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# THE CONGRESS PROJECT

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## Assignment Prompt Sheet

### **Mann-Elkins Act of 1910**

#### **Overview**

**Act Title:** Mann-Elkins Act of 1910

**Congress:** 61st Congress (1909-1911)  
**Session/Sessions:** 2

**Statute No:** 36 Stat. 539-57  
**Public Law No:** 61 PL 218

**Eid:** 610218  
**Gid:** 231-013

**Bill:** HR 17536  
**Sponsor:** Rep. [Charles Elroy Townsend \(R-MD\)](#)  
**House Committees:** Interstate and Foreign Commerce  
**Senate Committees:** Interstate Commerce

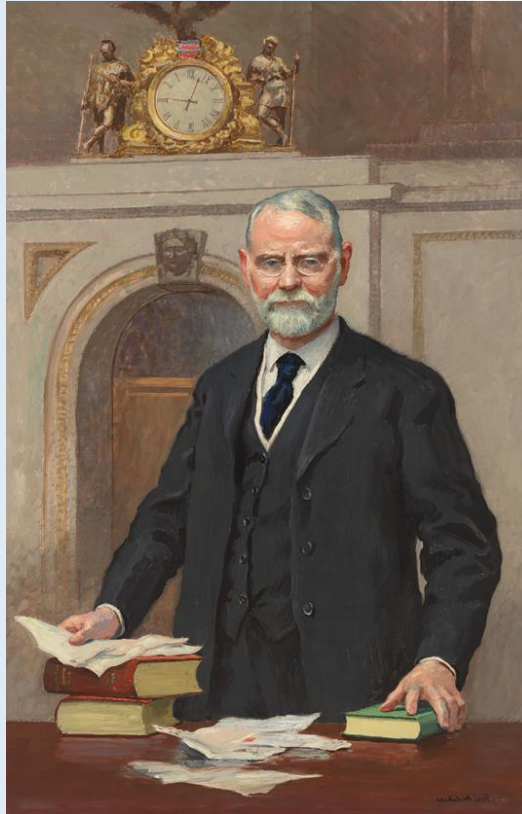
**Companion Bill:** S 6737  
**Related Bills:** HR 16312  
**House Rules:** Hres 572  
**Past Bills:** None

**Introduced Date- Law Date:** January 10 – June 18, 1910  
**House Floor Days:** 18  
**Senate Floor Days:** 51

**Roll Call Votes:** 43 (38 in the Senate on S 6737; 1 in the Senate on HR 17536; 4 in the House on HR 17536)

**Issues:** courts; separation of powers; economy; business regulation; executive power  
**Procedures:** open rule; recommit; amendments; filibuster; point of order; motion to concur; conference

**Last Updated:** 2/28/23



*(Above) Rep. James Robert Mann (R-IL), who played a prominent role in the passage of the Mann-Elkins Act, the Mann Act and the 19th Amendment. He also introduced legislation that would eventually become the Pure Food and Drug Act. He was everywhere during this period, basically the early 20th century House's version of Batman.*

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## Legislative History Comments

The Mann-Elkins Act of 1910 sought to crack down on unfair trade practices by extending the authority of the Interstate Commerce Commission to regulate the telecommunications industry. In doing so, it placed “telegraph, telephone, cable and wireless radio companies, as well as railroads, under the jurisdiction of the Interstate Commerce Commission (Stathis 2014, 190).” Also called the Commerce Court Act of 1910 and the Railway Rate Act of 1910, it was passed in response to public outcry over increasing railroad fees and placed the burden on railroads to “actively demonstrate that a rate was reasonable (PBS 2016).” Aggressively backed by the Taft administration, the Mann-Elkins Act also created the highly controversial and short-lived Commerce Court to oversee appeals of from ICC decisions. The Mann-Elkins Act of 1910 was the second most influential bill of the 61st Congress according to Clinton and Lapinski (2006), ranking behind the Payne-Aldrich Tariff Act of 1909.

The Commerce Court was repealed three years after Mann-Elkins was enacted. The measure’s lasting legacy—apart from being a rare occasions where Congress created a Court—relates to the role it played in future telecommunications regulations. Specifically, it has been praised as leading to the passage of the Communications Act of 1934. It is also often cited as one of the earliest instances of Congress successfully regulating the rail industry. The measure is considered during a period where the Republican Party was split into establishment and insurgent factions.

From a process standpoint, there’s a decent amount going on. It features 51 days of Senate debate, an absurd 43 recorded votes and over 200 floor amendments. There’s also a rare incident where a House opponent of the bill attempts to bypass a conference committee and moves to concur in the Senate bill. Otherwise, the last three sections should all be comparatively short. I did break the Senate section up into two sections. Don’t kill yourself by going through all the amendments. I flagged the ones that should be of most interest (though feel free to work in others). Expand on those and the debate immediately after the measure is brought up and right before it passes. Historical newspapers should also help here.

I am legitimately interested in what motivated this measure and why there was so much progressive and Democratic opposition to the Commerce Court. My guess is that they felt it would benefit the railroads, but I don’t know that for sure. Hopefully a detailed examination of the debate will help on this point.

Don’t hesitate to e-mail me with questions!

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## Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number. Here they are:

#1.

#2.

#3.

#4.

## Background Questions

1. Discuss the broader political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What other pieces of legislation were being considered/passed in this Congress?

What best accounts for the split in the Republican Party during this period? Who was "Uncle Joe" Cannon? Why was he controversial?

The Stathis (2014) piece might worth a citation here.

2. What motivated consideration of this legislation in this specific Congress? Was it in response to a specific event? Or was this a slower build over time? What happened in previous congresses regarding this? Had Congress considered comparable legislation?

What were the railroads doing that led to this measure's consideration and passage? What is a long and short-haul clause? Why was it offered?

3. What does this act actually do? Who was pushing for it? Was it significantly altered during consideration? What were the problems it was trying to rectify?

Why create a Commerce Court at all? What made this so controversial?

4. What did existing federal policy look like in this specific issue area? Why did reformers feel it needed to be changed? What had the Supreme Court said?

What was the Interstate Commerce Act of 1887? How did Mann-Elkins alter it?

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## Process Sections

Please write-up the sections that correspond to your number. Feel free to incorporate any notes I might have dumped in the margins. The relevant second session indices are available below:

S. 6737—To create a Court of Commerce and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes.  
Mr. Elkins; Committee on Interstate Commerce 2379.—Reported back (S. Report 355) 2817.—Debated 2655, 2656, 2817-2820, 2943-2950, 3187-3189, 3238, 3279, 3280, 3341-3388, 3463-3483, 3534-3549, 3600, 3748-3753, 3847, 3848, 4001, 4051, 4100-4120, 4209-4218, 4269-4269, 4324, 4325, 4355, 4360, 4366, 4367, 4497, 4499-4517, 4549-4564, 4603-4619, 4654-4661, 4732, 4868, 4873, 5030-5054, 5118-5132, 5187-5206, 5260-5271, 5322-5337, 5382-5404, 5437-5449, 5483-5510, 5548-5568, 5653-5665, 5710-5725, 5777-5783, 5820-5838, 5961-5964, 5997-6026, 6062-6075, 6120-6151, 6188-6215, 6326-6348, 6389-6414, 6443-6464, 6499-6505, 6506, 6507, 6516, 6606, 6773-6795, 6841-6843, 6847, 6848, 6882-6923, 6955-6977, 7108, 7109, 7129-7146, 7191-7218, 7248-7296, 7332-7376.—Unanimous-consent agreement 6127, 7269, 7270.—Bill H. R. 17536 substituted 7374.—Bill ordered to be reprinted in comparative form (S. Doc. 606) 7446.—Bill indefinitely postponed 8503.

H. R. 17536—To create a commerce court, and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes.  
Mr. Townsend; Committee on Interstate and Foreign Commerce 497.—Reported with amendment (H. R. Report 923) 4146.—Made privileged (H. Res. 572) 4240-4242.—Debated 4571-4588, 4711-4725, 4824-4852, 4937-4951, 4991-5022, 5138-5177, 5206-5242, 5408-5431, 5514-5537, 5570-5596, 5726-5753, 5839-5867, 5882-5897, 5898-5913, 6028-6033 [Appendix 86, 89, 94, 97, 100, 103, 104, 105, 122, 139, 150, 188, 343, 380].—Amended and passed House 6032, 6033.—Referred to Senate Committee on Interstate Commerce 6062.—Reported back 7273.—Amended and passed Senate 7374, 7375.—Bill ordered to be reprinted in comparative form (S. Doc. 606) 7446.—House disagree to Senate amendment and ask for a conference 7568-7578.—Senate insists on its amendment and agree to conference 7564.—Conference appointed 7564, 7578.—Conference report (S. Doc. 625) made in Senate 8026-8053, 8148.—Conference report (H. R. Report 1588) made in House 8134-8142.—Conference report debated in Senate 8237-8241, 8368-8391.—Conference report agreed to in Senate 8391.—Conference report debated in House 8470-8485 [Appendix 343, 380].—Conference report agreed to in House 8485.—Ordered printed as document (H. Doc. 967) 8487.—Examined and signed 8454, 8470.—Presented to the President 8457.—Approved [Public, No. 218] 8638.

### *#1. House Consideration of HR 17536 (April 12, 14-16, 18-22, 26, 28-29; May 3-10, 1910)*

Prior to considering HR 17536, the House considered Hres 572. Hres 572 sought to make HR 17536 privileged. The measure was adopted without a recorded vote on April 4, 1910.

Several days later, on April 12, Rep. James Mann (R-IL), moved the House consider HR 17536, the railroad bill. This motion was agreed to by voice vote and Mann introduced the bill. In his opening remarks he stated that "transportation by railway is not a mere convenience, it is a necessity (*Congressional Record*, 61<sup>st</sup> Congress, April 12, 1910, 4571)."

House debate over HR 17536 spanned several weeks.

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On May 10, 1910, the majority suffered their only significant substantive defeat, when an amendment by Mann that would have required rail carrier mergers to be supervised by the Interstate Commerce Committee [was defeated 161-169](#).<sup>1</sup>

The House then defeated a motion to recommit with instructions offered by Rep. William Adamson (D-GA) that specifically sought to eliminate the creation of the commerce court from the bill. The Adamson motion fell 157-176.

The House adopted the [bill 201-126](#), with 15 Democrats joining all voting Republicans in support.

***#2. Senate Consideration of S 6737 (March 3, 7-9, 15, 18-22, 25; April 1-29, May 2-5; May 9-19, 1910)***

On February 24, 1910, Sen. Stephen Elkins (R-WV) introduced the Senate companion bill (S 6737). Substantive floor debate on the measure began on March 3, 1910.

The measure would consume over 50 days of Senate floor debate.

Opponents, like Sen. Albert Baird Cummins (R-IA), took issue with a number of elements related to the bill, including the prominent role played by the administration in drafting it. Cummins argued the Taft administration's involvement amounted to "extraordinary circumstances (*Congressional Record*, 61<sup>st</sup> Congress, March 18, 1910, 3341)."

While senators debated and voted on a number of amendments, two votes in May were flagged by press accounts as being particularly important. The first was on an amendment by Sen. Dixon that sought to insert a "long and short haul" clause into the measure. This proposal barred railroads from charging passengers more for shorter distances than they charged for the full, longer haul. Newspapers accounts asserted that the adoption of Dixon's amendment represented the minority "outwitting" and "defeating" the Republican leader, Sen. Nelson Aldrich (R-RI).<sup>2</sup> The Dixon amendment [was eventually adopted 57-10 on May 13th](#).

While the Dixon amendment was viewed as a win for minority party Democrats and Republican insurgents, the defeated of Cummins' amendment eliminating the Commerce Court for the bill was characterized as a victory for establishment Republicans.<sup>3</sup> The Cummins amendment [fell 28-37 on May 16, 1910](#).

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<sup>1</sup> "House Passes Railroad Bill by a Vote of 200 to 126." *Wall Street Journal*, May 11, 1910.

<sup>2</sup> "Democrats Outwit and Defeat Aldrich." *New York Times*, May 14, 1910.

<sup>3</sup> "Insurgents Beaten on Commerce Court." *New York Times*, May 17, 1910.

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## #3. Senate Consideration of S 6737 & HR 17536 (May 24-June 3, 1910)

Senate debate continued through the end of May and into June of 1910.

The Senate dispensed with several amendments by Sen. Robert “Fighting Bob” La Follette (R-WI) on June 3, 1910. The first of these sought to bar any judges from the Commerce Court who held any financial interest in railroads. This was [defeated 29-32](#).

A second La Follette amendment would have revised the bill so the assignment of matters to the Commerce Court would necessitate the support of a majority of Supreme Court justices, instead of simply the Chief Justice. This [fell 18-39](#).

Another attempt to eliminate the provisions of the measure creating the Commerce Court [was defeated 25-38](#). This time the amendment was offered by Sen. Augustus Bacon (D-GA).

The bill was eventually [passed 50-12](#). The Senate then substitute S 6737, as amended, for the text of HR 17536.<sup>4</sup>

## #4. House Consideration of the Senate Amendments to HR 17536 (June 7, 1910)

Prior to requesting a conference with the Senate, the House had to consider a motion to concur in the Senate Amendments to HR 17536 with an amendment. This motion was offered by Rep. Irvine Lenroot (R-WI), an insurgent Republican.<sup>5</sup> Lenroot’s motion would have ensured “the section affecting raises in rates should go into effect immediately on the passage of the bill.”<sup>6</sup>

Mann spoke in opposition to the measure.

Lenroot argued that while he believed the House bill was better than the Senate bill, he also believed the Senate was “measurably a better bill than will come out of a conference committee (*Congressional Record*, 61<sup>st</sup> Congress, June 7, 1910, 7572).”

After a short debate, Lenroot’s motion was [defeated 156-162](#).

Mann then moved the House disagree with the Senate amendment. His motion was agreed to by division, 185-129. A motion to request a conference was then adopted by voice vote.

**Commented [AJM1]:** Three paragraphs maybe on this section.

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<sup>4</sup> “Rail Bill, Slashed to Pieces, is Passed by Vote of 50 to 12.” *Atlanta Constitution*, June 4, 1910.

<sup>5</sup> Lenroot, a progressive Republican, served as a senator from Wisconsin from 1918-1927. During the Republican convention in 1920, party leaders selected Lenroot to be the Vice Presidential nominee to balance out the establishment-backed Warren G. Harding (R-OH). However, even though his nomination was announced, it was not “seconded.” After his strongest backers had left the convention (and he had stepped out of his seat), Massachusetts Governor Calvin Coolidge was nominated and quickly seconded. This took the Vice Presidency and eventually the Presidency away from Lenroot (Margulies 1977).

<sup>6</sup> “R.R. Bill Goes Back.” *New York Times*, June 8, 1910.

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## *#4. Senate Consideration of the Conference Report on HR 17536 (June 16-17, 1910)*

**Commented [AJM2]:** Three paragraphs maybe on this section.

On June 16, 1910, Elkins called up the conference report on HR 17536.

Debate continued on June 17<sup>th</sup>. Newlands asserted it was “not a full and free conference (*Congressional Record*, 61<sup>st</sup> Congress, June 17, 1910, 8369).” Sen. William Borah (R-ID) asserted portions of the measure would likely be struck down by the Supreme Court.

Sen. George Sutherland (R-UT) conceded it may be struck down, but argued it was still “certainly a tremendous advantage upon the existing law (*Congressional Record*, 61<sup>st</sup> Congress, June 17, 1910, 8378).”<sup>7</sup>

Despite these concerns, the conference report was [adopted 50-11](#).

## *#4. House Consideration of the Conference Report on HR 17536 (June 17, 1910)*

The conference report was called up in the House by Mann on June 17, 1910. The measure was eventually adopted by voice vote after nearly two hours of debate.<sup>8</sup>

### Member Spotlight

Choose one of the following for your member spotlight:

**#1.** Rep. James Mann (R-IL); Rep. William Adamson (D-GA); Rep. Charles Townsend (R-MI); Rep. Martin Madden (R-IL); House Speaker Joseph Cannon (R-IL); Rep. George Norris (R-NE)

**#2.** Sen. Stephen Elkins (R-WV); Sen. Albert Cummins (R-IA); Sen. Nelson Aldrich (R-RI); Sen. Lee Overman (D-NC); Sen. Joseph Dixon (R-MT); Sen. Albert Beveridge (R-IN)

**#3.** Sen. Robert La Follete (R-WI); Sen. Francis Newlands (D-NV); Sen. Reed Smoot (R-UT); Sen. Thomas Gore (D-OK); Sen. Augustus Bacon (D-GA); Sen. William Lorimer (R-IL)<sup>9</sup>

**#4.** Rep. Irvine Lenroot (R-WI); Rep. Robert Henry (D-TX); Sen. George Sutherland (R-UT); Rep. Champ Clark (D-MO); Sen. William Borah (R-MT); Rep. Charles Bartlett (D-GA)

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<sup>7</sup> Sutherland would eventually serve on the Supreme Court from 1922 to 1938.

<sup>8</sup> See e.g. “Railroad Bill Goes to the President for His Signature.” *Wall Street Journal*, June 20, 1910.

<sup>9</sup> Lorimer only served in the Senate for less than a year before he was investigated [for bribery and corruption](#).

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## Aftermath Questions

1. How was this act viewed upon passage? What did the newspapers say? How did the final measure differ from the one reformers were pushing? How has it been viewed by scholars? Did the measure have an immediate impact on the split within the Republican Party? What happened with the revolt against [Speaker Joseph Cannon](#)? What about the following election?

What impact did this law have on the railroads? Was it effective?

2. How has this law evolved over time? Has it been featured in any major Supreme Court cases? Significantly altered by subsequent legislation? Specifically, with this question, take us through the repeal of the Commerce Court Act. Why was repealed? How contentious was it?

What happened with the impeachment of Judge Robert Archibald? What role did that play?

Specifically, the 62nd Congress attempted to repeal the Commerce Court twice in the Legislative, Executive and Judicial Appropriations Act of 1912. Both bills—HR 24023 and HR 26321 were vetoed by President Taft. The former veto was sustained by the House; the later overturned by the House but sustained by the Senate. It's eventually repealed by the Urgent Deficiency Appropriations Act for Fiscal Year 1913 (HR 7896, 63 PL 32).

3. How relevant is this law currently, as it pertains to telecommunications policy? Are there additional issues related to it that reformers have been pushing to change?

Specifically, how has the Interstate Commerce Commission evolved since? What happened with the Communications Act of 1934? How did the Mann-Elkins Act lead to that law and how has telecommunications policy been influenced by it?

4. How has this act been viewed by scholars? Did it achieve its stated goals? Do scholars highlight any major limitations? Are there aspects of the bill that are viewed more favorably than others?

Discuss the relevance of this act as it pertains to contemporary policy.

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## Suggested Sources

### *Scholarly Articles*

Clinton, Joshua D., and John S. Lapinski. 2006. "Measuring Legislative Accomplishment, 1877-1994." *American Journal of Political Science* 50(1): 232-249.

Dix, George E. "The Death of the Commerce Court: A Study in Institutional Weakness." *Am. J. Legal Hist.* 8 (1964): 238.

Dunn, Samuel O. "The Commerce Court Question." *The American Economic Review* 3.1 (1913): 20-42.

Martin, Albro. "The Troubled Subject of Railroad Regulation in the Gilded Age--a Reappraisal." *The Journal of American History* 61.2 (1974): 339-371.

Geyh, Charles Gardner. *When courts and Congress collide: The struggle for control of America's judicial system*. University of Michigan Press, 2009.

Resnik, Judith. "The Mythic Meaning of Article III Courts." *U. Colo. L. Rev.* 56 (1984): 581.

Eppel, John. "Administrative Law: Judicial Control: Injunctive Extension of the Rate Suspension Period under the Interstate Commerce Act." *Michigan Law Review* 61.3 (1963): 584-588.

Posner, Richard A. *The federal courts: Challenge and reform*. Harvard University Press, 1999.

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## *Newspaper Pieces*

- <https://history.house.gov/Blog/2021/March/3-19-Cannon-Revolt/>
- <https://www.nytimes.com/1910/10/28/archives/to-fight-railroad-law-lawyers-for-the-carriers-arrange-an-attack-on.html>
- <https://www.washingtonpost.com/news/made-by-history/wp/2017/11/27/what-fcc-chair-ajit-pai-gets-wrong-about-net-neutrality/>
- <https://www.pbs.org/wgbh/americanexperience/features/streamliners-commerce/>
- [https://www.brookings.edu/wp-content/uploads/2016/06/1227\\_censorship\\_wu.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/1227_censorship_wu.pdf)
- [https://www.washingtonpost.com/politics/court-precedents-involving-the-commerce-and-necessary-and-proper-clauses/2011/11/14/gIQAw6UBMN\\_story.html](https://www.washingtonpost.com/politics/court-precedents-involving-the-commerce-and-necessary-and-proper-clauses/2011/11/14/gIQAw6UBMN_story.html)
- <https://www.vox.com/2023/2/18/23604604/ohio-rail-disaster-regulations-and-equipment-mandates-chemical-spill>
- <https://www.theatlantic.com/magazine/archive/1922/01/railroad-efficiency-past-and-present/646858/>
- <https://www.vox.com/mischiefs-of-faction/2015/9/16/9334293/boehner-revolt-bad>
- <https://www.vox.com/policy-and-politics/2023/1/14/23550384/discharge-petition-debt-celting-house-mccarthy>
- <https://www.npr.org/sections/itsallpolitics/2015/10/16/449136598/czars-and-firebrands-a-brief-history-of-power-in-the-house>
- <https://www.npr.org/2023/01/05/1146841362/house-speaker-vote-struggle-100-years-explainer>
- <https://library.cqpress.com/cqresearcher/document.php?id=cqresrre1931070900>