Franklin Statehood Enabling Act

Model answer: the outline, then the written memo to the Counsel (annotated)

An internal memo persuading legislators that the governor's positions are legally correct. Read the colors as in your marked-up File and Library: each highlight is the rule or fact in play, and the same color links a rule to the fact that turns on it.

Key: a highlighted phrase is the rule or fact; **the teal → text** after it is the shorthand takeaway (the governor's winning point).

equal footing **Coyle v. Smith** **Issue 1 (representation)** **Art. IV § 3** **Issue 2 (contemporaneous)** **refuted arguments** **Issue 3 (the tax)** **Commerce power**

STEP ONE The outline (what you jot before you write)

Three issues, one unifying question: is each 1876 condition referable to a federal power (valid) or does it invade state sovereignty (void)? Note the authority by each rule.

Frame: the Coyle question decides all three

R Coyle v. Smith: a state enters on an equal footing with the original states. An Enabling Act condition binds only if it is referable to a power the Constitution grants Congress. **→ sort each condition: state power (void) or federal power (valid)**

Issue 1: the Assembly amendment is lawful

1 Fixing the basis of representation is a power of state sovereignty, like moving the capital in *Coyle*. § 12's no-amend-until-2026 bar is referable to no federal power. **→ condition unenforceable; amendment lawful**

Issue 2: division needs a current act of Congress

2 Art. IV, § 3: a state may be formed only with the consent of the legislatures concerned and of Congress. § 13's advance leave is not that consent. **→ needs contemporaneous congressional approval**

- Refute the 4 pro-division points: punctuation, legislative history, precedent, staleness only show states CAN divide. **→ they do not show Franklin met the criteria**
- Winning point (equal footing): no original state had advance leave, so § 13 cannot bind; Congress could not intelligently pre-approve. **→ approval must be contemporaneous**

Issue 3: the timber tax cannot stand

3 § 17 bars state taxation of navigable waters. Unlike § 12, it rests on the Commerce power (Art. I, § 8), a granted federal power, so *Coyle* makes it valid. Olympia timber on the Franklin River is interstate commerce. **→ provision valid; the tax cannot stand**

C **Conclude:** amendment lawful; division needs current Congress; tax fails **→ the governor is right on all three**

STEP TWO The written memo (persuasive, one heading per issue)

An internal memo to the Counsel: the memo frame, then a heading per issue stating the law, arguing the governor's side, and refuting the other. Analysis left, teaching notes right.

MEMORANDUM

To: Juanita Ortega, Counsel to the Governor

From: Associate

Date: September 30, 2020

Re: Legal support for the governor's positions on three issues under the Franklin Statehood Enabling Act

Franklin was admitted in 1876 on an equal footing with the original states. Enabling Act § 1. Under *Coyle v. Smith*, 221 U.S. 559 (1911), a condition in a statehood act binds the new state only if it is referable to a power the Constitution grants Congress; a condition that merely restricts an attribute of state sovereignty does not survive admission. That single question decides all three issues below.

I. The Proposed Amendment Reducing the State Assembly Is Lawful Because Fixing the Basis of Representation Is a Power of State Sovereignty.

On its face, Enabling Act § 12 bars amending the representation provision until July 4, 2026, and the constitutional convention accepted that condition by irrevocable ordinance. But *Coyle* controls. There, an enabling act forbade Oklahoma from moving its capital before 1913; the Court held the State could move it in 1910 anyway, because locating the seat of government is an attribute of state sovereignty referable to no power granted to Congress. The same is true here. Nothing in the federal Constitution gives Congress power over how a State apportions representation in its own legislature; that power belongs to state sovereignty and was possessed by the original thirteen states. Because a State admitted on an equal footing must hold that power too, § 12's bar cannot outlast admission, and the amendment is lawful. That the reform is urged by a nonpartisan commission and would not shift the legislature's political balance only underscores its propriety.

II. Franklin May Not Divide on the 1876 Act Alone Because Article IV Requires the Contemporaneous Consent of Congress.

Article IV, § 3 permits a new State to be formed from an existing one only

Memo frame. Keep the office memo frame: To/From/Date/Re. This is an internal, persuasive document, so you may take the governor's side openly.

Roadmap. Open with the through-line: equal footing plus the Coyle 'referable to a federal power' test. Every heading then just applies it.

Heading. Issue 1 heading: full sentence, names the issue and the governor's position.

Argue + refute. Issue 1. Concede the facial bar, then win on Coyle: representation is a state power referable to no federal power, so equal footing voids the condition. Close with the commission fact as a makeweight.

Heading. Issue 2 heading. Signal the concession ('not free from doubt') by stating the rule crisply.

Concede then win. Issue 2. Concede the with the consent of the legislatures concerned and of the Congress. The opposition reads Enabling Act § 13, which says Franklin “may hereafter” divide by act of its legislature, as Congress's advance consent, so that only a state act remains. Four points are said to support division: the punctuation of Article IV, its legislative history, the precedents of Vermont, Kentucky, Maine, and West Virginia, and the answer to the staleness objection. Grant them all: they establish only that States *may* divide, not that Franklin has satisfied the constitutional criteria. The governing point is that consent must be contemporaneous. Under the equal footing doctrine, none of the original thirteen States received advance leave to divide; to read § 13 as such leave would hand Franklin a power the original States never held. And Congress could not intelligently approve a future division without knowing the new State's attributes, including the content of its constitution. Congress therefore must approve at the time of the division; § 13 is not that approval.

four pro-division points, then pivot: they show states CAN divide but not that criteria were met. Win on equal footing + Congress can't pre-approve intelligently.

III. The Timber Tax Cannot Stand Because the Bar on Taxing Navigable Waters Is a Valid Exercise of the Commerce Power.

Heading. *Issue 3 heading. Note it turns the Coyle test the OTHER way.*

Enabling Act § 17 provides that Franklin's navigable waters remain untaxed by the State and under exclusive federal control. Unlike the representation condition, this provision is referable to a power the Constitution grants Congress: the power to regulate commerce among the several States. Art. I, § 8. *Coyle* makes the distinction decisive: Congress may not, through a statehood act, restrict an attribute of state sovereignty, but it may in the same act exercise a power the Constitution independently grants it. The proposed tax falls on the transportation of Olympia timber on the Franklin River into Franklin, the very definition of interstate commerce, as the Tri-State Timber Industry bulletin confirms by describing the tax's effect on both States' economies. Because § 17 rests on the Commerce power rather than on the mere power to admit a State, it remained valid after admission, and the proposed tax cannot stand.

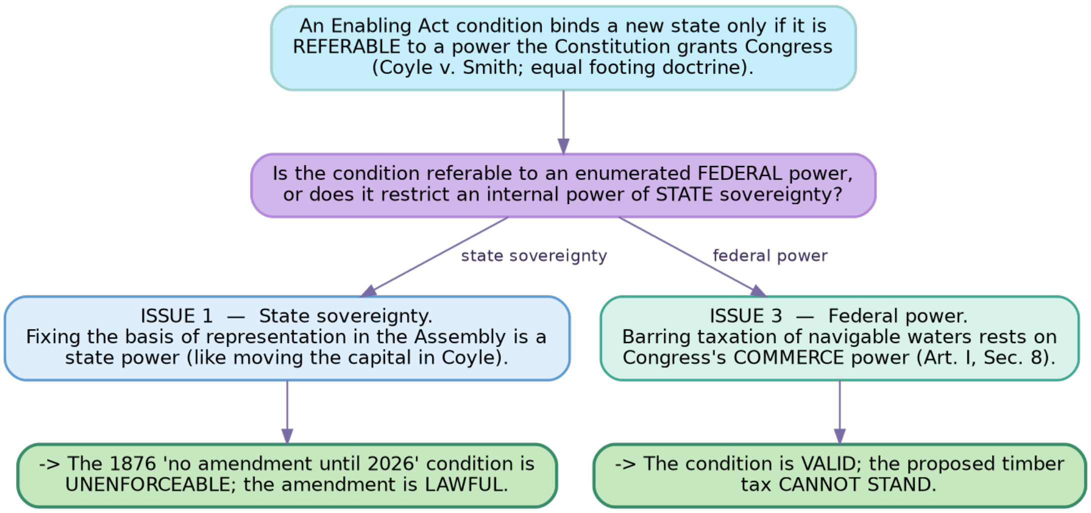
Argue. *Issue 3. Same Coyle test, opposite result: this condition IS referable to a federal power (Commerce), so it survives. Anchor interstate commerce with the timber facts.*

In sum, the governor's positions are legally sound. The proposed amendment to the basis of Assembly representation is a lawful exercise of state sovereignty that § 12 cannot bar; the proposed division of Franklin requires the contemporaneous consent of the current Congress, which § 13 did not supply; and the proposed timber tax cannot stand because § 17 is a valid exercise of the Commerce power.

Conclusion. *Close by restating all three holdings in one sentence each, tied back to the governor.*

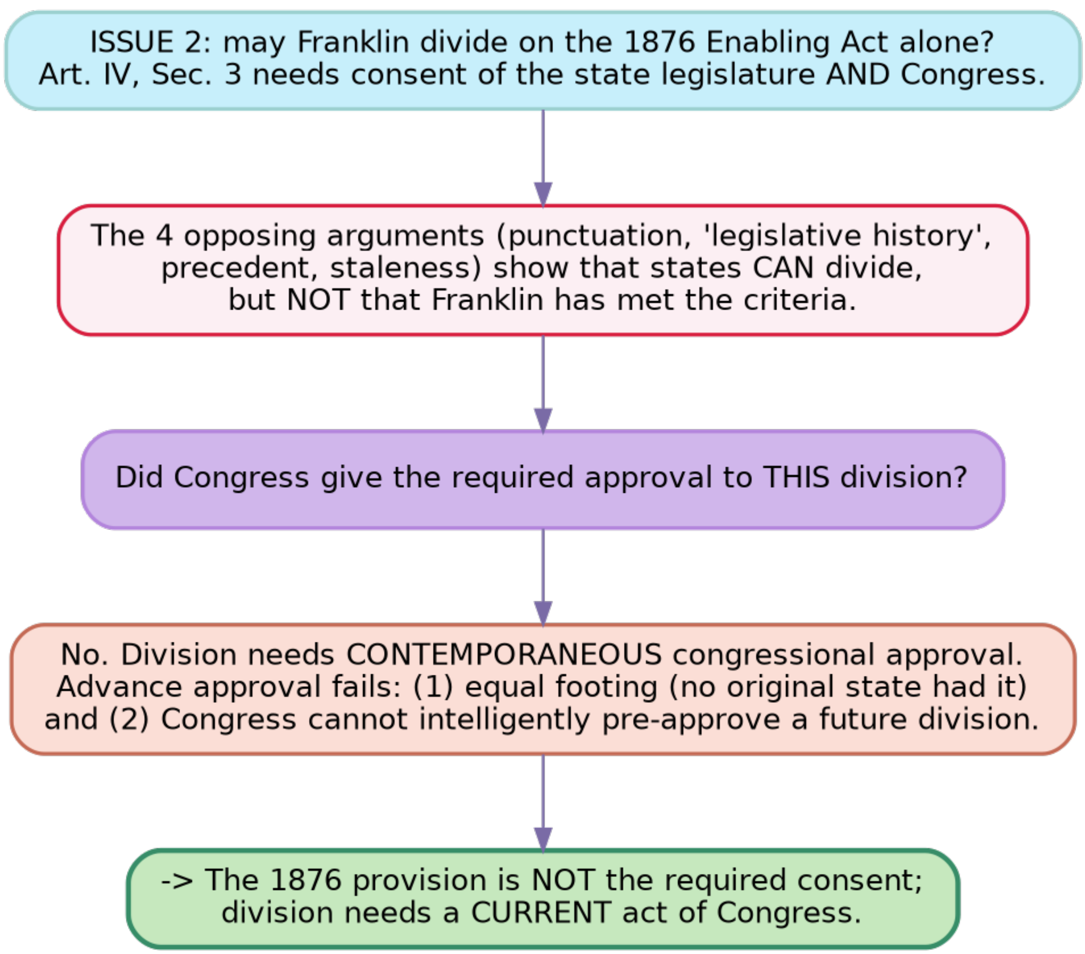
AT A GLANCE The one question and the two answers

Coyle sorts every condition



One question from Coyle, referable to a federal power or not, resolves both the Assembly amendment and the timber tax.

Why the 1876 division clause is not enough



The four pro-division points show only that states CAN divide; Article IV still requires contemporaneous consent.