No. 15-648

IN THE

Supreme Court of the United States

V.L.,

Petitioner,

v.

E.L., AND GUARDIAN AD LITEM, AS REPRESENTATIVE OF MINOR CHILDREN,

Respondents.

On Petition for a Writ of Certiorari to the Alabama Supreme Court

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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December 17, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES – cont'd.

Page(s)

Books, Articles, and Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the constitutional guarantees of the Full Faith and Credit Clause are respected, in accordance with constitutional text, history, and values, and accordingly has an interest in this case.

SUMMARY OF ARGUMENT

The Petition for a Writ of Certiorari in this case presents an important question: whether a state court may, consistent with the Full Faith and Credit Clause, refuse to recognize an adoption judgment previously issued by a sister state based on the forum court's *de novo* determination that the issuing state erred in applying its own state adoption law. In this case, the Alabama Supreme Court refused to grant full faith and credit to a Georgia judgment of adoption issued eight years earlier, thereby depriving Petitioner V.L. of parental rights over children she had

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[1] Counsel for all parties received notice at least 10 days prior to the due date of *amicus*'s intention to file this brief; all parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

raised since they were born and depriving those children of one of their parents. *See* Pet. App. 2a ("[i]t is undisputed that, following the births of the children, V.L. acted as a parent to them").

As the Petition explains, the Alabama Supreme Court's decision "flouts a century of precedent on the Full Faith and Credit Clause and will have a devastating impact on Alabama adoptive families," and review is appropriate for these reasons alone. *See* Pet. 1, 27-36. This brief in support of the Petition explains that this Court's review is also warranted for the additional reason that the decision below undermines the important role that the Full Faith and Credit Clause plays in our constitutional structure, as the text and history of the Clause both make clear.

When the framers drafted our enduring Constitution, they were operating against the backdrop of significant state-on-state discrimination; among other things, states refused to respect the judgments and laws of their sister states, and they denied the privileges and immunities of citizenship to citizens of other states. The framers understood that such "trespasses of the States on each other," 1 *The Records of the Federal Convention of 1787*, at 317 (Max Farrand ed., 1911), were incompatible with the "more perfect Union" that they were drafting the Constitution to establish.

The framers thus drafted the Full Faith and Credit Clause to prohibit these trespasses and "transform[] an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). As the text of the Clause makes clear, it imposes a binding obligation on the states to give "Full Faith and Credit . . . to the public Acts, Records, and judicial Proceedings of every other State," U.S. Const. art. IV, § 1, thereby ensuring that

throughout the new nation "a just obligation [could] be demanded as of right, irrespective of the state of its origin," *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

The drafting history of the Clause confirms that the framers intended to impose this binding obligation on the states. An early version of the Clause did not create this self-executing command of full faith and credit, but instead left the scope of the clause to Congress. Recognizing how critical it was to the new nation that states honor each other's judgments and laws, the framers amended the language of the draft Clause to make the Clause self-executing and thereby ensure that states could not engage in the sorts of discriminatory acts that existed under the Articles of Confederation.

Consistent with the text and history of the Full Faith and Credit Clause, this Court has repeatedly recognized that "the full faith and credit obligation is exacting," and "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998). Thus, one state may not refuse to enforce a judgment entered in another state simply because it disagrees with that state's laws. *Id.* at 243 (Kennedy, J., concurring).

To ensure that states honor the requirements of the Full Faith and Credit Clause, this Court has made clear that there are only limited circumstances in which a state need not give full faith and credit to a judgment issued by a sister state. Indeed, although the Court has recognized a narrow exception to the Full Faith and Credit Clause for cases in which a sister state court lacks jurisdiction to enter the judg-

ment, it has also carefully limited that exception. As the Court held in *Milliken v. Meyer*, 311 U.S. 457 (1940), if a "judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself.'" *See id.* at 462 (quoting *Adam v. Saenger*, 303 U.S. 59, 62 (1938)).

The court below did just the opposite, treating what was clearly a *merits* question as a *jurisdictional* one, and using that purported jurisdictional defect as a basis for refusing to honor the Georgia adoption decree at issue. Even absent a presumption, there should have been no question that the Georgia court had jurisdiction over the case—Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a); *see* Pet. App. 19a—and the existence of the presumption only underscores how reticent a court should be to refuse to honor a sister court's judgment for lack of jurisdiction. Yet the court below concluded that the Georgia court lacked jurisdiction because, in its view, the requirements of Georgia's adoption statute were not satisfied, and so the court should not have granted the adoption. If the court below were right, the narrow exception to the Full Faith and Credit requirement for cases in which the issuing court lacked jurisdiction would readily swallow the rule and undermine the "exacting" obligation that states honor each other's judgments that the framers enshrined in our national charter. *See Baker*, 522 U.S. at 233.

Amicus urges this Court to grant review and hold that the decision below violates the Full Faith and Credit Clause.

ARGUMENT

THE COURT SHOULD GRANT REVIEW TO HOLD THAT THE DECISION BELOW VIOLATES THE FULL FAITH AND CREDIT CLAUSE

A. The Text and History of the Full Faith and Credit Clause Require States To Respect the Equal Dignity of Sister States and Honor Their Judgments

The Full Faith and Credit Clause of Article IV provides, in pertinent part, that "[f]ull [f]aith and [c]redit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof." U.S. Const. art. IV, § 1. As this Court has long recognized, the Full Faith and Credit Clause was "incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer*, 334 U.S. at 355. The framers understood that they could not establish a "more perfect Union" if the individual states continued to exist as "independent foreign sovereignties" and remained "free to ignore obligations created under the laws or by the judicial proceedings of the others." *Milwaukee Cnty.*, 296 U.S. at 277. They thus sought to make the states "integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Id.*

The framers' commitment to this fundamental principle that each state must honor obligations created under the laws of the other states was a direct result of their experiences under the Articles of Con-

federation. *See, e.g.*, *Haywood v. Drown*, 556 U.S. 729, 755 n.5 (2009) (Thomas, J., dissenting) (describing the Full Faith and Credit Clause as a "prohibition on discrimination" designed to "address state-to-state discrimination"). In America under the Articles, state-on-state discrimination was prevalent. States refused to respect the judgments and laws of their sister states, denied citizens of other states the privileges and immunities of citizenship, and imposed discriminatory restrictions on out-of-state commerce. *See* James Madison, *Vices of the Political System of the United States*, *in* 2 *The Writings of James Madison* 361, 362-63 (Gaillard Hunt ed., 1901); *see The Federalist No. 80*, at 445 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (describing history of "bickerings and animosities" that "may spring up among the members of the Union"). James Madison noted the "trespasses of the States on each other," 1 *The Records of the Federal Convention of 1787*, *supra*, at 317, and observed that these "alarming symptoms . . . may be daily apprehended." *See* Madison, *supra*, at 362.

As its text makes clear, the Full Faith and Credit Clause imposes a binding obligation on states to honor the judgments and acts of its sister states, treating them as equal in authority to the state's own judgments and laws. In so doing, the Full Faith and Credit Clause prevents states from discriminating against the judgments and laws of other states and ensures "maximum enforcement in each state of the obligations or rights created or recognized by . . . sister states." *Hughes v. Fetter*, 341 U.S. 609, 612 (1951).

By including in the text of our nation's charter a constitutional requirement of full faith and credit, binding on the states, the framers demanded that each state respect the equal dignity of its sister states

by giving out-of-state judgments and acts "not some but *full* [faith and] credit." *Davis v. Davis*, 305 U.S. 32, 40 (1938) (emphasis added); *see* 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1304 at 180 (1833) (explaining that "full faith and credit" requires a state to give out-of-state judgments and laws "positive and absolute verity, so that they cannot be contradicted, or the truth of them denied, any more than in the state, where they originated").

In making the Full Faith and Credit Clause a part of the Constitution, the framers "form[ed] a more perfect Union," giving "each state a higher security and confidence in the others, by attributing a superior sanctity and conclusiveness to the public acts and judicial proceedings of all" and ensuring that "rights and property would belong to citizens of every state in many other states than th[e one] in which they resided." 3 Story, *supra*, § 1303 at 179. In the new nation, Americans could freely travel from state to state without fear that rights secured in one state would be dismissed or nullified in another. No state could discriminate against another's laws and judgments, refusing to recognize and enforce them.

Other aspects of Article IV, too, addressed the state-on-state discrimination that Madison had condemned as "trespasses of the States on each other." 1 *The Records of the Federal Convention of 1787*, *supra*, at 317. The Privileges and Immunities Clause, which follows the Full Faith and Credit Clause in the text of Article IV, prohibits a state from discriminating against citizens of other states, a requirement Alexander Hamilton called "the basis of the Union." *See The Federalist No. 80*, *supra*, at 446 (Alexander Hamilton). Without this requirement of equality, "the Republic would have constituted little more than a

league of States; it would not have constituted the Union which now exists." *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1868), *overruled in part by United States v. Se. Underwriters Ass'n*, 322 U.S. 533 (1944).

The drafting history of the Full Faith and Credit Clause confirms what the text makes clear: the Full Faith and Credit Clause is an affirmative command binding on the states. The framers chose language that required states to respect the judgments and acts of their sister states, rejecting proposed language that did not create any clear constitutional command on the states. An early version of the Full Faith and Credit Clause proposed by the Committee of Eleven[2] did not create any self-executing command of full faith and credit, but instead left the scope of the Clause to the judgment of Congress.

On September 1, 1787, the Committee of Eleven proposed that "[f]ull faith and credit ought to be given in each State" and that "the Legislature shall by general laws prescribe the manner in which such acts, Records, & proceedings shall be proved, and the effect which Judgments obtained in one State, shall have in another." 2 *The Records of the Federal Convention of 1787*, *supra*, at 485. In the debate that ensued a few days later, James Madison successfully moved to make the Full Faith and Credit Clause a self-executing command—striking out the word "ought" and replacing it with the word "shall"—and gave Congress legislative power to implement the constitutional requirement of full faith and credit. *Id.* at 489; *see also* Douglas Laycock, *Equal Citizens of Equal*

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[2] The Committee of Eleven, consisting of one member from each of the states represented at the Convention, was one of the committees appointed during the Convention to draft the text of the Constitution.

and Territorial States: The Constitutional Foundations of Choice of Law, 92 Colum. L. Rev. 249, 292 (1992) ("The effect of Madison's amendment was to make the clause self-executing, commanding full faith and credit in the constitutional text and making congressional action discretionary, instead of commanding congressional action and leaving the clause dependent on implementation of the command to Congress.").

B. The Decision of the Court Below Is Completely at Odds with the Text and History of the Full Faith and Credit Clause, as Well as this Court's Precedents

Consistent with the text and history of the Full Faith and Credit Clause, this Court has many times held that "the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker*, 522 U.S. at 233. A judgment "may not be denied enforcement," this Court has held, "based upon some disagreement with the laws of the State of rendition. Full faith and credit forbids the second State to question a judgment on these grounds." *Id.* at 243 (Kennedy, J., concurring); *see Milwaukee Cnty.*, 296 U.S. at 277 ("[C]redit must be given to the judgment of another state, although the forum would not be required to entertain the suit on which the judgment was founded.").

To ensure that states respect the requirements of the Full Faith and Credit Clause, this Court has also recognized that there are only limited circumstances in which a state need not give full faith and credit to a judgment issued by a sister state. Indeed, as the Petition discusses, although the Court has carved out

a narrow exception to the Full Faith and Credit Clause for cases in which a sister state court lacked jurisdiction to enter the judgment, it has also carefully limited that exception. *See* Pet. 14-16.

Most significantly, this Court has made clear that where a court of general jurisdiction renders a judgment, state courts asked to enforce that judgment should presume that it had jurisdiction to render the judgment at issue. *See Milliken*, 311 U.S. at 462 ("if the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself'" (quoting *Adam*, 303 U.S. at 62)). And in such cases, the Court emphasized, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." *Id.*; *see ids.* ("Whatever mistakes of law may underlie the judgment, it is 'conclusive as to all the media concludendi.'" (citation omitted) (quoting *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908))). Were it otherwise, state courts could refuse to honor judgments of their sister state courts simply by claiming that the sister courts lacked jurisdiction, thereby undermining the nationwide effect of judgments that the framers recognized was so critical to the success of the "more perfect Union" that they were establishing.

Instead of presuming that the Georgia court had jurisdiction to issue the adoption judgment at issue, as this Court's precedents require, the court below went out of its way to conclude otherwise. Even though Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a); *see* Pet. App. 19a ("it

is undisputed that Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions"), the court below nonetheless concluded that the Georgia court lacked jurisdiction here because, in its view, the Georgia court erred in applying Georgia law, and the requirements of Georgia's adoption statute were not satisfied. Whether or not the Georgia court erred in granting the adoption request, that is a quintessential *merits* question, not a jurisdictional question. *See* Pet. 17-18. And, as just noted, the court below should have presumed that the Georgia court had jurisdiction to grant the adoption in the absence of any extrinsic evidence or evidence in the record that would undermine that presumption, and none exists here. *See id.* at 18-19. If the court below were right, the narrow exception to the Full Faith and Credit requirement would readily swallow the rule and undermine the "exacting" obligation the framers enshrined in our national charter. *See Baker*, 522 U.S. at 233.

Moreover, if lower courts are allowed to contort possible merits deficiencies into jurisdictional defects, as the court below did here, it would also raise the prospect that courts will use purported jurisdictional deficiencies in order to refuse to honor judgments with which they have a substantive policy disagreement. Indeed, here, as the Petition argues, "there is reason to be concerned that the Alabama Supreme Court's departure from full faith and credit precedent reflects a public policy objection to adoption by a parent's same-sex partner." Pet. 26; *see id.* at 27, 27 n.4. Yet as this Court has recognized, "[t]he Full Faith and Credit Clause is not to be applied, accordion-like, to accommodate our personal predilections." *Estin v. Estin*, 334 U.S. 541, 545-46 (1948). Rather, the Full

Faith and Credit Clause "ordered submission by one State even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system . . . demanded it." *Estin*, 334 U.S. at 546; *see also Baker*, 522 U.S. at 233.

This Court should not countenance the decision of the court below to violate this Court's precedents and undermine the Full Faith and Credit Clause that the framers concluded our "federal system . . . demanded." *Estin*, 334 U.S. at 546. This Court should grant review and hold that the decision below violates the Full Faith and Credit Clause.

CONCLUSION

For the foregoing reasons, *amicus* urges the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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