

HB 3077

Mr. Chairman Members of the committee:

I once swore an oath to 'preserve and protect Constitution of the United States' and so the Constitutional issues raised by HB3077 are of major importance to me.

Is HB3077 a compact in the sense used in Article 1 Section 10 Clause 3 on the Constitution? Yes

Does it have 'the consent of Congress'? No

Does it 'increase the political power or influence of the states affected'? (The test given in Virginia v Tennessee, 148 US 503 (1893)) As it allows the parties to the agreement to impose their will on those states who have not entered into the compact fairly clearly yes.

Is it constitutional? My guess is no, but as I am not on the Supreme Court so your guess is as good as mine.

Is the agreement enforceable? It has the power of law so yes, until a state legislature decides to change it. At which point my guess is, no it is not enforceable, and the Contract clause does not make it enforceable. But we will not know till we have a ruling from the Supreme Court.

The problem is the sponsors of the bill would not have brought it before this committee if they agreed with me about its constitutionality and this is not a venue that is going to provide a definitive answer one way or another.

I do have three concerns that I hope can be addressed before this bill is moved out of this committee.

- 1) This bill will result in the legislature selecting the Electors for the state of Oregon. Constitutionally they have is right. When an election has occurred, no state legislature has acted on this right since 1860. The Oregon Legislature has never selected Oregon's Electors. Before we take this step, 153 years backwards, shouldn't we ask the citizens what they think about it? A referendum seems the right way to make this bill law.
- 2) This bill nationalizes the benefits of vote fraud. Under the current system a corrupt county can only affect the state it is in. This may or may not have a national impact. Under this bill if you can steal enough you get to elect the president.
- 3) **“The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.”** HB3077
page 2 lines 14 to 16
Having nationalized the benefits with this section the bill localizes enforcement. No matter how extreme the fraud in another state we are pre committed to except the announced results.

The Supreme Court may rule that this compact is constitutional. We all know that when it goes into effect it will be challenged. We all know when it will be challenged, in the December of a Presidential election year. Did we really love Florida in 2000 so much that we need to have a replay?

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Constitutional Issues

Article 1 Section 10 Clause 3 of the Constitution "No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, **enter into any agreement or compact with another state** or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." should block HB3077 but it would seem that Virginia v Tennessee, 148 US 503 (1893) gives it cover.

Virginia v Tennessee dose set out circumstances in which states can enter into agreements without the consent of Congress, but there are parts of it that are not favorable to the bill.

“Story, in his Commentaries (§ 1403), referring to a previous part of the same section of the Constitution in which the clause in question appears, observes that its language

"may be more plausibly interpreted from the terms used, 'treaty, alliance, or confederation,' and upon the ground that the sense of each is best known by its association (*noscitur a sociis*) to apply to treaties of a political character, such as treaties of alliance for purposes of peace and war, and treaties of confederation, in which the parties are leagued for mutual government, political cooperation, and the exercise of political sovereignty, and treaties of cession of sovereignty, or conferring internal political jurisdiction, or external political dependence, or general commercial privileges,"

and that

"the latter clause, 'compacts and agreement,' might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty, such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other."

And he adds:

"In such cases, the consent of Congress may be properly required,..."

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and

“The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it -- for example, as made upon a similar declaration of the border or contracting state. The mutual declarations may then be reasonably treated as made upon mutual considerations. The compact or agreement will then be within the prohibition of the Constitution, or without it, according as the establishment of the boundary line may lead or not to the increase of the political power or influence of the states affected..."

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