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 THE AMERICAN ACADEMY OF ADOPTION ATTORNEYS AND THE GEORGIA COUNCIL OF ADOPTION LAWYERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The American Academy of Adoption Attorneys, Inc. (the "Academy") is an association of attorneys, judges, and law professors in the United States and Canada dedicated to the highest standards of practice in adoption law. The Academy's membership is by invitation only based on demonstrated professional excellence. Its mission is to support the rights of children to live in safe, permanent homes with loving families; to ensure appropriate consideration of the interests of all parties to adoptions; and to facilitate the orderly and legal process of adoption. To fulfill its mission, the Academy engages in legislative and administrative advocacy, develops policy, and provides *pro bono* assistance on adoption issues.

The Academy is committed to improving the lives of children by advocating for the benefits and stability adoption provides. As an organization, the Academy has filed *amicus curiae* briefs in important adoption-related cases, including *Adoptive Couple v. Baby Girl*, 570 U.S. __, 133 S. Ct. 2552 (2013); advised the State Department on implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and

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[1] Pursuant to Sup. Ct. R. 37.2(a), counsel for all parties received notice of *amici*'s intent to file this brief. All parties have consented to the filing of this brief and have lodged blanket consent letters with the Clerk of Court. No counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

the federal Intercountry Adoption Act of 2000; assisted in drafting and advocated for the passage of state and federal adoption legislation; and advised on the drafting of the Uniform Adoption Act.

This brief was reviewed and approved to be filed by the Academy's Board of Trustees.

The Georgia Council of Adoption Lawyers, Inc. ("GCAL") is a Georgia nonprofit corporation that, among other things, advocates before the Georgia legislature on matters of adoption law and supports the Georgia judicial branch through educational programs and the filing of *amicus* briefs on adoption-law issues.

Membership in GCAL is by invitation only and is limited to members in good standing of the State Bar of Georgia who have demonstrated expertise in adoption law. Fellows in GCAL represent the most experienced members of the Georgia adoption bar.

The filing of this amicus brief was authorized by a vote of GCAL's Board of Directors.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Alabama Supreme Court's decision in this case violates the Full Faith and Credit Clause. U.S. Const., Art. IV, § 1. The court refused to give full faith and credit to an adoption decree issued by a Georgia court that had exclusive authority under Georgia law to issue adoption decrees. App. 19a. Instead, brushing aside Georgia's sovereign interests, the Alabama court concluded that the judgment of adoption—awarded to the biological mother's same-sex partner—was "void" according to its interpretation of Georgia law and, therefore, the Georgia court lacked subject-matter jurisdiction. *Id.* at 22a–24a.

That is not how full faith and credit works. *See* Pet. 16–27. As petitioner explains, the Alabama Supreme Court ignored the presumption in favor of jurisdiction, *id.* at 18–20, impermissibly recast the merits of the adoption decree as a question of jurisdiction, *id.* at 16–18, and contradicted the Georgia court's own finding of authority, *id.* at 24–26.

The Alabama Supreme Court thus imposed its own policy preferences on a question of Georgia adoption law that it had no authority to decide under the Full Faith and Credit Clause. *Amici* are concerned about the Alabama court's complete disregard for the exclusive authority of Georgia courts on matters of Georgia adoption law. Georgia's statute of repose bars any challenge to an adoption after six months, *see* O.C.G.A. § 19-8-18(e), and the Georgia Superior Court's judgment securing the bond between the adoptive mother and the children she

planned for and raised was due respect under basic full-faith-and-credit principles.

The consequences of the Alabama Supreme Court's decision are deeply troubling. Not only does the decision contravene Georgia's decision about how best to protect the bonds between adoptive parents and their children, it also casts doubt on the validity of second-parent adoptions—a widely recognized adoption procedure used to protect the children of unmarried same-sex couples in many states. Such adoptions, which involve the adoption of a child with one living parent by that parent's same-sex partner, have long existed in Georgia, *see Wheeler v. Wheeler*, 642 S.E.2d 103, 104 (Ga. 2007) (Carley, J., dissenting), and the Georgia appellate courts have repeatedly declined to entertain challenges to the validity of second-parent adoptions. *See id.*, at 103–04; *Bates v. Bates*, 730 S.E.2d 482, 486 (Ga. Ct. App. 2012). It offends not just full faith and credit but core principles of federalism to permit another state to contravene the careful policy choices Georgia has made on family law matters within its exclusive sovereignty.

Moreover, Georgia is not alone in permitting second-parent adoptions. Before states recognized same-sex marriage, judges in many states issued second-parent adoptions to protect and secure the bonds between children and their same-sex parents under materially similar statutory adoption schemes. *See* Leslie Joan Harris, *Voluntary Acknowledgements of Parentage for Same-Sex Couples*, 20 Am. U.J. Gender, Social Pol. & Law 467, 471–72 (2012). Now if the decision of the Alabama Supreme Court is not

reversed those adoptions—and *any* adoption that an Alabama court finds does not comply with *Alabama's* interpretation of another state's statutory adoption requirements—are vulnerable to attack. The Alabama precedent is as dangerous as it is wrong. This Court should grant the petition to reverse the decision below.

ARGUMENT

I. The Alabama Supreme Court's Decision Usurps Georgia's Sovereign Authority To Issue Adoption Decrees.

The Superior Court of Fulton County, Georgia, had "exclusive jurisdiction in all matters of adoption." O.C.G.A. §19-8-2(a). As that court found, it had full authority under Georgia law to issue an adoption to V.L. *See* App. 50a. Yet the Alabama Supreme Court impermissibly refused to respect that court's determination of its own authority and the validity of the adoption it ordered. *See Coe v. Coe*, 334 U.S. 378, 384 (1948); *see also* Restatement (First) of Conflict of Laws § 143 (1934). The Alabama Supreme Court's decision was wrong. It undermines the authority of Georgia courts to interpret Georgia law—especially on matters of family law. *Cf. In re Burrus*, 136 U.S. 586, 593–94 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.").

In Georgia, as in most states, a court's "ultimate concern" in adoption proceedings is to protect and further the best interests of the child. *See Johnson v. Eidson*, 221 S.E.2d 813, 816-17 (Ga. 1976); *Owens v.*

Griggs, 261 S.E.2d 463, 464 (Ga. 1979). By focusing on children's welfare, courts "ensure that children are treated fairly as individuals," *Stills v. Johnson*, 533 S.E.2d 695, 700 (Ga. 2000), taking into account their "interest in a safe, secure environment that promotes [their] physical, mental, and emotional development," *Clark v. Wade*, 273 Ga. 587 (2001). The Georgia Superior Court judge who presided over the petition for adoption was in the best position to determine his authority to grant the adoption—including the existence of personal and subject-matter jurisdiction—and to decide that the adoption was in the best interests of the children who appeared before him. *See* O.C.G.A. § 19-8-18(b).

Under the Full Faith and Credit Clause, that judgment by the Georgia Superior Court was entitled to the Alabama Supreme Court's respect and should have been enforced. For judgments, "the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state must honor the judgment of a sister state, even if it disagrees with it. *Id.*

Indeed, reinforcing the finality of the Georgia adoption decree, Georgia law prohibits *any* court from entertaining "any judicial challenge" to the adoption decree, as the Alabama courts did here. O.C.G.A. § 19-8-18(e). In particular, Georgia's statute of repose bars all challenges to adoption decrees—even *jurisdictional* ones—more than six months after the adoption issues. *See Williams v. Williams*, 717 S.E.2d 553, 554 (Ga. Ct. App. 2011). No Georgia decision holds that bar inapplicable merely because it is alleged the adoption did not

comport with Georgia law and should not have been issued.

Nevertheless, more than eight years after the Georgia court entered its decree, the Alabama court refused to recognize the adoption on grounds that no Georgia court could have entertained: that the issuing court lacked subject-matter jurisdiction.

The Alabama Supreme Court's decision impermissibly rejects the Georgia court's conclusion that it had the authority to grant a decree of adoption, and it tears apart family bonds in the process. Alabama should not be free to substitute its own judgment about the validity of a Georgia adoption years later—especially at the invitation of a biological mother who simply changed her mind about the wisdom of the adoption she asked the court to grant. *See Bates*, 730 S.E.2d at 486 n.5.

To be sure, a state need not give full faith and credit to a judgment issued by a sister state court that lacked jurisdiction. *Baker*, 522 U.S. at 233. But that narrow exception must be protected from abuse—or else the Full Faith and Credit Clause would be meaningless with policy disagreements easily recast as jurisdictional defects. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995) ("The Constitution nullifies sophisticated as well as simple-minded modes of infringing on constitutional protections.") (internal quotation marks omitted). That is exactly what happened here. The Alabama Supreme Court injected its own policy preferences under the guise of identifying an alleged jurisdictional defect.

The Alabama Supreme Court's subterfuge depends on treating the purest of *dicta*—a statement by a single Justice of the Georgia Supreme Court in a dissent from the denial of *certiorari* review—as controlling Georgia law. *See Wheeler*, 642 S.E.2d at 104 (Carley, J., dissenting). In *Wheeler*, the Georgia Supreme Court refused to consider a challenge to an adoption materially identical to the one the Superior Court of Fulton County granted to V.L. *Id.* at 103. In his dissent, Justice Carley explained that, in his view, the adoption was invalid under Georgia law because the same-sex partner of the biological mother could not be (at the time) a spouse under Georgia law, and, therefore, she purportedly had no right to seek an adoption (without terminating the existing parent's rights). *See id.* at 104. Based on this *dicta*, the Alabama Supreme Court "assume[d] that a Georgia court would make the same conclusion [that Justice Carley reached], and by extension, *would* permit a challenge on jurisdictional grounds to an adoption decree that did not fully comply with" Georgia's adoption code. App. 17a. But this assumption was wrong. Even though Justice Carley concluded that the adoption did not appear to comport with Georgia law, he described it as a "nonamendable defect"—a problem with the *merits* of the adoption, not a problem with the jurisdiction of the issuing court. *Id.* (quoting O.C.G.A. § 9-11-60(d)(3)).

It appears that in refusing to respect the Georgia court's judgment, some members of the Alabama Supreme Court substituted their own policy preferences for the full faith and credit that the Constitution requires. In his separate writing,

Justice Parker openly questioned the wisdom of allowing same-sex couples to adopt. *See* App. 31a (describing heterosexual families as the "optimal family structure" and citing with favor a decision upholding Florida's categorical ban on "adoption by any homosexual person). Likewise, Chief Justice Moore has publicly denounced gays and lesbians, stating that "homosexual conduct . . . creates a strong presumption of unfitness" to parent. *Ex Parte H.H.*, 830 So. 2d 21, 26 (Ala. 2002) (Moore, C.J., concurring).

But these types of policy considerations have no place in determining whether to accord full faith and credit to another state's judgments. *See Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). "The Full Faith and Credit Clause is not to be applied, accordion-like, to accommodate [a court's] personal predilections." *Estin v. Estin*, 334 U.S. 541, 545–46 (1948). Moreover, animus and moral opprobrium also should have no place in a full-faith-and-credit analysis. *Cf. Lawrence v. Texas*, 539 U.S. 558, 571 (2003) ("Our obligation is to define the liberty of all, not to mandate our own moral code." (internal quotation marks and citations omitted)); *Romer v. Evans*, 517 U.S. 620, 632 (1996) (condemning legislation that was "inexplicable by anything but animus toward the class it affects").

In any event, whatever the rationale of the Alabama Supreme Court, it flies in the face of the Georgia Superior Court's judgment that this adoption was in the best interests of the children. App. 50a. It also disrespects that court's conclusion that it had exclusive authority—subject-matter jurisdiction—

under Georgia law to issue the decree. *Id.* Even if the Georgia court was wrong about Georgia law, Alabama was obligated under the Full Faith and Credit Clause to respect its judgment.

II. The Alabama Supreme Court's Decision Threatens The Validity Of Thousands Of Second-Parent Adoptions Issued By Other States.

The Full Faith and Credit Clause protects interests of finality that are fundamental to our system of justice. *See Baker*, 522 U.S. at 232. Those finality interests are paramount where, as here, states have made different policy choices on matters within their sovereignty. Precisely because there is "no roving 'public policy exception' to the full faith and credit due *judgments*," *id.* at 233, no state should be free to interfere with the policy decisions of a sister state, even if (and especially when) those decisions may be controversial. *Amici* are concerned about the effect of the Alabama Supreme Court's decision on the recognition afforded second-parent adoptions more generally, as judges in many states have granted second-parent adoptions under similar state statutory adoption schemes.

Across the country, "hundreds of thousands of children are presently being raised by [same-sex] couples." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2600 (2015). Many of those children are being raised by couples who only recently secured marriage rights. Before that time, tens of thousands of same-sex couples turned to second-parent adoptions as a means to achieve the "safeguards" and "recognition,

stability, and predictability" needed to protect their families. *Id.*

Before *Obergefell*, a small handful of states had enacted statutes that allow a same-sex partner to adopt his or her partner's children.[2] In a larger number of states, including in the District of Columbia, Idaho, Illinois, Indiana, Maine, Massachusetts, New Jersey, New York, Oklahoma, and Pennsylvania, state appellate courts have expressly approved second-parent adoptions by flexibly interpreting state adoption codes.[3]

In states like Alaska, Florida, Georgia, Louisiana, Maryland, Texas, and West Virginia, trial courts have also issued second-parent adoptions based on a flexible reading of statutory requirements

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[2] Cal. Fam. Code §§ 8616.5, 9000 (West Supp. 2010) (allowing registered domestic partners to adopt without terminating the legal status of the biological parent by post-adoption contract); Colo. Rev. Stat. Ann. §§ 19-5-203(1), 19-5-208(5), 19-5-210(1.5); Conn. Gen. Stat. § 45a-724(a)(3) (West 2009); Vt. Stat. Ann. Tit. 15A, § 1-102(b) (2002).

[3] *In re M.M.D.*, 662 A.2d 837, 865-66 (D.C. 1995); *In re Adoption of Doe*, No. 41463, 2014 WL 527144 (Idaho Feb. 10, 2014); *In re Petition of K.M.*, 653 N.E.2d 888, 899 (Ill. App. Ct. 1995); *In re Adoption of Infant K.S.P.*, 804 N.E.2d 1253, 1260 (Ind. Ct. App. 2004); *In re Adoption of M.M.G.C.*, 785 N.E.2d 267, 270 (Ind. Ct. App. 2003); *Adoption of M.A.*, 2007 ME 123 (Me. 2007); *In re Adoption of Tammy*, 619 N.E.2d 315, 319 (Mass. 1993); *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535, 540-41 (N.J. Super. Ct. App. Div. 1995)*; In re Jacob*, 660 N.E.2d 397, 405 (N.Y. 1995); *Eldredge v. Taylor*, 339 P.3d 888, 893 (Okla. 2014); *In re Adoption of R.B.F.*, 803 A.2d 1195, 1202 (Pa. 2002).

(but without clear guidance from appellate courts).[4] Those states, like Georgia, *see Bates*, 730 S.E.2d at 342, have also refused collateral attacks to second-parent adoptions launched years after the fact.

In *Goodson v. Castellanos*, 214 S.W.3d 741, 747–48 (Tex. Civ. App. 2007), for example, the Texas Court of Appeals rejected an argument materially identical to the argument E.L. successfully made to the Alabama Supreme Court—that an adoption by a legal mother's same-sex partner was void for lack of subject-matter jurisdiction because the adoption purportedly did not comport with the statutory scheme. The Texas court explained that even if the trial court "erred in issuing the adoption decree," the error would not deprive the court "of jurisdiction over the adoption." *Id.* at 748. Because the defect was not one of subject-matter jurisdiction, the legal mother could not collaterally attack the decree. *Id.* at 748–49.

The Alabama Supreme Court's decision is unprecedented in refusing to recognize a second-parent adoption issued by a sister state—especially when that sister state would refuse a similar challenge within its own borders. *See* Pet. 31. It opens the door to devastating consequences for any adoptive family crossing the Alabama state line, as Alabama courts, government, hospitals, and schools are now free to disregard an adoption issued by a

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[4] *See generally* Nat'l Ctr. For Lesbian Rights, *Adoption by LGBT Parents*, at 1–2 (2015), http://www.nclrights.org/wp-content/uploads/2013/07/2PA_state_list.pdf (last visited Dec. 17, 2015).

state like Georgia or Texas or Louisiana, where the validity of a second-parent adoption may not be free from doubt under state law.

The decision is a stark reminder of the legal fragility of family bonds outside the protective institution of marriage. That is a harm this Court sought to ameliorate last Term by recognizing that same-sex couples have a constitutional right to marry. The Court should grant the petition to ensure that all families formed through adoption can be secure in knowing that the judicial order solidifying those bonds will be recognized throughout the nation.

CONCLUSION

For these reasons, the petition for certiorari should be granted.

Respectfully submitted,

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