Trends in Interstate Relations

By Audrey Wall
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This article reviews developments in interstate relations pertaining to uniform state laws, interstate compacts and administrative agreements, civil union and same-sex marriage, and other pertinent interstate legal matters since 2014.

About the Author

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The U.S. Constitution contains five exceptionally important interstate provisions: full faith and credit, interstate commerce, intestate compacts, privileges and immunities, and rendition that are designed to make more perfect the economic union and the political union of the states. The Constitution is silent relative to the considerably larger number of interstate administrative agreements entered into by state government officers with their counterparts in sister states. Many of these agreements are of great importance.

Uniform State Laws

A federal system contains features that are improvements when compared to a unitary system, but the federal system also has disadvantages, including non-uniform state laws. The sharp growth in population and economic activity subsequent to the Civil War resulted in a proliferation of undesirable disparate laws on the same subject in states. State government officers reacted to the problem by organizing in 1892 the National Conference on Uniform State Law Commissioners to draft harmonized bills for enactment by state legislatures. Commissioners were appointed by each of the fifty states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands.

Congress recognized the problems with the diversity of state laws and initiated several actions to encourage states to enter into interstate compacts and uniform state laws. To encourage states to negotiate and to enter into particular interstate compacts, Congress in 1911 initiated the practice of granting consent to specific compacts prior to their drafting. Compacts, except boundary and study commission compacts, establish a uniform state law within their respective jurisdictions and, in effect, establish a limited type of federation within the larger United States federation. Congress also has used financial incentives to encourage the adoption of more uniform laws across the states. For instance, Congress in 1974 used a cross-over sanction to encourage state legislatures to lower the maximum speed limit to 55 miles per hour to conserve gasoline and diesel fuel by stipulating a state without such a speed limit would lose 10 percent of its federal highway funding.
Hundreds of uniform laws have been drafted relating to a wide variety of subjects, with many laws enacted by only a small number of state legislatures and other laws enacted by all state legislatures after several decades. Most proposed uniform laws are private laws, based upon the English common law governing legal relationships between private individuals. In general, Midwestern and Northwestern states have the greatest propensity to enact uniform state laws, and Southern states have the least propensity to enact such laws. Recent uniform laws include the Child Custody Jurisdiction and Enforcement Act of 2013, Athlete Agents Act of 2015, and the revision in 2015 of the Fiduciary Access to Digital Assets Act. Arkansas in 2015 enacted the Uniform Partition of Heirs Property Act.


**Interstate Compacts and Cooperation**

Based on favorable experience with intercolony compacts, the Articles of Confederation and Perpetual Union, effective in 1781, authorized states to enter into interstate compacts with the consent of Congress. A generally similar provision is included in the U.S. Constitution (art. 1, §10). There are a total of 215 active interstate compacts in the United States.

Section 10 of Article I of the U.S. Constitution grants authority to states to enter into compacts with each other provided Congress grants its consent. The U.S. Supreme Court, however, in *Virginia v. Tennessee* in 1893 (148 U.S. 503 at 520) opined the required consent applies only to compacts encroaching upon the powers of Congress. The reader should note the Insurance Product Regulation Compact of 2004 did not need the consent of Congress to become effective because the McCarran-Ferguson Act of 1945 granted authority to the states to regulate the business of insurance and exempted the states from the national antitrust laws.

The great potential of interstate compacts to solve multistate problems was not recognized until 1921, as compacts were utilized only to settle boundary disputes between states. The New Jersey and New York state legislatures in 1921 enacted a most important compact establishing the Port Authority of New York Commission, the first use of a compact other than to solve boundary disputes between states. Subsequently, interstate compacts were developed to solve a wide variety of interstate problems. In 2004, The Council of State Governments established the National Center for Interstate Compacts to assist state governments in drafting interstate compacts.

In 2014, the Maine and New Hampshire departments of transportation reached an agreement on the replacement of the Sarah Mildred Long Bridge in Kittery, Maine, at an estimated cost of $158.5 million. The bridge, built in 1940 by agreement of the Maine-New Hampshire Interstate Bridge Authority is the second most important bridge in Maine. The new bridge will have wider shoulders for bicyclists and will improve marine navigation by straightening the navigational channel and allow larger ships to access the port and shipyard. The bridge, which began construction in the winter of 2015, is estimated to cost $158.5 million dollars and is expected to be completed in September of 2017.

U.S. Sen. Charles E. Schumer of New York in 2014 announced proposals that, if enacted
by Congress, would reduce the influence of the governors of New Jersey and New York over the Port Authority of New York and New Jersey. The New Jersey governor by tradition selects the chairman of the board of directors and the New York governor selects the executive director. Sen. Schumer proposed the executive director of the authority should be chosen by the agency’s board of commissioners. No action was taken on the proposal. A board of directors committee in 2014 invited a group of experts to offer suggestions to change the authority. Most of the invitees agreed the power of the governors of the two states over the authority should be reduced.

The Western Basin of Lake Erie Collaborative Agreement, signed in June of 2015, is an agreement between the states of Michigan and Ohio as well as the government of Ontario. The agreement was created to reduce phosphorus in the western Lake Erie basin by 40 percent by 2025. Excess phosphorus can result in the growth of algae blooms, including toxic strains, that disrupt the water supply to approximately 400,000 persons in southeast Michigan and the Toledo metropolitan area. The Ohio Legislature enacted a law prohibiting the spread of manure and other fertilizers on frozen ground because it frequently flows from farmers’ fields into lake tributaries during rain storms and thaws.

Gov. Peter Shumlin of Vermont on March 23, 2015, announced the renewal for the seventh time of an historic agreement between his state, New York and Québec to enhance and preserve the Lake Champlain watershed. The cooperative agreement dates back to 1988. A memorandum of understanding provides for the sharing of research on water quality, protecting natural and cultural resources, reducing polluted storm water runoff and blue-green algae blooms, and protecting against invasive aquatic species. In 2015, the Association of State and Provincial Psychology Boards released the draft of an interstate compact that would allow psychologists to practice their profession by telephone over state lines. The association formed a partnership with The Council of State Governments’ National Center for Interstate Compacts to draft model language for a compact to be introduced in state legislatures in 2016. An estimated 42 million persons, 18 percent of the adult population in the United States, are in areas with a shortage of mental health service providers.

The U.S. Supreme Court resolved a dispute in 2015 involving water rights under an interstate compact entered into by Colorado, Kansas and Nebraska in 1943. Kansas had filed an original action in the Supreme Court maintaining Nebraska exceeded by a substantial margin its allocation of water in 2005 to 2006. Nebraska responded by maintaining the accounting procedures needed to be modified as the state was being charged improperly for importing water originating in the Platte River basin.

As customary, the Supreme Court appointed a special master who examined the issue and recommended a $1.8 million disgorgement. According to the special master’s recommendation, Nebraska failed to comply with the compact by knowingly exposing Kansas to a substantial risk it would breach the contract since water is more valuable to Nebraska farmland than to Kansas farmland. The court found Nebraska failed to initiate many actions to stay within the allotment, including not amending the state’s water law for one and a half years. The court, based upon a restatement of law, rejected Nebraska’s argument holding disgorgement only may be ordered for an intentional breach of a compact. The Supreme Court acknowledged it did not know precisely how the master arrived at the $1.8 million figure, and added “what matters is that the Master took into account the appropriate considerations—weighing Nebraska’s incentives, past behavior, and more recent compliance efforts—in determining the kind of signal necessary to prevent another breach.” The court agreed the master was correct in holding an injunction against Nebraska was unnecessary in view of the fact Nebraska subsequently put in place compliance measures that are “up to the task” of complying with the compact.
This proposed agreement is an innovative interstate compact based on Section 10 of Article I of the U.S. Constitution authorizing states to enter into interstate agreements or compacts and Section 1 of Article II of the U.S. Constitution directing state legislatures to appoint presidential-vice presidential electors. Congressional consent is not required for the proposed agreement since its activation would not encroach upon the powers of the federal government. The agreement has been enacted by states with a total of 166 electoral votes, 61 percent of the 270 electoral voters necessary to activate the agreement.

**Same Sex Marriage**

The question whether same-sex couples should be allowed to marry has been controversial for decades. The U.S. Supreme Court in 2015, by a 5 to 4 vote, held same-sex marriage is a constitutional right throughout the nation. Justice Anthony M. Kennedy opined: “No longer may this liberty be denied” and added: “No union is more profound than marriage for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were.” The four liberal justices endorsed Kennedy’s opinion. Each conservative justice filed a separate dissent. Chief Justice John G. Roberts Jr. issued an opinion holding the U.S. Constitution is silent on the subject.

The North Carolina Legislature in 2015 overrode a veto by Gov. Pat McCrory and enacted a law allowing specified county officers to avoid same-sex marriage duties if they invoke a “sincerely held religious objection.” The law authorizes magistrates to recuse themselves from performing all marriages and assistant and deputy registers of deeds can opt out of issuing marriage licenses. Each recusal must be in effect for at least six months.

**Summary and Conclusion**

Uniform state laws continue to play a role in harmonizing the laws enacted by the fifty state legislatures, and are supplemented by interstate compacts and administrative agreements. State legislators are aware their failure to harmonize laws on certain subjects may generate pressure in Congress to enact uniform laws.

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