

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 *AMICI CURIAE* THIRTY-TWO
FAMILY LAW PROFESSORS IN SUPPORT OF
PETITIONER**

Barbara Bennett Woodhouse
Emory University
School of Law
1301 Clifton Road
Atlanta, Georgia 30322
(404) 712-4934
barbara.woodhouse
@emory.edu

Sarah M. Shalf
Counsel of Record
Emory Law School
Supreme Court
Advocacy Program
1301 Clifton Road
Atlanta, Georgia 30322
(404) 712-4652
sarah.shalf@emory.edu

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
ARGUMENT	2
I. Every State Provides for the Finality of Adoption Decrees, Which Have Important and Far-Reaching Consequences.	2
A. <i>Laws in Every State Reflect the Important Public Policy of Finality of Adoption Decrees.</i>	3
B. <i>Important and Far-Reaching Consequences and Benefits Flow from Final Adoption Decrees.</i>	5
II. Undermining the Finality of an Adoption Decree is Detrimental to Children and Their Families.	7
A. <i>The Alabama Supreme Court Decision Has Far Reaching and Detrimental Impact on Children</i>	8
B. <i>Imperiling the Finality of Adoption Has Significant Impact on Adoptive Parents and the Stability of Families</i>	10
III. Many Thousands of Parents and Children are Potentially Affected by the Alabama Decision.	12
CONCLUSION.....	14
APPENDIX A—LIST OF SIGNATORIES.....	1a

TABLE OF AUTHORITIES

Cases

<i>Application of L.L.</i> , 653 A.2d 873 (D.C. 1995)	13
<i>C.V. v. J.M.J.</i> , 810 So.2d 692 (Ala. Civ. App. 1999) <i>rev'd on other grounds sub nom. Ex parte C.V.</i> , No. 1981316, 2000 WL 1717011 (Ala. Nov. 17, 2000) <i>opinion withdrawn and superseded on reh'g</i> , 810 So. 2d 700 (Ala. 2001)	5
<i>Ex Parte Bronstein</i> , 434 So. 2d 780 (Ala. 1983)	6
<i>Hastings v. Hastings</i> , 291 Ga. 782 (2012)	7
<i>Lehman v. Lycoming County Children's Servs. Agency</i> , 458 U.S. 502 (1982)	8
<i>Ratliff v. Meltzer</i> , 487 N. E. 2d 836 (Ind. Ct. App. 1986)	8, 10
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982).....	3, 8
<i>Smith v. Org. of Foster Families for Equality and Reform</i> , 431 U.S. 816 (1977).....	3
<i>Stanley v. Illinois</i> , 405 U.S. 645 (1972).....	8
<i>Steed v. Steed</i> , 877 So. 2d 602 (Ala. Civ. App. 2003)	7

Statutes

15A V.S.A. § 3-706(c)	4
28 U.S.C. § 1738A (2000)	5
42 U.S.C. § 402(d)	6
Ala. Code 26-10A-25(d)	4
Code of Ala. § 26-10A-29.....	6
Code of Ala. §26-10A-26.....	5

O.C.G.A. § 19-11-100	5
O.C.G.A. § 19-11-3(12)	6
O.C.G.A. § 19-8-18	4, 5
O.C.G.A. § 19-8-9	6
O.C.G.A. § 19-9-40 <i>et. seq.</i>	5
Welfare Act of 1986, 42 U.S.C. §§ 670, <i>et. seq.</i>	13

Secondary Sources

Adopted Children and Stepchildren: 2000, Census 2000 Special Reports, www.census.gov/prod/2003pubs/censr-6	12
AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION (2005), LexisNexis.....	8
Barbara Woodhouse, <i>Of Babies, Bonding, and Burning Buildings: Discerning Parenthood In Irrational Action</i> , 81 Va. L. Rev. 2493 (1995)	7
Barbara Woodhouse, <i>Waiting for Loving: The Child's Fundamental Right to Adoption</i> , 34 Cap. U. L. Rev. 297.....	7
CHILD WELFARE INFO. GATEWAY, <i>How Many Children Were Adopted in 2007-2008?</i> , U.S. DEP'T HEALTH & HUMAN SERVS. (Sept. 2011), https://www.childwelfare.gov/pubPDFs/ adopted0708.pdf	12, 13
CHILDREN'S BUREAU, <i>The AFCARS Report</i> , U.S. DEP'T HEALTH & HUMAN SERVS. (July 2015), http://www.acf.hhs.gov/sites/default/files/cb/ afcarsreport22.pdf	13
COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO	

NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Jack P. Shonkoff & Deborah A. Philips eds. 2000).....	9, 10
DOUGLAS E. ABRAMS & SARAH E. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE (3d. ed. 2007).....	3
Janet Hopkins Dickson, Comment, <i>The Emerging Rights of Adoptive Parents: Substance or Specter?</i> , 38 U.C.L.A. L. Rev. 917 (1991)	11
JOAN HOLLINGER, ADOPTION LAW & PRACTICE (2015), Lexis-Nexis.....	3
JOHN BOWLBY, ATTACHMENT AND LOSS (2d ed. 1982).....	9
JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD (2d ed. 1979)	9
Judith C. Daniluk & Joss Hurtig-Mitchel, <i>Themes of Hope and Healing: Infertile Couples’ Experiences of Adoption</i> , 81 J. of Couns. & Dev. 389 (2003)	10
Leslie M. Singer, David M. Brodzinsky, Douglas Ramsay, Mary Steir and Everett Waters, <i>Mother-Infant Attachment in Adoptive Families</i> , 56 Child Dev. 1543 (1985)	9
NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994). http://www.uniformlaws.org/shared/docs/ adoption/uaa_final_94.pdf	3, 4
Robin DuRocher, <i>Balancing Competing Interests in Post-Placement Adoption Custody Disputes</i> , 15 J. Legal Med. 305 (1994)	11

Susan Livingston Smith and Jeanne A. Howard, <i>A Comparative Study of Successful and Disrupted Adoptions</i> , 65 Soc. Serv. Rev. 248 (1991)	11
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Other Authorities

<i>Anecdotal Accounts</i> , http://stillstandingmag.com/2014/02/grieving- child-never-died-grief-failed-adoption/	11
<i>Anecdotal Accounts</i> , http://www.theatlantic.com/ sexes/archive/2013/04/the-dark-sad-side-of- domestic-adoption/275370	12
<i>Anecdotal Accounts</i> , https://www.quora.com/ What-is-it-like-to-experience-a-failed-adoption...	11
Hague Convention on the Civil Aspects of International Child Abduction (Convention), Oct. 24, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99–11.....	5
<i>Pet. for Certiorari</i>	7

Rules

Supreme Court Rule 37.2	1
Supreme Court Rule 37.6	1

INTEREST OF *AMICI CURIAE*¹

Amici are law professors who specialize in family law and who have previously published on, or have interest in, the adoption rights that are threatened in this case. *Amici* have no personal stake in the outcome of this case, but have an interest in seeing that family law—especially adoption law—develops in a way that will protect the rights of the non-biological adoptive parents and the children involved.

¹ Pursuant to Supreme Court Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, that no counsel or a party made a monetary contribution intended to the preparation or submission of this brief and no person other than *amici curiae* or their counsels made a monetary contribution to its preparation or submission.

Pursuant to Supreme Court Rule 37.2, the Respondents and the Petitioners received at least 10-days' notice of the intent to file this brief under the Rule, each party has consented to the filing of this brief, and copies of the consents are on file with the Clerk of the Court.

ARGUMENT

The Alabama Supreme Court's ruling refusing to recognize and enforce an adoption decree entered eight years ago by a Georgia court undermines the finality of adoption judgments and sets a dangerous precedent that jeopardizes the welfare of children and the stability of their adoptive families. *Amici* urge the Court to grant certiorari in order to reverse the Alabama court's anomalous and harmful decision.

I. Every State Provides for the Finality of Adoption Decrees, Which Have Important and Far-Reaching Consequences.

The Supreme Court should grant certiorari because of this case's potential to wreak havoc on the finality of adoption orders. Finality of the adoption decree is essential to the concept of adoption. It is what distinguishes adoption from legal relationships that are easily formed but easily dissolved, such as temporary custody, fostering and guardianship. The State, in its *parens patriae* role, grants finality to honor and support the parent-child bonds of adoption and recognize the adoptive family as legally coequal to the biological family. It is crucial – to adoptive parents, biological parents, and most especially, to the adopted children – that a final decree is really final.

A. Laws in Every State Reflect the Important Public Policy of Finality of Adoption Decrees.

Adoption laws of every state, without exception, endorse and protect the integrity of the adoptive family. See DOUGLAS E. ABRAMS & SARAH E. RAMSEY, CHILDREN AND THE LAW: DOCTRINE, POLICY AND PRACTICE 707 (3d. ed. 2007). Once the adoption decree is final, the law extends to the adoptive family the same legal and constitutional protections as any other family. See *Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 844 n.51 (1977) (noting that “[a]doption... is recognized as the legal equivalent of biological parenthood). Family members can be secure in knowing the parent-child relationship can only be severed in cases where a court finds clear and convincing evidence of parental unfitness, just as in cases involving biological children. *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982). While adoption decrees can be challenged for limited periods of time, state laws typically recognize only a few grounds for such challenges, such as fraud, duress, incapacity, and failure to notify the biological parents. JOAN HOLLINGER, ADOPTION LAW & PRACTICE § 8.02 (2015), Lexis-Nexis.

The Uniform Adoption Act (UAA) also supports this important policy. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994). http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. The UAA reflects a consensus among the most highly respected and

authoritative scholars on the importance of finality in adoption.

The UAA repeatedly stresses the importance of finality of adoptions. “A basic policy of this Act is to facilitate the completion of consensual adoptions, expedite the handling of contested adoption or termination proceedings, and *secure the finality of decrees of adoption . . .*” NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf (emphasis added). UAA §3-706, entitled “Finality of Decree”, states that a “decree of adoption is a final order for purposes of appeal when it is issued and becomes final for other purposes upon the expiration of the time for filing an appeal, if no appeal is filed, or upon the denial or dismissal of any appeal filed within the requisite time.” *Id.* The UAA also proposes a six-month limitation for any challenge whatsoever to a final decree of adoption. NAT'L CONFERENCE OF COMM'RS ON UNIF. STATE LAWS, § 3-707: *Challenges to Decree in* 91 UNIFORM ADOPTION ACT (1994), http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf. State laws in accordance with this recommendation include Georgia and Vermont. O.C.G.A. § 19-8-18; 15A V.S.A. § 3-706(c); *see also* Ala. Code 26-10A-25(d) (“A final decree of adoption may not be collaterally attacked, except in cases of fraud or where the adoptee has been kidnapped, after the expiration of one year from the entry of the final decree and after all appeals, if any.”). Among the states that have adopted a version of the Uniform Adoption Act are Arkansas, Louisiana, Montana, North Dakota, Ohio and Oklahoma. *C.V.*

v. *J.M.J.*, 810 So.2d 692, 699 n.1 (Ala. Civ. App. 1999) *rev'd on other grounds sub nom. Ex parte C.V.*, No. 1981316, 2000 WL 1717011 (Ala. Nov. 17, 2000) *opinion withdrawn and superseded on reh'g*, 810 So. 2d 700 (Ala. 2001).

In addition to the UAA, federal, state and international laws have expressed the policy of finality in decrees establishing parental rights and responsibilities generally by requiring recognition of home state custody determinations and implementing interstate rules for the uniform enforcement of child support judgments. *See* Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000); O.C.G.A. § 19-9-40 *et. seq.* (Uniform Child Custody Jurisdiction and Enforcement Act); O.C.G.A. § 19-11-100 (Uniform Interstate Family Support Act); Hague Convention on the Civil Aspects of International Child Abduction (Convention), Oct. 24, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11.

B. Important and Far-Reaching Consequences and Benefits Flow from Final Adoption Decrees.

Shortly after an adoption decree is entered, in every state, they are insulated from collateral and direct challenges through combination of limits on grounds for challenges and limits on the time for bringing a challenge. For instance, in Georgia, adoption decrees cannot be challenged more than six months after their entry. O.C.G.A. § 19-8-18; *see also* Code of Ala. § 26-10A-26 (requiring that appeals be filed within fourteen days of entry of adoption decree). Once that adoption decree is finalized, the

law treats the relationship between adoptive parents and children as equivalent to that of biological parents and children. *See, e.g.*, O.C.G.A. § 19-8-9(a)(2) ("The adopted individual shall enjoy every right and privilege of a biological child of that petitioner."); Code of Ala. § 26-10A-29 ("After adoption, the adoptee shall be treated as the natural child of the adopting parent or parents and shall have all rights and be subject to all of the duties arising from that relation, including the right of inheritance."); *Ex Parte Bronstein*, 434 So. 2d 780, 782 (Ala. 1983) ("overall policy" of the adoption statute is "to treat adopted children in all respects as natural children"). The law entitles adoptive children to inherit under the same laws as biological children. O.C.G.A. § 19-8-9(a)(2); Code of Ala. § 26-10A-29. Federal law entitles adoptive children to the same social security benefits as biological children. 42 U.S.C. § 402(d). Thus, adoptive children and biological children are afforded the same legal rights.

Consequently, an adoptive parent is treated no differently than if he or she had been the biological parent of the adopted child, and the law places upon adoptive parents the same responsibilities as biological parents, including to provide adequate care for the child, and to pay child support. *E.g.*, O.C.G.A. § 19-11-3(12) (defining "parent" as "natural or adoptive" for purposes of the Child Support Recovery Act). In particular, in those adoptions where one biological parent co-parents with an adoptive parent, a common adoption family structure, the adoptive parent stands on equal footing with the biological parent when it comes to

custody and visitation in the event of a subsequent separation or divorce. *Steed v. Steed*, 877 So. 2d 602, 605-606 (Ala. Civ. App. 2003) (husband who adopted wife's child "stands on equal footing with the mother because he legally adopted the daughter"); *Hastings v. Hastings*, 291 Ga. 782, 794 (2012) ("[A]n adoptive parent stands on the same footing and has the same rights and obligations as a biological parent.").

II. Undermining the Finality of an Adoption Decree is Detrimental to Children and their Families.

In *V.L. v. E.L.*, both parents had lived with and co-parented their children since birth and the children have formed deep attachments to both of their parents. *Pet. for Certiorari*, at 4-7.

The bond between parent and child is the most fundamental of human relationships. Barbara Woodhouse, *Of Babies, Bonding, and Burning Buildings: Discerning Parenthood In Irrational Action*, 81 Va. L. Rev. 2493, 2509 (1995). While an increasing number of marriages end in divorce, parent-child relationships are intended to be ones that last a lifetime. Barbara Woodhouse, *Waiting for Loving: The Child's Fundamental Right to Adoption*, 34 Cap. U. L. Rev. 297, 318-19 & n.136.

The parent-child bond enjoys constitutional as well as statutory protection, in recognition of its importance to parents, children and society. Because it is so fundamental, courts are prohibited from severing the parent child relationship absent clear and convincing evidence of parental unfitness.

Santosky, 455 U.S. at 769-70. Thus, normally, when parents (biological, adoptive, or a combination of biological and adoptive) separate, the parents retain parental rights, and the children retain a right to a relationship with both parents, absent a showing that contact is harmful to the child. See AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 2.02 (2005), LexisNexis. But in this case, the Alabama Supreme Court terminated V.L.'s parental rights completely, treating the adoption as a nullity. The Alabama court's decision harms children, traumatizes adoptive parents, and destabilizes families. Awareness that adoption decrees are not truly final will make it more difficult for adoptive parents and their children to form the mutually reinforcing psychological and emotional bonds that are so critical to children's well-being. See *Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind. Ct. App. 1986).

A. The Alabama Supreme Court Decision Has a Far Reaching and Detrimental Impact on Children.

A rule that permits a court to refuse to recognize and enforce an out of state adoption decree has detrimental consequences for children. If there is one principle undergirding child and family law, it is the importance of stability and continuity to the welfare of the child. *Stanley v. Illinois*, 405 U.S. 645, 652-53 (1972) ("[T]he State registers no gain toward its declared goals when it separates children from the custody of fit parents.") *Lehman v. Lycoming County Children's Servs. Agency*, 458 U.S. 502, 513-14 (1982); Children need stability in order to form

strong bonds essential to their physical and psychological development. JOHN BOWLBY, *ATTACHMENT AND LOSS*, 365 (2d ed. 1982). Quintessential to the development of a child is a nurturing relationship with their caregiver. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., *FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT* 229–66 (Jack P. Shonkoff & Deborah A. Philips eds. 2000). It is irrelevant whether the attachment is to a biological relative. Indeed, a 1985 study by Singer et al. found no differences in mother-infant attachment between nonadopted and adopted pairs, at least in intraracial adoptions. Leslie M. Singer, David M. Brodzinsky, Douglas Ramsay, Mary Steir and Everett Waters, *Mother-Infant Attachment in Adoptive Families*, 56 *Child Dev.* 1543 (1985). What matters is that the attachment figure is an adult who, “on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child’s psychological needs, as well as the child’s physical needs.” JOSEPH GOLDSTEIN, ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 98 (2d ed. 1979). These relationships are fundamental to the normal development of a child's body and brain. *Id.* at 5.

Once established, continuity in such relationships is critical to the child’s continued development. Children deprived of contact with a parent to whom they have become attached “not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.” *Id.* at 33. Instability in the parent’s life can cause an imbalance in the child’s life, which disrupts the secure attachments that have formed.

COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 234 (Jack P. Shonkoff & Deborah A. Philips eds. 2000). And the deprivation of a parent can cause tremendous emotional and psychological damage to the child. Development of the child depends on both stability and flexibility in the child's life. COMM. ON INTEGRATING THE SCI. OF EARLY CHILDHOOD DEV., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 90 (Jack P. Shonkoff & Deborah A. Philips eds. 2000).

B. Imperiling the Finality of Adoption Has Significant Impact on Adoptive Parents and the Stability of Families.

Attacks on the finality of adoption pose severe risks of psychological harm not only to the children, but to the parents and the entire family.

Adoptive parents may experience acute distress at the thought of their adoptive child being taken away from them. Judith C. Daniluk & Joss Hurtig-Mitchel, *Themes of Hope and Healing: Infertile Couples' Experiences of Adoption*, 81 J. of Couns. & Dev. 389, 398 (2003). While this distress may be present in the early stages of any adoption, the entry of a final decree marks a passage that enhances secure attachments. *Id.* Parents and children who are faced with the reality that the relationship remains open to attack indefinitely will suffer severe harm to the stability of their relationship and individual well being. See *Ratliff v. Meltzer*, 487 N. E. 2d 836 (Ind., Ct. App. 1986) (“[F]inality of

[adoption] decrees is desirable in order to prevent the emotional strain which would otherwise be imposed upon both the adoptive child and parents, making it difficult for a normal parent-child relationship to develop.”) Under the precedent established by the Alabama decision, even an adoptive child and parent who had crossed the bridge to full familial status would be deprived of the security afforded to every other legal parent-child relationship protected by our laws and our Constitution.

Disrupted adoptions lead parents to feelings of failure, guilt and sorrow. Susan Livingston Smith and Jeanne A. Howard, *A Comparative Study of Successful and Disrupted Adoptions*, 65 Soc. Serv. Rev. 248, 248 (1991). Prospective parents in disrupted adoptions – adoptions that are not completed, *e.g.*, because the biological parent withdraws consent – report as much grief as the biological parent would experience in giving up the child for adoption, and in fact, losing a prospective adopted child back to the biological parents may be psychologically similar to experiencing the death of one’s own biological child. See Robin DuRocher, *Balancing Competing Interests in Post-Placement Adoption Custody Disputes*, 15 J. Legal Med. 305, 328 (1994); Janet Hopkins Dickson, Comment, *The Emerging Rights of Adoptive Parents: Substance or Specter?*, 38 U.C.L.A. L. Rev. 917, 967-69 (1991); see also anecdotal accounts at <http://stillstandingmag.com/2014/02/grieving-child-never-died-grief-failed-adoption/>; <https://www.quora.com/What-is-it-like-to-experience-a-failed-adoption/>; and <http://www.theatlantic.com/>

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The instability and lack of finality in adoption proceedings can bring about tremendous emotional and psychological damage to both the child as well as the adoptive parents. In the best interests of the child, these two categories – finality and stability – are critical in preventing any damage to the parties involved.

III. Many Thousands of Parents and Children are Potentially Affected by the Alabama Decision.

Adoption is woven into the fabric of our society and plays an important role in public policy. The family is the basic unit of society. A society cannot function if the status of parent and child comes and goes as families move from one state to another.

The 2000 Census counted more than 2 million adoptees as members of their adoptive parents' households. Adopted Children and Stepchildren: 2000, Census 2000 Special Reports, www.census.gov/prod/2003pubs/censr-6. As of 2008, over 135,000 children were being adopted each year – nearly 2300 in Alabama and nearly 4000 in Georgia. CHILD WELFARE INFO. GATEWAY, *How Many Children Were Adopted in 2007-2008?*, U.S. DEP'T HEALTH & HUMAN SERVS. 10–11 (Sept. 2011), <https://www.childwelfare.gov/pubPDFs/adopted0708.pdf>. In the same year, the adoption rate per 100,000 adults (i.e., persons aged 18 or older who became adoptive parents) was over 58 nationwide, and

higher in Alabama (over 63); in Georgia it was nearly 54. *Id.* at 12–13.

Although this case involves adoption by an individual who co-parented the child from birth, the case has implications for all types of adoptions. Adoptions with public agency involvement account for about one third of all adoptions. See *CHILDREN'S BUREAU, The AFCARS Report*, U.S. DEP'T HEALTH & HUMAN SERVS. 5 (July 2015), <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>. In 2014, 107,918 children were waiting to be adopted from foster care. *Id.* at 1. Both federal and state public policy favors adoption of these children into a safe and caring home if they cannot be reunited with their birth parents within a reasonable time. See *Application of L.L.*, 653 A.2d 873, 888 (D.C. 1995) (discussing the Adoption Assistance and Child Welfare Act of 1986, 42 U.S.C. §§ 670, et. seq., legislative history, treatises and precedents discussing the policy preference not to leave children lingering in foster care). If potential adoptive parents believed that the child's biological parents could challenge the adoption decree at any time, the likelihood that these children would be adopted would drop significantly.

The finality of adoption decrees affects each and every adoptive family and every state agency caring for displaced children. Adoption forms a life-long legal relationship, with implications affecting every area of the law in which parent-child status is important, from public welfare laws to laws on inheritance. The Alabama Court's decision resolves

what should have been a simple custody case by imperiling the stability of adoptions everywhere.

If a final adoption decree can be reopened and declared a nullity eight years after it is entered, prospective adoptive parents may be deterred from adopting in the first instance, and those who complete adoptions would live indefinitely under a shadow of uncertainty. Such a rule directly contravenes and undermines public policies favoring adoption.

The Alabama Supreme Court's decision could have broad, significant and seriously detrimental impact on the lives of parents and children nationwide.

CONCLUSION

For the foregoing reasons, *amici* respectfully ask this Court to grant the Petition for Writ of Certiorari and reverse the decision of the Alabama Supreme Court.

Respectfully Submitted,

Barbara Bennett
Woodhouse
Emory University
School of Law
1301 Clifton Road
Atlanta, Georgia 30322
(404) 712-4934
barbara.woodhouse
@emory.edu

Sarah M. Shalf
Counsel of Record
Emory Law School
Supreme Court
Advocacy Program
1301 Clifton Road
Atlanta, Georgia 30322
(404) 712-4652
sarah.shalf@emory.edu

APPENDIX A—LIST OF SIGNATORIES*

Barbara Woodhouse is among the nation's foremost experts on children's rights. She joined the Emory University School of Law faculty in 2009 as the L. Q. C. Lamar Chair in Law. Her scholarship and teaching focus on child law, child welfare, comparative and international family law, adoption, and constitutional law.

Nancy E. Dowd is Professor and David Levin Chair in Family Law at the University of Florida Levin College of Law, and Director Emeritus of the Center on Children and Families. She has published widely on a range of family law issues including adoption and nontraditional families, and participated with other family law scholars in briefs before state and federal appellate courts.

Jamie R. Abrams is an Assistant Professor of Law at the University of Louisville Brandeis School of Law in Louisville, KY. She teaches Family Law, Women and the Law, Torts, and Legislation. Her prior scholarship on reproductive autonomy, gendered citizenship, and masculinities theory has been published in top law reviews, such as the Florida State Law Review, Cardozo Law Review, and the Yale Journal of Law & Feminism (available at <http://ssrn.com/author=862554>). She received the University of Louisville's Presidential Exemplary

* University affiliation of the professors is given for identification purposes only, and implies no endorsement by the universities.

Multicultural Law Teaching Award and she was nominated for the University's LGBT Faculty Ally award.

Libby Adler is a Professor of Law at Northeastern University School of Law. She teaches Constitutional Law, Sexuality, Gender and the Law, Family Law, Administrative Law and Trusts and Estates. Adler has written extensively on sexuality, gender, family and children, including foster care, and draws heavily from queer and critical theory. She is a co-editor of the casebook *Mary Joe Frug's Women and the Law* (4th ed.).

Aziza Ahmed is Associate Professor of Law at Northeastern University School of Law. She is an expert in laws related to health, gender, and sexuality.

Susan Frelich Appleton is the Lemma Barkeloo & Phoebe Couzins Professor of Law at Washington University School of Law in St. Louis. Her scholarship and teaching focus on adoption and assisted reproduction, family law, and conflict of laws. In addition to publishing many law review articles on these topics, she is co-author of two casebooks, *Modern Family Law: Cases & Materials* (now in its sixth edition) and *Adoption & Assisted Reproduction: Families Under Construction* (2009). She served as an adviser to the American Law Institute's Principles of the Law of Family Dissolution and is now serving as an adviser to the ALI's project on Children and the Law.

Michael Boucai teaches Family Law and Criminal Law at SUNY Buffalo Law School, where he has also offered courses on Law & Sexuality and

Law & Procreation. His scholarship focuses on the legal, political, moral, and social norms that regulate sexuality, reproduction, and various forms of intimate association. He is a graduate of Yale (B.A., history), Georgetown (J.D.), and Cambridge (M.Phil, history), and he clerked for the Honorable Rosemary Barkett on the U.S. Court of Appeals for the Eleventh Circuit.

Kathryn Webb Bradley is a professor of the practice of law, the director of Legal Ethics, and the administrator for the Capstone Project at Duke Law School. She teaches in the areas of legal ethics and family law.

Naomi Cahn is the Harold H. Greene Professor of Law at George Washington University Law School. Her areas of expertise include family law, adoption and reproductive technology, and trusts and estates.

Patricia A. Cain is Professor of Law at Santa Clara University and the Aliber Family Chair in Law, Emerita, at the University of Iowa. She held the Inez Mabie Distinguished Professorship during her first five years at Santa Clara Law (2007-2012). She is the author of *Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement* (Westview Press 2000) and *Sexuality Law, 2nd Edition* (Carolina Academic Press 2009) (with Arthur S. Leonard).

John Culhane is the H. Albert Young Fellow in Constitutional Law and the Co-Director of the Family Health Law & Policy Institute at Delaware Law School (Widener University). With his colleague Alicia Kelly, he is co-author of a new, web-based

Family Law casebook for ChartACourse. He has written extensively on the rights of LGBT families, is a regular contributing writer for Slate, and is the co-author of *Same-Sex Legal Kit for Dummies*.

Martha M. Ertman is the Carole & Hanan Sibel Research Professor at the University of Maryland Francis King Carey School of Law. She teaches Contracts, Commercial Law and Contract Drafting courses and writes about the role of contracts and mini-contracts she calls "deals" in family relationships.

Linda D. Elrod is the Richard S. Righter Distinguished Professor of Law and Director of Children and Family Law Center at Washburn University School of Law. She is also the past Chair of ABA Family Law Section and Editor of Family Law Quarterly since 1992.

Deborah L. Forman is Professor of Law at Whittier Law School, in Costa Mesa, California, J. Allan Cook & Mary Schalling Cook Children's Rights Scholar. Professor Forman earned her J.D. from Stanford Law School. She joined Whittier in 1990 and served as Director of the Whittier Law School Center for Children's Rights from 1999-2007. Her courses include Family Law, Contemporary Problems in Family Law, and Torts. Professor Forman is the author of *Every Parent's Guide to the Law* (Harcourt Brace 1997) and numerous articles. Her scholarship focuses primarily on the problems faced by non-traditional families and those using assisted reproduction.

Theresa Glennon is a Professor of Law at Temple University Beasley School of Law. Her teaching and

scholarship focuses on the legal rights of children and families, with particular focus on family law, education, race and disability. Her family law publications address a wide range of topics, including assisted reproductive technologies, child custody and custody relocation disputes, the effort to harmonize family law in Europe, paternity disputes, second parent adoptions, and the child welfare system. Professor Glennon has been a visiting fellow at the Centre for Family Research at the University of Cambridge, and she is trained as a mediator in divorce and child custody matters and serves as a volunteer mediator for the custody mediation project of Good Shepherd Mediation Program.

Cynthia Godsoe is an Assistant Professor of Law at the Brooklyn Law School. She teaches courses in family law, criminal law, children and the law, professional responsibility, and public interest lawyering. Her scholarship centers on the regulation of intimate behavior and gender roles through family and criminal law, encompassing topics including adoption's role in the path to marriage equality. Before joining the Brooklyn Law School faculty, Professor Godsoe represented children and youth in impact litigation and individual cases in foster care and adoption, juvenile justice, and education matters as an attorney at the Legal Aid Society's Juvenile Rights Division and Advocates for Children, among others.

Leslie Harris is the Dorothy Kliks Fones Professor of Law at the University of Oregon, where she teaches Children and the Law, Family Law, and other courses and directs the Oregon Child Advocacy

Project. She is the co-author of textbooks on Family Law and Children and the Law that are widely used throughout the U.S. She serves on the advisory board for the Oregon Juvenile Court Improvement Project, the board of the Oregon Juvenile Law Training Academy, and the Juvenile Code Revision workgroup of the Oregon Law Commission. She is an elected member of the American Law Institute.

Lisa Ikemoto is a Martin Luther King, Jr. Professor at University of California-Davis School of Law. She has been teaching, researching, and writing on bioethics and family law issues for the past 25 years. She has written extensively on the ways in which race, gender, sexuality, and class norms shape motherhood, family formation, and genetic and assisted reproductive technology use.

Laura T. Kessler is a Professor of Law at the University of Utah and a nationally known expert in two areas: work and family conflict and the legal regulation of non-nuclear families. She is particularly interested in how the law perpetuates gender-based economic inequality. Kessler's scholarship is widely-cited and well-known as providing rigorous, comprehensive, theoretically informed, interdisciplinary analyses of cutting edge issues involving discrimination, families, and work.

Shani M. King has been a member of the faculty at University of Florida Fredric G. Levin College of Law since 2007, where he is Director of the Center on Children and Families. Professor King teaches and writes in the area of children's rights and family law, with a particular interest the role of child's counsel in various contexts, and more generally in

the rights of children and families, especially those from traditionally underserved populations and the public responsibility to protect those rights. Professor King has been active in local, regional and national child welfare and juvenile reform, serving on the board of the Youth Law Center and the Florida Chapter of the National Association for the Advancement of Children, and on the advisory board of Florida Children's First.

Solangel Maldonado is the Joseph M. Lynch Professor of Law at Seton Hall Law School and a Visiting Scholar at Center for Law and Culture at Columbia Law School. Maldonado's research and teaching interests include family law, gender and the law, critical race theory, and international and comparative family law. Her scholarship focuses on the intersection of race and family law and the law's influence on social norms. She is one of the reporters of the American Law Institute's Restatement of the Law, Children and the Law (in progress) and a co-editor of *Family Law in the World Community* (Carolina Academic Press, 3rd ed. 2015) (with D. Marianne Blair, Merle H. Weiner, and Barbara Stark). She also serves on the editorial board of the *Family Court Review*.

Linda C. McClain is Professor of Law and Paul M. Siskind Research Scholar at Boston University School of Law. She teaches Family Law, Children and the Law, and courses in gender and law. She has written extensively about family law, including parental rights and responsibilities. She is co-author of the casebook, D. Abrams et al., *Contemporary Family Law* (West, 4th ed 2015); author of *The Place*

of Families (Harvard University Press, 2006), and co-editor of *What Is Parenthood? Contemporary Debates about the Family* (NYU Press, 2014). She is past chair of the Association of American Law Schools Section on Family and Juvenile Law and is currently on the Executive Board of the Section.

Bernard P. Perlmutter is a Clinical Professor of Law and Co-Director of the University of Miami School of Law's Children & Youth Law Clinic, which represents children in abuse and neglect, foster care, adoption, and other proceedings. He also teaches courses in Family Law, Transnational Family Law, and Children and the Law. Under Professor Perlmutter, The Children & Youth Law Clinic has participated as *amicus curiae* in several landmark Florida appellate cases affirming the rights of children to be adopted by same-sex couples. *See, e.g., In the Matter of the Adoption of D.P.P.*, 158 So. 3d 633 (Fla. 5th DCA 2014); *Florida Department of Children and Families v. In the Matter of Adoption of X.X.G. and N.R.G.*, 45 So. 3d 79 (Fla. 3d DCA 2010); and *Embry v. Ryan*, 11 So. 3d 408 (Fla. 2d DCA 2009).

Nancy Polikoff is Professor of Law at American University Washington College of Law where she teaches Family Law and a seminar on Children of LGBT Parents. From Fall 2011 through Fall 2012, she was the Visiting McDonald/Wright Chair of Law at UCLA School of Law and Faculty Chair of the Williams Institute, a national think tank on sexual orientation law and public policy at UCLA Law. She was successful counsel in *In re M.M.D.*, the 1995 case that established joint adoption for lesbian, gay,

and unmarried couples in the District of Columbia. She is a former chair of the Association of American Law Schools Section on Sexual Orientation and Gender Identity Issues and a member of the National Family Law Advisory Council of the National Center for Lesbian Rights. In 2011, Prof. Polikoff received the Dan Bradley award from the National LGBT Bar Association, the organization's highest honor.

Catherine J. Ross is Professor of Law at George Washington University and, during the 2015-2016 academic year, a Visiting Scholar at the Harvard School of Education. An expert on children's rights, she is a co-author of the first through fourth editions of *Contemporary Family Law* (Thomson/West 4th Ed. 2015), in which she writes the two chapters on child custody and visitation issues. Professor Ross was co-Chair of the American Bar Association's Steering Committee on the Unmet Legal Needs of Children and its predecessor working group which presented its report "America's Children at Risk" at the White House in 1993. She served as the Chair of the Committee for many years thereafter.

Rebecca Scharf is an Associate Professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Before beginning her teaching career at the Boyd School of Law, she worked at the National Center for Law and Economic Justice in New York City, conducting class action impact litigation, primarily in the area of public benefits law. Prior to this, she worked as an attorney for The Legal Aid Society of New York City, providing legal services to impoverished families in the South

Bronx. She serves as an elected member of the Board of Directors of the Legal Writing Institute. She has published articles in the areas of Family Law, Juvenile Law, and Legal Writing. Her current scholarship focuses on Privacy Law and Technology. She teaches Privacy, Publicity & Defamation; Wills, Trusts, and Estates; Legal Research and Writing; and Family Law.

Elizabeth Scott is the Harold R. Medina Professor of Law at Columbia Law School. She visited at Columbia law school in 1987-88, 2001-02, 2003, and 2005, and joined the Columbia faculty as in 2006. Scott teaches family law, property, criminal law, and children and the law. She has written extensively on marriage, divorce, cohabitation, child custody, adolescent decision-making, and juvenile delinquency. Her research is interdisciplinary, applying behavioral economics, social science research, and developmental theory to family/juvenile law and policy issues. She was the founder and co-director of the University of Virginia's interdisciplinary Center for Children, Families and the Law.

Julie Shapiro is a Professor of Law at Seattle University School of Law. She studies how the law adapts – or fails to adapt – to the myriad ways families are structured today. She has written and spoken on the history of the legal treatment of non-traditional families (including lesbian, gay, and transgender families), the legal implications of assisted reproductive technology, and the controversy over same-sex marriage.

Edward Stein is Professor of Law at Cardozo School of Law in New York City and the Director of the Gertrud Mainzer Program in Family Law, Policy, and Bioethics. In spring of 2016, he will be the Maurice R. Greenberg Visiting Professor of Law at the Yale Law School. Stein's research interests include legal and philosophical topics related to families, sexual orientation, reproduction, cognition and science.

D. Kelly Weisberg is Professor of Law at Hastings College of the Law, University of California. She is an expert in the fields of family law and children and the law. She is the co-author of several books, including *Modern Family Law: Cases, Materials And Problems* (co-authored with Susan F. Appleton, 6th ed. 2016); *Child, Family, State: Problems And Materials On Children And The Law* (co-authored with Robert H. Mnookin, 7th ed. 2014); and *Adoption And Assisted Reproduction: Families Under Construction* (co-authored with Susan F. Appleton, 2009).

Professor Weithorn joined the full-time UC Hastings faculty in 2001. She received the UC Hastings Foundation Faculty Scholarship Award in 2002, and the Rutter Award for Teaching Excellence in 2007. Professor Weithorn received her J.D. from Stanford Law School where she served as President of the Stanford Law Review and was elected to the Order of the Coif. After graduating, she clerked for the Honorable Joseph T. Sneed III of the U.S. Court of Appeals of the Ninth Circuit.

12a

Wendy W. Williams is a professor emerita from Georgetown University Law Center, where she taught family law and related subjects for many years.