No. 22O156, Original

IN THE

Supreme Court of the United States

State of NEW YORK,
Plaintiff,

v.

State of NEW JERSEY,
Defendant.

NEW YORK'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS AND BRIEF IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO NEW JERSEY'S MOTION

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CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS

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The State of New York respectfully moves this Court to enter judgment for New York on the pleadings. The grounds for this Motion and opposition to New Jersey's Motion for Judgment on the Pleadings are set forth in the accompanying brief.

Respectfully submitted,

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October 2022

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State of NEW YORK,

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Defendant.

BRIEF IN SUPPORT OF CROSS-MOTION AND IN OPPOSITION TO NEW JERSEY'S MOTION

QUESTION PRESENTED

In 1953, New York and New Jersey entered into the Waterfront Commission Compact to address crime and regulate waterfront workers at the Port of New York-New Jersey. Through the Compact, the two States agreed to merge their regulatory powers together and vest them in the Waterfront Commission—a bistate agency created by the Compact. For over six decades, New York and New Jersey have jointly regulated the Port through the Commission, in accordance with the Compact's terms. In 2017, New Jersey abruptly changed course and enacted Chapter 324, which purports to unilaterally terminate the Compact, dissolve the Commission, and seize for itself assets and powers that belong jointly to New York and New Jersey.

The question presented is:

Whether Chapter 324, by which New Jersey purports to withdraw from and terminate the Compact, is invalid because such unilateral termination is not authorized by the Compact, either expressly or by implication.

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INTRODUCTION

New York brings this case to stop New Jersey's unconstitutional and unlawful attempt to withdraw unilaterally from the Waterfront Commission Compact, dissolve a bistate agency created by that Compact, and seize for itself the agency's powers and assets—which belong jointly to both States. Through the Compact, the States agreed to forge a joint solution to a joint problem—widespread criminal and corrupt influence over the workforce at the Port of New York-New Jersey. Both States unmistakably agreed to the joint solution, committing in the Compact to merge their regulatory authority, vest that intertwined authority in the newly created Waterfront Commission, and together regulate the whole Port.

New Jersey now seeks to renege on its commitments by purporting to terminate the Compact and abolish the Commission without New York's consent. New Jersey's actions plainly contravene the Compact. New Jersey asserts that the Compact does not expressly prohibit it from repudiating its agreement. But all of the tools of compact construction lead to the same conclusion: the Compact's drafters intended to prohibit unilateral termination, not allow it. The Compact's text and structure provide mechanisms for termination—mutual agreement by the States or repeal by Congress—and give both States co-equal power over the Commission to effect change. And both the Compact's legislative history and the States' decades-long course of performance establish that the States committed to regulate the whole Port together, and work through disagreements together, until they mutually determine that the Commission's purposes have been sufficiently achieved.

The history and tradition of interstate compacts and foundational principles of sovereignty further establish that the Compact's drafters understood and intended the Compact to forbid unilateral withdrawal. And if the drafters' intent were unclear, and a default rule were needed, this historical understanding also demonstrates that the default rule should be that unilateral withdrawal from compacts is prohibited. Since the Founding, interstate compacts have been understood to endure unless the States expressly say otherwise in the Compact. This historical understanding holds true for compacts that address land, ongoing regulatory authority, or ongoing regulatory authority over land—as many compacts, including this Compact, do. Indeed, interstate compacts serve by constitutional design to bind co-equal sovereign States to their agreements.

New Jersey's contrary arguments fail because they rely on purported default rules that are untethered to this Compact or interstate compacts at all. In any event, New Jersey's default rules boil down to the remarkable contention that States have an inherent right to renege on express commitments they made to co-equal sovereign States, unless they also expressly agree to adhere to those commitments. No such standalone right to renege exists. Rather, when States expressly commit to share regulatory authority, as New York and New Jersey each unmistakably did through the Compact, they must keep their commitment.

RELEVANT CONSTITUTIONAL, STATUTORY, AND COMPACT PROVISIONS

All relevant constitutional, statutory, and compact provisions are reproduced in the Appendix to New York's Motion for Leave to File Bill of Complaint (Compl.-App.).

STATEMENT OF THE CASE

A. Interstate Compacts

Interstate compacts serve an important role in our federal system. When the States formed the United States, they surrendered their sovereign right to resolve disputes by force, agreeing to resolve their differences by compact or by submitting to the original jurisdiction of this Court. *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 279 n.5 (1959). Under the Compact Clause of the United States Constitution, a compact affecting federal interests requires the approval of Congress—which enacts the compact into federal law and binds the States through the Supremacy Clause. *See* U.S. Const. art. I, § 10, cl. 3. Compacts thus enable States to forge stable solutions to problems that transcend their borders and affect national interests. *See West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951).

From the Founding, it was well understood that compacts are binding and thus prohibit unilateral termination absent express authorization in the compact. This understanding is reflected in early compacts, which primarily addressed boundaries. *See* Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study In Interstate Adjustments*, 34 Yale L.J. 685, 696, 735-48 (1921). Although these

compacts were usually silent on whether the compacting States could withdraw unilaterally (see Appendix A (App.-A)),[1] they are indisputably permanent arrangements, *see* N.J. Br. 29; U.S. Amicus Br. 20. Some early compacts that were silent on withdrawal also provided for ongoing shared jurisdiction, usually over a waterbody.[2] These compacts were likewise understood to be permanent. *See* Frederick L. Zimmerman & Mitchell Wendell, Council of State Gov'ts, *The Law and Use of Interstate Compacts* 40 (1961).

Beginning in the 1920s, States turned to compacts to establish interstate agencies, agreeing to combine their sovereign powers and delegate that now-intertwined authority to the newly created agency. One of the first examples was the New York-New Jersey Port Authority Compact of 1921 (App.-A-7), which is of particular relevance here. That compact created a single Port District spanning New York and New Jersey because the "geography, commerce, and engineering" of port areas had become "an organic whole." Frankfurter & Landis, *supra*, at 697. The States created a bistate agency, the Port Authority, with power to construct and operate terminals and facilities in the Port District. *Id.* Although article 21 of the Port Authority Compact

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[1] Appendix A lists in chronological order 80 compacts that were formed before this Compact was formed in 1953, specifying whether each compact is bistate or multistate, whether it creates an agency, and whether it provides a method for withdrawal or termination—unilateral or otherwise. See App.-A-1 (describing methodology).

[2] *E.g.*, New York and New Jersey Boundary Agreement (1834) (App.-A-3) (fisheries and service-of-process jurisdiction); Arkansas-Mississippi Boundary Compact (1910) (App.-A-5) (criminal jurisdiction); Columbia River Jurisdiction Compact (1918) (App.-A-6) (fishing rights); Minnesota and South Dakota Jurisdiction Compact (1921) (App.-A-6) (criminal jurisdiction).

stated that either State could withdraw if the States did not approve a development plan within two years, it did not expressly address withdrawal after the plan's approval. Scholars nevertheless understood the absence of a "general termination clause" to require the Port Authority Compact to "continue as a joint enterprise" until the States ended it "by mutual consent," Frederick L. Zimmerman & Mitchell Wendell, Council of State Gov'ts, *The Interstate Compact Since 1925*, at 50 (1951)—which they have not done.

During the three decades between the Port Authority's formation and the current Compact's enactment, States entered into approximately twenty-seven compacts creating interstate agencies. The majority of these interstate agency compacts (sixteen of twenty-seven) carried forward the historical practice of omitting an express withdrawal provision. See App.-A. This practice was especially prevalent in bistate agency compacts, which are most similar to the Compact here. Nine of these eleven bistate agency compacts were silent on withdrawal. See App.-A. And the remaining two expressly required mutual consent for termination. *See* Pecos River Compact (1949) (art. XIV) (App.-A-11); Arkansas River Compact (1949) (art. IX) (App.-A-12). Against this historical backdrop, New York and New Jersey entered into the Waterfront Commission Compact in 1953.

B. The Waterfront Commission Compact

1. In the decades following the Port Authority Compact's enactment, crime and corruption in the Port District "presented a notoriously serious situation," *De Veau v. Braisted*, 363 U.S. 144, 147 (1960) (plurality op.), and impeded Port operations, *see Record of Hr'gs Before N.Y. Governor Thomas Dewey* ("*New York Hr'gs*"),

June 8, 1953, *reprinted in Public Papers of Thomas E. Dewey* 667 (1953) ("*Public Papers*") (statement of N.Y. Governor Dewey). In 1949, the *Sun* published a detailed exposé—galvanizing a search for a lasting solution.[3] *New York Shipping Ass'n v. Waterfront Comm'n of N.Y. Harbor*, 835 F.3d 344, 348 (3d Cir. 2016).

Then-New York Governor Thomas Dewey established the New York Crime Commission, which conducted "a sweeping investigation of waterfront conditions," assisted by the Law Enforcement Council of New Jersey. *Fourth Report of the New York State Crime Commission to the Governor, the Attorney General, and the Legislature of the State of New York* (May 20, 1953) ("*Fourth Report*"), *reprinted in Public Papers*, *supra*, at 585-86. The Crime Commission's extensive hearings revealed that crime and corruption had resulted in "depressing and degrading" conditions for workers and imposed "greatly increased costs on food, fuel and other necessaries" shipped through the Port. Compl.-App. 1a-2a.

The Crime Commission recommended that New York create its own state agency to address these problems, with New Jersey responsible for finding a parallel solution. *See Fourth Report*, *supra*, at 639-41, 673-74. But the two States rejected this bifurcated approach and instead decided to form a compact to create a bistate commission with regulatory authority over the entire Port. *See* Statement by N.Y. Governor Thomas E. Dewey (June 18, 1953), *reprinted in Public Papers*, *supra*, at 1076; N.J. Law Enforcement Council, Report to the Governor and the Legislature of the State of New

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[3] The articles won the Pulitzer Prize and inspired the iconic 1954 film, "On the Waterfront." *See New York Shipping*, 835 F.3d at 348.

Jersey (June 19, 1953). The resulting Compact was drafted by representatives of the Governors, the Crime Commission, and the Port Authority. *See* Statement by N.Y. Governor, *supra*, at 1076.

The two Governors explained the need for a bistate approach. New Jersey Governor Alfred Driscoll explained that the States faced an "indivisible problem" affecting "a single shipping industry operating in a single harbor." *New Jersey-New York Waterfront Commission Compact: Hr'g Before Subcomm. No. 3 of the H. Comm. on the Judiciary* ("*Commission Compact Hr'g*"), 83d Cong. 24 (1953) (statement of N.J. Governor Alfred E. Driscoll). Moreover, "organized crime [did] not respect either State boundaries or economic statistics." *See id.* at 19. Thus, "the only real solution" to rooting out crime and corruption from the Port was to "create a single bistate agency" over which each State bore "equal responsibility"—regardless of the amount of commerce on either side of the Port. *Id*. New York Governor Dewey noted that a bistate agency was less likely to succumb to political pressure from regulated entities because such pressure would need to be successful in both States to work. For that reason, Governor Dewey initially asked whether the Port Authority should take on the task of regulating Port labor because, without a bistate solution, pressures on regulators "in either state" might "influence the effectiveness of the job." *See New York Hr'gs*, *supra*, at 674-76.

The Compact's drafters also made clear that their goal was not a "temporary cleanup of the waterfront." Announcement by N.Y. Governor Thomas E. Dewey (May 23, 1953), *reprinted in Public Papers*, *supra*, at 650. Rather, the proposed regulatory measures were intended to endure until the goal—"permanent elimination" of corrupt conditions at the Port—was sufficiently

achieved. *See New York Hr'gs*, *supra*, at 665-66 (testimony of Theodore Kiendl, Special Counsel to N.Y. State Crime Commission).

To effectuate the Compact, New York and New Jersey each enacted concurring legislation. *See* Ch. 202, § 1, 1953 N.J. Laws 1511, 1511-42 (codified at N.J. Stat. Ann. §§ 32:23-1 to -73); Ch. 882, § 1, 1953 N.Y. Laws 2417, 2417-36 (N.Y. Unconsol. Laws §§ 9801-9873 (McKinney)). In August 1953, after conducting hearings, Congress approved the Compact and the President signed it into federal law. Compl.-App. 1a-35a.

2. The Compact creates the Waterfront Commission, "a body corporate and politic" and "an instrumentality of the States of New York and New Jersey." Compl.-App. 6a. The States' equal role and cooperation is foundational to the Commission's design. The Commission may act only by "unanimous vote" of its two Commissioners, one appointed by New York and the other by New Jersey. Compl.-App. 6a. The Compact expressly requires that the States enact concurring legislation to alter the scope of the Commission's powers. *See* Compl.-App. 34a-35a. And the Commission's funding relies on assessments from waterfront employers in both States. Compl. App. 31a-32a.

New York and New Jersey jointly conferred on the Commission authority to root out corrupt labor practices and crime from the waterfront of the Port District. *See* Compl.-App. 3a, 8a. This merging of regulatory authority into a single Commission was fundamental to the Compact's purpose. As each State declared, "such regulation shall be deemed an exercise of the police power of the two States for the protection of the public safety, welfare, [and] prosperity . . . of the people of the two States." Compl.-App. 3a.

To accomplish these goals, the Compact vests in the Commission powers to license and regulate waterfront labor, including longshoremen, stevedores, and port supervisors. Compl.-App. 9a-26a. The Commission may also remove workers who endanger the Port by engaging in criminal activity. *E.g.*, Compl.-App. 17a-18a. As amended, the Compact empowers the Commission to also maintain a police force, conduct criminal investigations, and impose administrative sanctions against violators. *See* Compl.-App. 110a-111a, 114a-115a. But the Compact does not "take away any of the police power of the individual municipalities and cities that constitute the port district." *Commission Compact Hr'g, supra*, at 62 (testimony of N.J. Governor Driscoll). Rather, New York and New Jersey continue to share concurrent law-enforcement powers over the Port District with the Commission and other federal and local law-enforcement agencies. *See* Compl.-App. 37a-38a.

Finally, and of particular relevance here, the Compact does not permit either State to withdraw unilaterally or dissolve the Commission. Instead, the Compact reflects two ways that it may end. First, the Compact contemplates that the States may agree to terminate the Compact when they together decide that its purposes have been achieved. That reevaluation process is reflected in the Compact's requirement that the Commission report annually to the Governors and Legislators of both States on whether there is a continuing need for regulation. Compl.-App. 8a-9a. As then-Governor Driscoll explained, these reports allow the States to determine whether "there is a need to carry on this program." *Commission Compact Hr'g*, *supra*, at 28.

Second, in approving the Compact, Congress "expressly reserved" for itself the power to unilaterally repeal the legislation authorizing the Compact's forma-

tion. Compl.-App. 35a. As observed during the congressional hearings, Congress was concerned that there could be future conditions or amendments to the Compact that would affect its continuing desirability, and thus reserved for itself the right "to step in and repeal the entire thing." *Compact Commission Hr'g*, *supra*, at 28 (statement of Representative Kenneth B. Keating).

3. Over the past sixty-eight years, the Commission has taken myriad actions to safeguard Port operations from corruption and crime. It has conducted hundreds of investigations, leading to successful convictions for drug trafficking, racketeering, and murder.[4] And it has performed background checks on thousands of potential port employees, preventing organized crime members from infiltrating the waterfront.[5]

Despite achieving many successes, the Commission's work is unfinished. Corruption, racketeering, and unfair employment practices continue to afflict the Port. *See* Waterfront Comm'n, *Annual Report, 2019-2020*, *supra*, at 22 (Commission's investigations with law-enforcement partners resulted in 90 arrests, seizure of $1.47 million in criminal proceeds); *id.*, Message from Executive Director at 1 (Commission uncovered that workers "connected to union leadership or organized crime figures" received over $147 million in "special compensation packages"). The Commission's state and federal law-enforcement partners have thus recognized

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[4] *See* Waterfront Comm'n of N.Y. Harbor, *Annual Report, 2019-2020*, at 22 (2020); Waterfront Comm'n of N.Y. Harbor, *Annual Report, 2017-2018*, at 22 (2018).

[5] *See* Waterfront Comm'n, *Annual Report, 2019-2020*, *supra*, Message from Executive Director at 3; Waterfront Comm'n of N.Y. Harbor, *Annual Report, 2018-2019*, Message from Executive Director at 1-2 (2019).

that the Commission remains instrumental to rooting out crime and corruption from the Port.[6] And the Commission has repeatedly affirmed the need for continued regulation.[7]

C. New Jersey's Attempt to Withdraw Unilaterally from the Compact

1. After more than six decades of honoring its obligations under the Compact and benefitting from the Commission's work, New Jersey changed course. In 2015, the New Jersey Legislature passed a bill attempting to withdraw New Jersey from the Compact. S.B. 2277 (2d Reprt.), 2014-2015 Sess. (N.J. 2015). Then-Governor Chris Christie vetoed the bill, explaining that "federal law does not permit one state to unilaterally withdraw from a bi-state compact approved by Congress." Prelim. Inj. App. 85a (Veto Message).

But Governor Christie signed into law a nearly identical bill on his last day in office in January 2018. This law, Chapter 324, immediately repealed the New Jersey legislation assenting to the Compact and set forth steps to effectuate its unilateral withdrawal.

Chapter 324 purports to divest the Commission of its powers and assets and transfer them to New Jersey.

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[6] *E.g.*, Press Release, N.J. Attorney General, Five Defendants Plead Guilty in Illegal Loansharking, Check Cashing, Gambling & Money Laundering Schemes Linked to Genovese Crime Family – Indicted in "Operation Fistful" by Division of Criminal Justice & Waterfront Commission (May 1, 2019); Press Release, U.S. Attorney's Office, Dist. of N.J., General Foreman at Port Elizabeth Sentenced to Two Years in Prison for Salary Fraud (Mar. 26, 2018).

[7] *E.g.*, Waterfront Comm'n, *Annual Report, 2019-2020*, *supra*, Message from Executive Director at 4; Waterfront Comm'n, *Annual Report, 2018-2019*, *supra*, Message from Executive Director at 4.

The law declares that when the Commission is purportedly "dissolved," the New Jersey State Police "shall assume all of the powers, rights, assets, and duties of the commission within" New Jersey. Compl.-App. 46a. For example, the law authorizes New Jersey to seize Commission funds "applicable to" New Jersey and deposit them in the state treasury. Compl.-App. 47a. It directs that assessments currently payable to the Commission be paid instead to the New Jersey State Police. Compl.-App. 91a-97a. Finally, the law grants the New Jersey State Police many of the powers that the Compact confers on the Commission, including the power to adopt rules and regulations governing Port employment; to issue and revoke licenses; and to establish a registry for longshoremen in the portions of the Port located in New Jersey.

2. The day after Chapter 324 was enacted, the Commission filed suit in the U.S. District Court for the District of New Jersey seeking to enjoin New Jersey from enforcing the law. It took three years for that litigation to conclude. The district court first issued a preliminary injunction, *see Waterfront Comm'n of N.Y. Harbor v. Murphy*, No. 18-cv-650, 2018 WL 2455927 (D.N.J. June 1, 2018), and later granted summary judgment to the Commission, declaring Chapter 324 unlawful and permanently enjoining its enforcement, *Waterfront Comm'n*, 429 F. Supp. 3d 1 (D.N.J. 2019). On appeal, the U.S. Court of Appeals for the Third Circuit declined to reach the merits and instead held that the Commission's lawsuit was barred by state sovereign immunity. *See Waterfront Comm'n*, 961 F.3d 234 (3d Cir. 2020). After this Court denied certiorari, *Waterfront Comm'n*, 142 S. Ct. 561 (2021), the district court lifted its injunction against the enforcement of Chapter

324. Order, *Waterfront Comm'n*, No. 18-cv-650 (D.N.J. Dec. 3, 2021), ECF No. 76.

D. Procedural History

After New Jersey redoubled its efforts to enforce Chapter 324, notwithstanding the unresolved concerns about its legality, New York filed this original action in March 2022. The Bill of Complaint seeks a declaratory judgment that New Jersey's actions are unlawful; a permanent injunction against enforcement of Chapter 324; an order requiring New Jersey to perform its obligations under the Compact; and any other relief the Court deems just and proper. Compl. 36 (Prayer for Relief).

New York simultaneously moved for preliminary relief, which the Court granted. The Court preliminarily enjoined New Jersey "from enforcing Chapter 324 or taking action to withdraw unilaterally from the Compact or terminate the Commission pending disposition" of this case. *New York v. New Jersey*, 142 S. Ct. 1410 (Mem. 2022).

Subsequently, in response to the parties' joint motion, the Court granted New York's motion to file the Bill of Complaint and allowed the States to file cross-motions for judgment on the pleadings before, or in lieu of, appointing a Special Master. *New York v. New Jersey*, 142 S. Ct. 2856 (Mem. 2022).

SUMMARY OF ARGUMENT

I. Interstate compacts are binding agreements between co-equal sovereigns that must be interpreted to honor the compacting States' intent. Here, the Compact's text and circumstances demonstrate that its drafters intended to prohibit unilateral withdrawal, not authorize it.

The Compact's text and structure reflect that its drafters contemplated termination through only two mechanisms: by the compacting States' mutual agreement or by Congress's repeal. New Jersey's attempt to engraft a third termination mechanism—a purported right to unilateral withdrawal—contravenes the States' intent. Indeed, New Jersey's purported right to unilateral termination has no basis in the Compact. The only textual feature on which New Jersey relies—the right of each State to unilaterally veto the Commission's actions or budget—undermines New Jersey's argument. New Jersey's co-equal power over the Commission safeguards its interests and obviates any need for unilateral withdrawal.

The Compact's legislative history and purpose confirm that the drafters did not intend to allow unilateral withdrawal. The States purposefully declined parallel state action in favor of an enduring bistate solution to a bistate problem, i.e., corrupt influence over the workforce operating in a single Port District that both States jointly control. Recognizing an implied right of unilateral termination would remove the fundamental protections that the compacting States designed the Commission to provide—guarding against criminal enterprises that do not respect state boundaries and against corrupt influence that gains traction more easily in one State or the other.

New Jersey's decades-long course of performance further belies its argument here. New Jersey officials have repeatedly acknowledged that the Compact prohibits unilateral withdrawal. And the States have consistently resolved disagreements regarding the Commission without resort to unilateral termination.

II. History and tradition establish both the compacting States' intent to prohibit unilateral withdrawal and, even if that intent is unclear, the default rule that unilateral termination is presumptively forbidden.

When New York and New Jersey enacted the Compact in 1953, the prevailing understanding was that unilateral termination is prohibited absent express authorization in the compact. This understanding is reflected in the earliest compacts, which New Jersey concedes are permanent. And as contemporaneous scholarship demonstrates, this background understanding carried forward into compacts that, like this one, created bistate regulatory agencies. Indeed, when the Compact was formed, most bistate regulatory compacts were silent on termination and the few that addressed it expressly prohibited it.

Moreover, if the drafters' intent is unclear, and a default rule of interpretation is needed, the default that unilateral termination is prohibited best accords with foundational principles of sovereignty and federalism. As this Court has explained, interstate compacts inherently involve a mutual exchange of sovereignty, and no compacting State may exert unilateral control over an interstate agency that belongs jointly to a sister State. Indeed, the constitutional purpose of interstate compacts is to bind States to their agreements, thereby

precluding one State from unilaterally abrogating its agreement.

New Jersey errs in arguing that compacts addressing purportedly "vested" property rights are presumptively permanent while compacts addressing shared regulatory authority are presumptively terminable at will. The cases regarding "vested" rights address whether *private parties* received enforceable entitlements from the government. They are irrelevant to interstate compacts, which indisputably bind States as federal law. New Jersey's distinction between property and regulatory compacts is also illusory. Many compacts, including this Compact, involve both property and ongoing regulatory authority. Indeed, the Compact provides for shared regulatory authority over land that the compacting States already jointly control.

III. New Jersey is wrong that principles of sovereignty and contract law confer on States a right to withdraw unilaterally from interstate compacts.

"[T]he background notion that a State does not easily cede its sovereignty," *Tarrant Reg'l Water Dist. v. Herrmann*, 569 U.S. 614, 631 (2013), is inapplicable where, as here, the compacting States unmistakably agreed to share regulatory authority. Sovereign powers, once expressly shared, are not subject to unilateral recall.

New Jersey also misplaces its reliance on the unmistakability doctrine, which protects against implied incursions on sovereignty by *private contractual counterparties*. That doctrine is irrelevant to compacts between co-equal sovereigns. There is no risk that New Jersey or New York inadvertently shared their regulatory authority when that act was the unmistakable and foundational purpose of their sovereign

agreement. In any event, New Jersey maintains both concurrent law-enforcement jurisdiction over the Port and co-equal control over the Commission. There is thus no merit to New Jersey's suggestion that it is powerless in this bistate arrangement—especially when it benefited from the Commission for decades.

New Jersey also misplaces its reliance on presumptions regarding at-will termination that apply to private commercial contracts rather than interstate compacts. In any event, contract principles preclude New Jersey's implied right of at-will termination because it contravenes the drafters' intent. And even private contracts are not terminable at will where, as here, the agreement contemplates termination under specific circumstances.

IV. Because Chapter 324 breaches the Compact, the appropriate remedy is a permanent injunction against its enforcement and an order requiring New Jersey to comply with the Compact.

ARGUMENT

I. THE TOOLS OF COMPACT INTERPRETATION ESTABLISH THAT THE STATES INTENDED TO PROHIBIT UNILATERAL WITHDRAWAL.

The touchstone for compact interpretation is always the drafters' intent, as understood from the compact's language and circumstances. *See Montana v. Wyoming*, 563 U.S. 368, 375 n.4 (2011); *Tarrant*, 569 U.S. at 628. Although compacts are like contracts in that they are binding legal agreements, *Texas v. New Mexico*, 482 U.S. 124, 128 (1987), compacts have features that set them apart from private contracts. For example, the Compact Clause adapts "the age-old treaty-making power" to our federal system, *Dyer*, 341 U.S. at 32, by

requiring Congress's consent when States seek to merge their sovereign powers in ways that encroach on federal interests, *see Cuyler v. Adams*, 449 U.S. 433, 440 (1981). Thus, a "compact is not just a contract; it is a federal statute enacted by Congress" and must be interpreted as such. *Alabama v. North Carolina*, 560 U.S. 330, 351-52 (2010). And while nations have little recourse when treaties are violated, compacts approved by Congress are binding through the Supremacy Clause and enforceable through this Court's original jurisdiction. *Tarrant*, 569 U.S. at 627 n.8.

Here, the tools of compact interpretation all point to the same result: the Compact's drafters did not intend for either State to be able to unilaterally terminate the Compact, dissolve the Commission, and seize for itself regulatory powers that belong indivisibly to both States through the Commission. New Jersey's foundational error (Br. 14-24) is to skip over evidence of the compacting States' actual intent and instead rely on abstract default rules drawn largely from commercial contracts or contracts between States and private parties. These purported default rules are irrelevant here because the States' intent can be understood from the Compact's language and structure, the parties' course of performance, and the Compact's history and purposes. Moreover, if any default rule is needed, it should correspond to the likely intent of the compacting States rather than the likely intent of parties to other types of contracts.

A. The Compact's Text and Structure.

While the Compact does not contain an express provision forbidding or authorizing unilateral termination, it is not silent on that subject, as New Jersey asserts (Br. 14-18). The plain terms and structure of the Compact demonstrate that the drafters contemplated

only two ways in which the agreement may be terminated: mutual agreement or repeal by Congress. The Compact contains no evidence that the States intended to authorize unilateral termination.

1. The text of the Compact demonstrates that the States intended the Compact to endure until they agreed that their joint endeavor to eradicate crime and corruption at the Port had been sufficiently achieved. Article I, § 4 of the Compact clearly sets forth this shared goal: it declares that, through the Commission, the States will jointly regulate waterfront workers as "an exercise of the police power of the two States for the protection" of public safety and welfare of both States' residents. Compl.-App. 3a. Article IV, § 13 then requires the Commission to make annual reports to "the Governors and Legislatures of both States" about its progress, including a "determination as to whether the public necessity still exists" for its continued regulation of waterfront labor. Compl.-App. 8a. Taken together, these provisions clearly reflect that the Compact was intended to continue until (and only until) the compacting States determined together that the "evils described" in the Compact had abated. Compl.-App. 8a.

The Compact's concurrency requirement further confirms that termination was meant to be a mutual decision. The provision states 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." *See* Compl.-App. 34a-35a. Given that the Compact requires mutual consent to alter any of its terms, there is no basis to infer that the States intended its termination—the most drastic change—to be subject to less stringent protections. To the contrary, the concurrency provision, in conjunction with the annual report-

ing requirement, demonstrates that the drafters intended the States to determine together when changing conditions warrant alterations to their agreement, including termination.

New Jersey's assertion that only amendments—and not termination—"trample another State's sovereignty" (Br. 34) is belied by Chapter 324. The law purports to authorize New Jersey to unilaterally dissolve a political instrumentality of *both* States, and seize powers and assets that, under the Compact, belong jointly to both States. For example, Chapter 324 purportedly authorizes New Jersey to deliver to its treasury the Commission's funds "applicable to this State" (Compl.-App. 47a), even though those funds belong jointly to both States. And Chapter 324 purports to empower the New Jersey State Police to adjudicate applications "for a license, registration, or permit" (Compl.-App. 49a) pending before the Commission and to alter Commission regulations (Compl.-App. 48a), even though those functions belong jointly to both States. Enforcement of Chapter 324 would thus plainly trample New York's sovereign interests in the Compact and Commission. Indeed, the United States appears to recognize that "New York may be able to seek judicial relief" against the unilateral imposition of such terms.[8] Br. 14.

The States also plainly understood congressional repeal to be the alternative termination method. New

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[8] The United States incorrectly contends (Br. 14) that New York did not challenge the terms of dissolution. The Bill of Complaint expressly challenges Chapter 324 as a whole. *See* Compl. 20-21 ¶¶ 69-72, 32 ¶ 110, 34 ¶ 125. And damages would be insufficient as the remedy for New Jersey's unlawful actions for the reasons explained below (at 48-49 (discussing need for injunction)).

York and New Jersey both accepted, and are bound by, Congress's express reservation of the "right to alter, amend, or repeal" its consent to the Compact. *See* Compl.-App. 35a. *See also Petty*, 359 U.S. at 281-82. New Jersey misses the mark in downplaying this provision as "standard" across many compacts. Br. 35. Congress's approval of *this Compact* "was no perfunctory consent." *De Veau*, 363 U.S. at 149 (plurality op.). And the legislative history of *this Compact* makes clear that the States and Congress understood the congressional repeal provision as a safeguard against the possibility that future events might warrant termination. See *supra* at 9-10.

2. To be sure, the Compact does not contain an express provision prohibiting unilateral termination. But it expressly provides a mechanism to support termination by joint decision of the two compacting States, and it expressly provides for termination by Act of Congress. Against this backdrop, the absence of any provision for unilateral withdrawal demonstrates that the States did not intend to authorize it. New Jersey may not engraft onto the Compact a third avenue for termination—its own unilateral withdrawal—that is contrary to the drafters' intent.

Indeed, allowing unilateral withdrawal would contravene the Compact's express requirement that it "be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof." Compl.-App. 35a. Contrary to the United States' contention (Br. 16), this provision applies here. The liberal-construction principle not only counsels against construing the Compact to narrow the Commission's powers but also against construing the Compact to facilitate ending its operations. *See* 11 *Williston on Contracts* § 30:9 (4th ed. Westlaw, through May 2022 update) (courts must give

contract "fair and reasonable meaning so as to attain the purpose"); *see also Physicians Healthsource, Inc. v. A-S Medication Sols., LLC*, 950 F.3d 959, 967 (7th Cir. 2020) (applying liberal-construction rule to resolve statutory silence). Interpreting the Compact to allow New Jersey to unilaterally dissolve the Commission that forms the "heart" of the agreement, *see De Veau*, 363 U.S. at 149 (plurality op.), would fatally undermine the Compact's core purpose.

Adding a third, conflicting termination mechanism would also run headlong into the Court's admonition against "read[ing] absent terms into an interstate compact." *Alabama*, 560 U.S. at 352. In *Alabama*, the Court declined to recognize an implied covenant of good faith and fair dealing in an interstate compact, even though the drafters of private contracts are presumed to have intended to include such a covenant in "[e]very contract." *Id.* at 351-52. As the Court explained, just as it cannot "add provisions to a federal statute," it cannot add to a compact an implied term that the drafters did not intend. *Id.* at 352. The Court should likewise decline to read a conflicting right of unilateral termination into the Compact here.

The United States is mistaken (Br. 24-25) that *Alabama* bars engrafting an implied term onto a compact only if that term conflicts with an express provision. The fundamental point in *Alabama* was that courts "are not free to rewrite" a compact in a way that contravenes the parties' intent, *see* 560 U.S. at 342 (quotation marks omitted). While the express terms of a compact reflect the parties' intent, *see Tarrant*, 569 U.S. at 628, so too can a compact's structure, history, and course of performance, *see id.* at 629-31, 633-38. Indeed, even for private contracts, courts refrain from reading in default terms that conflict with the parties' intent, whether

expressly stated or implied by the agreement's nature and circumstances. *US Airways, Inc. v. McCutchen,* 569 U.S. 88, 102 (2013); *see also* 1 *Williston on Contracts*, *supra*, § 4:24.

3. New Jersey's insistence that the *omission* of an express unilateral withdrawal clause reflects an *endorsement* of unilateral withdrawal finds no support in the Compact. The only feature of the Compact on which New Jersey relies—the requirement for unanimity for certain Commission actions (Br. 24-26)—is flatly inconsistent with a right of unilateral withdrawal. The drafters' inclusion of multiple means through which the States exercise joint and equal control over the Commission is powerful evidence that they intended the States to rely on those tools, and not unilateral withdrawal, to safeguard their sovereign interests in the Compact. As the States' decades-long course of performance establishes (see *infra* at 27-29), the need for unilateral withdrawal is obviated when either State may block an action with which it disagrees through the veto of its Commissioner (Compl.-App. 6a), and disapprove or reduce the Commission's annual budget through its Governor (Compl.-App. 31a). And the Compact enables the States to adapt the Commission to changing circumstances by jointly amending the Compact. Compl.-App. 34a-35a. The drafters would not have gone to such great lengths to design a governance structure that requires unanimity of the States, and contemplates evolution of the Commission's operations, if they intended either State to be able to withdraw unilaterally and dissolve the Commission at the first sign of disagreement.

There is no merit to New Jersey's contention (Br. 25) that a "compact whose operation relies on the continued assent by each State" cannot function without permitting unilateral withdrawal. This Court

rejected a similar argument in *Texas v. New Mexico*, in which the Pecos River Compact required a bistate commission to "take official action only with the concurrence of both state Commissioners." *See* 462 U.S. 554, 560 (1983). The Court held that the "structural likelihood of impasse" created by the unanimity clause did not render the Pecos River Compact "void," notwithstanding that the compact expressly prohibited unilateral termination. *Id.* at 565. The mere possibility of impasse here likewise does not permit the Court to alter the Compact's structure by allowing unilateral withdrawal. In fact, when the States entered into this Compact, similar unanimity provisions were common, *see* Wallace R. Vawter, *Interstate Compacts—The Federal Interest*, *in* 3 Task Force on Water Res. & Power, *Report on Water Resources and Power* 1696-99 (1954), and there is no evidence that compacting States understood those provisions to require an implied right of unilateral withdrawal.

In any event, New Jersey's prediction of perpetual deadlock is unlikely to occur. As its own course of performance under the Compact shows, States are far more likely to negotiate when unilateral exit is off the table. Indeed, prior to its about-face on unilateral withdrawal, New Jersey cooperated with New York for over six decades and wielded its co-equal authority over the Commission to great success. See *infra* at 27-28. The Compact's governance structure thus clearly empowers the parties to work through disagreements—not to renege on their commitments through unilateral termination.

B. The Compact's Legislative History and Purpose.

New Jersey's contention that it may withdraw and dissolve the Commission at will is further belied by the Compact's history and purpose. *See Oklahoma v. New Mexico*, 501 U.S. 221, 234-35 & n.5 (1991) (relying on history); *Tarrant*, 569 U.S. at 630 (considering purpose).

The legislative history makes clear that the Compact's drafters understood that crime and corruption at the Port affected both States jointly and indivisibly. As then-New Jersey Governor Driscoll emphasized, the States were "dealing with a single shipping industry operating in a single harbor bisected artificially by the accident of a historical boundary line between the two States." *Commission Compact Hr'g*, *supra*, at 19. Indeed, many areas of the Port were then (and still are) owned by the Port Authority—a longstanding bistate agency controlled jointly by New York and New Jersey. *See* Port Auth. of N.Y. & N.J., *Port Master Plan 2050*, at 6 (2019) (Port Authority owns "over 3,000 acres of property").

Faced with this "indivisible problem," the Compact's drafters understood "from the beginning that the only real solution would depend upon the creation of a single bistate agency." *Commission Compact Hr'g, supra,* at 19; *see id*. at 24 ("two separate agencies . . . will never be a complete answer"). The two States' governors thus declined the initial proposal to pursue separate solutions and instead merged the States' regulatory powers, vested that intertwined authority in the newly formed Commission, and agreed to jointly regulate waterfront labor throughout the Port. And both States made clear that they were not seeking a "temporary cleanup," Announcement of Governor Dewey, *supra*, at

650, but rather a stable solution to endure until crime and corruption at the Port are sufficiently controlled.

After the two States had undertaken a comprehensive, multiyear investigation and selected a bistate agency as the solution to an indivisible problem, it is implausible that they intended either State to dismantle the shared agency at will. If the States had sought to retain such flexibility, they easily could have pursued parallel state action (as was originally contemplated) or sought to collaborate in other nonbinding ways.[9] The fact that they undertook the binding commitment, approved by Congress, of establishing and jointly operating a shared agency precludes any inference that they silently intended their arrangement to be capable of unilateral dissolution.

The legislative history excerpts on which New Jersey relies (Br. 33 n.8), at most show that the two States intended the Commission to end at some point. They do not address the central issues here: *who* must make that a decision and *how* it must be made. Indeed, the Compact's drafters anticipated and sought to guard against the very basis for withdrawal on which New Jersey now relies (Br. 7)—shifting patterns of commerce. Both States entered into the Compact with full understanding that the Commission remains necessary when the commercial activity occurs disproportionately on one side of the Port. Indeed, when the States enacted the Compact, seventy percent of the shipping business was conducted in port areas located in New York. *Commission Compact Hr'g*, *supra*, at 19. Having agreed

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[9] New York and New Jersey are both members of voluntary initiatives, for example, that they may—and sometimes do—leave and rejoin at will. *E.g.*, Regional Greenhouse Gas Initiative, https://www.rggi.org/.

then that the Commission is an "equal responsibility of both States," *id.*, New Jersey cannot repudiate its agreement now.

Ultimately, New Jersey's contention that the Commission is no longer needed is belied by its own actions. New Jersey concedes that "there is a continued need to regulate port-located businesses to ensure fairness and safety" (Compl.-App. 37a (Ch. 324, § 1(c))), and has sought to closely replicate the Commission's core functions through Chapter 324 (*see, e.g.*, Compl.-App. 49a (employment information centers), 50a (investigations), 52a (screening workers), 53a-63a (licensing)). But the Compact's drafters plainly intended both States to conduct those precise regulatory functions together, through the Commission, for as long as such regulation remains necessary. And allowing New Jersey to dissolve the Commission would expose the Port to the very corruption that the bistate agency is uniquely positioned to prevent.

C. The Compacting States' Course of Performance.

New Jersey's nearly seventy-year course of performance is also "highly significant" evidence of its understanding that the Compact prohibits unilateral withdrawal. *See Alabama*, 560 U.S. at 346; *see also* Restatement (Second) of Contracts §§ 202(4), 203 (1981).

Until it enacted Chapter 324, New Jersey consistently demonstrated that it understood that disputes regarding the Commission must be resolved through cooperation and negotiation. Since the Commission's inception, New York and New Jersey have successfully navigated various disagreements over its operations without either State asserting any right

to withdraw unilaterally. *See, e.g.*, A.H. Raskin, *Pier Peace Terms Expected Today*, N.Y. Times, Dec. 28, 1954, at 16; Bill Mooney, *Christie Takes Aim at Two More Authorities*, The Observer, Feb. 4, 2011 (discussing Governor Christie's veto of commission budget item). Moreover, in recent years, the Commission has undertaken many reforms that New Jersey requested, including modernization. *See* Waterfront Comm'n of N.Y. Harbor, *Annual Report, 2015-2016*, at 39 (2016). And New York and New Jersey have together amended the Compact at least a dozen times when changing circumstances warranted. Compl. 12 ¶ 42; Ans. 13 ¶ 42. New Jersey's unsubstantiated complaints about the Commission[10] (Br. 8) thus not only raise factual assertions unfit for resolution on cross-motions for judgment on the pleadings, *see Lively v. WAFRA Investment Advisory Grp., Inc.*, 6 F.4th 293, 306 (2d Cir. 2021), but also further highlight New Jersey's about-face here. To the extent New Jersey has continuing concerns, New Jersey may address them by using its co-equal power over the Commission's activities or by seeking to amend the Compact through concurring legislation from both States.

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[10] For example, both Port businesses (Port. Bus. Amicus Br. 12) and New Jersey assert that the Commission harms commerce, but commerce is booming at the Port, *see* Port Auth. of N.Y. & N.J., *Annual Comprehensive Financial Report, 2021*, at 19 ("highest single-year total" of cargo in Port's history and no delays). And contrary to the unsubstantiated allegations about "mismanagement" (Port Bus. Amicus Br. 14; *see* N.J. Br. 8), the Commission has introduced numerous reforms to improve its fiscal management and operations. *See* Waterfront Comm'n, *Annual Report, 2015-2016*, *supra*, at 39; N.Y. Office of the Inspector Gen., *Investigation of the Waterfront Commission of New York Harbor* 10, 32, 36, 56-57 (Aug. 2009).

Moreover, prior to Chapter 324's enactment in 2018, New Jersey officials repeatedly acknowledged that the Compact does not allow unilateral withdrawal. In 2015, then-New Jersey Governor Christie vetoed a bill nearly identical to Chapter 324, explaining that New Jersey may not withdraw "until New York considers similar legislation." Prelim. Inj. App. 84a (Veto Message). The New Jersey Office of Legislative Services also maintained that unilateral withdrawal is prohibited. *See* Compl. 19 ¶ 65; Ans. 23-24 ¶ 65. And former New Jersey Commissioner Michael Murphy publicly expressed the same view. *See* Kate King & Paul Berger, *Legislators Push to Back out of Waterfront Commission*, Wall St. J., Jan. 3, 2018.

Prior actions by New Jersey's legislature itself underscore this long-held understanding. In 2010, New Jersey's legislature sought to pass a law that would authorize New Jersey to enter into an agreement with New York to terminate the Commission and transfer certain powers to the Port Authority. *See* S. 2360/A. 3451, 214th Leg. (N.J. 2010). And New Jersey's legislature repeatedly introduced resolutions to petition Congress to repeal the Compact. *See* A.C.R. 90, 218th Leg. (N.J. 2018); A.C.R. 68, 217th Leg. (N.J. 2016); A.C.R. 217, 216th Leg. (N.J. 2015). New Jersey would not have undertaken these measures if it believed it could unilaterally withdraw. *See Tarrant*, 569 U.S. at 636 (offer to purchase water was "strange" if State believed compact entitled it to water without payment).

II. HISTORY AND PRACTICE ESTABLISH BOTH THAT THE STATES INTENDED TO PROHIBIT UNILATERAL WITHDRAWAL AND THAT THE DEFAULT RULE, IF NEEDED, PROHIBITS UNILATERAL WITHDRAWAL.

The history and tradition of compacts, and sovereignty principles, establish that when New York and New Jersey forged the Compact in 1953, the prevailing understanding was that unilateral termination is prohibited absent express authorization in the compact. This understanding is a compelling indicator of the actual intent of the drafters. *E.g.*, *Tarrant*, 569 U.S. at 633 (customary practices); *New Jersey v. New York*, 523 U.S. 767, 783 n.6 (2003) (States intended to follow "settled law governing avulsion"); Restatement (Second) of Contracts § 203(b) ("usage of trade"). It also establishes that the proper default rule to apply, if there is any question about actual intent, is a rule prohibiting unilateral termination.

A. History and Tradition of Compacts.

The earliest compacts addressing boundary and water disputes established the background understanding that unilateral withdrawal is prohibited. As New Jersey concedes (Br. 27-28), States understood these agreements to prohibit unilateral termination even though most did not expressly address termination. This understanding was carried forward into compacts through the first half of the twentieth century that shared jurisdiction or vested regulatory powers in interstate agencies. Indeed, before 1953, the majority of such compacts did not expressly address withdrawal. See *supra* at 5. Yet New Jersey does not contend that such compacts are subject to unilateral termination at the whim of one compacting State—an understanding that would make little sense given the extensive effort

and resources States often poured into such agreements. *See* Vawter, *supra*, at 1692-93 (average negotiation time for sixty-five pre-1954 compacts surveyed exceeded four years).

When the Compact here was enacted, the background understanding that unilateral termination is prohibited had particular force for bistate compacts that created regulatory agencies. As explained (*supra*, at 4-5), the Port Authority Compact, which lacked a provision addressing termination after the States' approval of a development plan, was understood to endure unless and until New York and New Jersey mutually agreed otherwise. The current Compact's drafters undoubtedly were aware of this understanding and shared it, given that Port Authority representatives were among the Compact's drafters and, indeed, the Compact references the Port Authority Compact (Compl.-App. 3a). Moreover, at least nine bistate agency compacts that followed the Port Authority Compact were silent on termination (*see* App.-A), likely based on the same understanding. And two additional bistate agency compacts of this period expressly required mutual consent to terminate (*see* App.-A).[11]

Moreover, the prevailing view in scholarship contemporaneous with the Compact's enactment was that "a state party to [a compact] cannot revoke without

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[11] New Jersey misses the mark in observing (Br. 43) that compacts expressly allowing unilateral withdrawal "are nearly three times more common" than compacts expressly forbidding it. It draws this trend from *all* compacts rather than those most relevant to ascertaining the drafters' intent, i.e., compacts preceding this Compact, especially bistate compacts creating a new agency. In any event, this trend further underscores that customary practice is to include a unilateral withdrawal provision when such an outcome is contemplated.

the consent of the other party states unless the agreement contains a provision for such revocation." Zimmermann & Wendell, *Interstate Compact*, *supra*, at 90; H.B. Rubenstein, *The Interstate Compact—A Survey*, 27 Temp. L.Q. 320, 326 (1953) (once effective, compact "is binding upon the legislatures of the compacting States" and "any attempt by the State legislatures to repudiate, has been held void" (footnote omitted)).[12] And subsequent scholarship examining many of the same pre-1954 compacts reaffirmed the settled understanding that a "State may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." Michael L. Buenger et al., *The Evolving Law and Use of Interstate Compacts* 48 (2d ed. 2016)*; see* Paul T. Hardy, *Interstate Compacts: The Ties That Bind* 10 (1982) ("Without withdrawal and termination clauses, a member state could withdraw only upon receiving the consent of all the party states, and the agreement could be terminated only by unanimous agreement."). If the Compact's drafters had intended to depart from this understanding and allow unilateral dissolution of the Commission, they would have said so expressly in the Compact.

B. State Practice Regarding Compacts.

Customary practice in other interstate compacts further demonstrates both the understanding of the Compact's drafters, and the basis for the proper default rule (if needed), that unilateral withdrawal is prohibited absent express authorization in the compact.

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[12] *See also* Richard H. Leach, *Interstate Authorities in the United States*, 26 Law & Contemp. Probs. 666, 671 (1961) ("interstate agencies may operate on a permanent basis, once they are established," subject to withdrawal "in accordance with the procedure set out" in the compact).

As scholars have confirmed both before and after the current Compact's enactment, the customary (and recommended) practice is to set forth the terms of withdrawal or termination expressly in a compact when such an outcome is contemplated. *See* Zimmerman & Wendell, *Interstate Compact*, *supra*, at 90 (explaining, in 1951, that "present practice is to include a revocation clause providing prescribed procedure for such action by a party state"); Buenger et al., *supra*, at 266-68 (recommending same in 2016). Thus, when States want to allow compact withdrawal or termination by any method other than mutual agreement, they not only say so expressly but also often require notice or impose conditions to safeguard the other compacting States' interests.[13] The absence of any such "terms and mechanics" here is another telling sign that unilateral withdrawal was "never intended to be a part of the States' agreement." *See Tarrant*, 569 U.S. at 635. Indeed, given that forced dissolution of the Commission would significantly prejudice the nonconsenting State and require a lengthy process of winding down the Commission's assets, liabilities, and powers, it is implausible that the drafters intended to permit one State to unilaterally dictate the timeline and terms of the Commission's dissolution—as New Jersey attempts to do through Chapter 324.

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[13] *E.g.*, Potomac Valley Pollution & Conservation Compact, (1940) (art. VI) (App.-A-10) (one-year's notice to withdraw); Lake Wylie Marine Compact, Pub. L. No. 100-549, 102 Stat. 2742, 2747 (1988) (sec. 10) (equitable division of interstate commission's property); Appalachian States Low-Level Radioactive Waste Compact, Pub. L. No. 100-319, 102 Stat. 471, 481 (1988) (art. 5(D)) (requiring withdrawing host state to keep disposal facilities open for five years following withdrawal).

It is particularly unlikely that the Compact's drafters intended to incorporate a right of unilateral termination by implication when such a right had so seldom been invoked in theory or practice prior to the Compact's enactment. No bistate compact preceding this one had expressly authorized unilateral termination. See App.-A. And as of 1951, there had been "no clear case of the revocation of an operating, effective compact," even for compacts that expressly allowed revocation. *See* Zimmerman & Wendell, *Interstate Compact*, *supra*, at 90.

Indeed, New York has not identified any instance in which a State has successfully revoked a compact without express authorization or the other compacting State's consent. The only two attempts that New York has identified were both unsuccessful. First, in 1870, Virginia tried to set aside its agreement with West Virginia to allow three counties to join West Virginia after the Civil War. *Virginia v. West Virginia*, 78 U.S. 39, 40-41, 61 (1870). This Court denied Virginia's request because there was a valid agreement. *See id.* at 61-62. Second, in 1957, Virginia filed an original action challenging Maryland's attempt to withdraw unilaterally from the Virginia-Maryland Compact of 1785, which settled certain navigational and jurisdictional rights over the Potomac River and prohibited unilateral withdrawal. *See* Zimmerman & Wendell, *Law and Use*, *supra*, at 14; *see also Virginia v. Maryland*, 355 U.S. 269 (1957) (per curiam). The Special Master persuaded the States to settle their dispute by entering into a new compact. *See Virginia v. Maryland,* 540 U.S. 56, 64 n.4 (2003).

C. Principles of Sovereignty and Federalism.

To the extent the drafters' intent is not discernible, and a default rule is needed, the same history and practice support a presumption *against* unilateral termination. Such a default also best respects fundamental principles of sovereignty and federalism. Inherent in the act of forging a compact between co-equal States is each state sovereign's agreement to keep its commitment to the other, thus forgoing any right to renege unilaterally. That is why among "the classic indicia of a compact" is the compacting States' inability to unilaterally modify or repeal the agreement—unless the compact expressly says otherwise. *Northeast Bancorp, Inc. v. Board of Governors, FRS*, 472 U.S. 159, 175 (1985); *see Seattle Master Builders Ass'n v. Pacific N.W. Elec. Power & Conservation Planning Council*, 786 F.2d 1359, 1363 (9th Cir. 1986) (compacting State "not free to modify or repeal its participation unilaterally").

This default is especially apt for compacts, like this one, that combine the delegated sovereign powers of two or more States and vest those powers in an interstate agency. Such compacts, by their nature, require the weighty agreement "to relinquish to one or more sister States a part of its sovereignty." *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and concurring in judgment); *see* Buenger et al., *supra*, at 51. The resulting interstate agency is a body politic of each compacting State, exercising merged authority that no longer inheres in any one compacting State. *See* Buenger et al., *supra*, at 51-52; *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994). Accordingly, an interstate entity created by compact is "not subject to the unilateral control of any one of the States that compose the federal system," unless the compacting States expressly agreed

in the compact to provide such unilateral control. *Hess*, 513 U.S. at 42; *see Delaware River Joint Toll Bridge Comm'n v. Secretary Pa. Dep't of Labor & Indus.*, 985 F.3d 189, 195 (3d Cir. 2012) (same). "While a State has plenary power to create and destroy" its own political subdivisions, it "enjoys no such hegemony over an interstate agency." *See Feeney*, 495 U.S. at 314 (Brennan, J., concurring).

New Jersey's forced termination of the Compact would thus result in far more than a reclamation of its own sovereign powers (*see* N.J. Br. 34). It would instead allow New Jersey to seize powers and assets that belong to both States through the Commission; impair New York's exercise of sovereign authority over the Port; and destroy a body politic that belongs in part to New York. Thus, it is *New York* rather than New Jersey (Br. 23) that can properly object to the lack of "fair notice" here. New York had no notice when it entered this Compact that it would be ceding its sovereign authority to an entity that could purportedly be dissolved at will by its partner state. As this Court has observed, "[i]t is difficult to conceive" that a State would "trade away" a portion of its sovereignty for a return promise that a sister state "could, for all practical purposes, avoid at will." *Texas*, 482 U.S. at 569; *cf. United States v. Winstar*, 518 U.S. 839, 921 (1996) (Scalia, J., concurring) ("promise to regulate in this fashion for as long as we choose" is "an absolutely classic description of an illusory promise" (quotation marks omitted)).

The default rule against implied rights to unilateral termination makes sense given compacts' place in the constitutional design. As one "of the two means provided by the Constitution for adjusting interstate controversies," *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938), the fundamental

purpose of compacts is to provide States a binding method of settling interstate disputes and coordinating regional action, *see* Zimmerman & Wendell, *Law and Use*, *supra,* at 40. States that prefer to cooperate through less-binding arrangements (*see* States' Amicus Br. 1) may of course do so through other means. *See, e.g.*, *Northeast Bancorp*, 472 U.S. at 175 (parallel state statutes); Reg'l Greenhouse Gas Initiative, *supra* (voluntary initiative). Or they may expressly authorize unilateral termination in their compacts. But the fact that States may sometimes choose to retain such flexibility does not change the essential character of *compacts* as binding arrangements that cannot be unilaterally undone absent express and advance agreement by signatory states.

New Jersey seeks to accommodate these considerations of history, practice, and sovereign principles by asserting that compacts conferring "vested rights" are understood to be binding while claiming that other compacts are terminable at-will. *See* Br. 27-29. This purported distinction lacks merit.

New Jersey's "vested rights" distinction is premised on cases in which *private parties* brought challenges under the Contracts or Due Process Clauses to the government's interference with rights previously conferred by law or contract. *See, e.g.*, *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) (conveyance of land); *Northern Ohio Traction & Light Co. v. Ohio*, 245 U.S. 574, 585 (1918) (franchise agreement). "Evaluating whether a right has vested is important" for such claims of governmental deprivation because the Contracts and Due Process Clauses "solely protect pre-existing entitlements," *Weaver v. Graham*, 450 U.S. 24, 29-30 (1981), and not "inchoate expectations and unrealized opportunities," *Fernandez-Vargas v. Gonzales*, 548 U.S. 30,

44 n.10 (2006). But whether *a compact* confers "permanent property or contract entitlements" (N.J. Br. 28) is irrelevant to its enforceability because *all* agreements formed under the Compact Clause—no matter their subject matter—are federal law and thus preempt contrary state action.

Moreover, New Jersey's purported distinction does not lend itself to practical application because many compacts that are silent on withdrawal involve *both* property rights, which New Jersey agrees are not generally subject to unilateral withdrawal, and ongoing regulatory authority, which New Jersey contends may be terminated at will. Boundary compacts usually require States to cede regulatory powers over the area no longer within their borders. And some, like the Arkansas-Mississippi Boundary Compact (1910) (App.-A-5), also provide for ongoing shared criminal or other jurisdiction over certain locations. Compacts that create interstate agencies that are silent on withdrawal likewise commonly involve *both* property rights and continuing delegations of power. For example, the Rio Grande Compact, which allocates waters between Colorado, New Mexico, and Texas, creates an interstate commission to administer the compact. *See* Rio Grande Compact (1939) (arts. II, XII) (App.-A-9). The Delaware River Joint Toll Bridge Commission Compact creates a bistate commission to construct bridges between Delaware and New Jersey and also to exercise ongoing regulatory powers, such as making and enforcing "rules and regulations" regarding such bridges. Delaware River Joint Toll Bridge Compact (1935) (art. V) (App.-A-8). And many other bistate compacts that are silent on withdrawal provide for the continued exercise of sovereign powers over a shared area—including police powers and eminent domain. *E.g.*, Breaks Interstate Parks Compact

(1954) (App.-B-2), *as amended*, Va. Code Ann. § 10.1-205.1 (2022) (art. III) (eminent domain); Delaware River and Bay Authority Compact (1962) (App.-B-2) (eminent domain and police powers); *see also* App.-B (listing other bistate agencies). So far as New York is aware, neither New Jersey nor any other State has argued that these bistate compacts are revocable at will, despite their provisions for continuing regulatory authority.

Adopting New Jersey's "vested" rights distinction would seem to destabilize *all* of the fifteen existing bistate compacts that create agencies and do not expressly address unilateral termination. See App.-B. And New Jersey's rule would threaten several multi-state agency compacts that lack express unilateral-withdrawal provisions. *See, e.g.*, Ohio River Valley Sanitation Compact (1940) (App.-A-10); Canadian River Compact (1952) (App.-A-13).

In particular, New Jersey's "vested" rights distinction breaks down for the current Compact, which, like many other compacts, involves shared regulation of physical land over which the compacting States have settled interests. The Commission exercises regulatory authority over waterfront areas in the preexisting Port District established by the Port Authority Compact (Compl.-App. 3a (art. II)); New York-New Jersey Port Authority Compact (1921) (art. II) (App.-A-7)—including property owned by the Port Authority.[14] The current Compact thus does not involve solely abstract regulatory authority, as New Jersey suggests, but rather joint regulation of a well-established geographical Port District that spans and is shared for many purposes by

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[14] *See* Port Auth. of N.Y. & N.J., *Port Master Plan 2050*, *supra*.

both States. There is no plausible basis to distinguish this Compact from the many others that involve both property and ongoing regulatory authority.

III. NEW JERSEY'S PURPORTED RIGHT OF UNILATERAL TERMINATION CONTRAVENES COMPACT AND CONTRACT LAW.

A. States Do Not Possess Any Sovereign Right to Renege on Their Agreements Through Unilateral Withdrawal.

New Jersey essentially argues (Br. 18-24) that States may expressly agree in compacts to share regulatory powers with a co-equal sovereign, yet renege on that commitment whenever they want unless they clearly say in the compact that they will not do so. But foundational principles of sovereignty and common sense establish that no such right to renege exists—whether the compact concerns boundaries or an interstate agency. See *supra* at 35-39.

1. New Jersey misplaces its reliance (Br. 19) on compact cases mentioning the background notion that States do not easily cede sovereignty. In these cases, the issue was whether a sovereign had expressly agreed to share a sovereign power in the first place, not whether it retained a right to take back a power expressly shared—which is what New Jersey demands here.

For example, in *Tarrant*, the Court held that an interstate compact did not grant member States cross-border water rights when the compact omitted any mention of those rights. 569 U.S. at 631-32. And in *Virginia*, the Court held that Virginia had not relinquished riparian rights when the compact "nowhere" made riparian rights "subject to Maryland's regulatory authority." 540 U.S. at 72. But these cases did not remotely suggest

that the States had any right, sovereign or otherwise, to unilaterally retake their water-related rights if they had, in fact, expressly agreed to share those rights.

Here, both New York and New Jersey indisputably delegated regulatory authority to the Commission and agreed to exercise those powers jointly through the Commission. New Jersey thus had "notice" (Br. 23) that it was sharing its regulatory authority over portions of the Port located within its borders in exchange for shared regulatory authority over the whole Port. Having made that express agreement, New Jersey well understood that it had no right to break it.

2. There is no merit to New Jersey's novel assertion that unilateral repudiation of compacts is itself a sovereign prerogative that must be expressly disclaimed. While "States entered into the federal system with their sovereignty intact," *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 779 (1991), New Jersey's asserted prerogative to repudiate a binding agreement has never been recognized as a sovereign "right," even among fully sovereign nations. To the contrary, a "fundamental principle" governing treaties between co-equal sovereigns is that they are "binding on the parties and must be performed by them in good faith." T.O. Elias, *The Modern Law of Treaties* 40-41 (1974).

This sovereign principle was understood around the time of the Founding. *See* Emerich de Vattel, *Law of Nations* 228 (Joseph Chitty, trans. 6th Am. ed. 1844) ("treaties are no better than empty words, if nations do not consider them . . . as rules which are to be inviolably observed by sovereigns"). This was the prevailing view when the Compact was enacted. *See* J.L. Brierly, *Law of Nations* 256 (5th ed. 1955) ("no general right of denunciation of a treaty of indefinite duration"). And

the Vienna Convention on the Law of Treaties (VCLT) now codifies the default rule that an "agreement that is silent on the right to withdraw generally does not contain such a right."[15] Timothy Meyer, *Power, Exit Costs, and Renegotiation in International Law*, 51 Harvard Int'l L.J. 379, 393 (2010). Thus, New Jersey's claim that it possesses a vestigial "sovereign right" to revoke its solemn compact with New York lacks any basis in historical or current understandings of sovereignty.

3. Also unavailing is New Jersey's reliance (Br. 19-22) on cases involving the "unmistakability doctrine." Under this doctrine, courts look for an "unmistakable" statement that a sovereign intended to relinquish regulatory power to a private party or regulated entity before interpreting the sovereign's contract as conferring such power. *See Winstar*, 518 U.S. at 878 (plurality op.).

As an initial matter, most of the cases again involve the question of whether a sovereign gave its contractual counterparty a particular power or exemption in the first place—not whether the sovereign has a standalone right to take that power back. *See id.* at 921 (Scalia, J., concurring). For example, in *Providence Bank v.*

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[15] The default may be overcome, and unilateral treaty withdrawal permitted, when, unlike here, circumstances or the nature of the treaty establish intent to allow unilateral withdrawal. *See* VCLT, art. 56; Restatement (Third) of Foreign Relations Law § 332 cmt. b (1987). New Jersey references instances (Br. 41-42 & n.10) where unilateral withdrawal occurred during the extreme and unforeseen circumstances of actual or threatened war. *See* Restatement (Fourth) of Foreign Relations Law § 313 n.3 (2018); (International Convention on Load Lines); Ch. 67, 1 Stat. 578 (1798) (French treaties). Such a situation cannot arise between States, which are instead given a judicial forum for resolving differences without resort to war.

Billings, the Court held that Rhode Island had not exempted a bank from taxation when "[n]o words" in the charter agreement promised such an exemption. 29 U.S. (4 Pet.) 514, 560 (1830). Likewise, in *Merrion v. Jicarilla Apache Tribe*, the Court held that an Indian tribe had not ceded its power to tax private businesses when its leases did not reference taxes. 455 U.S. 130, 145-48 (1982). And in *Winstar*, the plurality concluded that the federal government did not exempt thrift banks from regulatory changes through their contracts but did assume the financial risk that regulatory changes might prevent the government from performing. 518 U.S. at 871, 880. These cases are inapposite because New York and New Jersey expressly shared regulatory powers with each other through the Compact; unmistakability does not require "a further promise not to go back on the promise," *id.* at 921 (Scalia, J., concurring).

In any event, the doctrine applies to a sovereign's agreements with *private parties* and has no applicability to interstate compacts between *co-equal sovereigns*. The doctrine arose where a State had "made a contract granting a private party some concession (such as a tax exemption or a monopoly)," subsequent state legislation abrogated the contractual commitment, and the private party sued "to invalidate the abrogating legislation under the Contract Clause." *Id.* at 875 (plurality op.). Although the Court has applied the doctrine to contracts between private parties and nonstate sovereigns (the federal government and Indian tribes), *id.* at 876, it has not applied the doctrine to compacts between co-equal sovereign States.

Nor should the Court extend the unmistakability doctrine to interstate compacts because doing so would improperly contravene principles of sovereignty and federalism. *First,* compacts between co-equal sovereigns

do not involve the improper incursion on sovereignty occasioned by private parties or regulated entities claiming that contracts impliedly ceded regulatory powers to them or exempted them from subsequent legislation. *See id.* at 878. One compacting State does not generally have regulatory or legislative authority over another compacting State, and thus does not need protection from inadvertently relinquishing any such power. And unlike for contracts with private parties, States usually *do* intend to give up some aspect of sovereignty when they enter compacts. Indeed, a compact "as a joint undertaking is itself an unmistakable statement that the party states intend and are indeed sharing their sovereignty." Buenger et al., *supra*, at 53.

Second, interstate compacts are plainly not subject to the English common law principle that "one legislature may not bind the legislative authority of its successors," *Winstar*, 518 U.S. at 872 (plurality op.). In our federal system, this principle gives way "to the overriding dictates of the Constitution and the obligations that it authorizes." *Id.* at 873. And a basic tenet of the Constitution is that States are bound by federal law—including interstate compacts. Entry into a compact approved by Congress is thus "one of the few examples of the power of one state legislature to bind future legislatures to specific policy principles governing the subject matter of the agreement." Buenger et al., *supra*, at 48.

Third, the current Compact does not actually "block [the State's] exercise of a sovereign power," *Winstar*, 518 U.S. at 879 (plurality op.). The Compact gives the Commission law-enforcement jurisdiction over the Port that is concurrent with the law-enforcement jurisdiction of both compacting States, the Port Authority, and "municipalities and cities that constitute the port

district." *See Commission Compact Hr'g*, *supra*, at 62 (testimony of N.J. Governor Driscoll). New Jersey thus continues to exercise police powers over portions of the Port located in New Jersey. And through its co-equal control of the Commission, it is empowered to shape—and, in specific instances, to block—the Commission's exercise of the regulatory authority that New Jersey and New York agreed to share.

There is thus no merit to New Jersey's remarkable contention (Br. 3) that New York is wielding the Compact as a "cudgel to bend New Jersey's authority to its will." Not only does the Compact confer on both States equal authority over the Commission, but it also provides avenues for termination—options that New Jersey has not pursued. New Jersey could have (but did not) negotiate with New York to amend the Compact to introduce a sunset provision or to transition the Commission's regulatory powers to the States on a mutually agreeable timeline. And it also could have (but did not) seek Congress's intervention if it truly believed the States to be in a deadlock. New Jersey instead resorted to an unlawful course of action: it enacted Chapter 324 to unilaterally revoke its solemn agreement with New York and to forcibly dissolve the bistate Commission on its own timeline and terms.

B. Default Rules Favoring At-Will Termination of Certain Commercial Contracts Do Not Govern the Compact.

New Jersey's contract law arguments (Br. 14-18) are also unavailing; they turn entirely on the common law presumption that perpetual private contracts are disfavored and are therefore often terminable at will. That default principle is inapplicable here for three reasons.

First, reading in a right of at-will termination is improper when the intent of the parties is discernible. Even where private commercial contracts are silent on duration, "it is first necessary to interpret the promise in light of all surrounding circumstances, and with reference to its subject matter, in order to ascertain the intention of the parties."[16] *See* 1 *Williston on Contracts*, *supra*, § 4:22. If "a period of duration can be fairly implied from the nature of the contract, its subject matter, and the relationship of the parties, the contract is not terminable at the pleasure of either party." *Miller v. Miller*, 134 F.2d 583, 588 (10th Cir. 1943). Applying a default right of unilateral withdrawal here would violate this foundational principle of contract law because the Compact's drafters did not intend to allow unilateral withdrawal.

Second, and relatedly, it is settled law that where an agreement "delineates the circumstances in which the parties may cease to be obligated to perform"—here, mutual agrmapseement by the States or congressional repeal—it is *not* indefinite in duration and *precludes* at-will termination. *See* 17B C.J.S. Contracts § 608; *see also* 1 *Willison on Contracts*, *supra*, § 4:24; 3 *Corbin on Contracts* 216 (1960). Thus, even when faced with a contract where "continuous performance is a possi-

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[16] For example, when parties come together to form a corporation, the resulting body corporate is presumed to endure, and its dissolution, accordingly, requires the agreement of at least a of majority shareholders. *See* Model Business Corporation Act § 14.02(e) (through Sept. 2021). Similarly, where "the central goal" of an agreement is "to fashion a final and permanent resolution of a dispute"—as in the case of a settlement agreement—the natural inference is that parties intended their agreement "to last for an indefinite period of time." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 11-12 (1st Cir. 2000).

bility," courts commonly uphold the agreement as binding so long as its duration is bounded by the occurrence of a future event. *See Nicholas Labs. Ltd. v. Almay, Inc.*, 723 F. Supp. 1015, 1018 (S.D.N.Y. 1989), *aff'd*, 900 F.2d 19 (2d Cir. 1990) (per curiam).[17] This Court should do the same and hold that the Compact is binding until the States agree to terminate it or Congress repeals it.

Third, to the extent that resort to a default is necessary, New Jersey fundamentally errs in arguing (Br. 14-16) that a presumption governing certain private commercial contracts applies to interstate compacts. Just as contracts are not one-size-fits-all, the applicable defaults, too, must bear a reasonable relationship to the nature and purposes of the parties' agreement. Otherwise, the very purpose of applying a judicial default—to approximate the parties' reasonable expectations—is defeated. *See Globe Refining Co. v. Landa Cotton Oil Co.*, 190 U.S. 540, 543 (1903) ("common rules" establish "what the parties probably would have said if they had spoken about the matter"); *see also* Law Profs. Amicus Br. 5 (purpose of applying "background rules" is to uphold "reasonable expectations of the parties").

Here, the public purposes of compacts and the sovereign nature of the compacting parties render a presumption in favor of at-will termination inapplicable. For one thing, while commercial parties are presumed to desire "flexibility" in their contracts in order to respond to "market demands," *Jeperson v. Minnesota Mining & Mfg. Co.*, 183 Ill. 2d 290, 295

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[17] *See also, e.g.*, *Sports v. Top Rank, Inc.*, 954 F.3d 1142, 1149 (8th Cir. 2020) (fee agreement between promoters binding until cessation of promotion activity); *Lura v. Multaplex, Inc.*, 129 Cal. App. 3d 410, 413 (1982) (agreement to pay commission binding until sales cease).

(1998), the same cannot be said for sovereign States who choose to jointly regulate a designated district by compact rather than by cooperating through less binding means. Similarly, while "parties ordinarily do not intend to maintain their business relationships forever," *Delta Servs. & Equip., Inc. v. Ryko Mfg. Co.*, 908 F.2d 7, 11 (5th Cir. 1900), States can and regularly do enter into permanent compacts to forge binding and lasting solutions to interstate disputes or problems. Thus, a default rule reflecting the reasonable expectations and preferences of private parties is no proxy at all for the wills of New York and New Jersey. To the extent resort to a default is necessary, the appropriate default is instead the one that has reflected the States' expectations for centuries: compacts are not terminable at will unless that right is expressly reserved.

IV. THE COURT SHOULD GRANT NEW YORK EQUITABLE RELIEF ENJOINING NEW JERSEY FROM UNILATERALLY TERMINATING THE COMPACT.

Because implementing Chapter 324 would breach the Compact and be preempted by federal law, the Court should grant New York judgment as a matter of law. The appropriate remedy is to permanently enjoin New Jersey from enforcing Chapter 324 and require New Jersey to comply with the Compact.[18] This Court routinely imposes such equitable remedies in breach-of-compact cases. *See Texas*, 482 U.S. at 135; *Kentucky v. Indiana*, 281 U.S. 163, 169, 178 (1930).

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[18] If the Court finds a breach of the Compact but declines to grant injunctive relief and specific performance, New York requests the opportunity for the parties to submit supplemental briefs on alternative forms of relief, including but not limited to damages.

Permanent injunctive relief and specific performance are also amply warranted under traditional equitable principles. Damages would be inadequate "to protect the expectation interest" of New York. *See* Restatement (Second) of Contracts, *supra*, § 359(1) (specific performance); *see also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2020) (permanent injunction). Indeed, the entire purpose of the Compact is to create a unique, bistate regulatory entity whose value cannot be reduced to a mere accounting of its assets and liabilities. And New York cannot procure a "suitable substitute performance" from another party. *See* Restatement (Second) of Contracts, *supra*, § 360(c).

The balance of the equities and public interest further warrant a permanent injunction. New York would suffer substantial, irreparable harm to its sovereign interests if New Jersey were permitted to unilaterally dissolve the Commission and seize the Commission's powers for itself—harms that this Court found sufficient to warrant a preliminary injunction against the enforcement of Chapter 324. See Prelim. Inj. Mot. 12-17. Contrary to New Jersey's contentions, the injunction would not divest New Jersey of its sovereign police powers—the only irreparable harm the State has asserted. New Jersey remains free to police areas of the Port that fall within its boundaries. And New Jersey remains free to exercise its co-equal powers over the Commission's operations and to pursue lawful avenues for terminating the Compact. The public interest weighs heavily in favor of enjoining New Jersey from reneging on its commitments and forcibly dismantling a bistate agency that the States together designed to protect commerce, workers, and residents in both States.

CONCLUSION

The Court should grant New York's Cross-Motion for Judgment on the Pleadings and deny New Jersey's Motion for Judgment on the Pleadings.

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APPENDIX A

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Chronological List of Pre-1954 Compacts Identifying Compacts with Withdrawal or Termination Provisions

This Appendix identifies 80 interstate compacts that were entered into between 1783 and 1953 and that were in effect at the time this Compact was enacted in August 1953. New York relied on the chronological list of compacts in the publication *Interstate Compacts, 1783-1956*, pages 25-46, which was compiled by the Council for State Governments (CSG). Although the CSG list sets forth 109 compacts, this appendix removes any compacts that CSG identified as lacking the requisite congressional approval or state ratification as of the date of its publication and one superseded compact. The appendix also excludes (i) compacts that post-dated the enactment of the Waterfront Commission Compact, (ii) agreements that did not exclusively involve States as parties, and (iii) compacts whose text New York could not locate.

For each compact, New York has identified whether it is bistate (between two States) or multistate (between three or more States); whether it creates an interstate agency; and whether it contains an express withdrawal or termination provision. For compacts that expressly address withdrawal or termination, New York has further identified whether the compact expressly authorizes unilateral action.

Note: ***Name*** (original, common, or amended name); ***Year*** (date compact became effective); ***Express*** (express withdrawal or termination provision); ***Unilateral*** (unilateral withdrawal permitted); ***M/B*** (multistate or bistate agreement); ***Agency*** (creation of interstate agency). New York has cited sources where the text of the compact is available.

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
New Jersey-Pennsylvania Boundary Agreement (Delaware River Compact)[1]	1783			B	
Maryland-Virginia Compact (Potomac River Compact)[2]	1786	x		B	
Treaty of Beaufort (Georgia-South Carolina Savannah River Compact)[3]	1788			B	
Kentucky and Virginia Jurisdiction[4]	1791			B	

[1] Ch. 20, 1783 N.J. Laws 45

[2] Ch. 17, 1785 Va. Acts 5; Ch. 1, 1785 Md. Acts 1

[3] Digest Ga. Laws 53 (Prince comp., 1822); S.C. Stat. 411 (1 Cooper, 1836)

[4] Ch. 4, 1 Stat. 189 (1791)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Kentucky and Tennessee Boundary[5]	1820			B	
Chesapeake and Ohio Canal Company[6]	1825			M	
New York and New Jersey Boundary Agreement[7]	1834			B	
Arkansas and Missouri Boundary Compact[8]	1848			B	
Massachusetts-New York Boundary[9] (Boston Corner)	1855			B	
Massachusetts and Rhode Island Boundary Settlement[10]	1861			B	

[5] Res. 5, 3 Stat. 609 (1820); *Poole v. Fleeger*, 36 U.S. (11 Pet.) 185 (1837)

[6] Ch. 52, 4 Stat. 101 (1825)

[7] Ch. 126, 4 Stat. 708 (1834)

[8] Ch. 10, 9 Stat. 211 (1848)

[9] Ch. 340, 1853 Mass. Acts 564

[10] Ch. 187, 1861 Mass. Acts 496

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Virginia and West Virginia Debt Agreement[11]	1862			B	
Virginia and West Virginia Boundary[12]	1866			B	
Maryland and Virginia Boundary Agreement[13]	1879			B	
New York and Vermont Boundary[14]	1880			B	
Connecticut and New York Boundary[15]	1881			B	
Connecticut and Rhode Island Boundary[16]	1888			B	
New York and Pennsylvania Boundary[17]	1890			B	

[11] Ch. 6, 12 Stat. 633 (1862)

[12] Ch. 54, 1863 Va. Acts 41 (Dec. 1862 Extra Sess.); Jt. Res. 12, 14 Stat. 350 (1866)

[13] Ch. 196, 20 Stat. 481 (1879)

[14] Ch. 49, 21 Stat. 72 (1880)

[15] Ch. 81, 21 Stat. 351 (1879)

[16] Ch. 635, 1887 R.I. Acts & Resolves 203

[17] Ch. 804, 26 Stat. 329 (1890)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Nebraska and South Dakota Boundary[18]	1897			B	
Tennessee and Virginia Boundary[19]	1901			B	
Nebraska and South Dakota Boundary (South of Union County)[20]	1905			B	
Delaware River Jurisdiction[21]	1907	x		B	
Arkansas-Mississippi Boundary[22]	1910			B	
Connecticut and Massachusetts Boundary[23]	1914			B	
Arkansas and Tennessee Boundary[24]	1915			B	

[18] Ch. 12, 30 Stat. 214 (1897)

[19] Ch. 85, 1901 Tenn. Pub. Acts 128

[20] Ch. 234, 1905 Neb. Laws 792

[21] Ch. 394, 34 Stat. 858 (1907)

[22] Act 290, 1909 Ark. Acts 888; Ch. 141, Miss. Laws 132 (Special Sess.)

[23] Ch. 192, 1908 Mass. Acts 141

[24] Act 290, 1909 Ark. Acts 888; Ch. 123, 1915 Tenn. Pub. Acts 342

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Columbia River Jurisdiction Compact[25]	1918			B	
Minnesota and Wisconsin Boundary[26]	1918			B	
Hudson River Tunnel[27]	1920			B	
Delaware and Pennsylvania Boundary[28]	1921			B	
Minnesota and South Dakota Jurisdiction[29]	1921			M	
Minnesota, North Dakota, and South Dakota Boundary[30]	1921			M	

[25] Ch. 123, 40 Stat. 515 (1918)
[26] Ch. 172, 49 Stat. 959 (1918)
[27] Ch. 76, 1920 N.J. Laws 140
[28] Ch. 4, 1921 Del. Laws 73
[29] Ch. 505, 1917 Minn. Laws 850
[30] Ch. 326, 1921 Minn. Laws 479

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
New York-New Jersey Port Authority Compact[31]	1921	provision expired		B	x
Kansas and Missouri Waterworks[32]	1922			B	
Colorado River Compact[33]	1922	x		M	
Connecticut and New York Boundary[34]	1925			B	
La Plata River Compact[35]	1925	x		B	
South Platte River Compact[36]	1926	x		B	
Lake Champlain Bridge[37]	1928			B	x

[31] Ch. 77, 42 Stat. 174 (1921)
[32] Ch. 431, 42 Stat. 1058 (1922)
[33] Colo. Rev. Stat. Ann. § 37-61-101
[34] Ch. 70, 43 Stat. 731 (1925)
[35] Ch. 110, 43 Stat. 796 (1925)
[36] Ch. 46, 44 Stat. 195 (1926)
[37] Ch. 87, 45 Stat. 120 (1928)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Delaware River Port Authority Compact[38]	1932			B	x
Missouri River Toll Bridge Compact[39]	1933			B	
Delaware River Joint Toll Bridge Compact[40]	1935			B	x
Interstate Compact to Conserve Oil & Gas[41]	1935	x	x	M	x
Interstate Sanitation Compact[42] (Tri-State Sanitation Compact)	1935			M	x
Pymatuning Lake Compact[43]	1936			B	

[38] Ch. 258, 47 Stat. 308 (1932)
[39] Ch. 44, 48 Stat. 105 (1933)
[40] Ch. 833, § 9, 49 Stat. 1051 (1935)
[41] Ch. 781, 49 Stat. 939 (1935)
[42] Ch. 779, 49 Stat. 932 (1935)
[43] Ch. 869, 50 Stat. 865 (1937)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Interstate Compact for the Supervision of Parolees & Probationers[44] (now: Interstate Compact for Adult Offender Supervision)	1937	x	x	M	
Palisades Interstate Park Compact[45]	1937			B	x
Piscataqua River Bridge[46]	1937			B	x
Tri-State Waters Commission[47]	1938			M	x
Rio Grande Compact[48]	1939			M	x
Minnesota and South Dakota Boundary[49]	1939			B	x
Iowa and Missouri Boundary Compact[50]	1939			B	

[44] Ch. 92, 1937 Wash. Laws 379
[45] Ch. 706, 50 Stat. 719 (1937)
[46] Ch. 530, 50 Stat. 538 (1937)
[47] Ch. 59, 52 Stat. 150 (1938)
[48] Ch. 155, 53 Stat. 785 (1939)
[49] Ch. 60, 1939 Minn. Laws 84
[50] Ch. 304, 1939 Iowa Laws 413

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Ohio River Valley Water Sanitation Compact[51]	1940			M	x
Potomac Valley Pollution & Conservation Compact[52]	1940	x	x	M	x
Atlantic States Marine Fisheries Compact[53]	1942	x	x	M	x
Indiana and Kentucky Boundary[54]	1943			B	
Iowa and Nebraska Boundary Compact[55]	1943			B	
Republican River Compact[56]	1943			M	
Belle Fourche River Compact[57]	1944	x		B	

[51] Ch. 581, 54 Stat. 752 (1940)
[52] Ch. 579, 54 Stat. 748 (1940)
[53] Ch. 283, 56 Stat. 267 (1942)
[54] Ch. 116, 1942 Ind. Acts 552
[55] Ch. 306, 1943 Iowa Laws 401
[56] Ch. 104, 57 Stat. 86 (1943)
[57] Ch. 64, 58 Stat. 94 (1944)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
New York-Rhode Island Boundary Compact[58]	1944			B	
Costilla Creek Compact[59]	1946			B	x
New England Interstate Water Pollution Control Compact[60]	1947			M	x
Delaware River Tunnel Compact[61]	1947			B	
Pacific Marine Fisheries Compact[62]	1947	x	x	M	x
Michigan, Minnesota, and Wisconsin Boundary[63]	1948			M	
Pecos River Compact[64]	1949	x		B	x

[58] Ch. 362, 58 Stat. 672 (1944)
[59] Ch. 328, 60 Stat. 246 (1946)
[60] Ch. 407, 61 Stat. 682 (1947)
[61] Ch. 561, 1947 Pa. Laws 1452
[62] Ch. 316, 61 Stat. 419 (1947)
[63] Ch. 757, 62 Stat. 1152 (1948)
[64] Ch. 184, 63 Stat. 159 (1949)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Arkansas River Compact[65]	1949	x		B	x
Cheyenne River Compact[66]	1949	x		B	
Gulf State Marine Fisheries Compact[67]	1949	x	x	M	x
Mississippi River Bridge[68]	1949			B	x
Northeastern Interstate Forest Fire Protection Compact[69]	1949	x	x	M	x
Upper Colorado River Basin Compact[70]	1949	x		M	x
Bi-State Development Agency Compact[71]	1950			B	x

[65] Ch. 155, 63 Stat. 145 (1949)
[66] Ch. 257, 1949 S.D. Sess. Laws 292
[67] Ch. 128, 63 Stat. 70 (1949)
[68] Ch. 758, 63 Stat. 930 (1949)
[69] Ch. 246, 63 Stat. 271 (1949)
[70] Ch. 48, 63 Stat. 31 (1949)
[71] Ch. 829, 64 Stat. 568 (1950)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Missouri and Kansas Boundary Compact[72]	1950			B	
Snake River Compact[73]	1950	x		B	
Model Interstate Civil Defense and Disaster Compact[74]	1951	x	x	M	
New Jersey-Pennsylvania Turnpike Bridge Compact[75]	1951			B	
Yellowstone River Compact[76]	1951	x		M	x
Canadian River Compact[77]	1952			M	x

[72] Ch. 510, 1949 Kan. Sess. Laws 837
[73] Ch. 73, 64 Stat. 29 (1950)
[74] Ch. 1228, 64 Stat. 1245 (1951)
[75] Ch. 579, 65 Stat. 650 (1951)
[76] Ch. 629, 65 Stat. 663 (1951)
[77] Ch. 306, 66 Stat. 74 (1952)

Name	*Year*	*Express*	*Unilateral*	*M/B*	*Agency*
Interstate Compact for Mutual Military Aid in an Emergency[78]	1952	x	x	M	
Connecticut River Flood Control Compact[79]	1953			M	x
Western Regional Educational Compact[80]	1953	x	x	M	x

[78] Ch. 538, 66 Stat. 315 (1952)

[79] Ch. 103, 67 Stat. 45 (1953)

[80] Ch. 380, 67 Stat. 490 (1953)

APPENDIX B

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Bistate Compacts That Create an Agency and Lack a Withdrawal Provision

This Appendix sets forth 15 bistate compacts, which both (i) create a currently existing interstate agency and (ii) omit an express withdrawal or termination clause. For each compact, New York has confirmed that the enacting state statutes have not been subsequently repealed by the signatory States.

Name	*States*
Bi-State Development Agency Compact[1]	IL, MO
Breaks Interstate Park Compact[2]	KY, VA
Columbia River Gorge Compact[3]	OR, WA
Costilla Creek Compact[4]	CO, NM
Delaware River and Bay Authority Compact[5]	DE, NJ
Delaware River Joint Toll Bridge Compact[6]	NJ, PA
Delaware River Port Authority Compact[7]	NJ, PA

[1] Ch. 829, 64 Stat. 568 (1950)
[2] Ch. 588, 68 Stat. 571 (1954)
[3] Pub. L. No. 99-663, 100 Stat. 4277 (1986)
[4] Ch. 328, 60 Stat. 246 (1946)
[5] Pub. L. No. 87-678, 76 Stat. 560 (1962)
[6] Ch. 833, § 9, 49 Stat. 1051 (1935)
[7] Ch. 258, 47 Stat. 308 (1932)

Name	*States*
Kansas City Area Transportation District and Authority Compact[8]	KS, MO
Merrimack River Flood Control Compact[9]	MA, NH
Minnesota-South Dakota Boundary Compact[10]	MN, SD
New York-New Jersey Port Authority Compact[11]	NY, NJ
Palisades Interstate Park Compact[12]	NJ, NY
Potomac Highlands Airport Authority Compact[13]	MD, WV
Thames River Valley Flood Control Compact[14]	CT, MA

[8] Pub. L. No. 89-599, 80 Stat. 826 (1966)
[9] Pub. L. No. 85-23, 71 Stat. 18 (1957)
[10] Ch. 60, 1939 Minn. Laws 84
[11] Ch. 77, 42 Stat. 174 (1921)
[12] Ch. 706, 50 Stat. 719 (1937)
[13] Pub. L. No. 105-348, 112 Stat. 3212 (1998)
[14] Pub. L. No. 85-526, 72 Stat. 364 (1958)

Name	*States*
Wheeling Creek Watershed Protection and Flood Prevention District Compact[15]	PA, WV

[15] Pub. L. No. 90-181, 81 Stat. 553 (1967)