[J-101-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MATTHEW J. WROBLEWSKI,	:	No. 25 WAP 2001
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered December
	:	22, 2000, at No. 882CD2000, reversing
v.	:	the Order of the Court of Common Pleas
	:	of Erie County entered March 16, 2000, at
	:	No. 13854-1999.
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF TRANSPORTATION,	:	
BUREAU OF DRIVER LICENSING,	:	
	:	
Appellee	:	ARGUED: September 11, 2001

DISSENTING OPINION

MR. CHIEF JUSTICE ZAPPALA **DECIDED: October 22, 2002**

I dissent on two independent grounds. First, the Legislature's passage of 75 Pa.C.S. § 1586 constitutes an unlawful unilateral amendment to the Driver's License Compact, 75 Pa.C.S. § 1581. Second, Section 1586 cannot alter this Court's previous analysis of Article IV of the Driver's License Compact as set forth in Petrovick v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 741 A.2d 1264 (Pa. 1999). Accordingly, the order of the Commonwealth Court should be reversed.

The Driver's License Compact is a contractual agreement between thirty-nine states, including Pennsylvania, and the District of Columbia, each of which has enacted the Driver's License Compact into law by statute. Sullivan v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 708 A.2d 481, 482 n.2 (Pa. 1998). The forty party jurisdictions

entered into this interstate contractual agreement with the intention of promoting compliance with each party jurisdiction's driving laws and regulations. Id. at 482.

Generally, the authority for states to enter into interstate contractual agreements arises from the Compact Clause of the United States Constitution, which states:

> No State shall, without the consent of the 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.

U.S. Const. art. I, § 10, cl. 3. Congress provides its consent to compacts by a statute or a joint resolution, which will usually include the compact's terms. Note, Charting No Man's Land: Applying Jurisdictional and Choice of Law Doctrines to Interstate Compacts, 11 Harv. L. Rev. 1991, 1993 (1998). The terms of an interstate compact ordinarily contain the substantive obligations of the party states, provisions for enactment and amendment and procedures for termination or withdrawal. Id. As is the case with all contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. See U.S. Const. art. I, § 10, cl. 1 ("No state shall . . . pass any . . . Law impairing the Obligation of Contracts."). Although a state cannot be bound by a compact to which it has not consented, an interstate compact supersedes prior statutes of signatory states and takes precedence over subsequent statutes of signatory states. Jill E. Hasay, Interstate Compacts in a Democratic Society: The Problem of Permanence, 49 Fla. L. Rev. 1, 3 (1997).

Additionally, a state may not unilaterally amend, nullify or revoke a compact it has entered into if the compact does not so provide. Id.; see also West Virginia ex rel. Dyer v. Sims, 341 U.S. 22, 28 (1951); Hinderlider v. La Plat River, 304 U.S. 92, 106 (1938); Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 725 (1838).

Read literally, the Compact Clause requires states to obtain the consent of Congress for *any* agreement between states. However, the United States Supreme Court has held

that the Compact Clause only requires congressional consent for an interstate compact that "may tend to increase and build up the political influence of the contracting States, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control." United States Steel Corp. v. Multistate Tax Comm'n, 434 U.S. 452, 467 (1978) (quoting Virginia v. Tennessee, 148 U.S. 503, 518 (1893)).

The Driver's License Compact was not enacted with the consent of Congress. However, in Koterba v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 736 A.2d 761 (Pa. Cmwlth. 1999), alloc. denied, 751 A.2d 195 (Pa.), cert. denied, 531 U.S. 816 (2000), the Commonwealth Court held that the Driver's License Compact is not the sort of interstate agreement for which the Compact Clause mandates congressional consent. The Commonwealth Court reasoned that, "[n]either the sharing of information among states regarding serious motor vehicle offense convictions nor the regulation by each individual state of the driving privileges of its own citizens threatens the supremacy of the United States." Koterba, 736 A.2d at 765.

Appellant claims that the Legislature's passage of Section 1586 constitutes an unlawful unilateral amendment to the Driver's License Compact. The majority asserts that this claim is waived:

> Appellant recognizes that courts have acknowledged that unilateral amendments of compacts that have been ratified by Congress may violate [the Compact Clause]; Henderson v. Delaware Joint Toll Bridge Comm'n, 66 A.2d 843 (Pa.), cert. denied, 338 U.S. 850 (1949). Appellant **believes**, however, that the Driver's License Compact is not reviewable under the United States Constitution because it did not receive the consent of Congress. Appellant seems to be of the opinion that there is some extra-constitutional basis on which we could find that there was an impermissible unilateral amendment. He fails however to develop this claim in any meaningful way.

Majority op. at 8 (emphasis added). However, the text of Appellant's brief does not support

the majority's assertion of waiver. Appellant does not "believe" that the Driver's License Compact is not reviewable under the United States Constitution, rather, Appellant

> understands that the Driver's License Compact did not receive the consent of Congress and **may** therefore not be reviewable under Article 1, Section 10 of the United States Constitution. However, **the analysis is similar**. As in Henderson and in Aveline [v. Pennsylvania Board of Probation and Parole, 729 A.2d 1254 (Pa. Cmwlth. 1999),] the Compact was a contract entered into between a number of states. The basic premise was to treat offending conduct in the reporting state as it would have been treated in the home state. The Compact permits withdrawal after six months notice. . . . It does not permit unilateral modifications of the Compact . . . .

Brief for Appellant at 15 (emphasis added). I read Appellant's argument as asserting that regardless of whether the Driver's License Compact is controlled by the Compact Clause, the Legislature's passage of Section 1586 without the consent of the party jurisdictions constitutes an unlawful unilateral amendment. Appellant has not waived this argument.

In Henderson, this Court contemplated the mechanism for amendment of an interstate compact entered into by Pennsylvania and New Jersey with the consent of Congress. We stated that, "an amendment . . . would be a matter for the contracting States subject, of course, to the congressional consent required by Article 1, Section 10, cl. 3, of the United States Constitution . . . ." Henderson, 66 A.2d at 848. While Henderson is distinguishable from this case because the compact there required congressional consent, I do not read Henderson as standing for the proposition that an amendment to an interstate compact only requires consent of the party states where the compact at issue is controlled by the Compact Clause. The fact that an interstate compact is not controlled by the Compact Clause merely obviates the requirement of consent by Congress to an amendment. It does not obviate the requirement of consent by the party states to an amendment.

Likewise, the fact that the Driver's License Compact is not controlled by the Compact Clause merely obviates the requirement of consent by Congress to an amendment to the

Driver's License Compact. It does not obviate the requirement of consent by the party jurisdictions to an amendment to the Driver's License Compact.

Furthermore, in its essence, the Driver's License Compact is simply a contract between the forty party jurisdictions that have enacted the Driver's License Compact into law. See Sullivan, 708 A.2d at 484 (stating that the "[Driver's License] Compact is a contract between states."). I cannot discern any tenet of contract law which permits the unilateral modification of a contract by one of the contracting parties in the absence of specific language in the contract authorizing unilateral modification. While the Driver's License Compact explicitly contemplates and authorizes a mechanism for withdrawal, see Section 1581, Article IX (titled "Entry into Force and Withdrawal"), it neither contemplates nor authorizes a mechanism for amendment, let alone unilateral amendment. Under the interpretive principle of expressio unius es exclusio alterius,[1] unilateral amendment of the Driver's License Compact is prohibited due to the lack of any language in the Driver's License Compact authorizing such.

Accordingly, I would hold that the Legislature's passage of Section 1586 constitutes an unlawful unilateral amendment to the Driver's License Compact.

Even assuming arguendo that it was within the Legislature's authority to unilaterally amend the Driver's License Compact with the passage of Section 1586, as aptly stated by the trial court below, Section 1586 "is of no consequence", Trial Ct. op. at 5, in an analysis of Article IV of the Driver's License Compact.

In Petrovick, this Court examined the language of Article IV of the Driver's License

[1] "Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred." Black's Law Dictionary 581 (6th ed. 1991).

Compact and held that Article IV

> does not call for a direct comparison of Pennsylvania's statute to the out-of-state statute. Rather, the Compact requires a two-pronged test. First, we must evaluate whether there is a Pennsylvania offense which is "of a substantially similar nature" to the provisions of Article IV(a)(2). Second, we must evaluate whether there is a [out-of-state] offense which is "of a substantially similar nature" to Article IV(a)(2). Both prongs must be satisfied before PennDOT can sanction a Pennsylvania citizen for an out-of-state conviction.

741 A.2d at 1266-67; see also 75 Pa.C.S. § 1581, Article IV.

Despite this unanimous holding, and directly contrary to such, the majority reasons that the Legislature's passage of Section 1586, "broadens the scope of offenses that Pennsylvania would consider to be 'substantially similar' to the offenses delineated in Article IV(a)(2)." Majority op. at 6. I fail to understand the logic of this assertion.

Section 1586 states that PennDOT

> shall, for purposes of imposing a suspension or revocation under Article IV of the compact, treat reports of convictions received from party states . . . as being substantially similar to [75 Pa.C.S. §] 3731 (relating to driving under the influence of alcohol or controlled substance). The fact that the offense reported to the department by a party state may require a different degree of impairment . . . than that required to support a conviction for a violation of section 3731 shall not be a basis for determining that the party state's offense is not substantially similar to section 3731 for the purposes of Article IV of the compact.

75 Pa.C.S. § 1586.

If the language of Article IV required a direct comparison of Pennsylvania's DUI statute, 75 Pa.C.S. § 3731, to the out-of-state statute, Section 1586 would mandate that the two statutes be considered substantially similar. However, this Court has already specifically determined that the language of Article IV "does not call for a direct comparison of Pennsylvania's statute to the out-of-state statute." Petrovick, 741 A.2d at 1266. Rather,

Article IV requires a determination of whether the out-of-state statute is "substantially similar" to Article IV(a)(2). Id. at 1267.

The majority asserts that Section 1586 "supplants the Petrovick analysis . . . ." Majority op. at 7. Since the language of Article IV remains the same as when this Court interpreted Article IV in Petrovick, I fail to understand how the passage of Section 1586 could have "supplanted" the two-pronged test this Court enunciated in Petrovick.

I therefore respectfully dissent.