

# The Curious Incident of the Dog in the Nighttime: Interstate Compacts and Textual Silence

51 Rutgers L. Rec. 1 (2023) | [WestLaw](#) | [LexisNexis](#) | [PDF](#) **I. INTRODUCTION**

"Scotland Yard Detective Gregory: Is there any other point to which you would wish to draw my attention?"

Sherlock Holmes: To the curious incident of the dog in the night-time.

Gregory: The dog did nothing in the night-time.

Holmes: That was the curious incident.<sup>1</sup>

On April 18, 2023, the United States Supreme Court ended the 70-year history of the Waterfront Compact of New York Harbor because of the silence of the dog in the night-time, specifically the absence of a compact provision either authorizing or barring a member state's unilateral withdrawal. Instead, the Court used background common law principles of contract law to affirm New Jersey's right to unilaterally withdraw from the Compact. *New York v. New Jersey*, 143 S. Ct. 918 (2023).<sup>2</sup>

Most judges and lawyers are not as inductively brilliant as Sherlock Holmes. Nevertheless, it should have come as no surprise that the Court would resort to background common law principles to fill in gaps in a congressionally approved compact in a dispute between member states, because it has done so at least twice before, including in a case involving the identical states.<sup>3</sup>

This essay will examine how the Supreme Court has resolved disputes between member states arising under congressionally approved compacts when the compact is silent as to the controlling issue.

Part II will review how congressionally approved compacts are treated under our federal system of government.

Part III will examine how the Supreme Court treats statutory silence in general.

Part IV will examine how the Supreme Court has treated silence in congressionally approved compacts in disputes between member states.

Part V will offer a conclusion.

<sup>1</sup> Sir Arthur Conan Doyle, *The Adventure of Silver Blaze*, *THE MEMOIRS OF SHERLOCK HOLMES* (1894).

<sup>2</sup> The author has previously written about an earlier iteration of this case. Sheldon H. Laskin, [The Nostalgia of Eternity: Interstate Compacts, Time, and Mortality](#), 49 *RUTGERS L. REC.* 25 (2021).

<sup>3</sup> *New Jersey v. New York*, 523 U.S. 767 (1998) (common law of avulsion supports awarding New Jersey jurisdiction over filled portions of Ellis Island because Ellis Island Compact is silent as to filled land); [Tarrant Regional Water District v. Herrmann](#), 569 U.S. 614 (2013) (common law principles support ruling that Red River Compact does not preempt Oklahoma's water use statutes because Compact is silent on whether member state may meet its water allocation under the Compact by drawing on water located in another member state). [View the Entire Article](#)