No. _____

IN THE
Supreme Court of the United States

V.L.,

Applicant,

v.

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

Respondents.

On Application for Stay from the Alabama Supreme Court

APPLICATION FOR RECALL AND STAY OF CERTIFICATE OF JUDGMENT OF ALABAMA SUPREME COURT

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

INTRODUCTION

Under Rule 23 of this Court's rules, Applicant V.L. moves to recall and stay the Alabama Supreme Court's Certificate of Judgment pending the filing and disposition of a timely petition for certiorari. Applicant is filing this application simultaneously with her petition for a writ of certiorari. The Alabama Supreme Court issued its Certificate of Judgment on October 13, 2015, App. 3a, and denied the Joint Motion for Stay filed by Applicant and the court-appointed Guardian ad Litem on October 23, 2015. App. 1a-2a.

V.L. requests such relief because the Alabama Supreme Court's decision has effectively prevented her from having any contact with her adoptive minor children, causing irreparable harm to the parent-child relationship. In view of the lasting harm that occurs when a parent is prevented from contacting her minor children, V.L. requests expedited consideration of this application.

In this case the Alabama Supreme Court refused to grant full faith and credit to an adoption judgment duly issued by a court from a sister state, based on its *de novo* determination that the issuing state misapplied its own adoption law. 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. This Court is likely to grant certiorari and reverse the judgment below, and a stay is warranted to avoid irreparable harm while V.L.'s petition is pending.

Applicant V.L. and Respondent E.L. are two women who were in a committed relationship for nearly seventeen years. In May of 2000, V.L. changed her last name to E.L.'s last name, and the parties decided to start a family together. E.L. gave birth to one child in 2002, and to twins in 2004, through assisted reproduction. E.L. and V.L. took an equal role in raising the children during their early childhood.

To ensure that both V.L. and E.L. would be legally recognized as the children's parents, the parties agreed that V.L. would adopt the children and become the children's second, legally recognized parent, with E.L. retaining her parental rights. Thus, in 2007, V.L. filed a petition in the Superior Court of Fulton County, Georgia, for V.L. to adopt the children as a second parent with E.L.'s consent. The Superior Court granted the petition and ordered that V.L. would have full parental rights.

Several years later the couple separated and a dispute over child custody arose. V.L. sought joint custody in an Alabama circuit court based on her status as the children's adoptive mother. The Alabama Circuit Court and Court of Civil Appeals concluded that the Georgia adoption judgment must be honored.

The Alabama Supreme Court reversed, refusing to grant full faith and credit to the Georgia judgment. It concluded that the Georgia Superior Court misapplied Georgia's own adoption statute, which, in the Alabama Supreme Court's view, barred V.L. from adopting the children unless E.L. would relinquish her own parental rights. Having found that the Georgia Superior Court misapplied its own state's adoption law, the Alabama court then found that the Georgia court's error was "jurisdictional." Its justification for this conclusion was that adoption is a matter of statute under Georgia

law and that a misapplication of an adoption statute must therefore deprive a court of jurisdiction. Based on this determination, the Alabama Supreme Court held that V.L.'s adoption of the children, which the Georgia court had granted eight years earlier, was not entitled to full faith and credit. In so doing, it effectively stripped V.L. of parental rights over the children she had raised since they were born.

The Alabama Supreme Court's decision has serious practical consequences and reflects a grievous misinterpretation of the Full Faith and Credit Clause. It easily satisfies this Court's criteria for a stay.

An individual Justice is authorized to issue a stay "for a reasonable time to enable the party aggrieved to obtain a writ of certiorari." 28 U.S.C. § 2101(f). A stay is warranted when "(1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable harm [will] result from the denial of a stay." *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers).

Here, there is a reasonable probability that the Court will grant certiorari and reverse. The Alabama Supreme Court's decision is irreconcilable with this Court's Full Faith and Credit precedents. This Court has laid down three fundamental principles under the Full Faith and Credit Clause pertinent to this case. First, although collateral challenges to an out-of-state judgment based on lack of *jurisdiction* are permitted in limited circumstances, collateral challenges to the *merits* of an out-of-state judgment are categorically forbidden. Second, when a court of general jurisdiction issues a judgment, sister state courts must *presume* that the issuing state court had jurisdiction.

Third, a jurisdictional determination by a state court is itself entitled to full faith and credit in the courts of other states.

The Alabama Supreme Court's decision contravenes each of those principles. First, the alleged error in the Georgia Superior Court's decision went to the merits, not to jurisdiction; the Alabama Supreme Court's conclusion that the Georgia court lacked jurisdiction was based on a wildly overbroad definition of "jurisdiction" without any basis in this Court's or Georgia's case law. Second, the Alabama Supreme Court failed to honor the presumption that the Georgia Superior Court possessed jurisdiction, instead conducting a *de novo* analysis of Georgia law of a type prohibited by the Full Faith and Credit Clause. Third, the Alabama Supreme Court failed to honor the Georgia Superior Court's decision that it could exercise jurisdiction over the adoption petition, in plain violation of this Court's Full Faith and Credit precedents.

There is a reasonable probability that the Court will grant certiorari and reverse the judgment below in light of the decision's unprecedented nature and profound consequences for Alabama families. The Alabama Supreme Court's decision not only has effectively stripped the parental rights of V.L., but also places at risk numerous other families in which parents have relied on the stability of adoption judgments issued by the courts of sister states. As the dissent explained, the decision below "creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." App. 44a.

Finally, irreparable harm will result from the denial of a stay. Even if this Court were to grant certiorari and reverse the judgment, V.L.'s forced separation from her children while this case is pending will irreversibly harm the parent-child relationship. Separating a parent from her children, even temporarily, causes long-lasting harm to both parent and child. V.L.'s children are on the cusp of adolescence (they are 12, 10, and 10 years old), a very important period in a child's life, and V.L. will never be able to regain this time with her children once it is lost.

Because the decision below reflects a grievous misinterpretation of the Full Faith and Credit Clause and has far-reaching practical consequences, and because V.L. will suffer irreparable harm, the Court should grant V.L.'s application for stay.

STATEMENT OF THE CASE

A. The Georgia Superior Court's Adoption Order

Applicant V.L. and Respondent E.L. are two women who were in a committed relationship for nearly seventeen years. The parties began their relationship in 1995. In May of 2000, V.L. changed her last name to E.L.'s last name, and the parties decided to start a family together.

The parties decided that E.L. would be the children's biological mother and that the children would be conceived through donor insemination. E.L. gave birth to one child on December 13, 2002, and gave birth to twins on November 17, 2004. After the birth of each of the children, V.L. took leave from work to be at home and care for the children. V.L. paid the children's pre-school tuition and fees and shared responsibility with E.L. for all household expenses.

In 2007, V.L. petitioned the Superior Court of Fulton County, Georgia for an adoption judgment, with E.L.'s express consent. Following a home study, Judge Jerry Baxter granted the petition in a detailed written order. App. 62a-64a.[1] Under "Findings of Fact," the Superior Court found:

- V.L. "is qualified to petition for adoption and is a fit person to become the adoptive legal parent of" the children, "and is capable of continuing with the responsibilities she has shared with the legal and biological mother, [E.L.], for the children's care, supervision, training, and education." App. 62a.

[1] The Georgia Superior Court's adoption order, as well as the complaint and visitation order in the Alabama Circuit Court, contain the parties' full names. Thus, they are filed in a sealed appendix.

- E.L. "expressly consented to this adoption." *Id.*
- The record provided "clear and convincing evidence that [V.L.] has functioned as an equal second parent to the children, since their birth" and that "[t]he children relate to both their legal mother and [V.L.] on an equal basis." *Id.*
- "The adoption is in the best interests of the children. It would be inconsistent with the reality of this parenting arrangement to either terminate the rights of the sole legal parent or to deny the adoption by the second parent, which is with the express consent of the legal parent." App. 63a.

Under "Conclusions of Law," the Superior Court held:

- "The adoption should be granted in the best interest of the children. The children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption. It would be contrary to the children's best interest and would adversely impact their right to care, support and inheritance and would adversely affect their sense of security and well-being to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births." *Id.*
- "The Petitioner has complied with all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia." *Id.*
- Because the children were conceived by anonymous donor insemination, "no biological or legal father exists with rights requiring termination." *Id.*

In view of these determinations, the Superior Court "CONSIDERED, ORDERED, AND ADJUDGED" that "the parent-child relationship between [E.L.] and the children is hereby preserved intact and that [V.L.] shall be recognized as the second parent of" the children. App. 64a. It was "FURTHER, ORDERED" that the adoption of the children by V.L. "be and is hereby made permanent in accordance with the provisions of Chapter 8 of Title 19 of the Official Code of Georgia, Annotated." *Id.* It was "FURTHER, ORDERED" that a new birth certificate be issued listing both E.L. and V.L.'s names. *Id.* It was "FURTHER, ORDERED" that "this order shall act as sufficient evidence for the Social Security Administration to prepare and issue a new social security card to the children." *Id.*

B. The Alabama Supreme Court's Refusal To Recognize The Adoption Order

In 2011, V.L. and E.L. ended their relationship. Although V.L. continued to see the children for a time after the relationship ended, E.L. eventually prevented V.L. from having access to the children. Thus, on October 31, 2013, V.L. filed a Petition to Enroll Foreign Judgment with the Jefferson County Circuit Court in Alabama, asking the Circuit Court to give Full Faith and Credit to the Georgia adoption judgment and to grant her visitation or custody of her children. App. 66a-69a. On April 2014, the Circuit Court entered an order granting visitation to V.L. on the first and third weekends of each month. App. 65a.

E.L. appealed to the Alabama Court of Civil Appeals. In an initial decision, the Court of Civil Appeals reversed the Family Court's order, but the Court of Civil Appeals granted rehearing, reversed itself, and held that the Georgia adoption was

entitled to full faith and credit. App. 45a-61a. The court observed that "[t]he Georgia Supreme Court has not yet construed the provisions of the Georgia Adoption Code to determine if it allows adoption by a same-sex partner who has assumed a de facto parental role." App. 56a. It concluded, based on its "independent review of the Georgia Adoption Code," that such adoptions were impermissible under Georgia law. App. 57a. But it held that "[a]lthough it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court." *Id.* It concluded that "even if the law of Alabama generally disallows adoption by same-sex partners, under the Full Faith and Credit Clause, a court of this state must still enforce a duly entered foreign judgment approving the adoption petition of a same-sex partner." App. 60a (citation omitted). The Court of Civil Appeals remanded the case for an evidentiary hearing on visitation. App. 61a.

E.L. petitioned the Alabama Supreme Court for review. V.L. filed a brief in opposition. The court-appointed Guardian ad Litem, appointed to represent the children's interests, filed a brief urging the court to affirm the Court of Civil Appeals and allow V.L. access to the children.

The Alabama Supreme Court reversed. It held that the Georgia adoption judgment was not entitled to full faith and credit because, in its view, the Georgia Superior Court lacked subject-matter jurisdiction to enter the adoption judgment. App. 4a-44a.

The court began by rejecting V.L.'s argument that the Alabama Supreme Court should not entertain E.L.'s jurisdictional attack on the adoption order based on established Georgia law that "a Georgia court would enforce the Georgia judgment *even if* there is a lack of subject-matter jurisdiction." App. 17a. V.L.'s argument was premised on Ga. Code. Ann. § 19-8-18, a statute of repose which provides that "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." As the Alabama Supreme Court acknowledged, Georgia courts have held that the statute of repose bars even jurisdictional collateral challenges to adoptions after six months. App. 17a-18a. (citing *Williams v. Williams*, 717 S.E.2d 553 (Ga. Ct. App. 2011)). Nevertheless, the Alabama Supreme Court concluded that the statute of repose did not apply in this case because Georgia's statute of repose applied only to adoptions that complied with statutory requirements. App. 21a-23a.

The Alabama Supreme Court further concluded that the Georgia Superior Court erred in granting the adoption. It held that "Georgia law makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents." App. 27a. In the view of the Alabama Supreme Court, it was not possible under Georgia law for V.L. to adopt without terminating E.L.'s rights: either V.L. or E.L. could be the children's legal parent, but not both. The court reached this conclusion based on its "own analysis of the Georgia adoption statutes," and despite the Georgia Superior Court's express conclusion that it had the power to grant the adoption without terminating E.L.'s parental rights. *Id.*

Having found that the Georgia Superior Court misapplied Georgia law in granting the adoption, the Alabama Supreme Court then concluded that the Georgia Superior Court lacked *jurisdiction* to enter the adoption judgment—again despite the Georgia Superior Court's express conclusion regarding its power to grant the petition. The Alabama Supreme Court acknowledged that Georgia law "gives superior courts such as the Georgia court exclusive jurisdiction to enter adoption decrees." App. 29a-30a. However, it cited a Georgia case stating that the requirements of Georgia's adoption statutes "are mandatory and must be strictly construed in favor of the natural parents." App. 29a. The court concluded from this statement that a court that grants an adoption which is not in strict compliance with every provision of the adoption statutes automatically lacks jurisdiction to grant the adoption. App. 30a. Thus, the Alabama Supreme Court found that "[t]he Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment." *Id.* The Alabama Supreme Court declined to reach E.L.'s arguments that Alabama should refuse to recognize the Georgia judgment because the parties were allegedly non-residents of Georgia and because permitting same-sex parents to adopt conflicted with Alabama's own public policy. App. 30a-31a n.10.

Justice Parker filed a concurring opinion agreeing with the majority's decision on public policy grounds. He stated that "the State has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother." App. 38a. Justice Parker included a lengthy quotation from *Lofton v. Secretary of Department of Children & Family Services*, 358 F.3d 804,

819-20 (11th Cir. 2004), in which the court upheld Florida's "codified prohibition on adoption by any homosexual person." App. 36a-38a; *see Lofton*, 358 F.3d at 806-07 (quoting Fla. Stat. § 63.042(3)).

Justice Shaw dissented. He argued that the statutory requirements cited by the majority "speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction." App. 39a. He explained that the Georgia Superior Court had statutory jurisdiction over "all matters of adoption," and "[t]he fact that the adoption should not have been granted does not remove the case from the class of cases within that court's power." App. 39a-40a.

Justice Shaw noted that "Georgia's adoption code seems to provide the opposite," given that it grants superior courts the authority to "continue the case" even if "the court determines that any petitioner has not complied with" the adoption code. App. 41a. He also noted that "[u]nder Georgia law, although the trial court may find that the requirements for an adoption were not met, it may nevertheless place custody of the child with the petitioners, an act antithetical to the idea that the court possesses no subject-matter jurisdiction." App. 41a n.14. He concluded by expressing his "fear that this case creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction." App. 43a-44a.

On September 30, 2015, V.L. and the Guardian ad Litem filed a Joint Motion for Stay of Enforcement of Judgment Pending Consideration for Writ of Certiorari with the Alabama Supreme Court. On October 13, 2015, the Alabama Supreme Court issued

its Certificate of Judgment. App. 3a. On October 23, 2015, the Alabama Supreme Court denied the Joint Motion for Stay of Judgment. App. 1a-2a.

ARGUMENT

This Court should grant a stay. A stay is warranted when there is "(1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will then reverse the decision below, and (3) a likelihood that irreparable harm [will] result from the denial of a stay." *Maryland v. King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers).

These criteria are met in this case. The decision below conflicts with a century of this Court's Full Faith and Credit case law and deals a serious blow to the principles of comity and finality underlying the Clause. Moreover, the decision will result in grave practical harm. It yields the ultimate conflict of authority—dueling court orders in different states—and threatens to shatter the legal ties that bind numerous Alabama adoptive parents to their children. Finally, denial of a stay will result in irreparable harm to both V.L. and her children.

I. THE ALABAMA SUPREME COURT'S OPINION VIOLATES THE FULL FAITH AND CREDIT CLAUSE

A. The Full Faith and Credit Clause Authorizes Collateral Attacks on Out-of-State Judgments Only Under Narrow Circumstances.

Article IV, Section 1 of the Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." "Regarding judgments, ... the full faith and credit obligation is exacting." *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998). A state is

constitutionally required to honor a sister state's judgment even if it disagrees with that judgment: there is "no roving 'public policy exception' to the full faith and credit due *judgments*." *Id.* (emphasis in original).

This Court has long recognized the importance of finality of judgments. Finality "is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination." *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 336-37 (2005) (quoting *S. Pacific R. Co. v. United States*, 168 U.S. 1, 49 (1897)). The Full Faith and Credit Clause ensures that judgments, once rendered, are final nationwide. "The animating purpose of the full faith and credit command ... 'was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them 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.'" *Baker*, 522 U.S. at 232 (citation omitted).

This Court has carved out a narrow exception to the Full Faith and Credit Clause: a court need not grant full faith and credit to a judgment issued by a sister state court that lacked jurisdiction. *Id.* at 233. But to ensure that this exception does not swallow the rule, the Court has limited it in three respects.

First, the Court has made clear that only *jurisdictional* collateral challenges are permissible. Collateral challenges to the *merits* of an out-of-state judgment are forbidden. *Milliken v. Meyer*, 311 U.S. 457, 462 (1940) (holding that although collateral

challenges based on "a want of jurisdiction" are permitted, the Full Faith and Credit Clause "precludes any inquiry in to 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"). The difference between an examination of jurisdiction and of the merits is that jurisdiction "goes to the power," whereas merits goes "only to the duty[] of the court." *Fauntleroy v. Lum*, 210 U.S. 230, 235 (1908).

Second, the Court has adopted a presumption that when a court of general jurisdiction renders a judgment, it has jurisdiction to render that judgment. *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") (internal quotation marks omitted). In particular, a court must presume that when a court of general jurisdiction interprets a statute, it has the jurisdiction to do so, and its interpretation is simply a decision on the merits. *Fauntleroy*, 210 U.S. at 235 (where a law "affects a court of general jurisdiction and deals with a matter upon which that court must pass," the forum court must "be slow" to interpret that provision as imposing a limit on the court's jurisdiction, as opposed to fixing a "rule by which the court should decide").

Third, the Court has held that even *jurisdictional* collateral attacks are barred by the Full Faith and Credit Clause if the issuing court made a jurisdictional determination that is itself entitled to *res judicata*. "The principles of *res judicata* apply to questions of jurisdiction as well as to other issues." *Underwriters Nat'l Assur.*

Co. v. N.C. Life & Acc. & Health Ins. Guar. Ass'n, 455 U.S. 691, 706 (1982) (quotation marks omitted). Thus, this Court has held that where "both parties were given full opportunity to contest the jurisdictional issues" and the judgment is "not susceptible to collateral attack in the courts of the State in which it was rendered ... the requirements of full faith and credit preclude the courts of a sister State from subjecting such a decree to collateral attack." *Coe v. Coe*, 334 U.S. 378, 384 (1948). This principle applies to any litigant who had the opportunity to contest jurisdiction, regardless of whether that litigant actually did: "A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding." *Underwriters*, 455 U.S. at 710.

B. The Alabama Supreme Court Should Have Given Full Faith and Credit to the Georgia Judgment.

The Alabama Supreme Court's decision violated this Court's Full Faith and Credit precedents in numerous respects.

First, the alleged error in the Georgia Superior Court's adoption order went to the merits, not to jurisdiction. Georgia law provides that superior courts have "exclusive jurisdiction in all matters of adoption," Ga. Code Ann. § 19-8-2(a), and the Alabama Supreme Court observed that it was "undisputed that Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 25a. Thus, the Georgia Superior Court plainly had the power to *adjudicate* the parties' adoption petition. That should have been the end of the matter for purposes of the Full Faith and Credit Clause. Whether the Superior Court's decision to *grant* V.L. an adoption was correct, or whether it was legally

required to strip E.L. of her parental rights as a condition for granting V.L. an adoption, is a classic argument that went to the merits of the case, not the power to decide it.

This Court's recent cases distinguishing "jurisdiction" from "merits" confirm that Georgia's provision for terminating an existing parent's rights is non-jurisdictional. As this Court has explained, "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional, then courts and litigants will be duly instructed and will not be left to wrestle with the issue. ... But when [the legislature] does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515-16 (2006) (footnote and internal quotation marks omitted). The Court has repeatedly applied that principle in recent years, holding that statutory preconditions to relief were non-jurisdictional. *See, e.g., Morrison v. Nat'l Australia Bank, Ltd.*, 561 U.S. 247, 253-54 (2010) (territorial requirement in securities fraud statute is non-jurisdictional); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271-72 (2010) (requirement that bankruptcy court find undue hardship before discharging student loan debt is non-jurisdictional); *Arbaugh*, 546 U.S. at 515-16 (15-employee requirement under Title VII is non-jurisdictional). Here, there is nothing approaching a clear statement in Georgia law establishing that terminating an existing parent's parental rights when a second person adopts her child is a jurisdictional prerequisite to granting an adoption. The Alabama Supreme Court had no basis for characterizing the Georgia Superior Court's decision as containing a jurisdictional defect.

Other features of Georgia law confirm that the Georgia Superior Court had jurisdiction to grant the adoption petition. As the dissent pointed out, Georgia law permits a Superior Court to continue a case, and even grant custody, *even if it concludes that the statutory requirements for an adoption are not met.* App. 41a & n.14. These provisions are irreconcilable with the view that the Georgia Superior Court lacked jurisdiction over the parties' petition for adoption. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause" (quotation marks omitted)).

Second, if the Alabama Supreme Court had any doubt as to whether the termination provision was jurisdictional or rather simply established a legal rule, it was constitutionally obligated to apply a *presumption* that the Georgia Superior Court had jurisdiction to grant V.L.'s adoption petition. It is undisputed that the Georgia Superior Court is a court of general jurisdiction that has "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 25a. Under the Full Faith and Credit Clause, it is therefore presumed to have had jurisdiction to grant an adoption to V.L. *Milliken*, 311 U.S. at 462.

Nothing in Georgia law comes close to undermining this presumption. Nothing in the Georgia Code states that termination of an existing parent's parental rights is a jurisdictional prerequisite to granting an adoption to a second parent. Nor has any court ever adopted such an interpretation of the Georgia Code. The Superior Court

judge in V.L.'s case certainly saw no jurisdictional impediment to granting the adoption; to the contrary, that court expressly concluded that it had the power to grant the petition without terminating E.L.'s parental rights. And there are no reported cases of any other Superior Court judges who have concluded they lack jurisdiction to grant such adoptions.

Nor is there any appellate authority in Georgia adopting such a holding. The Alabama Supreme Court relied on Justice Carley's dissent from denial of certiorari in *Wheeler v. Wheeler*, 642 S.E.2d 103 (Ga. 2007), in which a trial court *refused* to set aside an adoption by a second parent, and the Georgia Supreme Court denied discretionary review. App. 25a-27a. That dissent by definition did not obtain the votes of the majority of the court, and it acknowledged that "[t]here is not any appellate opinion addressing same-sex adoptions in Georgia, even though they have been permitted at the trial court level in certain counties." 642 S.E.2d at 104. Nor did Justice Carley suggest that the trial court lacked *jurisdiction* to grant the adoption; to the contrary, Justice Carley argued that the adoption was subject to challenge under Ga. Code Ann. § 9-11-60(d)(3) because it contained a "nonamendable defect," which under Georgia law, is an error on the *merits*. *See id.*; *compare* § 9-11-60(d)(3) (permitting collateral attack based on "nonamendable defect") *with* § 9-11-60(d)(1) (permitting collateral attack based on "[l]ack of jurisdiction over ... the subject matter").

The Alabama Supreme Court also relied on dicta in *Bates v. Bates*, 730 S.E.2d 482 (Ga. Ct. App. 2012). App. 27a. But in that case, the court *denied* a collateral challenge to an adoption similar to V.L.'s. The challenger had already filed one

unsuccessful collateral challenge to the adoption, and the Court of Appeals held that a second collateral challenge to the adoption was barred by *res judicata*. *Id.* at 486. The court made clear that it was "decid[ing] nothing in this case about whether Georgia law permits a 'second parent' adoption," *id.*, and certainly decided nothing about whether such adoptions are void for lack of jurisdiction.

In sum, there is no Georgia authority that would defeat the presumption that the Superior Court had jurisdiction to allow V.L. to adopt her children. The Alabama Supreme Court had no warrant to disregard the Georgia Superior Court's order based on its *de novo* examination of Georgia law.

Third, the Alabama Supreme Court's reasoning for its holding that the Georgia Superior Court lacked jurisdiction was indefensible under this Court's Full Faith and Credit precedents. The Alabama Supreme Court held that any failure to strictly apply every provision of a state's adoption law renders the adoption judgment void. In reaching this conclusion, the Alabama Supreme Court cited *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009), for the proposition that "[t]he requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents." App. 29a. It also cited an Alabama case holding that "[i]n Alabama, the right of adoption is purely statutory and in derogation of the common law." *Id.* Based on that authority, the Alabama Supreme Court held that a statutory error in granting an adoption deprived the granting court of jurisdiction.

This reasoning is flawed. The Alabama Supreme Court had no basis for transforming a requirement that a statute be construed strictly[2]—which is a principle of statutory interpretation—into a rule that a deviation from such a statute is a jurisdictional defect. Such a rule would dramatically expand the scope of permissible collateral attacks on out-of-state judgments, in direct contravention of the principles underlying the Full Faith and Credit Clause. It is exceedingly common for state courts to find that state statutes are in derogation of the common law, and must be strictly construed. *See, e.g., Shine v. Moreau*, 119 A.3d 1, 10 (R.I. 2015) (holding attorney fees recovery statutes had no common law analog, and therefore must be strictly construed); *Carlton v. State*, 816 N.W.2d 590, 605 (Minn. 2012) (holding that wrongful death statutes had no common law analog, and therefore must be strictly construed). Thus, the Alabama Supreme Court's reasoning would imply that *any* judgment based on *any* such claim is subject to collateral attack if the issuing court deviated from any statutory requirements. Such a holding would create a massive loophole in the Full Faith and Credit Clause.

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[2] Moreover, that requirement does not even apply to this case. *Marks* held: "The requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents, *because the application thereof results in the complete and permanent severance of the parental relationship.*" 684 S.E.2d at 367 (emphasis added). Thus, under *Marks*, the "strict construction" requirement does not apply to this case, because the very statutory defect that E.L. was complaining about was that the adoption judgment did *not* sever her parental relationship. Indeed, other Georgia courts have explained that the provisions of the Georgia Code which allow for third-party adoptions and stepparent adoptions, Ga. Code Ann. §§ 19-8-5(a) and 19-8-6, are to be *liberally* construed to meet their primary purpose of protecting their best interests. *See, e.g., In re J.S.G.*, 505 S.E.2d 70, 71 (Ga. Ct. App. 1998) (liberally construing stepparent adoption statute to find that former stepfather could petition alone to adopt stepchild even after he was no longer married to child's mother).

Even assuming the Alabama Supreme Court's ruling is confined to the adoption context, it reflects a misapplication of Full Faith and Credit principles. The Alabama Supreme Court's was premised on Georgia's strict-construction requirement, which applies to *all* Georgia adoptions. Thus, in effect, the Alabama Supreme Court held that *any* statutory defect in an adoption necessarily means that the rendering court lacked jurisdiction. This holding has no basis in law. Adoption judgments warrant the full protection of the Full Faith and Credit Clause. *See, e.g., Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007) (invalidating Oklahoma statute barring recognition of same-sex couple adoptions because such adoptions are entitled to full faith and credit). There is no legal or practical basis for singling out adoptions as uniquely unworthy of full faith and credit.

To the contrary, legislatures nationwide have consistently recognized that adoptions require *more* protection from collateral attacks than other types of judgments, in light of "the compelling public interest in the finality and certainty of judgments, ... an interest that is especially compelling with respect to judgments affecting familial relations." App. 19a (quoting *Bates*, 730 S.E.2d at 483). For example, Georgia has an adoption-specific provision barring even *jurisdictional* attacks on adoptions after six months. *See* Ga. Code Ann. § 19–8–18(e); *Williams v. Williams*, 717 S.E.2d 553 (Ga. Ct. App. 2011). Alabama similarly prohibits virtually any kind of attack on an adoption after one year has passed. Ala. Code § 26-10A-25(d). Most states have similar limitations on collateral attacks in adoption cases. *See* 2 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases* § 14:28 n.1, Westlaw (database

updated Nov. 2014) (collecting statutes). The Alabama Supreme Court's rule that statutory requirements for adoptions are automatically jurisdictional is not only legally baseless, but undermines the nationally-recognized public policy in ensuring the finality of adoptions.[3]

Fourth, even if the Georgia Superior Court's decision not to terminate E.L.'s parental rights could be characterized as a jurisdictional defect—which it cannot—the Alabama Supreme Court was *still* constitutionally barred from overturning the adoption order. This Court has repeatedly held that jurisdictional determinations, like any others, are entitled to full faith and credit. *See supra* at 15-16.

Here, the Alabama Supreme Court's should have given full faith and credit to the Georgia Superior Court's decision to exercise jurisdiction over V.L.'s adoption petition. The Georgia Superior Court specifically addressed the fact that E.L.'s parental rights were not being terminated, and expressly made the "conclusion[] of law" that "[i]t would be contrary to the children's best interest ... to either deny this adoption by the second parent or to terminate the rights of the legal and biological mother. The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births." App. 63a. It found that "[t]he Petitioner has complied with

[3] The Alabama Supreme Court concluded that Georgia's bar on collateral attacks did not apply to this case because it applied only when an adoption *complied* with statutory requirements—the precise situation in which it is not needed. App. 17a-23a. This reasoning was not only an exceedingly dubious interpretation of the Georgia statute, but it overlooked a critical point: given that Georgia and numerous other states have enacted statutes granting adoption *heightened* protection from collateral attack, it makes no sense to hold that any statutory defect in an adoption is a "jurisdictional" error that permits a collateral attack in the courts of any other state.

all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia." *Id.* Even if this determination could be characterized as "jurisdictional," the Alabama Supreme Court owed full faith and credit to the Georgia Superior Court's determination of its own jurisdiction. *Coe*, 334 U.S. at 384. E.L. did not raise her jurisdictional objection in the Georgia Superior Court; to the contrary, she affirmatively asked the court to grant the adoption. Thus, E.L. participated in the adoption and had every opportunity to raise the jurisdictional arguments she now raises, and her failure to raise these arguments in 2007 does not entitle her to raise them in 2015. *Underwriters*, 455 U.S. at 710 ("A party cannot escape the requirements of full faith and credit and res judicata by asserting its own failure to raise matters clearly within the scope of a prior proceeding.").

Further, the Georgia Supreme Court has repeatedly held that a prior judgment determining parental rights cannot be challenged later by a parent who participated in the prior litigation, even if the issuing court did not have subject matter jurisdiction, because the public interest in family stability requires finality of these judgments. *Amerson v. Vandiver*, 673 S.E.2d 850, 851 (Ga. 2009) (holding that where a father agreed to termination of his parental rights in a divorce proceeding, he could not move to set aside the order even though the Georgia Superior Court had no subject-matter jurisdiction to terminate parental rights in the context of a divorce); *Marshall v. Marshall*, 360 S.E.2d 572 (Ga. 1987) (holding that where husband participated as a plaintiff in a divorce action, he could not later argue that the court lacked subject-matter jurisdiction). Moreover, in *Bates*—a case cited by the Alabama Supreme Court

majority—the panel included a footnote strongly implying that Georgia law would prohibit a collateral attack on an adoption under circumstances indistinguishable from this case. 730 S.E.2d at 486 n.5 ("To some of us, it seems that the present attack upon the validity of that decree amounts to an attempt to play the courts for fools, and that is the sort of thing that judges ought not tolerate."); *see also id.* at 483 (noting that the "compelling public interest in the finality and certainty of judgments" may prevent a collateral attack based on jurisdiction (citing *Abushmais v. Erby*, 652 S.E.2d 549 (Ga. 2007)). The Alabama Supreme Court's decision to disturb an adoption that could not have been disturbed in the courts of Georgia was blatantly unconstitutional. *Underwriters*, 455 U.S. at 704 (under the Full Faith and Credit Clause, Alabama was required to give the Superior Court's judgment "the same credit ... which it had in the state where it was pronounced") (quotation marks omitted).

Finally, although the majority opinion in this case declined to reach E.L.'s argument that the Alabama Supreme Court could deny recognition of the Georgia judgment for public policy reasons, App. 30a-31a n.10, 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. Justice Parker's concurring opinion stated that the state "has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother." App. 38a. He relied on *Lofton*, in which the court upheld Florida's "codified prohibition on adoption by any homosexual person." *Id.*; *see Lofton*, 358 F.3d at 806-07 (quoting Fla. Stat. § 63.042(3)).

Yet there is no roving 'public policy exception' to the full faith and credit due *judgments*," and the "Full Faith and Credit Clause ordered submission ... even to [the] hostile policies reflected in the judgment of another State." *Baker*, 522 U.S. at 233 (quotation marks omitted, ellipses in original). It was impermissible for Justice Parker or any other member of the Court[4] to rely on these views as a basis to deny full faith and credit to a sister state's judgment.

II. THERE IS A REASONABLE PROBABILITY THIS COURT WILL GRANT CERTIORARI TO REVERSE THE ERRANT DECISION BELOW.

As the previous section explained, the decision below is clearly wrong. As explained below, there is a reasonable probability that this Court will grant certiorari to reverse that errant decision. The decision below is an unprecedented departure from foundational full faith and credit principles. Moreover, it has profound practical consequences that will warrant this Court's review.

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[4] Other members of the Alabama Supreme Court have expressed strong views on the public policy issues presented by this case. For instance, Chief Justice Moore, who joined the majority opinion, has previously opined that "the homosexual conduct of a parent ... creates a strong presumption of unfitness that alone is sufficient justification for denying that parent custody of his or her own children or prohibiting the adoption of the children of others." *Ex Parte H.H.*, 830 So. 2d 21, 26 (Ala. 2002) (Moore, C.J., concurring). He reasoned that "[h]omosexual conduct is, and has been, considered abhorrent, immoral, detestable, a crime against nature, and a violation of the laws of nature and of nature's God upon which this Nation and our laws are predicated. ... It is an inherent evil against which children must be protected." *Id.*; *cf. Ex parte State ex rel. Alabama Policy Institute*, No. 1140460, -- So. 3d --, 2015 WL 892752 (Ala. Mar. 3, 2015) (directing Alabama officials not to issue same-sex marriage licenses, even after federal district court invalidated Alabama's prohibition on same-sex marriage).

A. The Decision Below Is An Unprecedented Application Of The Full Faith and Credit Clause.

There is a reasonable probability the Court will grant certiorari because the decision below is a gross deviation from case law from this Court and other jurisdictions applying the Full Faith and Credit Clause, both to judgments generally and to adoptions specifically.

As explained above, this Court has made clear that the circumstances under which an out-of-state judgment may be disregarded are exceedingly narrow. Although collateral attacks based on lack of subject-matter jurisdiction are permitted under limited circumstances, courts are constitutionally barred from questioning the merits of out-of-state judgments, and constitutionally required to presume that courts of general jurisdiction possessed jurisdiction of cases before them. *Supra*, at 14-15. In light of these limitations, only two modern Supreme Court cases have authorized a collateral attack on a state-court judgment for lack of subject-matter jurisdiction: *Williams v. North Carolina*, 325 U.S. 226, 231 (1945), in which the Court upheld a collateral attack on a state-court divorce issued to a non-domiciliary because domicile is constitutionally required for divorce jurisdiction, and *Kalb v. Feuerstein*, 308 U.S. 433, 438-39 (1940), and *Kalb v. Feuerstein*, 308 U.S. 433, 438-39 (1940), in which this Court upheld a collateral attack on a state-court judgment on a claim that could be heard only in federal court.[5] Thus, *Williams* and *Kalb* held that the state court lacked subject-matter

[5] *Kalb* was technically not a full faith and credit case: it involved a collateral challenge to a Wisconsin judgment lodged in a Wisconsin state court. But the Court's holding, that under *federal* law the judgment was subject to collateral attack, would have applied to a collateral challenge brought in any state.

jurisdiction because it was the wrong *forum*: in *Williams* the divorce should have been issued by the court in the couple's home state, while in *Kalb* the judgment should have been issued by a federal court.

As in this Court, successful collateral attacks in lower courts on out-of-state judgments for lack of subject-matter jurisdiction are very rare. And attacks that have succeeded share a common thread: like in *Kalb* and *Williams*, in such cases, the courts have upheld the collateral attack on the ground that the rendering court lacked power to issue a judgment because that power was lodged in the courts of a different jurisdiction. *See, e.g.*, *Hawley v. Murphy*, 736 A.2d 268, 272 (Me. 1999) (denying full faith and credit to Connecticut order imposing a lien on real property in Maine); *Routh v. State, ex rel. Wyoming Workers' Compensation Div.*, 952 P.2d 1108, 1114-15 (Wyo. 1998) (holding that Wyoming courts, not Mississippi courts, had subject-matter jurisdiction over claims under the Wyoming Worker's Compensation Act); *Mack v. Mack*, 618 A.2d 744, 750 (Md. 1993) (holding that Maryland courts, not Florida courts, had subject-matter jurisdiction over child in Maryland); *Tennessee ex rel. Sizemore v. Surety Bank*, 200 F.3d 373, 380-81 (5th Cir. 2000) (refusing to grant full faith and credit to a Tennessee chancery court order that applied outside of Tennessee's territorial borders). These decisions are consistent with the ordinary understanding of subject-matter jurisdiction as regulating the power of a court to resolve a dispute.

Here, by contrast, it is undisputed that the Georgia Superior Court was the right forum to grant Georgia adoptions. Thus, the decision below appears to be unique—prior to the Alabama Supreme Court's decision, V.L. has been unable to identify a

single successful collateral attack based on subject-matter jurisdiction from a federal appellate or state supreme court that did not challenge the forum in which a judgment was rendered.

The Alabama Supreme Court's decision is also a stark departure from how courts have applied the obligation of Full Faith and Credit to adoptions. Courts uniformly hold that adoptions, like any other judgments, are entitled to full faith and credit regardless of whether they would have been authorized under the law of the forum state. *See, e.g.*, *In re Trust Created by Nixon*, 763 N.W.2d 404, 408-09 (Neb. 2009) (granting full faith and credit to adoption from sister state that would have violated local law); *Delaney v. First Nat. Bank in Albuquerque*, 386 P.2d 711, 714 (N.M. 1963) (same). Decisions invalidating out-of-state adoptions are extremely rare, and typically involve a finding that a parent was not notified of the proceeding, thereby raising due process concerns. *E.g.*, *Hersey v. Hersey*, 171 N.E. 815, 819 (Mass. 1930). V.L. has not identified any court applying a rule remotely similar to the Alabama Supreme Court's rule broadly authorizing collateral attacks on adoptions *whenever* the issuing court allegedly failed to strictly comply with a statutory provision.

In the context of adoptions involving same-sex couples, no prior court (other than courts reversed on appeal) has denied full faith and credit to an adoption from another jurisdiction. *See, e.g.*, *Russell v. Bridgens*, 647 N.W.2d 56, 60 (Neb. 2002) (in factually similar case, reversing decision denying full faith and credit to Pennsylvania adoption because there was insufficient evidence in the record that the Pennsylvania court

lacked jurisdiction);[6] *Henry v. Himes*, 14 F. Supp. 3d 1036, 1057-58 n.24 (S.D. Ohio 2014) (holding that out-of-state same-sex adoption was entitled to full faith and credit); *Embry v. Ryan*, 11 So. 3d 408 (Fla. 2d DCA 2009) (same) *Giancaspro v. Congleton*, No. 283267, 2009 WL 416301 (Mich. Ct. App. Feb. 19, 2009) (same); *Palazzolo v. Mire*, 10 So. 3d 748, 755 (La. Ct. App. 2009) (same).

The unprecedented nature of the Alabama Supreme Court's decision warrants this Court's review. The Full Faith and Credit Clause elevates comity principles to a constitutional requirement, and states have historically honored that requirement, granting full faith and credit even to decrees with which they disagreed. The Alabama Supreme Court circumvented that constitutional obligation by adopting a new understanding of "jurisdiction" that is completely unheard of in the long history of Full Faith and Clause jurisdiction. The stark departure of the decision below from historical Full Faith and Credit case law will fully justify granting certiorari.

B. The Decision Below Will Harm Alabama Families.

Finally, there is a reasonable probability that this Court will grant review in light of the severe practical consequences of the decision below on Alabama families.

The Alabama Supreme Court's decision yields the ultimate conflict of authority: directly conflicting court orders in two different states. The Georgia Superior Court's adoption order has never been overturned by any Georgia court and remains binding on

[6] Shortly after the Nebraska Supreme Court's opinion, the Pennsylvania Supreme Court held that Pennsylvania courts do have jurisdiction to grant this type of adoption. *In re Adoption of R.B.F.*, 803 A.2d 1195 (Pa. 2002).

Georgia officials,[7] so in Georgia, V.L. is the children's legally-recognized adoptive mother. Yet in Alabama, as a result of the decision below, V.L. is a legal stranger to her children. Moreover, V.L. is not the only parent in this situation: All Georgia orders that allowed an unmarried second parent to adopt without terminating the existing parent's rights are now void in Alabama, and so all such families are simultaneously recognized in Georgia and not recognized in Alabama.

This interstate inconsistency creates practical difficulties for families in this situation—consider the difficulties that a Georgia adoptive mother who works in Alabama will experience while filling out her taxes, or traveling with her child between states. Moreover, it also creates the risk of forum-shopping in child custody disputes. For instance, if an unmarried Georgia couple who obtained an adoption breaks up, the biological parent could avoid the effect of the adoption order by moving to Alabama and obtaining a declaration that the adoption is void. The risk of dueling parentage decrees and associated inter-state friction justifies this Court's review. *Cf. Webb v. Webb*, 451 U.S. 493, 494 (1981) (granting certiorari to resolve Full Faith and Credit issue because "because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child").[8]

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[7] It is unlikely that the Georgia Superior Court would be required to give full faith and credit to an Alabama order invalidating the Superior Court's own judgment *See Colby v. Colby*, 369 P.2d 1019, 1022 (Nev. 1962) (refusing to give full faith and credit to Maryland decision invalidating Nevada judgment).

[8] The Court ultimately dismissed the writ because the Full Faith and Credit issue had not been litigated in the lower courts, 451 U.S. at 501-02. That consideration does not apply here, as that issue was litigated and decided below.

Even setting aside these practical difficulties, the Alabama Supreme Court's decision will have a devastating effect on Alabama families who obtained similar adoptions in Georgia. Adoptive parents in this situation may not be eligible to register their children for school, to make medical decisions for their children, or to make innumerable decisions that parents take for granted. Worse, if the biological parent unexpectedly dies, the adoptive parent may not be able to take custody of her children—because the adoptive parent is now a legal stranger to her children in Alabama, the children will become legal orphans and wards of her state. If the adoptive parent dies, the child may not have the right to inherit, receive child's Social Security survivor benefits or worker's compensation benefits, or bring an action for wrongful death.

The Alabama Supreme Court's decision would warrant this Court's review even if it applied only to same-sex couples and others who obtained similar adoptions in Georgia. But it applies far more broadly than that. First, as explained above, the Court's reasoning was not specific to adoptions by an unmarried second parent; it establishes that *any* Georgia adoption that deviates from statutory requirements can be collaterally attacked in Alabama.

Second, the court's decision is not limited to Georgia judgments. The court cited Georgia case law holding that adoption is purely a matter of statute and that adoption statutes should be strictly construed. App. 29a (citing *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009)). But adoption is a purely statutory cause of action in all fifty states, and courts from other states routinely use language virtually identical to the language

in *Marks* on which the Alabama Supreme Court relied.[9] The Alabama Supreme Court's reasoning would therefore apply in indistinguishable form to *any* statutory defect in *any* adoption in *any* state—a point that the dissent made, App. 44a, and that the majority did not dispute.

Thus, under the Alabama Supreme Court's decision, if an adoptive parent lives in Alabama, *any* parent who regrets permitting a second parent to adopt her child, or even any parent whose parental rights were terminated in another state's adoption proceeding, could presumably attack an adoption in an Alabama circuit court. And if she can convince the circuit court that there was a deviation from statutory requirements—which, under the Alabama Supreme Court's decision, ranks as a "jurisdictional" defect—she could win. Permitting an adoption judgment to be collaterally attacked years after the fact is catastrophic for the children and parents affected.

The Alabama Supreme Court's decision will have a particularly adverse impact on same-sex couples. All fifty states have long recognized adoptions by married couples, as well as step-parent adoptions, in which a step-parent could adopt the child of his or her spouse. However, before marriage between same-sex couples became legal,

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[9] *See, e.g., S.J.S. v. T.D.L.*, No. 2014-CA-01901, 2015 WL 5223511, at *1 (Ky. Ct. App. Sept. 4, 2015); *In re Adoption of B.Y.*, 356 P.3d 1215, 1223 (Utah 2015); *In re Adoption of K.L.M.*, No. 15AP-118, 2015 WL 4656633, at *2 (Ohio Ct. App. Aug. 6, 2015); *In re J.C.J.*, 349 P.3d 491, at *3 (Kan. Ct. App. 2015) (unpublished table decision); *In re Adoption of K.M.*, 31 N.E.3d 533, 538 (Ind. Ct. App. 2015); *In re B.J.C.*, 163 So. 3d 905, 909-10 (La. Ct. App. 2015); *In re Noelia M.*, 121 A.3d 1, 17 (Conn. Super. Ct. 2014); *Brown v. Harper*, 761 S.E.2d 779, 780 (S.C. App. Ct. 2014); *In re T.S.D.*, 419 S.W.3d 887, 892 (Mo. Ct. App. 2014).

such adoptions were unavailable to same-sex couples. Thus, in many states (including Georgia), the only way that same-sex couples could ensure their joint parental rights was by one member of the couple becoming a parent (either biologically or through adoption), and then the second parent adopting the child, with the existing parent preserving parental rights. As a result, for *all* Georgia same-sex couples who adopted a child prior to *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the Alabama Supreme Court's decision strips those couples of the legal bonds tying both parents to their children if those families cross the Alabama state line. Moreover, the decision affects same-sex couples who adopted children outside Georgia as well, because the legal landscape in Georgia matches the landscape in many other states: trial courts have granted adoptions similar to that obtained by V.L., without any appellate authority expressly affirming the validity of such adoptions.[10] Thus, all families who obtained adoption judgments in those states may now have a parent whom Alabama courts may hold to be a legal stranger to her children in Alabama. In light of these serious consequences, there is a reasonable probability that the Court will grant review and reverse.

III. DENIAL OF A STAY WILL RESULT IN IRREPARABLE HARM

Without a stay, V.L. and her children will suffer irreparable injury. Unless this Court stays enforcement of the Alabama Supreme Court's decision, V.L. will be unable to have contact with the children during the pendency of her petition to this Court.

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[10] While such adoptions are granted to unmarried couples in the majority of states, only about ten states have expressly authorized such adoptions either by statute or case law. Thus, in most states, the state of the law is similar to Georgia: trial courts routinely grant them, but the state appellate courts have not ruled on their permissibility. *See generally* Leslie Harris, *Voluntary Acknowledgments of Parentage for Same-Sex Couples*, Am. U.J. Gender, Social Pol. & Law 467, 471-72 (2012).

During most of this litigation, V.L. had visitation rights. It was not until April 15, 2015, when the Alabama Supreme Court granted E.L.'s Petition for Certiorari and Motion to Stay Visitation pending consideration of her petition, that V.L.'s visitation ended.[11]

V.L. and her children, who have already been separated for several months because of the Alabama Supreme Court's orders, are facing continued separation that could last many more months or even over a year if the Court grants certiorari. V.L. has parented the children since their births in 2002 and 2004 and legally adopted them in 2007. V.L. took maternity leave from work in order to be with the children and was their primary caregiver when they were younger, from 2002 through 2009. The children have the same last name as V.L., and until April of this year, have enjoyed visitation with her with only brief interruptions since the end of E.L. and V.L.'s relationship in 2011.

There was no finding by any of the Alabama courts that allowing V.L. visitation rights would harm the children, and indeed the trial court ordered that she have visitation. Rather, the Alabama Supreme Court's judgment was based on that court's purely legal conclusion that the Georgia adoption was void. In issuing its Adoption Judgment, the Georgia court found that V.L. "has functioned as an equal second parent to the children, since their birth[s]," and that "[t]he children relate to both [E.L.] and [V.L.] on an equal basis." App. 62a. The court further found that "[t]he adoption is in the best interests of the children. It would be inconsistent with the reality of this parenting arrangement . . . . to deny the adoption by the second parent, which is with

[11] V.L.'s right to visitation was also stayed between October and December 2014 while the Alabama Court of Civil Appeals considered her petition for rehearing.

the express consent of the legal parent." App. 63a. Granting a stay so that the children can maintain contact with their second parent is, as the Georgia court found, in their best interests.

Absent a stay, the children will suffer continued instability and emotional and psychological harm by being separated from their adoptive mother. The separation resulting from the Alabama Supreme Court's ruling irreparably harms V.L. as well, because, as this Court has recognized, the children's interests are "inextricably linked with the parents' interest in and obligation for the welfare and health of the child . . . ." *Parham v. J.R.*, 442 U.S. 584, 600 (1989). V.L. is missing out on crucial periods of her children's lives, as they are on the cusp of adolescence. This is an important time in a child's life for parental guidance, and V.L. will never be able to regain this time with her children once it is lost. As this Court has recognized, severing a bond between parent and child is "'irretrievab[ly] destructive' of the most fundamental family relationship." *M.L.B. v. S.L.J.*, 519 U.S. 102, 121 (1996) (quotation marks omitted). A prolonged separation also inflicts serious irreparable harm to the parent-child relationship and the children. V.L. also experiences irreparable harm because of the harm her children will suffer.

Continuity of the parent-child attachment relationship, including the adoptive parent-child relationship, is essential to a child's healthy development and overall well-being. *See, e.g.*, Joseph Goldstein, Anna Freud, Albert J. Solnit, Beyond the Best Interests of the Child 27, 31-33 (1979). Secure attachments in childhood profoundly affect a child's ability to develop close relationships later in life. W. Andrew Collins &

L. Alan Sroufe, *Capacity for Intimate Relationships: Developmental Construction, in* THE DEVELOPMENT OF ROMANTIC RELATIONSHIPS IN ADOLESCENCE 125-27 (Wyndol Furman et al., eds., 1999). When a child's attached bond with a parent has been severed, the psychological impact can be dramatic. Children assume that they can depend on both parents and "[w]hen that assumption proves incorrect, a child may question many other assumptions about the world; for example, whether he or she can count on the availability of *any* parent." WILLIAM F. HODGES, INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS, AND PSYCHOTHERAPY 8 (2d ed. 1991). Children may even "conclude that a parent's absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly devastating experience." *Id.* at 9. Children depend on their parents for their physical, emotional, and psychological needs on a daily basis, and any significant disruption in this relationship can cause short-term and long-term effects. Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 Psychol. Pub. Pol'y & L. 5, 11 (2004).

This serious psychological and emotional harm can lead to permanent behavioral difficulties and damage the children's ability to form healthy relationships. *See* Goldstein, *supra*, at 33-34 (1979). Breaking this bond can transform a securely attached child into "[a]n insecurely attached person [who] will anticipate rejection, unpredictability, or even cruelty . . . [e]ven when reality does not indicate these outcomes." James X. Bembry & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 Child & Adolescent Soc.

Work J. 177, 182-83 (1999). This is particularly so in early adolescence, when children are experiencing so many rapid changes that separation from a parent causes a "pile up" effect, which is a "significant cause of increased stress and disorder." *Id.* at 179. *See also* Dyer, *supra*, at 11 (numerous empirical findings "provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships]").[12]

Similarly, this Court has recognized that even when children have already suffered harm, a stay is appropriate to avoid "exacerbat[ing] the deprivations already suffered and mitigate the efficacy of whatever relief eventually may be deemed appropriate." *Certain Named and Unnamed Non-Citizen Children and their Parents v. Texas*, 448 U.S. 1327, 1333 (1980). Here, an extended separation of the children from their parent seriously undermines the efficacy of any future court order reuniting them. A stay of the judgment below is the only way to protect V.L. and her children from continued irreparable harm that would result from her continued inability to maintain their relationship.

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[12] When a school-aged child's bonded attachment with a person who has functioned as his or her parent is severed, this can also lead to behavioral problems at school and with the law, putting a child "beyond the reach of educational influence," due to "resentment toward the adults who have disappointed them in the past." *See*, Goldstein, *supra*, at 34. Thus, severing an attachment can lead to anxiety, aggression, academic problems and psychopathology. Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 Early Child Development & Care 271, 274 (2005); James G. Byrne, Thomas G. O'Connor, Robert S. Marvin, William F. Whelan, *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. Child Psych. 115, 118 (2005). The research also demonstrates that a child experiences distress when an attachment bond is severed with a parental figure regardless of whether there is a biological connection between parent and child. *See, e.g.*, Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care*, 25 Infant Mental Health J. 379, 394 (2004) (explaining that children suffer greatly when separated from non-biological parent figures).

When deciding whether to grant a stay pending certiorari review, "in a close case it may be appropriate to 'balance the equities'—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers). Here, the balance of harms favors V.L. E.L. participated in and consented to V.L.'s adoption of their children, knowing that under both Alabama and Georgia law, an adoptive parent has an equal right to custody and visitation. Alabama Code § 26-10A-29(a) ("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."); Ga. Code § 19-8-19(a)(2) ("A decree of adoption creates the relationship of parent and child between each petitioner and the adopted individual, as if the adopted individual were a child of biological issue of that petitioner."). She invited V.L. to assume an equal parental role from the children's birth, willingly ceding her exclusive parental authority and encouraging the children to bond with and depend upon V.L. as a parent. Indeed, E.L. represented to the Georgia court that she intended for V.L. to be an equal parent to the children, and that she consented to V.L.'s adoption of the children. App. 62a-63a. Having established and encouraged V.L.'s relationship with their children for many years, she cannot now claim that she would be harmed by the continuation of visitation pending this Court's resolution of the petition for certiorari. A stay of the Alabama Supreme Court Order would merely preserve the visitation arrangement that was in place during this case until April 15, 2015, when the Alabama Supreme Court stayed visitation pending appeal.

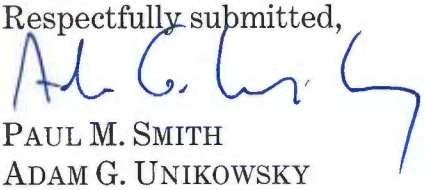
Finally, the public interest favors a stay. The Georgia Superior Court found that "[t]he evidence is clear and convincing that the adoption is in the children's best interest," and that there was no contrary evidence in the record. App. 63a. The Guardian ad Litem – appointed to protect the children's best interest – concluded that V.L. should have visitation. There is a strong public interest in the children's welfare.

In view of the irreparable harm caused by V.L.'s forced separation from her children, the Court should stay the judgment below.

CONCLUSION

The application for recall and stay of the Certificate of Judgment should be granted.

Respectfully submitted,



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November 16, 2015

No. ____

IN THE

Supreme Court of the United States

V.L.,

Petitioner,

v.

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

Respondents.

CERTIFICATE OF SERVICE

I, Adam G. Unikowsky, hereby certify that I am a member of the Bar of this Court, and that I have this 16th day of November 2015, caused one copy of the Application For Recall And Stay Of Certificate Of Judgment Of Alabama Supreme Court to be served via overnight mail and an electronic version of the document to be transmitted via electronic mail to:

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Adam G. Unikowsky

APPENDIX

IN THE SUPREME COURT OF ALABAMA

October 23, 2015

1140595

Ex parte E.L. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: E.L. v. V.L.) (Jefferson Family Court: CS-13-719; Civil Appeals: 2130683).

ORDER

The Joint Motion for Stay of Enforcement of Judgment Pending Consideration of Petition for Writ of Certiorari filed by V.L. and Tobie J. Smith on September 30, 2015, having been submitted to this Court,

IT IS ORDERED that the Joint Motion for Stay of Enforcement of Judgment Pending Consideration of Petition for Writ of Certiorari is hereby DENIED.

Moore, C.J., and Stuart, Bolin, Parker, Murdock, Shaw, Main, and Wise, JJ., concur.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 23rd day of October, 2015.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

cc:
Anne Lamkin Durward
Randall W. Nichols
Heather Fann
Catherine Sakimura
Traci Owen Vella

IN THE SUPREME COURT OF ALABAMA

October 23, 2015

Michael Stuart Nissenbaum
Breauna R. Peterson
Tobie J. Smith
Herbert Francis Young, Jr.
Bryant Andrew Whitmire, Jr.

IN THE SUPREME COURT OF ALABAMA

October 13, 2015

1140595 Ex parte E.L. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: E.L. v. V.L.) (Jefferson Family Court: CS-13-719; Civil Appeals : 2130683).

CERTIFICATE OF JUDGMENT

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on September 18, 2015:

Reversed And Remanded.

PER CURIAM - Moore, C.J., and Stuart, Bolin, Main, and Wise, JJ., concur. Parker, J., concurs specially. Murdock, J., concurs in the result. Shaw, J., dissents.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 13th day of October, 2015.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

REL@ 09/18/2015

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2015

1140595

Ex parte E.L.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS

(In re: E.L.

v.

V.L.)

(Jefferson Family Court, CS-13-719; Court of Civil Appeals, 2130683)

PER CURIAM.

This Court granted the petition filed by E.L. seeking certiorari review of the judgment entered by the Court of Civil Appeals affirming the judgment entered by the Jefferson Family Court insofar as that judgment recognized and gave effect to an adoption decree entered by the Superior Court of Fulton County, Georgia ("the Georgia court"), approving the adoption by V.L., E.L.'s former same-sex partner, of E.L.'s biological children, S.L., N.L., and H.L. (hereinafter referred to collectively as "the children"). We reverse and remand.

I.

E.L. and V.L. were involved in a relationship from approximately 1995 through 2011. During the course of that relationship, they maintained a residence in Hoover. In December 2002 E.L. gave birth to S.L., and in November 2004 E.L. gave birth to twins, N.L. and H.L. All births were achieved through the use of assisted-reproductive technology. It is undisputed that, following the births of the children, V.L. acted as a parent to them, and, consistent with that fact, the parties eventually made the joint decision to take legal action to formalize and to protect the parental role

V.L. had undertaken. V.L. explained this decision as follows in an affidavit filed with the Jefferson Family Court after initiating this action:

> "We began researching second-parent and co-parent adoptions. We had heard through friends that Fulton County, Georgia, was receptive to same-sex parents seeking such. I could not find an attorney in Birmingham that had any knowledge of such or that was very helpful. In the fall of 2006 we met with an attorney in Atlanta, Georgia, to seek legal advice. We were informed that I needed to be a resident of the state of Georgia, specifically Fulton County, for at least six (6) months to petition for adoption in Fulton County. E.L. spoke with a friend from college ... that lives in Atlanta and her friend's mother owned a house in Alpharetta. We went to Atlanta and looked over the home and spent time with [E.L.'s] friend and her family, including [the friend's] mother. [The friend's] mother ... offered up her house for rent to us. [E.L.] and I both signed a lease for the Alpharetta residence on October 1, 2006. I submitted fingerprints to the FBI which were obtained in Alpharetta on January 25, 2007, also part of the adoption process. A background check request was submitted using the Alpharetta address. On March 26, 2007, a home study was done at the address in Georgia; per my attorney this was a requirement for petitioning for adoption. Our family of five (5) was all present."

E.L. does not dispute these basic facts; however, she states in her own affidavit filed with the Jefferson Family Court that, although the parties leased the Alpharetta house, they never spent more than approximately two nights in it, instead

continuing to live at their Hoover residence and to work at their jobs in Alabama.

On April 10, 2007, V.L. filed in the Georgia court a petition to adopt the children. E.L. subsequently filed with the Georgia court a document labeled "parental consent to adoption" in which she stated that she consented to V.L.'s adopting the children and that, although she was not relinquishing or surrendering her own parental rights, she desired that the requested adoption would "have the legal result that [V.L.] and [the children] will also have a legal parent-child relationship with legal rights and responsibilities equal to mine through establishment of their legal relationship by adoption." On May 30, 2007, the Georgia court entered its final decree of adoption ("the Georgia judgment") granting V.L.'s petition and declaring that "[V.L.] shall be permitted to adopt [the children] as her children." New birth certificates were subsequently issued for the children listing V.L. as a parent.

In approximately November 2011, E.L. and V.L. ended their relationship, and, in January 2012, V.L. moved out of the house E.L. and V.L. had previously shared. On October 31,

2013, V.L. filed a petition in the Jefferson Circuit Court alleging that E.L. had denied her access to the children and had interfered with her ability to exercise her traditional and constitutional parental rights. Accordingly, she asked the court to register the Georgia judgment, to declare her legal rights pursuant to the Georgia judgment, and to award her some measure of custody of or visitation with the children. The matter was transferred to the Jefferson Family Court, and E.L. subsequently moved that court to dismiss V.L.'s petition on multiple grounds. Both parties subsequently filed additional memoranda and the above-referenced affidavits regarding E.L.'s motion to dismiss.

On April 3, 2014, the Jefferson Family Court denied E.L.'s motion to dismiss, without a hearing, and simultaneously awarded V.L. scheduled visitation with the children. On April 15, 2014, the Jefferson Family Court entered an additional order noting that all other relief requested by the parties was denied and that the court considered the case closed. E.L. promptly moved the court to alter, amend, or vacate its judgment; however, on May 1, 2014, that motion was denied by operation of law, and, on May 12,

2014, E.L. filed her notice of appeal to the Court of Civil Appeals.[1]

Before the Court of Civil Appeals, E.L. argued (1) that the Jefferson Family Court lacked subject-matter jurisdiction to rule on V.L.'s petition; (2) that the Georgia court lacked subject-matter jurisdiction to enter the Georgia judgment; (3) that the Jefferson Family Court should have refused to recognize and to enforce the Georgia judgment for public-policy reasons; and (4) that the Jefferson Family Court denied her due process inasmuch as it awarded V.L. visitation rights without holding an evidentiary hearing at which E.L. could be heard. On February 27, 2015, the Court of Civil Appeals released its opinion rejecting the first three of these arguments, but holding that the Jefferson Family Court had erred by awarding V.L. visitation without conducting an evidentiary hearing. E.L. v. V.L., [Ms. 2130683, Feb. 27, 2015] ___ So. 3d ___, ___ (Ala. Civ. App. 2015). Accordingly, the judgment of the Jefferson Family Court was reversed and

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[1]Rule 1(B), Ala. R. Juv. P., provides that a postjudgment motion in a juvenile case is denied by operation of law if not ruled upon within 14 days of its filing unless specific steps outlined in the rule are taken to extend that period. No attempt was made to extend the 14-day period in this case.

the case remanded for the Jefferson Family Court to conduct an evidentiary hearing before deciding the visitation issue; however, the implicit finding in the judgment of the Jefferson Family Court that the Georgia judgment was valid and subject to enforcement in Alabama was upheld. See E.L. v. V.L., ___ So. 3d at ___ ("At oral argument, the parties all agreed that, in its judgment, the family court impliedly enforced the Georgia judgment by recognizing V.L.'s right to visitation as an adoptive parent of the children.").

On March 11, 2015, E.L. petitioned this Court for a writ of certiorari to review the Court of Civil Appeals' affirmance of the judgment of the Jefferson Family Court to the extent that judgment recognized and enforced the Georgia judgment. On April 15, 2015, we granted E.L.'s petition seeking certiorari review and set the briefing schedule for the parties.[2]

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[2]V.L. and E.L. subsequently filed briefs in support of their positions, as did the guardian ad litem appointed to represent the children, who filed a brief urging this Court to affirm the judgment of the Court of Civil Appeals. We also granted the subsequent motion filed by the American Academy of Adoption Attorneys, Inc., and the Georgia Council of Adoption Lawyers, Inc., requesting permission to file an amicus brief based on their interest in the subject matter of this appeal, and we have received their joint brief in support of V.L. urging us to affirm the judgment of the Court of Civil

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II.

The issues raised by E.L. in this appeal regarding the effect and validity Alabama courts should afford the Georgia judgment are purely issues of law. Accordingly, we review those issues de novo. Ex parte Byrom, 47 So. 3d 791, 794 (Ala. 2010). We emphasize, however, that our review of those issues does not extend to a review of the legal merits of the Georgia judgment, because we are prohibited from making any inquiry into the merits of the Georgia judgment by Art. IV, § 1, of the United States Constitution ("the full faith and credit clause").[3] Pirtek USA, LLC v. Whitehead, 51 So. 3d 291, 296 (Ala. 2010). We further "note that '[t]he validity and effect of a foreign judgment, of course, are to be determined by the law of the state in which it was rendered.'" Orix Fin. Servs., Inc. v. Murphy, 9 So. 3d 1241, 1244 (Ala. 2008) (quoting Morse v. Morse, 394 So. 2d 950, 951 (Ala. 1981)).

Appeals.

[3]Article IV, § 1, of the United States Constitution provides, in pertinent part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

III.

The gravamen of E.L.'s appeal is that the Jefferson Family Court erred by recognizing and enforcing the Georgia judgment. When considering such a claim -- whether a foreign judgment should be enforced in this State -- we are guided by the principle that we generally accord the judgment of another state the same respect and credit it would receive in the rendering state. This principle stems from the full faith and credit clause and was explained as follows by Chief Justice John Marshall in Hampton v. McConnel, 16 U.S. (3 Wheat.) 234, 235 (1818):

> "[T]he judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court in the United States."

The courts of this State have consistently applied the full faith and credit clause in this manner. See, e.g., Ohio Bureau of Credits, Inc. v. Steinberg, 29 Ala. App. 515, 519, 199 So. 246, 249 (1940) (stating that "the duly attested record of the judgment of a State court is entitled to such faith and credit in every court within the United States as by

law or usage it had in the State from which it is taken"), and Pirtek, 51 So. 3d at 295 (stating that "'Alabama courts are generally required to give a judgment entitled to full faith and credit at least the res judicata effect accorded in the rendering court's jurisdiction'" (quoting Menendez v. COLSA, Inc., 852 So. 2d 768, 771 (Ala. Civ. App. 2002))).

Traditionally, Alabama courts generally have applied the full faith and credit clause so as to limit their review of foreign judgments to whether the rendering court had jurisdiction to enter the judgment sought to be domesticated. This is likely because the question of a court's jurisdiction over the subject matter or parties is one of the few grounds upon which a judgment may be challenged after that judgment has become final and any available appellate remedies exhausted. See, e.g., McDonald v. Lyle, 270 Ala. 715, 718, 121 So. 2d 885, 887 (1960) ("Where it appears on the face of the record that a judgment is void, either from want of jurisdiction of the subject matter or of the defendant, it is the duty of the court, on application by a party having rights and interests immediately involved, to vacate the judgment or decree at any time subsequent to its rendition." (citing

Sweeney v. Tritsch, 151 Ala. 242, 44 So. 184 (1907), and Griffin v. Proctor, 244 Ala. 537, 14 So. 2d 116 (1943))).[4]

In this case, E.L. relies on this principle and argues that this Court should hold that the Georgia judgment is unenforceable in Alabama because, she argues, the Georgia court lacked subject-matter jurisdiction to issue the Georgia judgment based on the facts (1) that Georgia law does not provide for so-called "second parent adoptions"[5] and (2) that V.L. was not, E.L. alleges, a bona fide resident of Georgia at the time of the adoption. However, E.L. argues in the alternative that, even if we conclude that the Georgia court was not lacking subject-matter jurisdiction when it issued the Georgia judgment, we should not enforce the Georgia judgment

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[4]Of course, in certain circumstances the lack of personal jurisdiction may be waived; however subject-matter jurisdiction may never be waived. Campbell v. Taylor, 159 So. 3d 4, 11 (Ala. 2014).

[5]"A 'second parent' adoption apparently is an adoption of a child having only one living parent, in which that parent retains all of her parental rights and consents to some other person -- often her spouse, partner, or friend -- adopting the child as a 'second parent.' See Butler v. Adoption Media, LLC, 486 F. Supp. 2d 1022, 1044 ... (N.D. Cal. 2007) (describing 'second parent' adoption under California law)." Bates v. Bates, 317 Ga. App. 339, 340 n. 1, 730 S.E.2d 482, 483 n. 1 (2012). The Bates court further noted that "[t]he idea that Georgia law permits a 'second parent' adoption is a doubtful one." 317 Ga. App. at 341, 730 S.E.2d at 484.

because, E.L. argues, doing so would be contrary to Alabama's public policy.

In response, V.L. argues (1) that the Georgia court had subject-matter jurisdiction to issue the Georgia judgment even if Georgia law does not provide for second-parent adoptions or even if V.L. was not a bona fide resident of Georgia at the time of the adoption;[6] (2) that the Georgia judgment should be enforced even if the Georgia court lacked subject-matter jurisdiction because, V.L. argues, Georgia Code Ann., § 19-8-18(e), bars any challenge to adoption decrees filed more than six months after the decree is entered; and (3) there is no public-policy exception to the full faith and credit clause.

Georgia Code Ann., § 9-11-60, sets forth the circumstances in which a Georgia court will not enforce one of its judgments, stating, in relevant part:

> "(d) Motion to set aside. A motion to set aside may be brought to set aside a judgment based upon:
>
> "(1) Lack of jurisdiction over the person or the subject matter;

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[6]V.L. does not concede that Georgia law does not allow second-parent adoptions or that she failed to comply with the residence requirements of the Georgia adoption statutes.

> "(2) Fraud, accident, or mistake or the acts of the adverse party unmixed with the negligence or fault of the movant; or
>
> "(3) A nonamendable defect which appears upon the face of the record or pleadings. Under this paragraph, it is not sufficient that the complaint or other pleading fails to state a claim upon which relief can be granted, but the pleadings must affirmatively show no claim in fact existed.
>
> "....
>
> "(f) Procedure; time of relief. Reasonable notice shall be afforded the parties on all motions. Motions to set aside judgments may be served by any means by which an original complaint may be legally served if it cannot be legally served as any other motion. A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time. Motions for new trial must be brought within the time prescribed by law. In all other instances, all motions to set aside judgments shall be brought within three years from entry of the judgment complained of."

Because the current legal proceedings were initiated over six years after the Georgia judgment was entered, the only ground in § 9-11-60 upon which a Georgia court might possibly decide not to enforce the Georgia judgment is that set forth in subsection (d)(1) -- lack of jurisdiction over the person or the subject matter.[7] It is undisputed in this case that E.L.

[7]Although E.L. suggests that V.L. committed a fraud upon the court by claiming to be a Georgia resident when she was

and V.L. willingly appeared with the children before the Georgia court, so personal jurisdiction is not disputed; thus, lack of subject-matter jurisdiction is the only possible ground a Georgia court could have for not enforcing the Georgia judgment.

However, V.L. argues that a Georgia court would enforce the Georgia judgment even if there is a lack of subject-matter jurisdiction because of the nature of the judgment -- an adoption decree -- and the fact that it was rendered over six years ago. In support of this argument, she cites § 19-8-18(e), Georgia Code Ann., which provides that "[a] decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." (Emphasis added.) In Williams v. Williams, 312 Ga. App. 47, 47-48, 717 S.E.2d 553, 553-54 (2011), the Georgia Court of

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not, such a claim would entitle her to relief from the Georgia judgment only to the extent that it implicates the subject-matter jurisdiction of the Georgia court. Section 9-11-60(d)(2) provides that a judgment may be set aside for fraud only if the party seeking to set aside the judgment is free from fault, and subsection (f) provides that a judgment may be challenged on the basis of fraud only within three years of its entry. E.L. was a willing participant in any fraud, and it is undisputed that no challenge was made to the Georgia judgment for more than six years after it was entered.

Appeals held that § 19-8-18(e) barred even a jurisdictional challenge to an adoption decree if that challenge was filed outside that six-month period, notwithstanding the general rule in § 9-11-60, Georgia Code Ann., that a judgment may be challenged on jurisdictional grounds at any time:

> "Notwithstanding OCGA [Official Code of Georgia Annotated] § 19-8-18(e)'s plain language, the trial court held that the Code section did not bar [the appellee's] challenge to the adoption decree, on the ground that the challenge was brought under OCGA § 9-11-60, which allows for a judgment void for lack of jurisdiction to be attacked 'at any time' through a motion to set aside. OCGA § 9-11-60(f). See generally Burch v. Dines, 267 Ga. App. 459, 461(2), 600 S.E.2d 374 (2004) (invalidity of service can give rise to lack of personal jurisdiction). But for purposes of statutory interpretation, 'a specific statute will prevail over a general statute, absent any indication of a contrary legislative intent, to resolve any inconsistency between them.' (Citation and punctuation omitted.) Marshall v. Speedee Cash of Ga., 292 Ga. App. 790, 791, 665 S.E.2d 888 (2008). In this case, OCGA § 19-8-18(e) is the more specific statute because it addresses when a particular type of judgment -- an adoption decree -- may be attacked, while OCGA § 9-11-60(f) addresses when judgments in general may be attacked. Neither statute contains language indicating a legislative intent that a motion to set aside under OCGA § 9-11-60 for lack of jurisdiction is an exception to the specific prohibition in OCGA § 19-8-18(e) against 'any judicial challenge' to an adoption decree."

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The Georgia Court of Appeals subsequently explained the rationale underpinning § 19-8-18(e) in Bates v. Bates, 317 Ga. App. 339, 339-40, 730 S.E.2d 482, 483 (2012), stating:

> "Under Georgia law, a judgment entered by a court without jurisdiction is void, Carpenter v. Carpenter, 276 Ga. 746, 747(1), 583 S.E.2d 852 (2003), and generally speaking, such a judgment 'may be attacked in any court, by any person, at any time.' James v. Intown Ventures, 290 Ga. 813, 816(2) n. 5, 725 S.E.2d 213 (2012). See also Cabrel v. Lum, 289 Ga. 233, 235(1), 710 S.E.2d 810 (2011) ('[A] judgment void for lack of personal or subject-matter jurisdiction may be attacked at any time.'). But in some circumstances, these principles must yield to competing principles that derive from the compelling public interest in the finality and certainty of judgments, see Abushmais v. Erby, 282 Ga. 619, 622(3), 652 S.E.2d 549 (2007), an interest that is especially compelling with respect to judgments affecting familial relations. See Amerson v. Vandiver, 285 Ga. 49, 50, 673 S.E.2d 850 (2009)."

See also Abushmais v. Erby, 282 Ga. 619, 622, 652 S.E.2d 549, 552 (2007) (explaining that parties may not "confer subject-matter jurisdiction on a court by agreement or waive the defense [of a lack of subject-matter jurisdiction] by failing to raise it in the trial court" but that, "[u]nder limited circumstances, the equitable defenses of laches and estoppel may prevent a party from complaining of a court's lack of subject-matter jurisdiction"). It is evident from

these decisions of the Supreme Court of Georgia and the Georgia Court of Appeals that a Georgia court will generally not entertain a challenge to a Georgia adoption decree based even on an alleged lack of subject-matter jurisdiction if that challenge is made more than six months after the challenged decree is entered.

E.L. nevertheless argues that § 19-8-18(e) does not apply in this case because, she argues, the statute by its terms applies only to adoption decrees issued pursuant to § 19-8-18(b), which provides:

> "If the court is satisfied that each living parent or guardian of the child has surrendered or had terminated all his rights to the child in the manner provided by law prior to the filing of the petition for adoption or that each petitioner has satisfied his burden of proof under Code Section 19-8-10, that such petitioner is capable of assuming responsibility for the care, supervision, training, and education of the child, that the child is suitable for adoption in a private family home, and that the adoption requested is for the best interest of the child, it shall enter a decree of adoption, terminating all the rights of each parent and guardian to the child, granting the permanent custody of the child to each petitioner, naming the child as prayed for in the petition, and declaring the child to be the adopted child of each petitioner. In all cases wherein Code Section 19-8-10 is relied upon by any petitioner as a basis for the termination of parental rights, the court shall include in the decree of adoption appropriate

> findings of fact and conclusions of law relating to the applicability of Code Section 19-8-10."

E.L. argues that the Georgia court failed to comply strictly with all the requirements of § 19-8-18(b) in this case inasmuch as the Georgia judgment failed to "terminat[e] all the rights of each parent and guardian to the child[ren]." In other words, E.L. argues that the Georgia judgment was not issued pursuant to § 19-8-18(b) -- and thus is not subject to the bar of § 19-8-18(e) -- because it did not terminate her own parental rights. Both the guardian ad litem and the amici curiae argue in their briefs that, regardless of the failure of the Georgia court to terminate E.L.'s parental rights in the Georgia judgment, the Georgia judgment was nonetheless issued pursuant to § 19-8-18(b) because all decrees of adoption in Georgia are issued pursuant to § 19-8-18(b) -- there is, they argue, no other statute under which a Georgia adoption decree can issue.

The Supreme Court of Georgia as a whole has not specifically addressed this issue; however, in Wheeler v. Wheeler, 281 Ga. 838, 642 S.E.2d 103 (2007), a similar case involving a biological mother's attempt to void a second-parent adoption granted her same-sex ex-partner, that court,

without issuing an opinion, denied a petition for the writ of certiorari filed by the biological mother challenging the Georgia Court of Appeals' decision not to consider her discretionary appeal of the trial court's order denying her petition to void the adoption. However, in a dissenting opinion Justice Carley addressed the argument E.L. now makes:

> "[The adoptive mother] argues that the motion to set aside is time-barred by OCGA [Official Code of Georgia Annotated] § 19-8-18(e), although the trial court did not rely on that statute. It reads as follows: 'A decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree.' OCGA § 19-8-18(e). Subsection (b) provides for the entry of a decree terminating all parental rights in those cases where the rights of each living parent or guardian have been surrendered or terminated, or where termination of parental rights is appropriate pursuant to OCGA § 19-8-10. As previously noted, however, subsection (b) obviously does not apply here, because neither surrender nor termination of [the biological mother's] rights was ever sought or accomplished, and the trial court entered a decree specifically preserving her rights. Because subsection (b) is inapplicable, the six-month limitation in subsection (e) clearly does not bar the motion to set aside."

281 Ga. at 841, 642 S.E.2d at 105 (Carley, J., dissenting). We agree with the analysis of Justice Carley and his conclusion that the six-month bar in § 19-8-18(e) should not apply in the current situation. Having concluded that his is

the proper analysis of § 19-8-18(b) and § 19-8-18(e), we can only assume that a Georgia court would make the same conclusion and, by extension, would permit a challenge on jurisdictional grounds to an adoption decree that did not fully comply with § 19-8-18(b).[8]

We must therefore consider whether, in fact, E.L. has asserted an argument that actually puts the subject-matter jurisdiction of the Georgia court into question. She asserts that the Georgia court lacked subject-matter jurisdiction to issue the Georgia judgment for two reasons -- because it purported to effect a second-parent adoption in which a living parent's parental rights were not terminated and because V.L. allegedly was not a bona fide Georgia resident at the time of the judgment; however, V.L. argues that these arguments in

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[8]Although Justice Carley's analysis of § 19-8-18(b) and § 19-8-18(e) was offered in a special writing dissenting from the majority's decision not to grant certiorari review in Wheeler, the majority did not issue an opinion explaining its rationale for denying the petition for the writ of certiorari, and, accordingly, it cannot be presumed that the majority's decision was premised on a contrary analysis of § 19-8-18(b) and § 19-8-18(e). See Wheeler, 281 Ga. at 838-39, 642 S.E.2d at 103 (Carley, J., dissenting) ("'With no explanation accompanying the majority's denial of the motion to dismiss, I am left to conjecture.'" (quoting Perdue v. Baker, 276 Ga. 822, 823-24, 586 S.E.2d 303, 304 (2003) (Benham, J., dissenting))).

fact implicate only the merits of the Georgia judgment, and not the Georgia court's subject-matter jurisdiction, and the arguments are therefore, V.L. argues, barred by the full faith and credit clause, which "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." Milliken v. Meyer, 311 U.S. 457, 462 (1940). The Supreme Court of the United States explained this distinction between a subject-matter-jurisdiction challenge and a merit-based challenge in Fauntleroy v. Lum, 210 U.S. 230, 234-35 (1908):

> "No doubt it sometimes may be difficult to decide whether certain words in a statute are directed to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty, of the court. Under the common law it is the duty of a court of general jurisdiction not to enter a judgment upon a parol promise made without consideration; but it has power to do it, and, if it does, the judgment is unimpeachable, unless reversed. Yet a statute could be framed that would make the power, that is, the jurisdiction, of the court, dependent upon whether there was a consideration or not. Whether a given statute is intended simply to establish a rule of substantive law, and thus to define the duty of the court, or is meant to limit its power, is a question of construction and common sense. When it affects a court of general jurisdiction, and deals with a matter upon which that court must pass, we naturally are slow to read ambiguous words as meaning to leave

> the judgment open to dispute, or as intended to do more than to fix the rule by which the court should decide."

In this case, 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. Indeed, Georgia Code Ann., § 19-8-2, subtitled "jurisdiction and venue," provides:

> "(a) The superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption, except such jurisdiction as may be granted to the juvenile courts."

E.L., however, argues that the Georgia court could properly exercise subject-matter jurisdiction only when the requirements of the Georgia adoption statutes are met, and, in this case, they were not, she argues, because those statutes make no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents. E.L.'s argument regarding the Georgia adoption statutes appears to be correct, as illustrated by Justice Carley's explanation of those statutes in his dissenting opinion in Wheeler:

> "Under certain conditions, a child who has only one living parent 'may be adopted by the spouse of that parent ....' OCGA [Official Code of Georgia

> Annotated] § 19-8-6(a)(2). See also In re C.N.W., [274 Ga. 765, 768, 560 S.E.2d 1, 1 (2002)]. However, [the same-sex ex-partner] is not the spouse of [the biological mother], as '[m]arriages between persons of the same sex are prohibited in this state.' OCGA § 19-3-3.1(a). See also Ga. Const. of 1983, Art. I, § IV, Par. I(a) (approved in 2004); In the Interest of Angel Lace M., [184 Wis. 2d 492, 507, 516 N.W.2d 678, 682 (1994)]. Under OCGA §§ 19-8-5(a) and 19-8-7(a), a third party who is not a stepparent, such as [the same-sex ex-partner], may adopt the child only if the parent's rights are surrendered, or are terminated pursuant to OCGA § 19-8-10. However, neither the surrender nor termination of [the biological mother's] parental rights was ever sought or ordered. Instead, the adoption petition was based on [the biological mother's] consent to the adoption, wherein she expressly refused to relinquish or surrender her parental rights, and the trial court declared that the child would have 'two legal parents' and awarded permanent custody to both. OCGA § 19-8-19(a)(1) specifically proscribes such an order: 'Except with respect to a spouse of the petitioner and relatives of the spouse, a decree of adoption terminates all legal relationships between the adopted individual and his relatives, including his parent....' 'If the legislature had intended to sanction adoptions by nonmarital partners, it would not have mandated this "cut-off" of ["all legal relationships"] of the birth parents in these adoptions.' In the Interest of Angel Lace M., supra at 683."[9]

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[9]We note that V.L. has not argued in this case that she was the spouse of E.L. and thus entitled to adopt the children on that basis. To the contrary, she asserts in her brief to this Court that

> "this case has nothing to do with marriage. V.L. is not a stepparent and was permitted to adopt as an unmarried person. Recognizing V.L.'s adoption and treating her like any other adoptive parent does not

281 Ga. at 840, 642 S.E.2d at 104. See also Bates, 317 Ga. App. at 341, 730 S.E.2d at 484 ("The idea that Georgia law permits a 'second parent' adoption is a doubtful one ... and the arguments that [the appellant] presses about the validity of a decree that purports to recognize such an adoption might well have some merit."). We further note that our own Court of Civil Appeals considered this issue when this case was before it and concluded that "[its] independent review of the Georgia Adoption Code fully supports Justice Carley's position." E.L. v. V.L., ___ So. 3d at ___.

Having now conducted our own analysis of the Georgia adoption statutes, we echo the conclusion of Justice Carley and the Court of Civil Appeals that Georgia law makes no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents. It is undisputed that a termination of E.L.'s parental rights did not occur in this case; thus, it would appear to be undisputed that the Georgia court erred by entering the Georgia judgment

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> involve or require recognizing the parties' marriage in any way; as a legal matter, the two are completely unrelated."

V.L.'s brief, at p. 7.

by which V.L. became an adoptive parent of the children. Our inquiry does not end here, however, as that error is ultimately of no effect unless it implicates the subject-matter jurisdiction of the Georgia court. While not conceding that the Georgia court erred, V.L. argues that any such error has no bearing on whether the Georgia court had subject-matter jurisdiction to issue the Georgia judgment, stating:

> "The question of whether the Georgia court properly interpreted and applied Georgia's adoption statutes to grant an adoption to V.L. without terminating E.L.'s rights as a parent is not a question of subject-matter jurisdiction, but rather of whether the adoption as pled was a cognizable action under Georgia law. 'The legal question of the cognizability of an alleged cause of action under state law goes to the merits of a lawsuit asserting that cause of action rather than the subject-matter jurisdiction of the court to decide the legal question.' South Alabama Gas District v. Knight, 138 So. 3d 971, 979 (Ala. 2013) (Murdock, J., concurring in the rationale in part and concurring in the result); see also Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 46 (Ala. 2013) ('"Lack of statutory authorization best supports analysis as the lack of a claim upon which relief can be granted ... not a claim over which the forum court lacks subject-matter jurisdiction ...."') (quoting Jerome A. Hoffman, The Malignant Mystique of 'Standing', 73 Ala. Law. 360, 362 (2012)). Therefore, if the Georgia court had subject-matter jurisdiction over the adoption, which it did, E.L. is prohibited from challenging the judgment on any grounds, including arguing that Georgia does not allow anyone other than a spouse to

> adopt without terminating the rights of the existing parent."

V.L.'s brief, at pp. 24-25. The Court of Civil Appeals in fact agreed with this argument, stating in its opinion:

> "Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court. See Pirtek [USA, LLC v. Whitehead], 51 So. 3d [291,] 296 [(Ala. 2010)] (holding that court in making inquiry into jurisdiction of foreign court to enter judgment cannot consider merits or correctness of foreign judgment)."

E.L. v. V.L., ___ So. 3d at ___.

However, we disagree. "The requirements of Georgia's adoptions statutes are mandatory and must be strictly construed in favor of the natural parents ...." In re Marks, 300 Ga. App. 239, 243, 684 S.E.2d 364, 367 (2009). See also Doby v. Carroll, 274 Ala. 273, 274, 147 So. 2d 803, 804 (1962) ("In Alabama, the right of adoption is purely statutory and in derogation of the common law, ... and unless the statute by express provision or necessary implication confers the right to adoption, such right does not exist."). Although § 19-8-2(a) of the Georgia Code gives superior courts such as the Georgia court exclusive jurisdiction to enter adoption

decrees, Georgia Code Ann., § 19-8-5(a), further defines the condition that must exist before such superior courts can grant adoptions to third parties such as V.L. -- "each such living parent ... has voluntarily and in writing surrendered all of his rights to the child to that third person for the purpose of enabling that third person to adopt the child." As explained supra, it is undisputed that E.L. did not surrender her parental rights in this case; accordingly, the Georgia court was not empowered to enter the Georgia judgment declaring V.L. to be an adoptive parent of the children. That is to say, the Georgia court lacked subject-matter jurisdiction to enter the Georgia judgment. The Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment. Indeed, it would be error for the courts of this State to do so, and, to the extent the judgments of the Jefferson Family Court and Court of Civil Appeals did give effect to the Georgia judgment, they did so in error.[10]

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[10]Because we have held that the Georgia judgment is void for lack of subject-matter jurisdiction based on the fact that the Georgia adoption statutes make no provision for a non-spouse to adopt a child without first terminating the parental rights of the current parents, we need not consider E.L.'s other arguments that the Georgia judgment is also void because

IV.

We granted the petition for a writ of certiorari filed by E.L. to review the judgment entered by the Court of Civil Appeals insofar as that judgment affirmed the Jefferson Family Court's judgment recognizing as valid the Georgia judgment approving the adoption by V.L. of the children of her former same-sex partner E.L. After reviewing the record and analyzing the relevant law of both this State and Georgia, we now conclude that the Court of Civil Appeals and the Jefferson Family Court erred in giving full faith and credit to the Georgia judgment because the Georgia court was without subject-matter jurisdiction to issue the Georgia judgment. Accordingly, the judgment of the Court of Civil Appeals is reversed and the cause remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Moore, C.J., and Stuart, Bolin, Main, and Wise, JJ., concur.

Parker, J., concurs specially.

V.L. was not a bona fide resident of Georgia or that the courts of this State need not recognize that judgment because, E.L. alleges, it is contrary to the public policy of Alabama.

Murdock, J., concurs in the result.

Shaw, J., dissents.

1140595

PARKER, Justice (concurring specially).

It is well settled in Alabama that adoption is a purely statutory right. "In Alabama, the right of adoption is purely statutory and in derogation of the common law, ... and unless the statute by express provision or necessary implication confers the right of adoption, such right does not exist." Evans v. Rosser, 280 Ala. 163, 164-65, 190 So. 2d 716, 717 (1966) (citing Doby v. Carroll, 274 Ala. 273, 147 So. 2d 803 (1962)). In Hanks v. Hanks, 281 Ala. 92, 99, 199 So. 2d 169, 176 (1967), this Court similarly stated:

> "The right of adoption, that is, to confer on the child of another a title to the privileges and rights of a child and appointment as heir of the adopting person is purely statutory, and was never recognized by the rules of common law. Abney v. DeLoach, Admr., 84 Ala. 393, 4 So. 757 [(1888)]; Franklin v. White, 263 Ala. 223, 82 So. 2d 247 [(1955)]; Milton v. Summers, 280 Ala. 106, 190 So. 2d 540 [(1966)]."

Alabama has unequivocally held that adoption is a purely statutory right; an Alabamian's right to adopt does not exist apart from Alabama's positive law. Thus, adoption is a privilege, not a right.[11]

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[11]In Alabama, we have consistently referred to the statutory "right of adoption." It must be stressed that adoption is a statutory right, not a natural or fundamental right:

Stating explicitly what is implicit in the above caselaw: there is no fundamental right to adopt. Instead, as set forth above, "adoption is a status created by the state acting as parens patriae, the sovereign parent."[12] Douglas v. Harrison, 454 So. 2d 984, 986 (Ala. Civ. App. 1984) (citing Ex parte

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> "While adoption has often been referred to in the context of a 'right' of adoption, the right to adopt is not absolute, and ... such 'right' is not a natural or fundamental one but rather a right created by statute. Furthermore, adoption statutes confer a privilege rather than a right; that is, adoption is not a right, but a privilege which is governed not by the wishes of the prospective parents but by the state's determination that a child is best served by a particular disposition. Similarly stated, adoption is not a fundamental right but is rather a creature of statute. Adoption has sometimes been characterized as a 'status' created by the state, and an 'opportunity,' rather than a right, to adopt has been said to be a legislatively created device."

2 Am. Jur. 2d Adoption § 6 (2004)(footnotes omitted).

[12]Of course, the State may act as parens patriae only as to children who actually need rescuing. In my special concurrence to Ex parte E.R.G., 73 So. 3d 634 (Ala. 2011), I stated that a parent has a fundamental right to parent his or her children that is disturbed only "'"in those extreme instances where the state takes over to rescue the child from parental neglect or to save its life."'" 73 So. 3d at 655 (quoting R.J.D. v. Vaughan Clinic, P.C., 572 So. 2d 1225, 1228 (Ala. 1990), quoting in turn 59 Am. Jur. 2d Parent and Child § 48 at 194 (1987)). Only once a child has been determined to be "dependent" does the State have any jurisdiction to intrude into the "separate and legitimate human government" that is the family. 73 So. 3d at 650.

Bronstein, 434 So. 2d 780 (Ala. 1983)). Of course, having created the purely statutory right of adoption, the State has the authority to specify the contours of that right,[13] which it has done in the Alabama Adoption Code, Ala. Code 1975, § 26-10A-1 et seq. In Ex parte Sullivan, 407 So. 2d 559, 562-63 (Ala. 1981), this Court stated:

> "Adoption is purely statutory. It was unknown to the common law. The courts of this state have always required strict adherence to statutory requirements in adoption proceedings. No case has stated this principle better than the Court of Civil Appeals in Davis v. Turner, 337 So. 2d 355 (Ala. Civ. App. 1976), where it said:
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> > "'Adoption is strictly statutory, Hanks v. Hanks, 281 Ala. 92, 199 So. 2d 169 [(1967)]. Being unknown at common law, it cannot be achieved by contract, Prince v. Prince, 194 Ala. 455, 69 So. 906 [(1915)]. Adoption is not merely an arrangement between the natural and adoptive parents, but is a status created by the state acting as parens patriae, the sovereign parent. Because the exercise of sovereign power involved in adoption curtails the fundamental parental rights of the natural

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[13]See Stevenson v. King, 243 Ala. 551, 553, 10 So. 2d 825, 826 (1942)(recognizing that the purely statutory right of mortgage redemption, which did not exist at common law but was created by the positive law of Alabama, "must be exercised by the person and in the mode and manner prescribed by the statute" and that "[i]t [is] entirely within the competency of the Legislature to determine the conditions upon which the right could be granted").

> parent, the adoption statutes must be closely adhered to.'
>
> "337 So. 2d at 360-361."

Among other things, the State, acting as parens patriae, has the authority to determine who may adopt based on the best interest of the child to be adopted. To this end, the United States Court of Appeals for the Eleventh Circuit has held that a state has a legitimate interest in encouraging a stable and nurturing environment for an adopted child by encouraging that the child be raised in the optimal family structure with both a father and a mother:

> "Florida clearly has a legitimate interest in encouraging a stable and nurturing environment for the education and socialization of its adopted children. See, e.g., Palmore v. Sidoti, 466 U.S. 429, 433, 104 S. Ct. 1879, 1882, 80 L. Ed. 2d 421 (1984) ('The State, of course, has a duty of the highest order to protect the interests of minor children, particularly those of tender years.'); Stanley[v. Illinois], 405 U.S. [645,] 652, 92 S. Ct. [1208,] 1213 [(1972)] (noting that 'protect[ing] the moral, emotional, mental, and physical welfare of the minor' is a 'legitimate interest[], well within the power of the State to implement') (internal quotation marks omitted). It is chiefly from parental figures that children learn about the world and their place in it, and the formative influence of parents extends well beyond the years spent under their roof, shaping their children's psychology, character, and personality for years to come. In time, children grow up to become full members of society, which they in turn influence,

whether for good or ill. The adage that 'the hand that rocks the cradle rules the world' hardly overstates the ripple effect that parents have on the public good by virtue of their role in raising their children. It is hard to conceive an interest more legitimate and more paramount for the state than promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil society -- particularly when those future citizens are displaced children for whom the state is standing in loco parentis.

"More importantly for present purposes, the state has a legitimate interest in encouraging this optimal family structure by seeking to place adoptive children in homes that have both a mother and father. Florida argues that its preference for adoptive marital families is based on the premise that the marital family structure is more stable than other household arrangements and that children benefit from the presence of both a father and mother in the home. Given that appellants have offered no competent evidence to the contrary, we find this premise to be one of those 'unprovable assumptions' that nevertheless can provide a legitimate basis for legislative action. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 62-63, 93 S. Ct. 2628, 2638, 37 L. Ed. 2d 446 (1973). Although social theorists from Plato to Simone de Beauvoir have proposed alternative child-rearing arrangements, none has proven as enduring as the marital family structure, nor has the accumulated wisdom of several millennia of human experience discovered a superior model. See, e.g., Plato, The Republic, Bk. V, 459d-461e; Simone de Beauvoir, The Second Sex (H.M. Parshley trans., Vintage Books 1989) (1949). Against this 'sum of experience,' it is rational for Florida to conclude that it is in the best interests of adoptive children, many of whom come from troubled and unstable backgrounds, to be placed in a home

> anchored by both a father and a mother. Paris Adult Theatre I, 413 U.S. at 63, 93 S. Ct. at 2638."

Lofton v. Secretary of Dep't of Children & Family Servs., 358 F.3d 804, 819-20 (11th Cir. 2004).

In summary, adoption is a purely statutory right created by the State acting as parens patriae; there exists no fundamental right to adopt a child. Acting in the role of parens patriae, the State has a legitimate interest in encouraging that children be adopted into the optimal family structure, i.e., one with both a father and a mother.

1140595

SHAW, Justice (dissenting).

I dissent. The main opinion reviews the merits of the adoption in this case; our caselaw, interpreting the United States Constitution, does not permit this Court to do so.

The main opinion holds that the Superior Court of Fulton County, Georgia ("the Georgia court"), was not "empowered" to allow the adoption in this case--and thus lacked subject-matter jurisdiction--because it did not comply with Georgia Code Ann., § 19-8-5(a) and § 19-8-18(b). Section 19-8-5(a) designates that a child may be adopted by a "third party" if the rights of the living parents or guardians have been surrendered. Section 19-8-18(b) requires, among other things, that the court be "satisfied" that this has occurred. These provisions speak to the merits of whether the adoption should be granted--not to whether the trial court obtains subject-matter jurisdiction. Jurisdiction is instead provided by Georgia Code Ann., § 19-8-2(a), which states that the superior courts of Georgia have jurisdiction "in all matters of adoption." (Emphasis added.) This would include adoption matters where the petitioners fail to "satisfy" the court that

the requisites for an adoption were met. The Supreme Court of Georgia has defined "subject-matter jurisdiction" as follows:

> "The phrase 'subject-matter jurisdiction,' as defined by this Court, '"refers to subject matter alone," i.e., "conferring jurisdiction in specified kinds of cases."' '"Jurisdiction of the subject matter does not mean simply jurisdiction of the particular case then occupying the attention of the court, but jurisdiction of the class of cases to which that particular case belongs."'"

Abushmais v. Erby, 282 Ga. 619, 620, 652 S.E.2d 549, 550 (2007) (citations omitted). The adoption petition in the instant case, whether meritorious or not, was part of the class of cases within the Georgia court's jurisdiction to decide. § 19-8-2(a). The fact that the adoption should not have been granted does not remove the case from the class of cases within that court's power.

I see no support for the proposition that, if a petitioner fails to show that an adoption is warranted or permissible under Georgia law, then the court in Georgia is suddenly divested of jurisdiction over the subject matter. Indeed, Georgia's adoption code seems to provide the opposite. Specifically, Georgia Code Ann., § 19-8-18(c), states: "If the court determines that any petitioner has not complied with this chapter, it may dismiss the petition for adoption without

prejudice or it may continue the case." (Emphasis added.) Both §§ 19-8-5(a) and 19-8-18(b) are part of "this chapter," namely, chapter 8 of title 19 of the Official Code of Georgia. If a petitioner has failed to comply with anything in chapter 8, the result is not a loss of subject-matter jurisdiction, based on the simple fact that the court is still empowered to continue the case. Sections 19-8-5(a) and 19-8-18(b) cannot be read to deny the court subject-matter jurisdiction if it may nevertheless continue hearing the case despite noncompliance with those sections.[14]

When a party seeking to obtain an adoption fails to show that the adoption is permissible, then that party has simply failed to prove the merits of his or her case:

> "If in the end the facts do not support the plaintiffs, or the law does not do so, so be it--but this does not mean the plaintiffs cannot come into court and allege, and attempt to prove, otherwise.

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[14]Under Georgia law, although the trial court may find that the requirements for an adoption were not met, it may nevertheless place custody of the child with the petitioners, an act antithetical to the idea that the court possesses no subject-matter jurisdiction. In re Stroh, 240 Ga. App. 835, 523 S.E.2d 887 (1999) (affirming the trial court's denial of an adoption on the grounds that the petitioners were not residents of Georgia under Georgia Code Ann. § 19-8-3(a)(3), but nevertheless holding that the trial court erred in refusing to place custody of the child with the petitioners).

> If they fail in this endeavor ... they have a 'cause of action' problem, or more precisely in these cases, a 'failure to prove one's cause of action' problem. The trial court has subject-matter jurisdiction to 'hear' such 'problems'--and the cases in which they arise."

Ex parte BAC Home Loans Servicing, LP, 159 So. 3d 31, 46 (Ala. 2013). Stated differently, "[t]he legal question of the cognizability of an alleged cause of action under state law goes to the merits of a lawsuit asserting that cause of action rather than the subject-matter jurisdiction of the court to decide that legal question." South Alabama Gas Dist. v. Knight, 138 So. 3d 971, 979 (Ala. 2013) (Murdock, J., concurring in the rationale in part and concurring in the result). In BAC and several other cases, e.g., Poiroux v. Rich, 150 So. 3d 1027 (Ala. 2014), and Ex parte MERSCORP, Inc., 141 So. 3d 984 (Ala. 2013), this Court has rejected the idea that a simple failure to prove an element of a statutorily provided cause of action results in the lack of subject-matter jurisdiction. I have recently noted, however, that this Court "appears to [have] signal[ed] a retreat" from that principle. McDaniel v. Ezell, [Ms. 1130372, Jan. 30, 2015] ___ So. 3d ___, ___ (Shaw, J., dissenting). Under the rationale of the main opinion, that retreat is now complete.

1140595

The rationale of Justice Carley's dissenting opinion in Wheeler v. Wheeler, 281 Ga. 838, 642 S.E.2d 103 (2007), would hold that § 19-8-18(b) would not allow the type of adoption that occurred in the instant case. Thus, as the main opinion states, "the Georgia court erred by entering the Georgia judgment by which V.L. became an adoptive parent of the children." ___ So. 3d at ___ (emphasis added). I tend to agree; however, this is an error on the merits, not an error that deprived the Georgia court of subject-matter jurisdiction. As the Court of Civil Appeals stated: "Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a 'second parent,' that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court." E.L. v. V.L., [Ms. 2130683, Feb. 27, 2015] ___ So. 3d ___, ___ (Ala. Civ. App. 2015). Our caselaw prohibits an inquiry into the merits of a foreign judgment. Pirtek USA, LLC v. Whitehead, 51 So. 3d 291, 296 (Ala. 2010) ("'Full faith and credit prohibits an inquiry into the merits of the original cause of action.'" (quoting Tongue, Brooks & Co. v. Walser, 410 So. 2d 89, 90 (Ala. Civ. App. 1982))). Further, I fear

that this case creates a dangerous precedent that calls into question the finality of adoptions in Alabama: Any irregularity in a probate court's decision in an adoption would now arguably create a defect in that court's subject-matter jurisdiction.

REL: 02/27/2015

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2014-2015

2130683

E.L.

v.

V.L.

Appeal from Jefferson Family Court
(CS-13-719)

On Application for Rehearing

PER CURIAM.

This court's opinion of October 24, 2014, is withdrawn, and the following is substituted therefor.

2130683

E.L. ("the mother") appeals from a judgment of the Jefferson Family Court ("the family court") awarding V.L., the mother's former same-sex partner, periodic visitation with the mother's biological children, S.L., N.L., and H.L. (hereinafter referred to collectively as "the children"). We reverse and remand.

Background

On October 31, 2013, V.L. filed a petition in the Jefferson Circuit Court ("the circuit court"). In that petition, V.L. asserted that she and the mother had engaged in a same-sex relationship from 1995 to 2011; that, during the course of their relationship, the mother had given birth to S.L. on December 13, 2002, and to twins, N.L. and H.L., on November 17, 2004, through the use of assisted reproductive technology; that, at all times since the birth of the children, V.L., in addition to the mother, had acted as a parent to the children; that, on May 30, 2007, with the mother's consent, the Superior Court of Fulton County, Georgia ("the Georgia court"), had entered a judgment approving V.L.'s adoption of the children ("the Georgia judgment"), which judgment, V.L. asserted, was entitled to full faith and credit

by the courts of this state; and that V.L. is listed as a parent on the children's Alabama birth certificates.

V.L. further asserted that the mother had denied her the traditional and constitutional parental rights to the children she had secured in the Georgia judgment, including visitation and access to their educational and other information. V.L. averred that the children have known both parties as their parents since their births and that the children were being harmed by the mother's denying them association with her. V.L. further averred that she was fit to assume the children's custody.

V.L. requested that the circuit court register the Georgia judgment; declare her legal status, rights, and relations to the children pursuant to the Georgia judgment; award her custody of the children or, alternatively, award her joint custody with the mother and establish a schedule of custodial periods; order the mother to pay her child support and attorney's fees; and provide her any such other relief to which she might be entitled.

On November 4, 2013, the circuit court transferred the matter to the family court. On December 17, 2013, the mother

moved the family court to dismiss V.L.'s petition, asserting, among other things, that the family court lacked subject-matter jurisdiction and that V.L. lacked standing to invoke the family court's jurisdiction.[1] On December 27, 2013, V.L. amended her petition to reassert the allegations in the original petition, but also to allege the dependency of the children based on their separation from her. On February 3, 2014, the mother filed a memorandum of law to support her motion to dismiss. That same date, V.L. filed a response to the motion to dismiss. On March 11, 2014, the mother "renewed" her motion to dismiss, attaching her affidavit. That same date, V.L. responded to the renewed motion to dismiss, attaching her affidavit and several exhibits.

On April 3, 2014, without a hearing, the family court denied the mother's motion to dismiss and awarded V.L. scheduled visitation with the children. On April 15, 2014, the family court entered a supplemental order specifically denying all other requested relief and closing the case. On

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[1]On February 3, 2014, V.L. moved the family court to consolidate the underlying action with actions designated by case numbers "JU-55.01; JU-56.01; JU-57.01," which are referred to in the record as dependency actions. The record contains no indication that the family court acted on that motion.

April 17, 2014, the mother moved the family court to alter, amend, or vacate its judgment. On May 1, 2014, the mother's postjudgment motion was deemed denied by operation of law, and, on May 12, 2014, the mother timely filed her notice of appeal.[2] See Rule 1(B), Ala. R. Juv. P.; Rule 4(a), Ala. R. App. P.; and Holifield v. Lambert, 112 So. 3d 489, 490 (Ala. Civ. App. 2012) ("[C]ases filed in the Jefferson Family Court and docketed with a case number having a 'CS' prefix[] are governed by the Alabama Rules of Juvenile Procedure.").

Analysis

Subject-Matter Jurisdiction of the Family Court

Before proceeding to consider the merits of the appeal, we must first consider whether the family court had subject-matter jurisdiction to enter its April 3, 2014, judgment. As stated above, the action was commenced in the circuit court, and that court, sua sponte, transferred the action to the family court. At oral argument, the parties all agreed that,

[2]Although the mother moved the family court and this court to stay enforcement of the judgment pending resolution of her postjudgment motion and appeal, those motions were denied. The mother subsequently petitioned our supreme court for mandamus relief from the denial of those motions; however, the mother filed a motion to dismiss that petition, which motion was granted by the supreme court. See E.L. v. V.L. (No. 1131084, Nov. 7, 2014).

in its judgment, the family court impliedly enforced the Georgia judgment by recognizing V.L.'s right to visitation as an adoptive parent of the children. The family court did not award V.L. visitation under any other theory, having expressly rejected any allegation of dependency or any other claim raised by V.L. in her pleadings. Thus, the preliminary question is whether the family court, when ruling on a child-custody matter, has subject-matter jurisdiction to enforce a foreign judgment.

Act No. 478, Ala. Acts 1935, §§ 2 & 3, established a juvenile and domestic-relations court for Jefferson County, which, by Act. No. 674, Ala. Acts 1967, was renamed the Family Court of Jefferson County. See Placey v. Placey, 51 So. 3d 374, 375 n.2 (Ala. Civ. App. 2010). Section 2 of Act No. 478 provides, in pertinent part, that the family court "shall have and exercise original and exclusive jurisdiction" over "[b]ills, petitions or writs involving the custody of minors." Section 3 of Act No. 478 provides that, as to such actions that are within its jurisdiction, the family court is invested with "all the power, jurisdiction and authority of Circuit and Chancery Courts ...."

The petition filed by V.L. seeking a determination of her custody rights to the children clearly fell within the general subject-matter jurisdiction of the family court. We further conclude that the family court had the specific jurisdiction to enforce the Georgia judgment. According to Ala. Code 1975, § 6-9-230 et seq., the Uniform Enforcement of Foreign Judgments Act ("the UEFJA"), upon compliance with certain filing provisions, a judgment entered in a foreign jurisdiction that is entitled to full faith and credit may be enforced in this state by a circuit court. See Nix v. Cassidy, 899 So. 2d 998, 1002 (Ala. Civ. App. 2004) ("The circuit court had jurisdiction to accept the judgment creditor's filing of the Georgia judgment pursuant to § 6-9-232[, Ala. Code 1975] ...."). Because § 3 of Act No. 478 vests the family court with the same authority as circuit courts in relation to actions involving the custody of children, the family court possesses the same power as a circuit court to enforce a foreign judgment if necessary to dispose of a child-custody petition.

V.L. followed the procedure established under the UEFJA by filing an authenticated copy of the Georgia judgment with

the clerk of the family court, see Ala. Code 1975, § 6-9-232, and by filing an affidavit setting forth the information required by Ala. Code 1975, § 6-9-233. Thus, V.L. properly invoked the subject-matter jurisdiction of the family court to enforce the Georgia judgment. V.L. did not have to further register the Georgia judgment pursuant to the provisions of the Alabama Uniform Child Custody Jurisdiction and Enforcement Act, Ala. Code 1975, § 30-3B-101 et seq., because the Georgia judgment is not a "child custody determination" within the meaning of Ala. Code 1975, § 30-3B-102(3) (defining "child custody determination" as "[a] judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child"). See also Ala. Code 1975, § 30-3B-102(4) (defining "child custody proceeding" so as to exclude "a court proceeding involving ... adoption"). Thus, the family court could lawfully enforce the Georgia judgment as part of its adjudication of the custody petition filed by V.L.

Subject-Matter Jurisdiction of the Georgia Court

"A judgment [filed pursuant to the UEFJA] has the same effect and is subject to the same procedures, defenses and

proceedings for reopening, vacating, or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner ...." § 6-9-232. "Therefore, once the judgment is domesticated, [a party attacking the validity or enforceability of the judgment] must resort to procedures applicable to any other judgment originally entered by a circuit court in order to set it aside." Greene v. Connelly, 628 So. 2d 346, 350 (Ala. 1993), abrogated on other grounds, Ex parte Full Circle Distrib., L.L.C., 883 So. 2d 638 (Ala. 2003). In this case, the mother argued in her renewed motion to dismiss that the Georgia judgment should be set aside because it is void for lack of subject-matter jurisdiction, a ground recognized by Rule 60(b)(4), Ala. R. Civ. P. We, therefore, treat that portion of her motion to dismiss as a Rule 60(b)(4) motion, which is an appropriate mechanism to vacate a domesticated foreign judgment. See Bartlett v. Unistar Leasing, 931 So. 2d 717, 720 n.2 (Ala. Civ. App. 2005).

"Before giving effect to a foreign judgment, Alabama courts are permitted to inquire into the jurisdiction of the foreign court rendering the judgment." Feore v. Feore, 627

So. 2d 411, 413 (Ala. Civ. App. 1993); see also Pirtek USA, LLC v. Whitehead, 51 So. 3d 291, 295 (Ala. 2010). Generally speaking, "[t]he scope of inquiry is limited to, '(1) whether the issue of jurisdiction was fully and fairly litigated by the foreign court and (2) whether the issue of jurisdiction was finally decided by the foreign court.'" Feore, 627 So. 2d at 413 (quoting Alston Elec. Supply Co. v. Alabama Elec. Wholesalers, Inc., 586 So.2d 10, 11 (Ala. Civ. App. 1991)). However, if the court entering the foreign judgment did not litigate and decide the question of its subject-matter jurisdiction, an Alabama court may make its own determination of subject-matter jurisdiction on a Rule 60(b)(4) motion. See Lanier v. McMath Constr., Inc., 141 So. 3d 974 (Ala. 2013). "[T]here is a presumption that the court rendering the judgment had the jurisdiction to do so, and the burden is placed on the party challenging the judgment to overcome the presumption." McGouryk v. McGouryk, 672 So. 2d 1300, 1302 (Ala. Civ. App. 1995).

In this case, the Georgia court rendered a three-page judgment in which it found that the mother had conceived the children via artificial insemination through an anonymous

sperm donor. According to the judgment, V.L. acted as "an equal second parent to the children" after their births. The judgment recites that it would be in the best interests of the children, and consistent with the mother's and V.L.'s life-long parenting arrangement, to allow V.L. to adopt the children without terminating the parental rights of the mother. In that judgment, the Georgia court did not expressly address its subject-matter jurisdiction. From the affidavit filed by the mother in support of her renewed motion to dismiss, it is apparent that she fully supported V.L.'s petition and that she never contested the subject-matter jurisdiction of the Georgia court.[3] Because that issue was not fully and fairly litigated in the Georgia court, it can be considered anew on the motion of the mother.

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[3]The mother's failure to contest subject-matter jurisdiction before the Georgia court does not prevent her from now challenging subject-matter jurisdiction in Alabama because subject-matter jurisdiction cannot be conferred by estoppel, see Cedartown North P'ship, LLC v. Georgia Dep't of Transp., 296 Ga. App. 54, 56, 673 S.E.2d 562, 565 (2009) ("It is well established that '[j]urisdiction of the subject matter of a suit cannot be conferred by agreement or consent, or be waived or based on an estoppel of a party to deny that it exists.'" (quoting Redmond v. Walters, 228 Ga. 417, 417, 186 S.E.2d 93, 94 (1971))); see also Vann v. Cook, 989 So. 2d 556, 559 (Ala. Civ. App. 2008), and may be raised at any time. Abushmais v. Erby, 282 Ga. 619, 652 S.E.2d 549 (2007); and Ex parte Ortiz, 108 So. 3d 1046 (Ala. Civ. App. 2012).

Section 19-8-2(a), Ga. Code Ann., a part of the Georgia Adoption Code, Ga. Code Ann., § 19-8-1 et seq., provides, in pertinent part, that "[t]he superior courts of the several counties shall have exclusive jurisdiction in all matters of adoption ...." The Georgia court, as a superior court of Fulton County, had general subject-matter jurisdiction over adoptions. The Georgia Supreme Court has not yet construed the provisions of the Georgia Adoption Code to determine if it allows adoption by a same-sex partner who has assumed a de facto parental role. In Wheeler v. Wheeler, 281 Ga. 838, 642 S.E.2d 103 (2007) (Carley, J., dissenting), Justice Carley asserted that Georgia law does not authorize a court to approve an adoption by a person who is not a stepparent or a spouse of the biological parent unless the parents of the child surrender their parental rights or their parental rights are involuntarily terminated. In Bates v. Bates, 317 Ga. App. 339, 730 S.E.2d 482 (2012), the Georgia Court of Appeals recognized that it is "doubtful" that Georgia law permits such "second parent" adoptions[4] and that arguments against the

[4]"A 'second parent' adoption apparently is an adoption of a child having only one living parent, in which that parent retains all of [his or] her parental rights and consents to some other person -- often [his or] her spouse, partner, or

validity of an adoption decree approving such an adoption "might well have some merit." 317 Ga. App. at 342, 730 S.E.2d at 484. Our independent review of the Georgia Adoption Code fully supports Justice Carley's position. Although it may be that the Georgia court erroneously construed Georgia law so as to permit V.L. to adopt the children as a "second parent," that error goes to the merits of the case and not to the subject-matter jurisdiction of the Georgia court. See Pirtek, 51 So. 3d at 296 (holding that court in making inquiry into jurisdiction of foreign court to enter judgment cannot consider merits or correctness of foreign judgment).

The mother contends that she and V.L. did not properly invoke the jurisdiction of the Georgia court because they did not reside in Georgia as required by Georgia law. See Ga. Code Ann., § 19-8-2(b) ("All petitions under this chapter shall be filed in the county in which any petitioner resides."); and Ga. Code Ann., § 19-8-3(a)(3) ("Any adult

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friend -- adopting the child as a 'second parent.' See Butler v. Adoption Media, LLC, 486 F. Supp. 2d 1022, 1044 ... (N.D. Cal. 2007) (describing 'second parent' adoption under California law)." Bates, 317 Ga. App. at 340 n.1, 730 S.E.2d at 483 n.1.

person may petition to adopt a child if the person ... [h]as been a bona fide resident of this state for at least six months immediately preceding the filing of the petition."). We note, however, that the Georgia court specifically found in the Georgia judgment that V.L. and the mother had met the residency requirements. Arguably, because the Georgia court has already decided that the residency requirements were satisfied, the family court was bound by that determination and could not find otherwise. See Feore, supra. Even if it was not bound by the Georgia judgment, the family court did not err in failing to inquire into the mother's claim that she and V.L. had defrauded the Georgia court as to their residency. Georgia Code Ann., § 19-8-18(e), provides: "A decree of adoption issued pursuant to subsection (b) of this Code section shall not be subject to any judicial challenge filed more than six months after the date of entry of such decree." That provision effectively precludes the mother from attacking the Georgia judgment on the ground of lack of residency. See Williams v. Williams, 312 Ga. App. 47, 717 S.E.2d 553 (2011).

In summary, we conclude that the Georgia court had subject-matter jurisdiction to enter the Georgia judgment and

that the family court did not err in denying the mother's Rule 60(b)(4) motion.

Full Faith and Credit

The UEFJA defines a "foreign judgment" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state." Ala. Code 1975, § 6-9-231. Article IV, § 1, of the United States Constitution provides that "[f]ull Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." In interpreting the Full Faith and Credit Clause, the United States Supreme Court has held that "[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). Because the Georgia court had appropriate jurisdiction, the Georgia judgment is entitled to full faith and credit throughout the United States, including Alabama.

Under the federal Constitution, each state is entitled to develop its own statutes embodying its own public policy, but

the United States Supreme Court has declared that there is "no roving 'public policy exception' to the full faith and credit due judgments." Baker, 522 U.S. at 233. Hence, a court may not refuse to enforce a foreign judgment on the ground that it violates the public policy of the forum state. Id. Thus, even if the law of Alabama generally disallows adoption by same-sex partners, see In re Adoption of K.R.S., 109 So. 3d 176 (Ala. Civ. App. 2013), under the Full Faith and Credit Clause, a court of this state must still enforce a duly entered foreign judgment approving the adoption petition of a same-sex partner. See, e.g., Embry v. Ryan, 11 So. 3d 408 (Fla. Dist. Ct. App. 2009). We reject any contention by the mother that the family court should have refused to enforce the Georgia judgment based on Alabama public policy.

Due Process

Although we agree with V.L. that the family court did not err in recognizing V.L. as a second parent of the children pursuant to the Georgia judgment, we hold that the family court did err in awarding V.L. visitation without affording the mother a hearing. Courts of equity have broad power to act for the best interests of children, but that power must be

exercised consistently with the due-process rights of both parents. Thorne v. Thorne, 344 So. 2d 165, 169 (Ala. Civ. App. 1977). Before visitation rights may be adjudicated, each parent is entitled to due notice and an opportunity to be heard on the matter. Ex parte Dean, 137 So. 3d 341, 345 (Ala. Civ. App. 2013). Moreover, in a contested case, a court should award visitation only after ascertaining through an evidentiary hearing that visitation would be in the best interests of the children. See id. Accordingly, the family court erred in awarding V.L. visitation based simply on her status as an adoptive parent under the Georgia judgment without conducting an evidentiary hearing to inquire into the best interests of the children.

Based on that error, we reverse the judgment of the family court and remand the case. On remand the family court is to forthwith conduct an evidentiary hearing to decide the visitation issue.

The mother's request for the award of attorney's fees on appeal is denied.

APPLICATION GRANTED; OPINION OF OCTOBER 24, 2014, WITHDRAWN; OPINION SUBSTITUTED; REVERSED AND REMANDED WITH INSTRUCTIONS.

All the judges concur.