup>70</sup> P.L. 92-308, 86 Stat. 193 (1972).

<sup>71</sup> Res. 5, 16th Congress, 3 Stat. 609 (1820); 1820 Ky. Acts Ch. 546.

<sup>72</sup> Ch. IV, 1st Congress, 1 Stat. 189 (1791).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
73	Klamath River Compact <sup>73</sup>	Yes	Unanimous
74	La Plata River Compact <sup>74</sup>	Yes	Unanimous
75	Massachusetts and New York Boundary Compact <sup>75</sup>	No	
76	Massachusetts and Rhode Island Boundary Settlement of 1859 <sup>76</sup>	No	

---

<sup>73</sup> P.L. 85-222, 71 Stat. 497 (1957).

<sup>74</sup> P.L. 68-346, 43 Stat. 796 (1925).

<sup>75</sup> Ch. 20, 33rd Congress, 10 Stat. 602 (1855); 1853 N.Y. Laws 1102 (McKinney).

<sup>76</sup> Ch. 28, 35th Congress, 11 Stat. 382 (1859).

## 21a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
77	Massachusetts-Connecticut Boundary Compact <sup>77</sup>	No	
78	Merrimack River Flood Control Compact <sup>78</sup>	No	
79	Metropolitan Washington Airports Authority <sup>79</sup>	No	
80	Middle Atlantic Forest Fire Protection Compact <sup>80</sup>	Yes	Unilateral

---

<sup>77</sup> P.L. 63-207, 38 Stat. 727 (1913).

<sup>78</sup> P.L. 85-23, 71 Stat. 18 (1957).

<sup>79</sup> P.L. 105-102, 111 Stat. 2210 (1997); P.L. 106-181, 114 Stat. 115 (2000); Va. Code Ann. §§ 5.1-152 to 5.1-178.

<sup>80</sup> P.L. 84-790, 70 Stat. 636 (1956).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
81	Midwest Interstate Low-Level Radioactive Waste Compact <sup>81</sup>	Yes	Unilateral
82	Mississippi-Alabama-Georgia-Louisiana Rapid Rail Transit Compact <sup>82</sup>	Yes	Unilateral
83	Missouri River Toll Bridge Compact <sup>83</sup>	No	
84	Missouri-Arkansas Boundary Compact <sup>84</sup>	No	

---

<sup>81</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 225), 42 U.S.C. § 2021d.

<sup>82</sup> P.L. 97-213, 96 Stat. 150 (1982).

<sup>83</sup> P.L. 73-008, 48 Stat. 105 (1933).

<sup>84</sup> Ch. 10, 30th Congress, 9 Stat. 211 (1848); 1847 Mo. Laws 13.

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
85	Missouri-Nebraska Boundary Compact <sup>85</sup>	No	
86	National Crime Prevention and Privacy Compact <sup>86</sup>	Yes	Unilateral
87	National Interstate Corrections Compact <sup>87</sup>	Yes	Unilateral
88	New England Higher Education Compact <sup>88</sup>	Yes	Unilateral

---

<sup>85</sup> P.L. 106-101, 113 Stat. 1333 (1999).

<sup>86</sup> P.L. 105-251, 112 Stat. 1870 (sec. 211), 34 U.S.C. § 40316.

<sup>87</sup> P.L. 81-138, 63 Stat. 107 (1949); N.H. Rev. Stat. Ann. §§ 622-B:1 to 622-B:3.

<sup>88</sup> P.L. 83-719, 68 Stat. 982 (1954).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
89	New England Interstate Water Pollution Control Compact <sup>89</sup>	No	
90	New England Interstate Corrections Compact <sup>90</sup>	Yes	Unilateral
91	New England State Police Compact <sup>91</sup>	Yes	Unilateral
92	New Hampshire-Maine Interstate School District Compact <sup>92</sup>	No	

---

<sup>89</sup> P.L. 80-292, 61 Stat. 682 (1947).

<sup>90</sup> Crime Control Act, H.R. 7353, 48 Stat. 909 (1934), 4 U.S.C. § 112; N.H. Rev. Stat. Ann. § 622-A:2.

<sup>91</sup> Crime Control Act, H.R. 7353, 48 Stat. 909 (1934), 4 U.S.C. § 112; Conn. Gen. Stat. Ann. § 29-162.

<sup>92</sup> P.L. 102-494, 106 Stat. 3153 (1992).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
93	New Hampshire-Vermont Interstate Public Water Supply Compact <sup>93</sup>	No	
94	New Hampshire-Vermont Interstate School District Compact (Dresden Interstate School District) <sup>94</sup>	No	

---

<sup>93</sup> P.L. 104-126, 110 Stat. 884 (1996).

<sup>94</sup> P.L. 88-177, 77 Stat. 332 (1963); P.L. 91-21, 83 Stat. 14 (1969); P.L. 107-352, 116 Stat. 2981 (2002); N.H. Rev. Stat. Ann. § 200-B:1; Vt. Stat. Ann. tit. 16, §§ 771 to 784.

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
95	New Hampshire-Vermont Interstate School District Compact (Rivendell Interstate School District) <sup>95</sup>	No	
96	New Hampshire-Vermont Interstate Sewage and Waste Disposal Facilities Compact <sup>96</sup>	No	
97	New Hampshire-Vermont Interstate Solid Waste Compact <sup>97</sup>	No	

---

<sup>95</sup> P.L. 91-21, 83 Stat. 14 (1969).

<sup>96</sup> P.L. 94-403, 90 Stat. 1221 (1976).

<sup>97</sup> P.L. 97-278, 96 Stat. 1207 (1982).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
98	New Jersey-Delaware Delaware River Jurisdiction Compact <sup>98</sup>	No	
99	New Jersey-Pennsylvania Turnpike Bridge Compact <sup>99</sup>	No	
100	New York and Connecticut Boundary Agreement of 1911-1912 <sup>100</sup>	No	
101	New York and Pennsylvania Boundary Compact <sup>101</sup>	No	

---

<sup>98</sup> P.L. 59-32, 34 Stat. 858 (1907).

<sup>99</sup> P.L. 82-216, 65 Stat. 650 (1951).

<sup>100</sup> P.L. 68-316, 43 Stat. 731 (1925); 1912 N.Y. Sess. Laws 692 (McKinney).

<sup>101</sup> P.L. 51-804, 26 Stat. 329 (1890).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
102	New York-Connecticut Boundary Compact of 1881 <sup>102</sup>	No	
103	New York-Connecticut Railroad Passenger Transportation Compact <sup>103</sup>	No	
104	New York-New Jersey Boundary Compact <sup>104</sup>	No	
105	New York-Vermont Boundary Agreement <sup>105</sup>	No	

---

<sup>102</sup> Ch. 81, 46th Congress, 21 Stat. 351 (1879).

<sup>103</sup> P.L. 91-159, 83 Stat. 441 (1969).

<sup>104</sup> P.L. 23-126, 4 Stat. 708 (1834).

<sup>105</sup> P.L. 46-49, 21 Stat. 72 (1880); 1879 N.Y. Sess. Laws 138 (McKinney).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
106	Nonresident Violator Compact <sup>106</sup>	Yes	Unilateral
107	Northeast Dairy Compact <sup>107</sup>	Yes	Unilateral
108	Northeastern Interstate Forest Fire Protection Compact <sup>108</sup>	Yes	Unilateral
109	Northwest Compact on Low-Level Radioactive Waste Management <sup>109</sup>	Yes	Unilateral

---

<sup>106</sup> P.L. 85-684, 72 Stat. 635 (1958); Tex. Transp. Code Ann. § 703.002.

<sup>107</sup> 7 U.S.C. § 7256; Vt. Stat. Ann. tit. 6, §§ 1801-22; N.Y. Agric. & Mkts. Law § 258-KK (McKinney).

<sup>108</sup> P.L. 81-129, 63 Stat. 271 (1949).

<sup>109</sup> P.L. 99-240, 99 Stat. 1842 (1986).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
110	Northwest Wildland Fire Protection Agreement <sup>110</sup>	Yes	Unilateral
111	Ohio River Valley Water Sanitation Compact <sup>111</sup>	No	
112	Oregon-Washington Boundary Compact <sup>112</sup>	No	
113	Pacific Marine Fisheries Compact <sup>113</sup>	Yes	Unilateral

---

<sup>110</sup> P.L. 105-377, 112 Stat. 3391 (1998).

<sup>111</sup> P.L. 76-739, 54 Stat. 752 (1940).

<sup>112</sup> H.J. Res. 160, 61st Congress, 36 Stat. 881 (1910); P.L. 85-575, 72 Stat. 455 (1958); Or. Rev. Stat. §§ 186.510 et seq.; Wash. Rev. Code Ann. §§ 43.58.050 to 43.58.090.

<sup>113</sup> P.L. 81-232, 61 Stat. 419 (1947).

## 31a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
114	Pacific Northwest Emergency Management Arrangement <sup>114</sup>	Yes	Unilateral
115	Palisades Interstate Park Compact <sup>115</sup>	No	
116	Pecos River Compact <sup>116</sup>	Yes	Unanimous
117	Port Authority of New York and New Jersey Compact <sup>117</sup>	Yes	Unanimous

---

<sup>114</sup> P.L. 105-381, 112 Stat. 3402 (1998).

<sup>115</sup> H.R.J. Res. 445, 50 Stat. 719 (1937).

<sup>116</sup> P.L. 81-91, 63 Stat. 159 (1949).

<sup>117</sup> P.L. 67-017, 42 Stat. 174 (1921); N.J. Stat. Ann. §§ 32:1-1 to 32:1-24; N.Y. Unconsol. Law §§ 6401-24 (McKinney).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
118	Portsmouth-Kittery Bridge Compact <sup>118</sup>	No	
119	Potomac Highlands Airport Authority Compact <sup>119</sup>	No	
120	Potomac River Compact <sup>120</sup>	Yes	Unanimous
121	Potomac Valley Compact <sup>121</sup>	Yes	Unilateral

---

<sup>118</sup> P.L. 75-220, 50 Stat. 538 (1937), amended by P.L. 83-366, 68 Stat. 140 (1954).

<sup>119</sup> P.L. 105-348, 112 Stat. 3212 (1998).

<sup>120</sup> P.L. 87-783, 76 Stat. 797 (1962).

<sup>121</sup> Ch. 577, 76th Congress, 54 Stat. 748 (1940), amended by P.L. 91-407, 84 Stat. 85.

## 33a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
122	Pymatuning Lake Compact <sup>122</sup>	No	
123	Quad Cities Interstate Metropolitan Authority Compact <sup>123</sup>	Yes	Unilateral
124	Red River Compact <sup>124</sup>	Yes	Unanimous
125	Republican River Compact <sup>125</sup>	No	

---

<sup>122</sup> P.L. 75-398, 50 Stat. 865 (1937).

<sup>123</sup> P.L. 101-288, 104 Stat. 178 (1990).

<sup>124</sup> P.L. 96-564, 94 Stat. 3305 (1980).

<sup>125</sup> P.L. 78-060, 57 Stat. 86 (1943).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
126	Rio Grande Compact <sup>126</sup>	No	
127	Rocky Mountain Low-Level Radioactive Waste Compact <sup>127</sup>	Yes	Unilateral
128	Sabine River Compact <sup>128</sup>	Yes	Unanimous
129	Snake River Compact <sup>129</sup>	Yes	Unanimous

---

<sup>126</sup> P.L. 76-96; 53 Stat. 785 (1939).

<sup>127</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 226), 42 U.S.C. § 2021d.

<sup>128</sup> Tex. Water Code Ann. § 44.010.

<sup>129</sup> P.L. 81-464, 64 Stat. 29 (1950).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
130	South Central Forest Fire Protection Compact <sup>130</sup>	Yes	Unilateral
131	South Dakota-Nebraska Boundary Compact (1897) <sup>131</sup>	No	
132	South Dakota-Nebraska Boundary Compact (1905) <sup>132</sup>	No	
133	South Dakota-Nebraska Boundary Compact (1989) <sup>133</sup>	No	

---

<sup>130</sup> P.L. 83-642, 68 Stat. 783 (1954).

<sup>131</sup> P.L. 55-12, 30 Stat. 214 (1897); 1897 Neb. Sess. Laws 458.

<sup>132</sup> P.L. 58-116, 33 Stat. 820 (1905); 1905 Neb. Sess. Laws 792.

<sup>133</sup> P.L. 101-183, 103 Stat. 1328 (1989).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
134	South Platte River Compact <sup>134</sup>	Yes	Unanimous
135	Southeast Interstate Low-Level Radioactive Waste Compact <sup>135</sup>	Yes	Unilateral
136	Southeastern Forest Fire Protection Compact <sup>136</sup>	Yes	Unilateral

---

<sup>134</sup> P.L. 69-37, 44 Stat. 195 (1926).

<sup>135</sup> P.L. 99-240, 99 Stat. 1842 (1986) (sec. 223), 42 U.S.C. § 2021d.

<sup>136</sup> P.L. 83-536, 68 Stat. 563 (1954).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
137	Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004 <sup>137</sup>	Yes	Unilateral
138	Southwestern Low-Level Radioactive Waste Disposal Compact <sup>138</sup>	Yes	Unilateral
139	Susquehanna River Basin Compact <sup>139</sup>	Yes	Other (unilateral withdrawal permitted every 100 years)

---

<sup>137</sup> P.L. 108-336, 118 Stat. 1354 (2004); Colo. Rev. Stat. Ann. § 25-7-1303 et seq.

<sup>138</sup> P.L. 100-712, 102 Stat. 4773 (1988).

<sup>139</sup> P.L. 91-575, 84 Stat. 1509 (1970).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
140	Tahoe Regional Planning Compact <sup>140</sup>	Yes	Unilateral
141	Taxation of Motor Fuels Consumed by Interstate Buses <sup>141</sup>	Yes	Unilateral
142	Tennessee River Basin Water Pollution Control Compact <sup>142</sup>	Yes	Unilateral
143	Tennessee-Tombigbee Waterway Development Compact <sup>143</sup>	Yes	Unilateral

---

<sup>140</sup> P.L. 91-148, 83 Stat. 360 (1969).

<sup>141</sup> P.L. 89-11, 79 Stat. 58 (1965).

<sup>142</sup> P.L. 85-734, 72 Stat. 823 (1958).

<sup>143</sup> P.L. 85-653, 72 Stat. 609 (1958).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
144	Tennessee-Virginia Boundary Compact <sup>144</sup>	No	
145	Texas Low-Level Radioactive Waste Disposal Compact <sup>145</sup>	Yes	Unilateral
146	Thames River Valley Flood Control Compact <sup>146</sup>	No	
147	Upper Colorado River Basin Compact <sup>147</sup>	Yes	Unanimous

---

<sup>144</sup> J. Res. 19, 56th Congress, 31 Stat. 1465 (1901).

<sup>145</sup> P.L. 105-236, 112 Stat. 1542 (1998).

<sup>146</sup> P.L. 85-526, 72 Stat. 364 (1958).

<sup>147</sup> P.L. 81-37, 63 Stat. 31 (1949).

## 40a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
148	Upper Niobrara River Compact <sup>148</sup>	No	
149	Vehicle Equipment Safety Compact <sup>149</sup>	Yes	Unilateral
150	Virginia-Maryland Boundary Compact <sup>150</sup>	No	
151	Virginia-West Virginia Agreement of 1862 <sup>151</sup>	No	

---

<sup>148</sup> P.L. 91-52, 83 Stat. 86 (1969).

<sup>149</sup> N.J. Stat. Ann. § 32:26-1 to 26-20.

<sup>150</sup> Ch. 196, 45th Congress, 20 Stat. 481 (1879).

<sup>151</sup> Ch. VI, 37th Congress, 12 Stat. 633 (1862).

## 41a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
152	Virginia-West Virginia Boundary Agreement <sup>152</sup>	No	
153	Wabash Valley Compact <sup>153</sup>	Yes	Unilateral
154	Washington Metropolitan Area Transit Authority Compact <sup>154</sup>	Yes	Unilateral
155	Waterfront Commission Compact <sup>155</sup>	No	

---

<sup>152</sup> H.R.J. Res. 12, 39th Congress, 14 Stat. 350 (1866); 1862-63 Va. Sess. Laws 41.

<sup>153</sup> P.L. 86-375, 73 Stat. 694 (1959).

<sup>154</sup> P.L. 86-794, 74 Stat. 1031 (1960).

<sup>155</sup> P.L. 83-252; 67 Stat. 541 (1953).

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
156	Western Interstate Corrections Compact <sup>156</sup>	Yes	Unilateral
157	Western Interstate Nuclear Compact <sup>157</sup>	Yes	Unilateral
158	Western Regional Education Compact <sup>158</sup>	Yes	Unilateral
159	Wheeling Creek Watershed Protection and Flood Prevention District Compact <sup>159</sup>	No	

---

<sup>156</sup> P.L. 73-293, 48 Stat. 909 (1934); Col. Rev. Stat. Ann. § 24-60-801.

<sup>157</sup> P.L. 91-461, 84 Stat. 979 (1970).

<sup>158</sup> P.L. 83-226; 67 Stat. 490 (1953).

<sup>159</sup> P.L. 90-181, 81 Stat. 553 (1967).

43a

	<b>Name</b>	<b>Express withdrawal provision?</b>	<b>If so, unilateral or unanimous?</b>
160	Yellowstone River Compact <sup>160</sup>	Yes	Unanimous

---

<sup>160</sup> P.L. 82-231, 65 Stat. 663 (1951).