



Testimony

Bringing States Together to Protect the Border

Senate Committee on State Affairs in Support of SB 1252

by Thomas K. Lindsay, Center Director

In an era of rampant federal stagnation, states striving for constructive political change can no longer rely on Washington D.C.—crippled by congressional gridlock and corrupted by federal overreach—to deliver effective results. Instead, states must seek alternative ways to secure the welfare of themselves and their citizens. One such alternative is the interstate compact, which, although often overlooked, can prove a powerful tool for restoring the constitutional balance between the states and the federal government.

An interstate compact is an agreement between two or more states that ties the parties in question to the compact's stipulations, whatever they may be. A compact may arise out of states advancing similar agendas on certain policy topics or from a need for interstate cooperation regarding a specific issue important to the parties at hand.

The power of the interstate compact is constitutionally rooted in the U.S. Constitution, Article One, Section Ten, Clause Three, which states that “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.” Although compacts require congressional approval, as stated in the clause, it is important to note that the clause does not stipulate that they also require a presidential signature, although there is a good deal of debate today over whether the Constitution’s “presentment” clause likewise applies to interstate compacts. However this issue may be resolved in the future, once a compact has been approved, it is protected by law; it supersedes existing legislation and, unless found unconstitutional, cannot be changed by a subsequent court ruling.

On the whole, interstate compacts provide a legal, formal relationship between states that can be more adaptive and responsive to the needs of the member states than the federal government’s nationwide mandates and regulations. Through

their use, states can form legal unions to solve common problems not addressed by broad federal legislation and/or regulations. Keeping legislation at a state or interstate level allows it to be more efficient and cost effective for those in question. Perhaps most importantly, interstate compacts enable states to benefit from economies of scale: Compacts make it possible for states to tackle big ticket items while retaining state sovereignty. Problems are remedied without ceding power to the federal government—a rare opportunity in today’s political landscape.

Texas should consider entering into compacts, through which it could address one of our state’s most important issues—border security. As former president Ronald Reagan once observed, “A nation that cannot control its borders is not a nation.” However, despite the gravity of border security, our country currently exhibits a distinct lack of control over its own territory, largely due to the federal government’s irresponsibility. The current administration has either ignored the issue, or mishandled it. The President himself has skirted federal and constitutional limits on power in order to deliver executive action, protecting illegal aliens from deportation. This lack of accountability has produced an unsafe environment for those states along the border, and Texas is no exception. To combat this, states themselves must step into the power vacuum. Interstate compacts are one means by which to do so.

SB 1252—“relating to an interstate compact on border security and immigration enforcement”—instructs the Governor to “coordinate, develop, and execute an interstate compact for border security among interested states.” SB 1252 calls for “the operational control of this state’s border with Mexico by the total detection and apprehension or deflection of illegal aliens attempting to cross the border into this state,” as well as “otherwise enforcing federal immigration laws.”

Arizona is also investigating interstate cooperation on border security. Through compact partnership with Arizona, or

other border states, Texas could increase border security and immigration safety. Such a compact could include the establishment of a dedicated border security force under state command, creation of an illegal alien tracking system within the United States, and/or the implementation of legislation that makes it a crime to knowingly hire illegal aliens. Other alternatives include legislation that provides compacting states exemption from federal executive orders challenging the wellbeing of the states in question, or which allows them the power to prosecute apprehended aliens as they choose, instead of handing them over to the federal government. All this and more could be accomplished

through the use of interstate compacts; each opportunity bringing with it hope for the security and safety of Texas.

Interstate compacts will send a powerful message to the federal government, one that demonstrates Texas' refusal to acquiesce meekly to an increasingly overreaching federal government. They will return Constitution-based sovereignty to the states. Finally, and most importantly, they will help to re-establish the rule of law and, with it, the conditions that are indispensable for the continued flourishing of our constitutional democracy. ★

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