

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

---

No. S053577

---

KINGSTON CONSTRUCTORS, INC., Appellant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY, Respondent.

---

On Petition for Review of a Decision  
of the Court of Appeal for the Second Appellate District  
No. B088727

Los Angeles County Superior Court  
No. 068273  
Hon. Harvey Schneider

---

**ANSWER BRIEF ON THE MERITS**

---

MAYER, BROWN & PLATT  
KENNETHS. GELLER (admitted *pro hac vice*)  
DONALD M. FALK (State Bar No. 150256)  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
Telephone: (202) 463-2000

Attorneys for Respondent  
WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

## TABLE OF CONTENTS

	<b>Page</b>
ISSUE PRESENTED .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	1
STATEMENT .....	4
A.    The Washington Metropolitan Area Transit Authority .....	4
B.    The WMATA/Kingston Contract And The Contractually Mandated Resolution Of Their Dispute .....	10
C.    The California Litigation .....	14
ARGUMENT .....	16
I.    CONGRESS COULD CONSTITUTIONALLY RESTRICT SUBJECT MATTER JURISDICTION OVER WMATA TO THE FEDERAL COURTS AND THE LOCAL COURTS OF THE SIGNATORIES .....	18
A.    Public Law 89-774, Which Includes The WMATA Compact, Is A Constitutional Federal Law, Not A Surreptitious Agreement Between States .....	18
B.    Congress Performed Routine and Constitutional Functions In Enacting Public Law 89-774 .....	20
C.    The Limitation Of Concurrent Jurisdiction To The Courts Of Maryland And Virginia Is Constitutional .....	23

**TABLE OF CONTENTS - Continued**

	<b>Page</b>
II. KINGSTON’S WAIVED ARGUMENTS DISPUTING THE MEANING OF THE WMATA COMPACT'S JURISDICTIONAL PROVISION LACK MERIT .....	31
A. Kingston Provides No Intelligible Alternative Reading Of The Clause Conferring Concurrent Jurisdiction Only On The Courts Of Maryland And Virginia .....	32
B. The Explicit Language Limiting Concurrent Jurisdiction Overcomes The Presumption Of Concurrent Jurisdiction In The Face Of Silence ..	35
C. The California Local Courts, Unlike Those Of The District Of Columbia, Did Not Succeed To The Jurisdiction Of A Court Identified By Congress In Section 81 Of The Compact And Section 4 Of Public Law 89-774 .....	38
CONCLUSION .....	40

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>American National Red Cross v. S.G.</i> (1992) 505 U.S. 247, 120 L.Ed. 2d 201, 112 S.Ct. 2465 .....	3, 26
<i>Automatic Sprinkler Corp. v. Darla Environmental Specialists, Inc.</i> (7th Cir. 1995) 53 F.3d 181 .....	37
<i>Becker v. S.P.V. Construction Co.</i> (1980) 27 Cal.3d 489 .....	15
<i>Clafin v. Houseman</i> (1876) 93 U.S. 130, 23 L.Ed. 833 .....	27
<i>Cohens v. Virginia</i> (1821) 19 U.S. (6 Wheat.) 264, 5 L.Ed 257 .....	21
<i>Dant v. District of Columbia</i> (D.C. Cir. 1987) 829 F.2d 69 .....	37
<i>General Investment Co. v. Lake Shore &amp; Michigan Southern Ry.</i> (1922) 260 U.S. 261, 67 L.Ed. 244, 43 S.Ct. 106 .....	24
<i>Gulf Offshore Co. v. Mobil Oil Corp.</i> (1981) 453 U.S. 473, 69 L.Ed.2d 784, 101 S.Ct. 2870 .....	22-25
<i>Hancock Electronics Corp. v. WMATA</i> (4th Cir. 1996) 81 F.3d 451 .....	11
<i>Heller v. Doe</i> (1993) 509 U.S. 312, [125 L.Ed.2d 257, 113 S.Ct. 2637] .....	29

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
<i>Hess v. Port Authority Trans-Hudson Corp.</i> (1994) 130 L.Ed.2d. 245, 115 S.Ct. 394 .....	16, 21
<i>Kansas v. Colorado</i> (1995) 131 L.Ed.2d 759, 115 S. Ct. 1733 .....	16
<i>Kingston Constructors, Inc. v. WMATA</i> (D.D.C. 1994) 860 F. Supp. 886 .....	38
<i>Kingston Constructors, Inc. v. WMATA</i> (D.D.C. 1996) 930 F.Supp. 651 .....	<i>passim</i>
<i>Lambert Run Coal Co. v. Baltimore &amp; Ohio R.R.</i> (1922) 258 U.S. 377, 66 L.Ed. 671, 42 S.Ct. 349 .....	37-38
<i>LaRue v. Swoap</i> (1975) 51 Cal.App.3d 543 .....	38
<i>League to Save Lake Tahoe v. B.J.K. Corp.</i> (9th Cir. 1976) 547 F.2d 1072 .....	28
<i>Library of Congress v. Shaw</i> (1986) 478 U.S. 310, 92 L.Ed.2d 250, 106 S.Ct. 2957 .....	37
<i>Marlow v. Campbell</i> (1992) 7 Cal.App.4th 921 .....	34
<i>Mercantile National Bank v. Langdeau</i> (1963) 371 U.S. 555, 9 L.Ed.2d 523, 83 S.Ct. 520 .....	33-35
<i>Minnesota v. United States</i> (1939) 305 U.S. 382, 83 L.Ed. 235, 59 S.Ct. 292 .....	27, 37, 38
<i>Mistretta v. United States</i> (1989) 488 U.S. 361 102 L.Ed.2d 714, 109 S.Ct. 647 .....	29

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
<i>Morris v. WMATA</i> (D.C. Cir. 1986) 781 F.2d 218 .....	<i>passim</i>
<i>Neild v. District of Columbia</i> (D.C. Cir. 1940) 110 F.2d 246 .....	20
<i>Osborn v. Bank of the United States</i> (1824) 22 U.S. (9 Wheat.) 738 [6 L.Ed. 204] .....	3, 27
<i>Pennsylvania v. Wheeling &amp; Belmont Bridge Co.</i> (1852) 54 U.S. (13 How.) 518, 14 L.Ed. 249 .....	16
<i>Pernell v. Southall Realty</i> (1974) 416 U.S. 363, 40 L.Ed. 2d 198, 94 S.Ct. 1723 .....	39
<i>Qasim v. WMATA</i> (D.C. 1983) 455 A.2d 904 .....	38-39
<i>Reid v. Covert</i> (1956) 351 U.S. 487, 100 L.Ed. 1352, 76 S.Ct. 880 .....	5
<i>Sanders v. WMATA</i> (D.C. Cir. 1987) 819 F.2d 1151 .....	16, 37
<i>Tahoe Regional Planning Agency v. King</i> (1991) 233 Cal.App.3d 1365 .....	28
<i>Texas v. New Mexico</i> (1983) 462 U.S. 554, 564 96 L.Ed.2d 105, 107 S.Ct. 2279 .....	16
<i>Texas v. New Mexico</i> (1987) 482 U.S. 124 96 L.Ed.2d 105, 107 S.Ct. 2279 .....	2, 16, 18
<i>The Moses Taylor</i> (1867) 71 U.S. (4 Wall.) 411, 18 L.Ed. 397 .....	24-25

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
<i>United States Department of Labor v. Triplett</i> (1992) 494 U.S. 715, 108 L.Ed.2d 701, 110 S.Ct. 1428 .....	29
<i>United States v. Kimbell Foods, Inc.</i> (1979) 440 U.S. 715 59 L.Ed. 2d 711, 99 S. Ct. 1448 .....	25
<i>United States v. Mitchell</i> (1980) 445 U.S. 535, 63 L.Ed.2d 607, 100 S.Ct. 1349 .....	37
<i>United States v. Nordic Village, Inc.</i> (1992) 503 U.S. 30, 117 L.Ed.2d 181, 112 S.Ct. 1011 .....	33, 40
<i>Universal Interpretive Shuttle Corp. v.</i> <i>WMAT Commission</i> (1968) 393 U.S. 186, 21 L.Ed.2d 334, 89 S.Ct. 354 .....	7
<i>Ventura County v. Tillett</i> (1982) 133 Cal. App.3d 105 .....	17
<i>Verlinden B.V. v. Central Bank of Nigeria</i> (1983) 455 U.S. 480, 76 L.Ed.2d 81, 103 S.Ct. 1962 .....	25
<i>Yellow Freight System, Inc. v. Donnelly</i> (1990) 494 U.S. 820, 108 L.Ed.2d 834, 110 S.Ct. 1566 .....	35

**CONSTITUTIONAL PROVISIONS**

U.S. Const., art I, § 1 .....	20
-------------------------------	----

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
U.S. Const., art. I, § 8 . . . . .	<i>passim</i>
U.S. Const., art. I, § 10 . . . . .	3, 18
U.S. Const., art. III, § 2 . . . . .	25
U.S. Const., art. VI . . . . .	<i>passim</i>

**STATUTES**

***California***

Code Civ. Proc. § 473 . . . . .	15
Code Civ. Proc. § 580 . . . . .	15
Code Civ. Proc. § 585 . . . . .	15
Code Civ. Proc. § 1048 . . . . .	15

***United States***

15 U.S.C. § 15 . . . . .	24
15 U.S.C. § 26 . . . . .	24
15 U.S.C. § 78aa . . . . .	24
16 U.S.C., ch. 1 . . . . .	23
18 U.S.C. § 3243 . . . . .	24

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
20 U.S.C. § 80q-2 .....	30
28 U.S.C. § 1343 .....	35
28 U.S.C. § 1360 .....	28
28 U.S.C. § 2403 .....	17
District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 97 .....	6
Judiciary Act of 1789 § 9, 1 Stat. 76 .....	24
Judiciary Act of 1789 § 9, 1 Stat. 76 .....	24
National Capital Planning Act of 1952, Pub. L. No. 82-592, 66 Stat. 781 .....	6
National Capital Transportation Act of 1960, Pub. L. No. 86-669, 74 Stat. 537 .....	6, 7
National Capital Transportation Amendments of 1990, Pub. L. No. 101-551, 104 Stat. 2733 .....	22
Pub. L. No. 93-198 (1973) 87 Stat. 774, tit. V .....	6
The Tahoe Regional Planning Agency Compact, Pub. L. No. 91-148 (1969) 83 Stat. 360 .....	28
Washington Metropolitan Area Regulatory Compact, Pub. L. No. 86-794 (1960) 74 Stat. 1031 .....	6, 7

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774 (1966) 80 Stat. 1324 . . . . .	<i>passim</i>
1 D.C. Code (1991) . . . . .	29
 <b>RULE</b>	
Calif. R. Ct. Rule 29.3 . . . . .	3, 32
 <b>MISCELLANEOUS</b>	
112 Cong. Rec. . . . .	<i>passim</i>
<i>Felix Cohen’s Handbook of Federal Indian Law</i> (1982) . . . . .	24
Henry M. Hart, Jr. & Herbert Wechsler (1953) <i>The Federal Courts and the Federal System</i> . . . . .	25
Kingston Constructors, Inc. (1995) 95-2 BCA ¶27,841, 1995 WL 452072 . .	13, 14
H.R. Rep. No. 177 (1995) 104th Cong., 1st Sess. . . . .	23
H.R. Rep. No. 430 (1990) 101st Cong., 2d Sess. . . . .	22, 23, 30
H.R. Rep. No. 1914 (1966) 89th Cong., 2d Sess. . . . .	5
S. Rep. No. 415 (1990) 101st Cong., 2d Sess. . . . .	23
S. Rep. No. 1491 (1966) 89th Cong., 2d Sess. . . . .	<i>passim</i>

**TABLE OF AUTHORITIES - continued**

	<b>Page(s)</b>
Story, Joseph <i>A Familiar Exposition of the Constitution of the United States</i> (1840) .....	19, 20
2 Weekly Compilation of Presidential Documents (1966) .....	8, 10

## **ISSUE PRESENTED**

Whether Congress violated the United States Constitution by limiting jurisdiction over suits against the Washington Metropolitan Area Transit Authority, an agency created by interstate compact to provide mass transit in and around the District of Columbia, to the federal courts and the courts of Maryland and Virginia.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The courts below held that a default judgment entered against the Washington Metropolitan Area Transit Authority (WMATA) in the superior court was void for want of subject matter jurisdiction. WMATA is a public transportation agency created by federal legislation that consented to, and approved for the District of Columbia, a compact between the District and the States of Maryland and Virginia. Washington Metropolitan Area Transit Authority Compact (“WMATA Compact”), Pub. L. No. 89-774 (1966) 80 Stat. 1324. WMATA entered into a contract with appellant Kingston Constructors, Inc., in Washington, D.C., for the replacement of electrical transformers powering WMATA's transit system in the District of Columbia and the State of Virginia. The void judgment was procured by Kingston and a subcontractor (Power Energy Industries) that — as the only bodies empowered to adjudicate the issue have found — supplied WMATA with defective transformers that WMATA properly rejected. See *Kingston Constructors, Inc. v. WMATA* (D.D.C. 1996) 930 F.Supp. 651.

Both courts below based their conclusion that the California courts lacked subject matter jurisdiction on Section 81 of the WMATA Compact, which provides in unambiguous terms for the “Jurisdiction of Courts” over actions involving WMATA (80 Stat. 1350, 1353):

The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against [WMATA].

Because an interstate “compact when approved by Congress becomes a law of the United States,” *Texas v. New Mexico* (1987) 482 U.S. 124, 128 [107 S.Ct. 2279, 96 L.Ed.2d 105], the quoted provision preempts inconsistent state laws under the Supremacy Clause (U.S. Const., art. VI).

1. Kingston contests the constitutionality of Section 81 of the WMATA Compact because it limits jurisdiction to the federal courts and the courts of two States. But Congress unquestionably could have limited such suits to the federal courts alone, thereby withdrawing the subject matter jurisdiction of *all* state courts over WMATA. Kingston has identified no law or principle that would hinder Congress from taking the more modest course it chose.

In denying that Congress had constitutional authority to enact the jurisdictional provision, Kingston overlooks the significance of several clauses of the United States Constitution that provide Congress the power to create WMATA under federal law and then to limit the jurisdiction of courts over WMATA. To begin with, a State may “enter in any agreement or compact with another state” only with “the consent of Congress,” consent that was given here. U.S. Const., art. I, § 10, cl. 3. Second, the Constitution provides Congress the power to “exercise exclusive

legislation, in all cases whatsoever, over such district \* \* \* as may \* \* \* become the seat of the government of the United States,” that is, the District of Columbia. *Id.*, art. I, § 8, cl. 17. Congress exercised that plenary power in creating WMATA and approving the Compact on behalf of the District of Columbia as well as the United States. Third, Congress necessarily exercised its power to regulate interstate commerce (*id.*, art. I, § 8, cl. 3) in enacting the WMATA Compact. Finally, the Supremacy Clause in Article VI makes the “laws of the United States” \* \* \* the supreme law of the land.” *Id.*, art. VI, cl. 2.

It is beyond cavil that the WMATA Compact is both a “law[] of the United States” and thus supreme over the laws of the States, and that it is a legitimate exercise of power under the Compact Clause, the Seat of Government Clause, and the Commerce Clause. And it is far too late in the day to deny to Congress the power to set and regulate the jurisdiction of courts over an entity such as WMATA, which could not exist but for the exercise of federal power. See *Osborn v. Bank of the United States* (1824) 22 U.S. (9 Wheat.) 738, 817-828 [6 L.Ed. 204] (Marshall, C.J.). See also *American National Red Cross v. S.G.* (1992), 505 U.S. 247, 264 [120 L.Ed. 2d 201, 112 S.Ct. 2465].

2. The petition for review presented only the question of constitutional power. Pet. 1. See also Br. 2. Nevertheless, and despite the contrary command of Rule 29.3(c), most of Kingston’s brief addresses not whether Congress could restrict jurisdiction in the way it chose in Section 81, but whether Section 81 in fact restricts jurisdiction over WMATA to the federal courts and the state courts of Maryland and Virginia. This question of statutory interpretation — whether Con-

gress intended the words “concurrent with the Courts of Maryland and Virginia” to mean not what they say but rather “concurrent with the courts of all the States of the Union” — is not properly included within the question of constitutional power, and therefore has been waived.

In any event, Kingston's interpretive arguments are frivolous. As both courts below held, the federal statute that created WMATA explicitly limits jurisdiction over actions against WMATA to the federal courts and the state courts *only* of Maryland and Virginia. Kingston has not offered any plausible explanation for the words “concurrent with the Courts of Maryland and Virginia” that would make jurisdiction sweep beyond those two States. Although that statutory directive alone is sufficient to decide this case, its phrasing as a positive grant of jurisdiction indicates the second reason that the superior court lacked subject matter jurisdiction: Congress did not waive WMATA's federal sovereign immunity from suit in the California courts.

## STATEMENT

### A. The Washington Metropolitan Area Transit Authority

The Washington Metropolitan Area Transit Authority (WMATA) is an interstate agency created by the United States Congress, Maryland and Virginia pursuant to the WMATA Compact. Pet. Exh. A, at 2, 52 Cal.Rptr.2d at 667. See *Morris v. WMATA* (D.C. Cir. 1986) 781 F.2d 218. WMATA operates a rapid transit system in the Washington, D.C., area, and does not maintain facilities outside that area. Pet. Exh. A, at 2, 52 Cal.Rptr.2d at 667.<sup>1/</sup> The creation of

---

<sup>1/</sup>Because WMATA lacks minimum contacts with California, WMATA also challenged the personal jurisdiction of the superior court, which did not need to reach the issue.

WMATA was primarily the result of action on the federal level: “Congress, not the states, initiated the WMATA Compact,” and Congress enacted and adopted the Compact for the District of Columbia. *Morris*, 781 F.2d at 222. The federal government has participated substantially in funding WMATA's construction, capital improvements, and operations, see Compact § 16, 80 Stat. 1331 (“any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments”), in addition to its well-publicized role in underwriting the District of Columbia government.

The Constitution endows Congress with the enumerated power “[t]o exercise exclusive legislation in all cases whatsoever” over the District of Columbia. U.S. Const., art. I, § 8, cl. 17. Congress has exercised that power throughout the District's history, although it has delegated varying degrees of local law-making functions, subject always to congressional oversight. When the WMATA Compact was concluded, the District *had* no local government independent of the federal government, but was governed by three commissioners appointed by the President and confirmed by the Senate. See S. Rep. No. 1491 (1966) 89th Cong., 2d Sess. 24 (legislative history of the WMATA Compact); *Reid v. Covert* (1956) 351 U.S. 487, 489 [100 L.Ed. 1352, 76 S.Ct. 880]. Congress saw itself as the District's “town council” (112 Cong. Rec. (1966), at 20,561 (statement of Sen. Brewster)), and did not hesitate to tell those commissioners what to do — as exemplified by the express instructions to enter into and conclude the WMATA Compact. 80 Stat. 1352. Even after more than 20 years of “home rule” in the District, Congress still exercises its unique power to disapprove local law with some regularity, and recently imposed an

appointed Chief Financial Officer and five-member Financial Control Board on the District, with power to override the elected Mayor and Council. District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. L. No. 104-8, 109 Stat. 97. See Pub. L. No. 93-198 (1973) 87 Stat. 774, tit. V (providing for “annual federal payment” to District government), tit. VI (reservation of congressional authority over local legislation).

The WMATA Compact resulted from more than a decade of sustained congressional attention to transportation issues in the National Capital Region. Congress had authorized federal studies of those issues beginning in 1952. National Capital Planning Act of 1952, Pub. L. No. 82-592, 66 Stat. 781. See generally S. Rep. No. 1491, *supra*, 3-4. In 1960, recognizing that “an improved transportation system for the National Capital Region is essential for the continued and effective performance of the functions of the Government of the United States” (74 Stat. 537), Congress enacted both the National Capital Transportation Act (“1960 Transportation Act”), Pub. L. No. 86-669, 74 Stat. 537, and the Washington Metropolitan Area Regulatory Compact (“Regulatory Compact”), Pub. L. No. 86-794, 74 Stat. 1031. The Regulatory Compact placed privately owned, common carrier transportation under a single regulatory agency, the Washington Metropolitan Area Transit Commission (“WMAT Commission”). The WMAT Commission succeeded to the authority of four agencies: “the public utility regulatory agencies of the States of Virginia, Maryland, and the District of Columbia and the Interstate Commerce Commission.” *Universal Interpretive Shuttle Corp. v. WMAT Commission* (1968) 393 U.S. 186, 192, 21 L.Ed.2d 334, 89 S.Ct. 354 (quoting Pub. L. No. 86-794, 74 Stat. 1031). The Regulatory

Compact made the WMAT Commission entirely immune from suit except for proceedings for judicial review of its administrative orders. 74 Stat. 1031, 1046-1047. Congress granted jurisdiction over the Commission *only* to the federal courts. *Id.* at 1051.

The 1960 Transportation Act directed the Commissioners of the District of Columbia to negotiate an interstate compact with the neighboring States of Maryland and Virginia to create a new agency to provide mass transportation in the National Capital Region. See 1960 Transportation Act, § 301, 74 Stat. 544. The 1960 Act also provided that a federal representative appointed by the President should participate in the negotiations to represent the United States generally. 1960 Transportation Act, § 301(c), 74 Stat. 544. See also S. Rep. No. 1491, *supra*, at 4, 27. Pending the enactment of the new compact, Congress created the National Capital Transportation Agency to begin work on developing a transit system. 74 Stat. 537, 538-544; see S. Rep. No. 1491, *supra*, at 4.<sup>2/</sup>

The WMATA Compact thereupon was negotiated by Virginia, Maryland, the District of Columbia (acting pursuant to congressional direction), and the presidentially appointed representative of the United States. 80 Stat. 1324. See S. Rep. No. 1491, *supra*, at 4. The WMATA Compact was drafted and enacted as an amendment to the Regulatory Compact. 80 Stat. 1324-1325. In approving the Compact and enacting it into federal law, Congress declared that “a coordinated system of \* \* \* transit \* \* \* is essential in the National Capital Region for \* \* \* the effective per-

---

<sup>2/</sup>Although the Agency had the power to enter into contracts, it had no power, separate from that of the United States generally, to sue and be sued except in condemnation actions. See 74 Stat. 537.

formance of the functions of the United States Government located within the Region,” and that “such a system should be developed cooperatively by the Federal, State, and local governments of the National Capital Region, with the costs of the necessary facilities financed, as far as possible, by persons using or benefiting from such facilities and the remaining costs shared equitably among the Federal, State, and local governments.” 80 Stat. 1324.<sup>3/</sup> Congress acted for the District of Columbia, and under its Compact Clause consent power. *Ibid.* (“Congress hereby consents to, adopts, and enacts for the District of Columbia” the WMATA Compact). Indeed, Congress not only “authorized” but “directed” the Commissioners of the District of Columbia to amend the Regulatory Compact to bring the WMATA Compact into effect. 80 Stat. 1352.

Congress also exercised its power over the District's purse, and “authorized to be appropriated out of District of Columbia funds such amounts as are necessary to carry out the obligations of the District of Columbia in accordance with the terms” of the WMATA Compact. 80 Stat. 1352. The Compact did not permit WMATA to impose any “mass transit plan or plan of financing [upon] the District of Columbia or impose any obligations on that Government until and

---

<sup>3/</sup>President Johnson submitted the WMATA Compact to Congress, along with draft consent legislation that, with only typographical corrections, became Public Law 89-774. 2 Weekly Comp. Pres. Doc. (1966), at 751, reprinted in S. Rep. 1491, *supra*, at 26. In urging the Senate to approve the WMATA Compact, President Johnson made clear that it was “Congress which promised the citizens of the Nation's Capital a new system of mass transportation,” and that it would be “Congress which extends that promise to the citizens of the entire Washington metropolitan area.” *Ibid.* President Johnson shared the view that “the efficient functioning of the Government itself” depended on “adequate mass transportation facilities.” *Ibid.*

unless *Congress* appropriates for the District of Columbia the funds required of that signatory by those plans.” S. Rep. 1491, *supra*, at 24 (emphasis added).

Like the WMAT Commission, WMATA succeeded to the functions and duties of a federal agency, here the National Capital Transportation Agency. 80 Stat. 1352. But unlike the Commission, WMATA was subjected to some state-court jurisdiction. Section 81 of the Compact expressly provides for the “Jurisdiction of Courts” over actions involving WMATA:

The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against [WMATA].

80 Stat. 1350. Congress enacted identical language in Section 4 of Public Law No. 89-774. 80 Stat. 1353; see 112 Cong. Rec. 25,656 (1966) (statement of Rep. Whitener) (the bill that became Pub. L. No. 89-774 “has other language which is legislation and \* \* \* is not merely the approval of a compact”). The committee reports slightly clarified the grant of jurisdiction: “[Section 81] [p]rovides for concurrent jurisdiction by the U.S. District Courts and the courts of Maryland and Virginia \* \* \* .” H.R. Rep. No. 1914 (1966) 89th Cong., 2d Sess. 18; S. Rep. No. 1491, *supra*, at 19.

The WMATA Compact legislation passed the Senate unanimously (112 Cong. Rec. (1966), at 26,535-26,536), and passed the House without recorded opposition (*id.* at 25,684-25,685). The President then signed the Compact legislation into law. *Id.* at 28,863; 2 Weekly Comp. Pres. Doc. at 1656.

**B. The WMATA/Kingston Contract And The Contractually Mandated Resolution Of Their Dispute**

This action arises from a contract between WMATA and Kingston, under which Kingston agreed to install electrical power transformers for WMATA's Metrorail system. In 1990, WMATA issued a public request for proposals (RFP) to install the transformers; Kingston responded to the RFP from its Annandale, Virginia, office, and submitted a winning bid. 1 C.T. 29-30, ¶¶ 2-5. Kingston subcontracted the fabrication of the transformers for the Installation Contract to Power Energy Industries (PEI). 2 C.T. 268. PEI did not contract with WMATA, however, and there was no communication between PEI and WMATA in connection with Kingston's bid. 1 C.T. 27, ¶¶ 8-9. Indeed, the Installation Contract specifically disclaimed “any contractual relation between the subcontractor and [WMATA].” *Id.* ¶ 9.

The “transformers’ dismal record of repeated failures” is thoroughly canvassed in the published decision of the United States District Court for the District of Columbia rejecting Kingston’s appeal of the administrative decision that was its exclusive remedy under the standard disputes clause of its contract with WMATA. *Kingston*, 930 F.Supp. 651, 656.<sup>4/</sup> That remedy was to file a complaint with the Board of Contract Appeals (“BCA”) of the Army Corps of Engineers, which Kingston did on September 22, 1992, with an appeal to any court of competent jurisdiction, which Kingston brought in the district court after the Board's adverse decision in 1995. *Id.* at 653-654;

---

<sup>4/</sup>For the convenience of the Court, the report of the district court decision is attached as an appendix. The preclusive effect of that decision on the merits of the dispute between Kingston and WMATA has not yet been determined.

1 C.T. 28, ¶ 15-16; Resp. C.A. Br. Exh. A, p. 1-6, ¶ 1.6(a)).<sup>5/</sup> See *Hancock Electronics Corp. v. WMATA* (4th Cir. 1996) 81 F.3d 451, 454 (affirming dismissal for failure to exhaust administrative remedies under standard disputes clause).

When PEI had produced six of the planned 53 transformers, “testing of one of the units revealed that there was misplaced insulation within the unit which caused a short circuit problem.” 930 F.Supp. at 653. Two additional units failed testing one month later “and were found to have the same insulation defect.” *Id.* After additional testing, however, WMATA allowed Kingston to begin installing the transformers. The district court described what happened next (*ibid.*):

Upon installation of the first transformer — which had passed all routine and induced voltage tests — the unit functioned for a few minutes and then failed, creating a great outpouring of smoke.

This event prompted discussions regarding how to ensure the integrity of the transformers. As the district court recognized, “[s]uch assurances were particularly important because the continuity of WMATA’s rail transit system was totally dependent on the reliability of the transformers.” 930 F.Supp. at 653. Meanwhile, at the request of Kingston and PEI, a new testing company performed extended applied voltage tests on 11 PEI transformers that were stored at

---

<sup>5/</sup> This exhibit was inadvertently omitted from the Clerk’s Transcript. See Resp. C.A. Br. 4 n. 1.

Kingston's warehouse in Manassas, Virginia. *Id.* at 654. Six of the 11 transformers failed, including at least one that was known *not* to have the insulation defect discovered previously. *Ibid.*

At this point, as a condition of accepting the 22 transformers that PEI had already manufactured, WMATA insisted upon testing by another independent laboratory selected by Kingston. After both of the tested transformers failed, WMATA “completely lost confidence in the transformers and rejected the entire lot.” 930 F.Supp. at 654. Kingston ultimately replaced the PEI transformers with transformers that worked, and completed the contract, incurring additional costs due to its delay in completion. *Ibid.*

After WMATA withheld liquidated damages for delay and refused to adjust the contract, Kingston asked the Board of Contract Appeals to award it \$1.4 million; the Board rejected Kingston's request except to grant an adjustment for costs and delays resulting from extra-contractual testing, and to reduce the rate of liquidated damages charged for unexcused delays. See 930 F.Supp. at 653. (The decision of the Board of Contract Appeals is published at 95-2 BCA ¶ 27,841, 1995 WL 452072, and was attached as Appendix B to Respondent's Brief in the Court of Appeal.)

The district court, reviewing the Board's decision, disagreed with Kingston's contention that the extra-contractual tests were not appropriate grounds for rejection, particularly after “the explosion of the first installed transformer — which had passed all contractually-specified testing — cast serious doubt on the reliability of the contractual tests.” 930 F.Supp. at 655. The court held that the “contract clearly did not require WMATA to accept transformers of questionable

reliability.” *Ibid.* The court also affirmed the Board in rejecting Kingston’s assertion that WMATA should have allowed Kingston to pursue “inspection and repair methods” that “required cutting into the structure of the transformer and could have shortened the life of the transformers.” *Ibid.* That rejection was reinforced by the fact that “at least one ‘repaired’ transformer completely failed to function upon installation.” *Id.* at 656.

The district court, like the Board, also refused to force WMATA to accept the transformers that had not yet failed upon testing. As the court put it (930 F.Supp. at 656):

The transformers’ dismal record of repeated failures calls into significant doubt the reliability of all 22 units as well as the tests utilized to identify defects. Given WMATA’s reasonable need for absolute reliability of the transformers, WMATA certainly was justified in rejecting the entire lot. There is nothing wrong with a public transportation authority being meticulous about the integrity of the products used in its transit system.

The net result of the BCA order required WMATA to remit some of the funds it had withheld from the contract price as damages for delay, and to pay Kingston an additional \$30,000. Resp. C.A. Br., App. B, at 41-42; 1995 WL 452072, at 72. The district court required WMATA to return the remaining \$92,500 that had been withheld as liquidated damages, but remanded the case to the Board to determine WMATA’s *actual* damages from delay. This same dispute, adjudicated by the district court to be worth no more than \$122,500 above the contract price (less whatever actual damages that WMATA proves on remand), is the basis for the \$6.9 million default judgment entered and then vacated in this case.

### C. The California Litigation

PEI sued Kingston and WMATA in Los Angeles County Superior Court in May 1992, asking for \$300,000 in damages from WMATA.<sup>6</sup> Pet. Exh. A, at 2, 52 Cal.Rptr.2d at 667; 2 C.T. 251-295. WMATA did not appear, and a default was entered in October 1992. Pet. Exh. A, at 2, 52 Cal.Rptr.2d at 667. PEI voluntarily dismissed Kingston from that action (see L.A. Super. Ct. No. 056254, Request for Dismissal)), but repleaded the same allegations against Kingston (but not WMATA) in the present, separate action (L.A. Super. Ct. No. 068273, Complaint (filed Nov. 10, 1992)).

Kingston moved to stay this action pending resolution of the BCA proceeding. Kingston recognized that it was “required to exhaust its administrative remedies” before the BCA, that the BCA action “involv[ed] the same issues raised by [PEI’s] complaint,” and that “PEI would be free to file or join in any action in Washington, D.C. or Virginia.” Mem. of Pts. and Auths., pp. 2, 8 (Dec. 31, 1992).

PEI and Kingston subsequently settled the later action in December 1993, however, and as part of the settlement PEI assigned its claims against WMATA to Kingston. Despite this Court’s clear command that default judgments must be limited to the amount of damages pleaded in the

---

<sup>6</sup>Contrary to Kingston’s assertion (Br. 4), nothing prevented PEI from suing WMATA in a proper forum. PEI, which was willing to send its transformers into the Washington metropolitan area, could have sued there as well, either in local or in federal court. Federal court jurisdiction that is founded on an independent grant of jurisdiction (such as Section 81 of the WMATA Compact), rather than on 28 U.S.C. § 1331, is not subject to the “well-pleaded complaint” rule. See note 11, *infra*.

complaint, *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, in May 1994 Kingston (as successor to PEI's claim) was awarded a default judgment of \$6.9 million (plus interest and attorney's fees) against WMATA, although WMATA had been neither named nor served in the action in which judgment was entered.<sup>7</sup> The \$6.9 million figure included extensive damages claimed by Kingston against WMATA (Local Rule 9.44 Documents Filed in Support of Request for Default Judgment (L.A. Super. Ct. No. 068273, filed May 5, 1994) — the same damages that Kingston was pursuing in the BCA proceeding under the disputes clause in its contract.

WMATA moved the superior court to vacate the judgment as void for want of jurisdiction.<sup>8</sup> The superior court vacated the decree on the ground that subject matter jurisdiction was lacking, and the court of appeal unanimously affirmed. Pet. Exh. A, at 3, 52 Cal.Rptr.2d at 667. As the court of appeal concluded, Section 81 of the WMATA Compact shows that “Congress intended state jurisdiction [over WMATA] to be limited to Maryland and Virginia.” *Id.* at 5-6; 52 Cal.Rptr.2d at 669.

---

<sup>7</sup>The default judgment was void and could have been vacated on that ground alone. Although the two cases are said to be “related,” no order was entered consolidating the case in which WMATA was named and served (No. 056254) with the present case (see Code Civ. Proc. § 1048); the judgment was entered in the wrong action.

<sup>8</sup>In the alternative, WMATA moved the court to vacate as void that part of the default judgment award that exceeded the amount pleaded in the complaint, that is, \$300,000. 1 C.T. 3-31. See Code Civ. Proc. §§ 473, 580, 585; *Becker*, 27 Cal.3d 489.

## ARGUMENT

An interstate “compact when approved by Congress becomes a law of the United States.” *Texas v. New Mexico* (1987) 482 U.S. 124, 128 [96 L.Ed.2d 105, 107 S.Ct. 2279]. As a federal law, a compact preempts inconsistent state laws under the Supremacy Clause (U.S. Const., art. VI). *E.g.*, *Pennsylvania v. Wheeling & Belmont Bridge Co.* (1852) 54 U.S. (13 How.) 518, 565-566 [14 L.Ed. 249]. Accordingly, “no court,” state or federal, “may order relief inconsistent with its express terms.” *Kansas v. Colorado* (1995) 131 L.Ed.2d 759, 776, 115 S.Ct. 1733, 1744 (quoting *Texas v. New Mexico* (1983) 462 U.S. 554, 564 [96 L.Ed.2d 105, 107 S.Ct. 2279])).

Formed by the agreement of two States (which could not join together without congressional consent) and Congress (which exercised its express constitutional power to legislate for the District of Columbia), WMATA could not constitutionally exist without an Act of Congress. Although any “compact accorded congressional consent” is “a means of safeguarding the national interest,” *Hess v. Port Authority Trans-Hudson Corp.* (1994) 130 L.Ed.2d. 245, 256, 115 S.Ct. 394, 401, the federal statutory character of the WMATA Compact is especially clear: “Congress, not the states, initiated the WMATA Compact,” and Congress adopted and enacted the Compact for the District of Columbia. *Morris*, 781 F.2d at 222; see also *Sanders v. WMATA* (D.C. Cir. 1987) 819 F.2d 1151, 1154.

In the federal statute that brought WMATA into existence, Congress, acting under at least three enumerated sources of constitutional power, granted jurisdiction over “all actions brought by

or against” WMATA to “the United States District Courts \* \* \* concurrent with the Courts of Maryland and Virginia.” This language was not inadvertent; Congress repeated the jurisdictional provision both as Section 81 within the text of the Compact and as Section 4 of the “enacting” legislation in the statute. 80 Stat. 1350, 1353.

The constitutionality of this provision is beyond dispute. Congress could have conferred jurisdiction over WMATA exclusively on the federal courts; extending jurisdiction to the courts of the WMATA Compact signatories offends no constitutional provision or principle. Because the state courts of California are not among the forums identified in the statute, the courts below lacked subject matter jurisdiction, and any judgment entered against WMATA was void. “Where \* \* \* a judgment is void, it *must* be set aside \* \* \* .” *Ventura County v. Tillett* (1982) 133 Cal.App.3d 105, 112 (emphasis added). The judgment of the court of appeal therefore should be affirmed.<sup>9/</sup>

---

<sup>9/</sup>If Kingston's attack on the constitutionality of Section 81 of the WMATA Compact had arisen in federal court, that court would have been obliged by 28 U.S.C. § 2403 to notify the Attorney General and to allow the Department of Justice the opportunity to intervene to defend the Act of Congress. Although there is no similar obligation on this Court under California law, it nonetheless would be appropriate to invite the views of the United States if the Court is inclined to take Kingston's novel constitutional claims seriously.

**I. CONGRESS COULD CONSTITUTIONALLY RESTRICT SUBJECT MATTER JURISDICTION OVER WMATA TO THE FEDERAL COURTS AND THE LOCAL COURTS OF THE SIGNATORIES**

The petition for review presented only the question — which was not raised or decided below — whether Congress had the constitutional power to confer subject matter jurisdiction over actions involving WMATA upon the federal courts and the local courts of Maryland and Virginia without additionally conferring jurisdiction on the local courts of the remaining 48 States. Pet. 1; Br. 2. Despite the wide range of novel theories presented, Kingston's blunderbuss attack on the Compact and the jurisdictional provision misses its target.

**A. Public Law 89-774, Which Includes The WMATA Compact, Is A Constitutional Federal Law, Not A Surreptitious Agreement Between States**

Kingston principally relies on a bald misrepresentation of the WMATA Compact — which was enacted into federal law by Congress — as some sort of surreptitious “contract” by which two States “unilaterally” intruded on the jurisdiction of the other States. Br. 13; see also *id.* at 2. To the contrary, an interstate “compact when approved by Congress becomes a law of the United States,” *Texas v. New Mexico*, 482 U.S. at 128, with full preemptive force under the Supremacy Clause (U.S. Const., art. VI). The dissent on which Kingston relies (Br. 13) for the proposition that an interstate compact is only a species of extrastatutory contract is just that: a dissent. But even if that rejected view could prevail over contrary binding precedent holding that a compact is a law of the United States, Kingston would get nowhere in this case. Congress included a provision identical to Section 81 of the Compact in Section 4 of the enacting legislation (of which

the agreed-upon terms of the Compact are the first Section). 80 Stat. 1353. Congress could scarcely have made more clear its intention to place every ounce of its constitutional power behind the jurisdictional provision that extends concurrent jurisdiction to “the Courts of Maryland and Virginia” and no further.

Kingston ignores the function of Congress under the Interstate Compacts Clause (Art. I, § 10, cl. 3) when it insists that the “terms of the Compact were not agreed to by the other 48 States.” Br. 18. The Compact Clause exists precisely to ensure that there *is* such agreement on a national scale, and to limit the ability of States to enter into “mischievous combinations, injurious to the general interests, and bind them into confederacies of a geographical or sectional character.” Joseph Story, *A Familiar Exposition of the Constitution of the United States* (1840), at 156. To form any compact, States must persuade both the Senate and the House of Representatives, composed of representatives of all 50 states, to “agree[] to” the compact’s terms on behalf of the non-participating States.

Indeed, all of Kingston’s protestations about the constitutional limits on the ability of individual *States* to restrict state court jurisdiction by contract (Br. 13, 15) evaporate upon consideration of the constitutional roles that Congress exercised in approving and in participating as a full party in the WMATA Compact. Far from “innocent non-parties” to the Compact (Br. 18), the other 48 States, through their senators and representatives, had full opportunity to amend or reject the WMATA Compact. That is the typical, and approved, protection for most matters of perceived

inequality in the treatment of States in Acts of Congress; at least, that was the protection devised by the Framers in requiring a bicameral legislature. See, *e.g.*, Story, *supra*, at 69, 97, 156-157.

For that reason, and contrary to Kingston’s contention (Br. 14), affirming the two courts below would not result in “some States being allowed to designate themselves as ‘more equal’ than others” whether “by contract or \* \* \* unilateral action.” Consistent with Kingston’s other arguments, this parade of horrors cannot survive scrutiny in light of the restraining effect of the Compact Clause — which flatly forbids States to enter into any agreement without the consent of Congress — and the plain fact that, unlike federal laws, state laws are not the “supreme law of the land” binding “the judges in every State.” U.S. Const., art VI, cl. 2.

**B. Congress Performed Routine and Constitutional Functions In Enacting Public Law 89-774**

In a different vein, Kingston makes the bizarre assertion (Br. 12) that “Congress approved the Compact \* \* \* in its capacity as the legislative body for the District of Columbia and not in its capacity as the legislative body of the United States.” No such distinction exists, for the functions are inseparable. Congress’s power over the District of Columbia comes directly through the Constitution of the United States, and exists because the District is the “seat of the government of the United States.” U.S. Const., art. I, § 8, cl. 17. See *Neild v. District of Columbia* (D.C. Cir. 1940) 110 F.2d 246, 250 (“[W]hen it legislates for the District, Congress acts as a legislature of national character.”).

Kingston draws (Br. 13) another non-existent distinction between Congress acting “as a national legislative body” and Congress acting “merely as an approving authority to an interstate compact.” As Kingston doggedly refuses to understand, the approval of interstate compacts is among the legislative powers expressly enumerated and granted by the Constitution (art. I, §§ 1, 8). In any event, there is only one Congress, and it acts “in its high character, as the legislature of the Union” whenever it acts bicamerally to pass legislation, regardless of the particular enumerated power that it exercises. *Cohens v. Virginia* (1821) 19 U.S. (6 Wheat.) 264, 429, 5 L.Ed 257 (Seat of Government Clause).

In another attempt to weaken the validity of Section 81 (and Section 4), Kingston suggests (Br. 15) that the only source of congressional power to enact those jurisdictional provisions must come from the Necessary and Proper Clause (art. I, § 8, cl. 18) standing alone. But Congress exercised three enumerated powers when it enacted the WMATA Compact into federal law: the power to “exercise exclusive legislation” over the District of Columbia, the power to regulate interstate commerce, and the power to approve interstate compacts. Whatever limitations on congressional power might arise from actions less firmly rooted in limited and enumerated grants of power in the Constitution, Congress faced no such limits here.

Taking a different tack, Kingston attempts to induce this Court to part company with every other court that has examined the issue, including the United States Supreme Court (*Hess*, 130 L.Ed.2d at 361, 115 S.Ct. at 405), and find that the WMATA Compact did not require the invocation of the Compact Clause power at all. Br. 12. On this point, Kingston makes (*ibid.*) the

still more remarkable assertion that WMATA and the WMATA Compact “do[] not affect the federal sphere.” When it passed the legislation that initiated the negotiations resulting in the Compact, Congress unsurprisingly took the opposite view. In enacting the National Capital Transportation Act of 1960, 74 Stat. 537, which among other things directed the commissioners of the District of Columbia to conclude what became the WMATA Compact, Congress declared that “an improved transportation system for the National Capital region is *essential for the continued and effective performance of the functions of the Government of the United States,*” and that “it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments of the National Capital region,” to bring about the “unified and coordinated transportation system” that is WMATA. 74 Stat. 537 (emphasis added). Congress believed that transportation in and out of the seat of the federal government had a piercingly direct effect on “the federal sphere.”

Congress repeatedly has reaffirmed the national importance of WMATA and its enterprise. In appropriating additional funds for completion of the Metrorail system, Congress reemphasized “the importance of a mass transportation system to serve the capital of the United States.” National Capital Transportation Amendments of 1990, Pub. L. No. 101-551, 104 Stat. 2733, 2734. The legislative history of that Act emphasized WMATA's “special federal relationship,” H. Rep. No. 430 (1990) 101st Cong., 2d Sess. 2, and described the “unique federal commitment” to ““America’s Subway,” resulting from the system’s “critical[] importan[ce] to millions of Federal workers.” S. Rep. No. 415 (1990) 101st Cong., 2d Sess. 1-2. The Committees further explained

that the “presence of the seat of government in Washington is, of course, the source of the federal interest in the District of Columbia and the surrounding metropolitan area,” and that “[t]his Federal interest [is] unique to this area among all American cities.” *Id.* at 3; H. Rep. No. 430, *supra*, at 2-3 (quoting testimony of Philip S. Hughes, Deputy Director of the Bureau of the Budget). And less than one year ago, Congress enacted mandatory arbitration standards and procedures for WMATA labor disputes (Pub. L. No. 104-50, tit. IV (1995) 109 Stat. 436, 463 (codified at 40 U.S.C. §§ 1301-1304)) to serve the “clear federal interest in providing affordable public transit in the national capital region \* \* \* [i]n view of the large federal workforce.” H.R. Rep. No. 177 (1995) 104th Cong., 1st Sess. 175.

**C. The Limitation Of Concurrent Jurisdiction To The Courts Of Maryland And Virginia Is Constitutional**

Kingston makes the extraordinary argument that Congress, which unquestionably has the power to divest *all* state courts of jurisdiction over particular matters of federal concern, cannot divest *some* of them. Kingston supplies a bald claim (Br. 11) that “Congress \* \* \* does not have the authority to grant jurisdiction to some States and the federal courts,” but can neither suggest why this should be so, nor identify *any* authority for this spurious limitation.

Congress routinely treats some States differently from other States in addressing national concerns. Title 16, Chapter 1 of the United States Code is full of state-specific statutes dealing with national parks; Congress need not establish a park in Rhode Island for every park established in (and more accessible to the citizens of) California. Congress provided Kansas with partial

criminal jurisdiction over the Indian reservations within its boundaries before extending the same power in piecemeal fashion to other States. Act of June 8, 1940, ch. 276, 54 Stat. 240 (codified as amended at 18 U.S.C. § 3243); see *Felix Cohen's Handbook of Federal Indian Law* (1982), at 373-374 (Kansas); *id.* at 362-375 (other States). And the Voting Rights Act of 1965 allows federal officers to place substantial burdens on the redistricting process and the conduct of elections by some States — States that are selected by the federal Department of Justice — but not by others. 42 U.S.C. §§ 1973b, 1973c.

Kingston asserts (Br. 16) that the “sovereignty of the States protects California from the abrogation of its jurisdictional capacity or an encroachment on that capacity by either another State or the federal government.” But that proves too much. Congress' power to commit some matters exclusively to the federal judiciary was understood and exercised in the Judiciary Act of 1789 (§§ 9, 11, 1 Stat. 76, 78), and has been exercised ever since. *E.g.*, 15 U.S.C. § 78aa (Securities Exchange Act); 15 U.S.C. §§ 15, 26 (antitrust laws, construed to be exclusively within jurisdiction of federal courts in *General Investment Co. v. Lake Shore & Michigan Southern Ry.* (1922) 260 U.S. 261, 286-288 [67 L.Ed. 244, 43 S.Ct. 106]). The first former Justice of this Court to speak for the United States Supreme Court made clear that the constitutionality of exclusive jurisdiction “cannot be seriously questioned,” and that the “judicial power of the United States” may be made exclusive “at the election of Congress.” *The Moses Taylor* (1867) 71 U.S. (4 Wall.)

411, 429, 430 [18 L.Ed. 397] (Field, J.).<sup>10</sup> Such “abrogation[s]” and “encroachment[s]” are a fact of life under our federal system, a fact compelled by the Supremacy Clause and confirmed by more than two centuries of practice. As the leading treatise put it, “The power of Congress to make exclusive *any* valid grant of jurisdiction has hardly been in issue.” Henry M. Hart, Jr. & Herbert Wechsler (1953) *The Federal Courts and the Federal System* 373 (emphasis added). Because the greater power to exclude surely includes the lesser, there can be no constitutional problem with Section 81, particularly in light of the obvious and close relationship between the state courts granted jurisdiction and the purposes and functions of WMATA. Cf. *Verlinden B.V. v. Central Bank of Nigeria* (1983) 461 U.S. 480, 494 [76 L.Ed.2d 81, 103 S.Ct. 1962].

Kingston repeatedly claims (Br. 2, 6, 15, 17) that, because local law supplies the rules of decision of most cases by or against WMATA, those cases are “nonfederal.” To the contrary, the rules of decision derive from a federal statutory command: the WMATA Compact contains a “borrowing” provision that expressly identifies the source of substantive law for tort and contract actions against WMATA as “the law of the applicable signatory (including rules on conflict of laws) \* \* \*.” WMATA Compact § 80, 80 Stat. 1350. The incorporated local substantive law thus is, in fact, *federal* law. See *Gulf Offshore Co. v. Mobil Oil Corp.* (1981) 453 U.S. 473, 480-481 [69 L.Ed.2d 784, 101 S.Ct. 2870]; see generally *United States v. Kimbell Foods, Inc.* (1979)

---

<sup>10</sup>Kingston’s allusion (Br. 13 & n.3) to the Exceptions Clause, by which Congress has the authority to limit the appellate jurisdiction of the United States Supreme Court (U.S. Const., art. III, § 2, cl. 2), is indecipherable. If it is true that Congress cannot “restrict or limit the jurisdiction” of state courts, then the federal courts could *never* have exclusive jurisdiction except for cases in which the Supreme Court has original jurisdiction. That has never been the law.

440 U.S. 715 [59 L.Ed.2d 711, 99 S.Ct. 1448]. But more fundamentally, the Supreme Court has “consistently reaffirmed” the “longstanding and settled rule, on which Congress has surely been entitled to rely,” that “Article III’s ‘arising under’ jurisdiction is broad enough to authorize Congress to confer federal court jurisdiction over actions involving federally chartered corporations,” regardless of whether the substantive law in a particular case derives from state or federal law. *American National Red Cross v. S.G.* (1992) 505 U.S. 247, 264-265, 120 L.Ed.2d 201, 112 S.Ct. 2465.<sup>11/</sup>

The present case presents a far stronger case of constitutional power to confer “arising under” jurisdiction than that presented by the federally chartered corporation at issue in *Red Cross*. Whereas Congress’s power to charter a corporation derives only from the Commerce and Necessary and Proper Clauses, the powers to approve an interstate compact by statute, and to exercise exclusive legislative power for the District of Columbia, are expressly set forth in Article I. Although a federally chartered corporation could exist in essentially indistinguishable form under a state charter, WMATA could not exist at all without the consent of Congress: No interstate compact, and no intergovernmental organization depending on the participation of the District of Columbia, can constitutionally exist unless Congress affirmatively permits it.

---

<sup>11/</sup>The Court added that the “‘well-pleaded complaint’ rule (that the federal question must appear on the face of a well-pleaded complaint)” does not apply to cases, like this case, in which jurisdiction is “based on a separate and independent jurisdictional grant” rather than “statutory ‘arising under’ jurisdiction based on 28 U.S.C. § 1331.” 505 U.S. at 258.

As a consequence, not merely as a matter of historical fact, but as a matter of constitutional necessity, the WMATA Compact “not only creates” WMATA, “but gives it every faculty which it possesses.” *Osborn v. Bank of the United States* (1824) 22 U.S. (9 Wheat.) 738, 823 [6 L.Ed. 204]. WMATA, by constitutional mandate rather than by legislative happenstance, is a “being [that] can acquire no right, make no contract, bring no suit, which is not authorized by a law of the United States.” *Ibid.* The question whether and where WMATA may sue or be sued, and what courts are afforded jurisdiction to hear such suits, “forms an original ingredient in every cause.” *Id.* at 824. In Chief Justice Marshall's words, the Compact “is the first ingredient in the case — is its origin — is that from which every other part arises.” *Id.* at 825. This case, like every case concerning a contract or other act of WMATA, “arises emphatically under the law” of the United States that alone could give WMATA existence. *Ibid.*

And where a right — such as the right to recover from WMATA at all — “arises under a law of the United States, Congress may, if it sees fit, give the federal courts an exclusive jurisdiction” either “by express commitment” or “by implication.” *Claffin v. Houseman* (1876) 93 U.S. 130, 133, 137 [23 L.Ed. 833]. Congress, then, had the power to exclude *all* state courts from jurisdiction over WMATA, or fewer, “as it s[aw] fit.”

In addition, when Congress waives federal sovereign immunity, as it did in Section 81, it surely may choose the courts in which to waive that immunity as well as the subjects on which immunity is waived. *Minnesota v. United States* (1939) 305 U.S. 382, 388-389 [83 L.Ed. 235, 59 S.Ct. 292] Under the Supremacy Clause (*id.*, art. VI), Congress's choice unquestionably prevails over

state-law jurisdictional principles. There simply is no basis for Kingston's argument that Congress lacked power to limit the geographic reach of the courts that could entertain actions brought by or against an agency created by Congress (with the agreement of two States bordering the District of Columbia) to provide transportation in and around the Nation's capital, whether in exercise of the Compacts Clause, the Seat of Government Clause, the Commerce Clause, or any combination.

At bottom, Kingston insists (Br. 11) that the preclusion only of non-signatory States from jurisdiction concurrent with the federal courts must be unconstitutional because it is unprecedented, but Kingston cannot succeed with this attempted reversal of the burden of proof.<sup>12/</sup> Contrary to Kingston's implication, statutes that have been passed by Congress and signed by the President are presumed to be *constitutional*. When a court "is asked to invalidate a statutory provision that has been approved by both Houses of the Congress and signed by the President, \* \* \* it should only do so for the most compelling constitutional reasons." *Mistretta v. United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647] (internal quotation marks omitted). See also, *e.g.*, *Heller v. Doe* (1993) 509 U.S. 312, 320 [125 L.Ed.2d 257, 113 S.Ct. 2637]; *United States De-*

---

<sup>12/</sup>Kingston is also mistaken. The Tahoe Regional Planning Agency Compact (1969) Pub. L. No. 91-148, 83 Stat. 360, vested "jurisdiction over civil actions to which the agency is a party" in the state courts of the signatories, California and Nevada. California and federal courts alike recognized that, were it not for the availability of federal jurisdiction for the interpretation of some aspects of the Compact and ordinances enacted under it, "exclusive jurisdiction [would rest] with the state courts of California and Nevada." *Tahoe Regional Planning Agency v. King* (1991) 233 Cal.App.3d 1365, 1384; *League to Save Lake Tahoe v. B.J.K. Corp.* (9th Cir. 1976) 547 F.2d 1072, 1074-1075. See also 28 U.S.C. § 1360 (carving out different jurisdictional rules among state courts in suits involving Indians).

*partment of Labor v. Triplett* (1992) 494 U.S. 715, 721 [108 L.Ed.2d 701, 110 S.Ct. 1428].

Kingston has not come close to carrying its heavy burden of demonstrating otherwise.

At the end of the day, Kingston's peculiar constitutional claim amounts to nothing more than that Congress acted irrationally in drawing the distinctions in the jurisdictional provisions of Public Law 89-774. But there are in fact sound reasons, rooted in geography and constitutional history, for the precise jurisdictional limitations imposed in Section 81. Maryland and Virginia have a special relationship to the District of Columbia. Those States, and those States alone, are the “particular States” that “by cession” contemplated in the Seat of Government Clause (art. I, § 8, cl. 17) contributed the territory of the District.<sup>13/</sup> Only those States contributed their common-law tradition (as of the 1801 cession) to the common law of the District. See 1 D.C. Code 1 (1991) (citing 2 Stat. 103 (1801)). Only those States now border the District, and efficient transportation to and from the District requires the construction and operation of transportation facilities only in those States.

Congress could have retained the federal National Capital Transportation Agency, condemned the relevant property in the neighboring States, and imposed completely federal hegemony over transportation in the metropolitan area. Instead, in the best tradition of federalism, it chose to make the undertaking a cooperative venture between the federal sovereign and two sovereign States.

---

<sup>13/</sup>In 1846, the United States retroceded Virginia's contribution (except for Virginia's half of the part of the Potomac River that parallels the District, which remained part of the District).

The reason for imposing *jurisdictional* limitations also is clear. Such limitations obviously reduce the litigation expenses that must be paid, ultimately, by the signatory governments or their subdivisions. Indeed, Congress has noted that litigation costs, even without the additional expenses of outside counsel or travel, have increased construction costs — the part of WMATA's funding that has been most consistently (and predominantly) federal. See H.Rep. No. 430 (1990) 101st Cong., 2d Sess. 6.<sup>14/</sup>

Even within the Compact, the overwhelmingly federal character of WMATA would have justified limiting jurisdiction over WMATA to the federal courts exclusively; as noted above, Congress permitted only federal courts to hear cases involving WMATA's sister agency, the WMAT Commission, and WMATA's predecessor, the National Capital Transportation Agency. Nothing except the need to receive the cooperation (and the financial support) of the state and local governments of Maryland and Virginia could have stopped Congress from refusing to submit WMATA to the jurisdiction of *any* state courts. But States that are full participants in an interstate-federal compact might desire the ability to have legal actions that were in part chargeable to their treasuries heard in their state courts, and might decline to place their treasuries (and the treasuries of their subdivisions) at risk of being raided by litigation brought throughout the nation. In addition, the citizens of the signatory States (and the District) are the most likely litigants against WMATA; the signatory States might properly ask Congress to provide their citizens (from whom the nearest

---

<sup>14/</sup>For apparently similar reasons, Congress provided that all disputes arising from an agreement (1) should be governed by the law of the State of New York, but (2) could be heard only in the United States District Court for the Southern District of New York. 20 U.S.C. § 80q-2.

federal district court may be distant) access to their local court systems for that litigation. In exchange for their contributions to the federal goal of a transportation system for the National Capital Region, the participating States surely could be accorded the “home court” privilege on which the United States generally insists before placing *its* treasury at risk. No other State has a comparable claim to such treatment.

In sum, Congress’ choice in Section 81 was entirely sensible, and indeed, is tied both to its purposes and the sources of its constitutional power in creating WMATA. Congress routinely legislates in ways that treat States differently, and it surely did not exceed its authority to make legislative policy in the service of its enumerated powers in this instance.

## **II. KINGSTON’S WAIVED ARGUMENTS DISPUTING THE MEANING OF THE WMATA COMPACT’S JURISDICTIONAL PROVISION LACK MERIT**

Contrary to its position in the petition for review, Kingston now asserts that not only did Congress lack the power to enact Section 81, but that Section 81 does not mean what it says. Kingston insists that, rather than conferring jurisdiction over WMATA upon the “United States District Courts \* \* \* concurrent with the Courts of Maryland and Virginia,” Congress intended to make that jurisdiction concurrent with the courts of Maryland, Virginia, California, New York, Delaware, and the other 45 States. That contention (not properly included within the question of constitutional power) was waived by not being presented for review in the petition (Cal. R. Ct. 29.3(c)), but in any event lacks substantive merit.

The WMATA Compact provides for the jurisdiction of courts over WMATA in these plain terms:

The United States District Courts shall have original jurisdiction, concurrent with the

Courts of *Maryland and Virginia*, of all actions brought by or against [WMATA].

WMATA Compact §81, 80 Stat. 1350 (emphasis added). That provision deprives the state courts of California of subject matter jurisdiction for two reasons. First, the terms of the statute can have no other plausible meaning, and as an Act of Congress, the Compact preempts inconsistent state laws or decrees under the Supremacy Clause. Second, because Congress conferred federal sovereign immunity upon WMATA, WMATA may not be sued in the state courts in the absence of congressional consent. But Congress consented to state-court lawsuits against WMATA *only* in Maryland and Virginia.

**A. Kingston Provides No Intelligible Alternative Reading Of The Clause Conferring Concurrent Jurisdiction Only On The Courts Of Maryland And Virginia**

Kingston’s arguments all founder on the same shoal: Congress specified that actions by or against WMATA should be subject to the jurisdiction of the federal courts “concurrent with the Courts of Maryland and Virginia.” The United States Supreme Court has firmly instructed that “a statute must, if possible, be construed [so] that every word has some operative effect.” *United States v. Nordic Village, Inc.* (1992) 503 U.S. 30, 36 [117 L.Ed.2d 181, 112 S.Ct. 1011]; see also *Mercantile National Bank v. Langdeau* (1963) 371 U.S. 555, 560 [9 L.Ed.2d 523, 83 S.Ct. 520] (giving “appropriate meaning” to statutory provision restricting venue in actions against

national banks to particular state courts). Kingston's reading of Section 81 fails that test, because (as both lower courts explained) it provides *no* plausible explanation why Congress chose to single out the local courts in Maryland and Virginia for explicit reference, if it did not intend to exclude the unnamed States.

Kingston attempts to explain away (Br. 8) its attempted nullification of the statutory directive by stating that “the federal district courts and the courts of Maryland and Virginia would have only the power to entertain cases in the first instance.” But try as it might, Kingston cannot provide any reason of the slightest plausibility why Congress would go to the trouble of expressly conferring original jurisdiction on two states' courts that can have no other kind of jurisdiction. Indeed, Section 81 would have had the same meaning, according to Kingston, even if Congress had not included the “concurrent with” phrase.<sup>15/</sup> Kingston’s feeble efforts to avoid the plain meaning of a geographical limit on actions against an entity created by federal statute resemble those rejected in *Mercantile Bank v. Langdeau*. In that case, the United States Supreme Court interpreted a statute that provided for the venue of actions against national banks in these terms: “Actions \* \* \* may be had \* \* \* in any State, county, or municipal court in the county or city in which [a national bank] is located.” 371 U.S. at 556 (quoting the then-current version of 12 U.S.C. § 94). That provision, like Section 81 of the WMATA Compact, identifies particular state courts in which an

---

<sup>15/</sup> Kingston suggests (Br. 6-7) that WMATA should have removed the superior court action to federal court, despite the patent lack of subject matter jurisdiction in the superior court. As the court of appeal noted, “[T]hat cannot be.” Pet. Exh. A, at 8; 52 Cal.Rptr.2d at 670. But even if removal to a federal court would have created jurisdiction, Kingston's current predicament would be unchanged: this case was *not* removed, and the superior court remained without jurisdiction.

action will lie. The chief difference between the two statutes is that Section 81 expressly confers subject-matter *jurisdiction* on the named courts, rather than merely establishing venue. Although improper venue can be waived (see 371 U.S. at 561), a lack of subject matter jurisdiction, of course, cannot. See, e.g., *Marlow v. Campbell* (1992) 7 Cal.App.4th 921, 928.

The Supreme Court held in *Mercantile Bank* that 12 U.S.C. § 94 “specif[ied] the precise courts in which Congress consented to have national banks subject to suit” and that “Congress intended that in those courts alone could a national bank be sued against its will.” 371 U.S. at 560. Reading the statute to permit actions in any state court in which state jurisdictional and venue requirements were satisfied “would render altogether meaningless a congressional enactment permitting suit to be brought in the bank’s home county.” *Ibid.* The Court declined to “conclude that a congressional enactment has no purpose or function,” because it was compelled to “give appropriate meaning to each of the provisions” of the statute. *Ibid.*

In this case, Kingston seeks to render the clause “concurrent with the Courts of Maryland and Virginia” without “purpose or function.” As the court of appeal put it, Kingston would “make superfluous the mention of two specific states.” Pet. Exh. A, at 6; 52 Cal.Rptr.2d at 669. *Mercantile Bank* requires, to the contrary, that those words receive “appropriate meaning.”

**B. The Explicit Language Limiting Concurrent Jurisdiction Overcomes The Presumption Of Concurrent Jurisdiction In The Face Of Silence**

Kingston swats at a straw man when it recites various authorities (at Br. 7-12) for the proposition that a statute granting federal jurisdiction does not necessarily oust state courts of concurrent jurisdiction. That presumption of concurrent jurisdiction governs only when the federal statute is “completely silent on any role of the state courts.” *Yellow Freight System, Inc. v. Donnelly* (1990) 494 U.S. 820, 825 [108 L.Ed.2d 834, 110 S.Ct. 1566]. It thus has no validity here, because “[t]he Compact was not completely silent about jurisdiction” (Pet. Exh. A, at 5, 52 Cal.Rptr.2d at 669), but rather spelled out with unmistakable precision the exact extent of concurrent state court jurisdiction over actions by or against WMATA.<sup>16/</sup>

1. To begin with, the precedents covering *exclusive* jurisdiction are irrelevant. The courts below did not hold, and we have never contended, that Section 81 confers *exclusive* jurisdiction on the federal courts. Rather, it confers *non-exclusive* jurisdiction on the federal courts, concurrent with the state courts of Maryland and Virginia. Thus, unlike the statutes at issue in the cases on which Kingston relies, the WMATA Compact does *not* lack a “provision by Congress” governing the extent of federal and state court jurisdiction. *Gulf Offshore*, 453 U.S. at 477. Rather, Section 81’s “explicit statutory directive” (*id.* at 478) plainly “addresses concurrent jurisdiction, but limits

---

<sup>16/</sup>In this regard, Kingston maintains (Br. 7-8) that a jurisdictional provision for civil rights cases (28 U.S.C. § 1343) is “substantially similar” to Compact § 81, but that is not so. Section 1343 grants the federal district courts original jurisdiction without limiting concurrent jurisdiction to “the Courts of Maryland and Virginia.”

it to the courts of only two states, Virginia and Maryland.” Pet. Exh. A, at 5; 52 Cal.Rptr.2d at 668.

The structure of the Compact as a whole provides another reason to give the clause “concurrent with the Courts of Maryland and Virginia” its natural meaning, which would exclude the local courts of other States. The provision that mandates the source of substantive and choice of law provisions in tort and contract cases against WMATA (WMATA Compact, § 80, 80 Stat. 1350) defines WMATA's tort and contract liability in terms of “the law of the applicable signatory (including rules on conflict of laws)” (80 Stat. 1350). That formulation makes no sense if cases involving WMATA may be heard by the courts of non-signatory States. If the forum does not establish which “signatory” is the “applicable” source of the choice-of-law rule, choosing the “applicable” choice-of-law rule would be left entirely to the discretion of a forum court with no ties to any “signatory.” As a matter of statutory structure, therefore, the jurisdictional provision, which is next in sequence, must mean what it says or deprive *two* sections of ascertainable content.

2. Kingston’s reliance on the presumption of concurrent jurisdiction fails for a second reason: the cases Kingston cites did not involve suits against an entity with federal sovereign immunity. The United States, of course, is immune from lawsuits in any court in the absence of consent, and the terms of its “consent to be sued in any court define that court's jurisdiction to entertain the suit.” *United States v. Mitchell* (1980) 445 U.S. 535, 538 [63 L.Ed.2d 607, 100 S.Ct. 1349]. Those terms “must be unequivocally expressed” and cannot be expanded by implication. *Ibid.*

In joining into the Compact, Congress conferred its federal sovereign immunity upon WMATA. *Morris*, 781 F.2d at 219-220, 222; *Sanders*, 819 F.2d at 1154-1155; *Dant v. District of Columbia* (D.C. Cir. 1987) 829 F.2d 69, 74. That immunity bars any state or federal court from asserting jurisdiction over WMATA except in accord with the express terms of Congress's consent to be sued. Under those circumstances, “it rests with Congress to determine not only whether” federal sovereign immunity should be waived, but “in what courts [a] suit may be brought.” *Minnesota v. United States* (1939) 305 U.S. at 388 (Brandeis, J.).

Waivers of federal sovereign immunity must be strictly construed, and cannot be enlarged “beyond what the language *requires*” (*Library of Congress v. Shaw* (1986) 478 U.S. 310, 318 [92 L.Ed.2d 250, 106 S.Ct. 2957] (emphasis added)). There is a simple reason for this. In the absence of a statutory waiver to overcome its immunity, WMATA could not be sued at all: “anyone who seeks money from the Treasury needs a statute authorizing that relief.” *Automatic Sprinkler Corp. v. Darla Environmental Specialists, Inc.* (7th Cir. 1995) 53 F.3d 181, 182. See also *Lambert Run Coal Co. v. Baltimore & Ohio R.R.* (1922) 258 U.S. 377, 382 [66 L.Ed. 671, 42 S.Ct. 349]; *LaRue v. Swoap* (1975) 51 Cal.App.3d 543, 553-554 & n.9.

Thus, when a waiver of federal sovereign immunity is involved, the presumption is that state courts do *not* have jurisdiction: “Congress has provided generally for suits against the United States in the federal courts.” *Minnesota v. United States*, 305 U.S. at 388. Section 81 of the Compact does not aid Kingston’s cause, but instead states unambiguously that WMATA may be sued only in “the United States District Courts” and the state “Courts of Maryland and Virginia”

(80 Stat. 1350).<sup>17/</sup> Because Congress did not expressly consent to allow WMATA to be sued in the state courts of California, the superior court lacked jurisdiction, and its judgment against WMATA is void.

**C. The California Local Courts, Unlike Those Of The District Of Columbia, Did Not Succeed To The Jurisdiction Of A Court Identified By Congress In Section 81 Of The Compact And Section 4 Of Public Law 89-774**

Kingston's attempt (Br. 9) to rest on the assertion of jurisdiction over WMATA by the District of Columbia local courts strains credulity. See *Qasim v. WMATA* (D.C. 1983) 455 A.2d 904. Unlike California, the District of Columbia is a signatory of the WMATA Compact. At the time the Compact was enacted into law, the United States District Court for the District of Columbia was the court of general jurisdiction in the District; the effect of Section 81 was to remove the \$10,000 minimum amount in controversy then required in that federal court. *Id.* at 906. Under federal legislation enacted in 1970, the Superior Court of the District of Columbia succeeded to the general jurisdiction of the United States District Court for the District of Columbia. See *id.* at 906-907. See generally *Pernell v. Southall Realty* (1974) 416 U.S. 363, 367-368 [40 L.Ed. 2d 198, 94 S.Ct. 1723] (explaining 1970 reorganization of D.C. courts). Accordingly, although the *Qasim*

---

<sup>17/</sup> Kingston previously has argued that WMATA broadly waived its sovereign immunity in the “sue and be sued” clause set forth among WMATA’s “General Powers” (Compact § 12, 80 Stat. 1328). The *Morris* court held that the “*partial* waiver of \* \* \* immunity in the Compact” (*id.* at 220 (emphasis added)) is contained in Sections 80 and 81 — which directly address WMATA’s “Liability for Contracts and Torts” and the “Jurisdiction of Courts” to determine that liability (80 Stat. 1350) — not in the “sue and be sued” clause, which is expressly limited by provisions elsewhere in the statute. See 781 F.2d at 221 & n.3. See also *Kingston Constructors, Inc. v. WMATA* (D.D.C. 1994) 860 F. Supp. 886, 888 & n.2 (rejecting similar Kingston argument).

decision rests on less than solid ground, Congress undeniably conferred jurisdiction on the predecessor of the District of Columbia Superior Court, and undeniably intended that the local courts of each signatory have jurisdiction over actions by or against WMATA. See 455 A.2d at 906-907. The courts of California can derive no comparable support for an assertion of jurisdiction; indeed, in recognizing that Congress did not intend the federal courts to have exclusive jurisdiction over WMATA, the *Qasim* court understood that concurrent jurisdiction extended to “[b]oth the Maryland and Virginia state courts,” not to all state courts. *Id.* at 907.

\* \* \* \* \*

The limitation of state court jurisdiction to the state courts of Maryland and Virginia — the States that joined with Congress in a compact to provide mass transit for the District of Columbia metropolitan area — makes perfect sense. It accords with the focus of the Compact on the National Capital Region, and with Congress’s desire to create an entity that would achieve a federal goal through local means.<sup>18/</sup> By contrast, Kingston's tortured interpretation of the statute would give no meaning to the words “concurrent with the Courts of Maryland and Virginia” and would violate the “settled rule that a statute must, if possible, be construed [so] that every word has some operative effect.” *United States v. Nordic Village*, 503 U.S. at 36. When every word of Section 81 is given “operative effect,” that provision (as both lower courts held) must mean what

---

<sup>18/</sup>Neither the terms of Section 81 nor the extent of Congress’s power to enact it can be altered in the least by Kingston’s self-serving and unsubstantiated claim that the “operation and purposes of WMATA will not be frustrated” by litigation in any state court in the nation. Whether geographically limited jurisdiction is necessary to the operation of WMATA is a decision that belongs to, and has been made by, Congress.

it says: concurrent jurisdiction extends only to the Maryland and Virginia state courts, and not to the California state courts.

### **CONCLUSION**

For the foregoing reasons, the judgment of the court of appeal should be affirmed.

Respectfully submitted.

Dated: October 10, 1996

MAYER, BROWN & PLATT  
KENNETH S. GELLER (admitted *pro hac vice*)  
DONALD M. FALK (State Bar No. 150256)

By \_\_\_\_\_

Donald M. Falk  
Attorneys for Defendant  
WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY