

No. 15A **532**

In the Supreme Court of the United States

TOBIE J. SMITH, Guardian ad Litem,
as representative of three minor children,

Applicant,

v.

E.L. and V.L.,

Respondents.

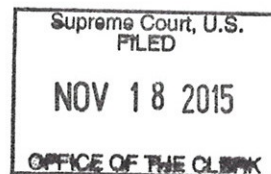
**APPLICATION OF THE GUARDIAN AD LITEM
FOR RECALL AND STAY OF CERTIFICATE OF JUDGMENT
OF THE SUPREME COURT OF ALABAMA
PENDING FILING AND DISPOSITION OF
A PETITION FOR A WRIT OF CERTIORARI**

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

INTRODUCTION

This application concerns a custody dispute in which the Supreme Court of Alabama violated the Full Faith and Credit Clause of the Constitution by deciding not to honor an adoption judgment issued by a Georgia court. Applicant is the Guardian ad Litem, who represents the interests of the three minor children—S.L., N.L., and H.L.—who range in age from ten to twelve. The children are caught up in a dispute between their parents, V.L. and E.L., two women who were in a committed relationship for nearly 17 years. E.L. gave birth to all three children, but both E.L. and V.L. are their parents, both having fully participated in caring for and rearing the children since birth.

In 2007, with E.L.'s participation and full consent, the Superior Court of Fulton County, Georgia, granted V.L.'s petition to adopt the children as a second parent, finding that the adoption was in the children's best interests. Under that judgment, V.L. should have full parental rights (and, indeed, in Georgia she still does). After the couple separated in 2011, V.L. sought joint custody in the Family Court of Jefferson County, Alabama, based on the Georgia judgment of adoption. The Family Court honored the Georgia judgment and ordered visitation rights for V.L. as the children's adoptive mother. The Alabama Court of Civil Appeals agreed.

The Supreme Court of Alabama, however, refused to honor the Georgia court's judgment, concluding that it was free to disregard that judgment under the Full Faith and Credit Clause because, it held, the Georgia Superior Court lacked subject-matter jurisdiction to issue it. The Alabama court so ruled even though it recognized that the Georgia court had "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 25a. The Alabama court nevertheless conducted its "own analysis of the Georgia adoption statutes," App. 27a, and ruled that in issuing the adoption decree, the Georgia Superior Court did not comply with provisions of the Georgia Code requiring that existing parental rights be terminated before a non-spouse can adopt a child. App. 27a-28a. But as the dissenting Justice explained, those Georgia statutes "speak to the *merits* of whether the adoption should be granted—not to whether the trial court obtains subject-matter jurisdiction." App. 39a.

There is a reasonable probability that the Court will grant certiorari and reverse the Alabama Supreme Court's judgment. The Alabama Supreme Court's decision is unfaithful to this Court's decisions forbidding one State's courts from permitting collateral attacks on the merits of a judgment of a sister State's courts. It also creates an intolerable situation for families who obtained second-parent adoptions in other States and who have counted on those judgments' being given full faith and credit. As the dissenting Justice explained, the decision "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.

It also is beyond dispute that S.L., N.L., and H.L. are presently being harmed and that the harm will continue absent a stay. The biological mother, E.L., has never so much as suggested—not even in the trial court, where such arguments would have been properly presented—that V.L. is unfit or that preserving the children's legal relationship with V.L. is not in their best interests. The end of their parents' relationship disrupted a cornerstone of the children's lives. And now, for reasons having nothing to do with the welfare of the children, the Alabama Supreme Court has effectively declared to these children that their adoptive mother, whom the children have known since infancy as their parent, is not and never was their mother. The children presently have no access to their adoptive mother and have not for several months. These circumstances are antithetical to the children's best interests and the reality that they have known their whole lives.

The adoptive mother, V.L., has filed a petition for a writ of certiorari (No. 15-648) and an application for a stay of the Alabama Supreme Court's judgment (No. 15A522). The Guardian ad Litem supports V.L.'s stay application and intends to file a response in support of the certiorari petition. The Guardian ad Litem, as representative of the children's interests, respectfully submits this separate stay application and asks that a stay be granted to prevent further harm to the children.

BACKGROUND

1. V.L. and E.L. were in a committed relationship for nearly 17 years, beginning in 1995. App. 5a. In 2002 and 2004, E.L. gave birth to three children conceived through assisted-reproductive technology. App. 5a. From the beginning of the children's lives, V.L. and E.L. both have been their parents.

In 2007, E.L. and V.L. decided to formalize V.L.'s parental role and obtain legal protection for her as a parent. App. 5a-6a. To that end, with E.L.'s consent, V.L. petitioned the Superior Court of Fulton County, Georgia for a judgment of adoption. App. 7a. The court noted that E.L. consented to the adoption and stated that 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." App. 7a.

After a home visit, App. 6a, the Georgia court found by "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.] as parents on an equal basis." Petition for Writ of Certiorari, App. 49a, *V.L. v. E.L.*, No. 15-648 (filed November 17, 2015). The court found that 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." *Id.* at 50a.

The court thus granted the adoption, concluding that the “evidence is clear and convincing that the adoption is in the children’s best interest.” *Ibid.* The court explained that the “children should have the legal benefits and protections of both their parents which will accrue as a result of their adoption.” *Ibid.* Specifically addressing the fact that this was a second-parent adoption, the court explained that 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.” *Ibid.* “The adoption will result in legal recognition of the actual parenting arrangement which has existed since their births.” *Ibid.* The court thus ordered “that the parent-child relationship between the legal mother, [E.L.], and the children is hereby preserved intact and that [V.L.] shall be recognized as the second parent.” *Id.* at 51a.

New birth certificates were issued, listing V.L. as a parent. App. 7a.

2. The relationship between E.L. and V.L. ended in November 2011. App. 7a. In 2013, V.L. sought to secure her parental rights after E.L. interfered with V.L.’s exercise of parental rights and denied access to the children. App. 7a-8a. V.L. filed a petition in Alabama seeking registration of the Georgia judgment of adoption, a declaration of her legal rights pursuant to that judgment, and an award of joint custody and/or visitation. App. 8a. The Jefferson Family Court awarded V.L. scheduled visitation. App. 8a.

3. E.L. appealed to the Alabama Court of Civil Appeals. That court initially reversed the Family Court's order, but it later granted rehearing, reversed itself, and held that the Georgia adoption is entitled to full faith and credit. App. 45a-61a. The court concluded that, based on its "independent review of the Georgia Adoption Code," Georgia law does not permit so-called second-parent adoptions—i.e., adoptions by a person who is not married to the biological parent, where the biological parent will retain parental rights. App. 56a-57a. But it nevertheless held that the adoption judgment must be recognized in Alabama: "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." App. 57a.

4. The Supreme Court of Alabama reversed, refusing to accord full faith and credit to the Georgia adoption decree. The court acknowledged that its review of the legal issues in the case "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," i.e., the Full Faith and Credit Clause. App. 11a. Nevertheless, the court proceeded to review the merits of the Georgia adoption judgment, under the guise of reviewing the Georgia court's subject-matter jurisdiction to issue the judgment—even while expressly acknowledging that the Georgia court had "subject-matter jurisdiction over, that is, the power to rule on, adoption petitions." App. 25a.

The Alabama court *de novo* conducted its “own analysis of the Georgia adoption statutes” and decided that the Georgia court should not have granted V.L.’s adoption petition because, in its view, Georgia law does not provide “for a non-spouse to adopt a child without first terminating the parental rights of the current parents.” App. 27a. Having determined that the Georgia court misapplied Georgia law, the Alabama court concluded that the error went to the Georgia court’s subject-matter jurisdiction. App. 28a-30a. The Alabama court cited a decision from the intermediate appellate court in Georgia stating that the “requirements of Georgia’s adoptions statutes are mandatory and must be strictly construed in favor of the natural parents.” App. 29a (quoting *In re Marks*, 684 S.E.2d 364, 367 (Ga. Ct. App. 2009)). From that single statement, the Alabama court concluded that a defect in application of the Georgia adoption statutes in a particular case necessarily means that the Georgia court was “not empowered” to issue an adoption decree in that case. App. 30a.

The Alabama court also rejected application of Georgia’s statute of repose for adoptions, under which Georgia courts will enforce a Georgia adoption judgment even if there was no subject-matter jurisdiction to issue it. App. 17a. The statute of repose 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.” Ga. Code Ann. § 19-8-18(e). The Alabama court acknowledged that Georgia courts have held that after six months, the statute of repose precludes even jurisdictional challenges to adoptions.

App. 17a-18a (citing *Williams v. Williams*, 717 S.E.2d 553-54 (Ga. Ct. App. 2011)). The policy underlying the statute of repose is that normal jurisdictional principles “must yield to competing principles that derive from 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 v. Bates*, 730 S.E.2d 482, 483 (Ga. Ct. App. 2012) (citation omitted)). But, relying on its own analysis of the Georgia statutes and a dissent from the denial of a certiorari petition to the Supreme Court of Georgia in *Williams*, the Alabama Supreme Court ruled that the statute of repose applies only where the statutory requirements are already met. App. 21a-23a.

The Supreme Court of Alabama therefore declared that the “Georgia judgment is accordingly void, and the full faith and credit clause does not require the courts of Alabama to recognize that judgment.” App. 30a.

Justice Parker specially concurred. App. 33a-38a. He wrote that under *Alabama* law, adoption “is a privilege,” that “there is no fundamental right to adopt,” and that “having created the purely statutory right of adoption, the State has the authority to specify the contours of that right.” App. 33a-35a. In his view, because “adoption is a purely statutory right created by the State acting as *parens patriae*,” Alabama “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 Shaw dissented. App. 39a-44a. He wrote that the statutory requirements to which the majority pointed “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 “[j]urisdiction 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.’” App. 39a (emphasis by Justice Shaw). Moreover, the Supreme Court of Georgia has defined “subject-matter jurisdiction” as jurisdiction over the “class of cases” to which any particular case belongs. App. 40a (quoting *Abushmais v. Erby*, 652 S.E.2d 549, 550 (2007)). In Justice Shaw’s view, “[t]he 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.” App. 40a. He also pointed to Section 19-8-18(c) of the Georgia Code, which states that the court may “continue the case” even if it “determines that any petitioner has not complied with this chapter.” App. 40a-41a. Finally, Justice Shaw expressed 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.

5. The Supreme Court of Alabama denied the joint motion of V.L. and the Guardian ad Litem seeking a stay of enforcement of the judgment pending certiorari. App. 1a-2a.

ARGUMENT

A stay is warranted where 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 factors are met here.

I. THERE IS A REASONABLE PROBABILITY THAT CERTIORARI WILL BE GRANTED

The issue presented in V.L.’s petition is of enormous importance and is worthy of this Court’s review. The decision of the Supreme Court of Alabama calls into question the validity of out-of-state adoptions on which numerous parents and children in Alabama have relied to provide legal stability for their families. The Full Faith and Credit Clause is supposed to preclude uncertainty about whether those legal relationships will be recognized throughout the Nation. In disregarding what this Court has taught about the meaning and importance of full faith and credit, the Alabama court’s decision leaves children in the lurch, unsettling the most foundational relationships in their lives. This Court’s review is urgently needed.

The Alabama court’s refusal to recognize final Georgia adoptions by unmarried second parents means that the question whether a legal relationship exists between a child and his or her adopted parent depends on where the child is physically located at the time the question is asked. V.L.’s adoption decree has never been challenged in Georgia and remains valid there, notwithstanding the Alabama court’s decision. Thus, while V.L. and E.L.’s children in Alabama now

have no legal relationship with V.L. in Alabama, if the children were to cross into the neighboring State of Georgia, a person whom the Alabama Supreme Court deems a legal stranger to them suddenly would become their legal parent. And that legal parent would once again become a legal stranger if the children returned to Alabama. The children in this case are not alone in this state of extraordinary uncertainty; as a result of the Alabama court's decision, children throughout Alabama who were adopted by a second parent in Georgia (and probably other States) are subject to the same rigid dichotomy. The risk that children will be subject to conflicting decisions about who their parents are warrants review from this Court. See *Webb v. Webb*, 451 U.S. 493, 494 (1981) (granting certiorari to resolve full-faith-and-credit issue "because the state courts of Florida and Georgia have reached conflicting results in assigning custody of the child").

This concern can arise in a multitude of different scenarios and is not limited to situations where, as here, the relationship between the biological parent and the adoptive parent ends. Under the Alabama Supreme Court's decision, a child who lives with a biological parent and an adoptive parent who are in an ongoing relationship would be treated as an orphan if the biological parent were to die or become incapacitated. Because the child's adoptive parent is a legal stranger to that child, the child could be removed from the custody of his or her only remaining parent at a critical time of grief and crisis, when the child most needs that parent. The Alabama court's decision also may affect numerous other areas that should not

be issues for adoptive parents and their children—including medical decision making, schooling, inheritance, and Social Security benefits.

The risk of harm to families is untenable. The decision's reach is not even limited to families who reside in Alabama: a family of Georgia residents consisting of a biological parent, an unmarried adoptive parent, and children is legally recognized as a family as long as they remain in Georgia, but if they travel into Alabama, the adoptive parent becomes a legal stranger to her children the moment they cross the border. If anything were to happen to the biological parent while the family is visiting Alabama, the adoptive parent would be powerless to help the children during the crisis or thereafter. Indeed, *every* Georgia adoption is at risk of being declared “void” by Alabama courts in a collateral attack, simply by a showing that a statutory requirement was not followed to a T, even years after the adoption was finalized.

These intolerable conditions are more than enough to justify this Court's intervention.

II. IF REVIEW IS GRANTED, THE ALABAMA SUPREME COURT'S DECISION IS LIKELY TO BE REVERSED

The decision of the Supreme Court of Alabama not only creates immense uncertainty, it is unfaithful to this Court's decisions.

The Constitution demands that “[f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.” U.S. CONST. Art. IV, § 1. Under that clause, a judgment in one State's court commands the same preclusive effect in other States' courts that it would enjoy in

the issuing State. *Underwriters Nat'l Assur. Co. v. North Carolina Life & Acc. & Health Ins. Guar. Ass'n*, 455 U.S. 691, 702 (1982); 28 U.S.C. § 1738. That command “is exacting.” *Baker ex rel. Thomas v. General Motors Corp.*, 522 U.S. 222, 223 (1998). “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.” *Ibid.* The Constitution accordingly precludes courts in one State, presented with a judgment from another, from “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).

Only “when the courts of one state do not have jurisdiction either of the subject matter or of the person of the defendant” is another state court relieved of that duty. *Williams v. North Carolina*, 317 U.S. 287, 297 (1942). The question of a court’s subject-matter jurisdiction “goes to the power” of the court to decide the issue. *Fauntleroy v. Lum*, 210 U.S. 230, 235 (1908); see *Morrison v. Nat’l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010) (“Subject-matter jurisdiction, by contrast, ‘refers to a tribunal’s power to hear a case.’” (quotation marks and citation omitted)). Whether a court had power to hear a case is “an issue quite separate from the question whether the allegations the plaintiff makes entitle him to relief.” *Morrison*, 561 U.S. at 254.

There is no question that the Georgia Superior Court had the *power* to issue adoption decrees. Superior courts are Georgia’s trial-level courts of general

jurisdiction. Ga. Const., Art. VI, § 1, ¶ 1. The Georgia Code vests those courts with “exclusive jurisdiction in all matters of adoption.” Ga. Code Ann. § 19-8-2. Indeed, the Alabama Supreme Court rightly recognized that “Georgia superior courts like the Georgia court have subject-matter jurisdiction over, that is, the power to rule on, adoption petitions.” App. 25a. That should have been the end of the question, for that is the way in which Georgia defines subject-matter jurisdiction. As the Supreme Court of Georgia recently explained, “[t]he phrase jurisdiction of the subject matter refers to subject matter alone, *i.e.*, conferring jurisdiction in specified *kinds of cases*. It is the power to deal with the *general abstract question*, to hear the particular facts in *any case* relating to this question.” *Crutchfield v. Lawson*, 754 S.E.2d 50, 52 (Ga. 2014) (quotation marks and citations omitted) (emphasis added); *see also* App. 40a (quoting *Abushmais*, 652 S.E.2d at 550).

What the Alabama Supreme Court decided is that the Georgia court *should not have* issued the adoption decree under Sections 19-8-5 and 19-8-18 of the Georgia Code because the decree failed to meet the requirements of those provisions. That is, the Alabama court relitigated the merits, rather than determining the Georgia court’s subject-matter jurisdiction. A statutory requirement prescribing how a particular case is to be decided does not determine a Georgia court’s jurisdiction to decide the case. *See Mosley v. Lancaster*, 770 S.E.2d 873, 876-77 (Ga. 2015). Were it otherwise, every statutory requirement would pose a potential jurisdictional defect, and all manner of out-of-state judgments could be challenged in collateral attacks.

Nothing in the statutory provisions suggests the Georgia legislature intended to abrogate the *power* of Georgia superior courts to issue adoption decrees whenever the statutory requirements are not met precisely. Indeed, the text and structure of Section 19-8-18 strongly suggest the contrary. For one thing, the statute provides: “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.*” Ga. Code Ann. § 19-8-18 (emphasis added). Authorizing a court to continue the case is the opposite of depriving the court of jurisdiction.

In addition, the statute contains other requirements for issuing adoption decrees that cannot be jurisdictional. For example, it provides that “[i]f the court is not satisfied that the adoption is in the best interests of the child, it shall deny the petition.” *Ibid.* It would be passing strange to suggest that a court’s subject-matter jurisdiction turns on whether it is “satisfied” that its decision is in a child’s best interests. That is a quintessential merits question.

The statutory provisions provide reason enough to conclude that the Alabama court’s judgment is likely to be reversed. But that is not the only reason. The Alabama Supreme Court never should have considered whether the Georgia court had subject-matter jurisdiction because the Georgia Superior Court already expressly considered the import of preserving the biological mother’s parental rights and concluded that the adoption could proceed. The Georgia court held that it “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.” Pet. App. 50a, *V.L. v. E.L.*, No. 15-648. The court concluded that V.L. had “complied with all relevant and applicable formalities regarding the Petition for Adoption in accordance with the laws of the State of Georgia.” *Ibid.*

The Georgia court’s unchallenged decision that it could issue the adoption decree should have been the last word. Under well-established rules of finality, the Alabama courts were precluded from inquiring into the Georgia court’s authority. *See Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939) (“The principles of res judicata apply to questions of jurisdiction as well as to other issues, as well to jurisdiction of the subject matter as of the parties.” (quotation marks and footnote omitted)); *Coe v. Coe*, 334 U.S. 378, 384 (1948) (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”).

Indeed, the Supreme Court of Georgia has made clear that because of the compelling need for finality and stability in family matters, a party who participated in prior litigation cannot later challenge the judgment, even if the court lacked jurisdiction to issue the decree. *See Amerson v. Vandiver*, 673 S.E.2d 850, 851 (Ga. 2009). The Full Faith and Credit Clause does not tolerate the courts of one

State declaring void the decrees of another State when that State would continue to uphold it. *See Underwriters Nat'l Assur.*, 455 U.S. at 702.

Finally, in disregarding the demands of full faith and credit, the Alabama court's decision permits parties to game the system to their advantage. *Cf. Bates*, 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."). When it suited her interests, E.L. appeared in Georgia court and acceded to that court's authority to issue a decree determining the parental rights over her children. She welcomed that court's judgment and undoubtedly relied on the stability it provided her family. But when her wishes changed, she asked the Alabama courts to disregard her own previous conduct and the final judgment of the Georgia court. Such actions are wholly inconsistent with the finality that the Full Faith and Credit Clause is supposed to ensure.

III. THE CHILDREN WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY

The Alabama Supreme Court's ruling already is working a pernicious harm in the lives of these three children, and it will continue to do so absent a stay. The children have known V.L. as their mother since infancy. There has never been any suggestion that V.L. is unfit to parent her children or that preserving the children's legal relationship with V.L. is not in their best interests. To the contrary, the Georgia court expressly found by clear and convincing evidence that the children's adoption by V.L. was in their best interests. *Pet. App. 50a, V.L. v. E.L.*, No. 15-648.

The end of their parents' relationship has already been traumatic for the children. And now, because in April 2015 the Alabama Supreme Court entered a stay of the Family Court's judgment granting V.L. visitation rights, the children have already been deprived of visiting with their mother for over six months, for reasons having nothing to do with the children's welfare.

Continued separation from their mother will only compound the harm already caused. Losing a mother's companionship for any amount of time is detrimental to a child's emotional welfare. *See Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 844 (1977) ("[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association."). When the length of separation becomes significant, it can cause long-term injury. Researchers have concluded that "[s]ignificant disruptions in children's relationships with their primary caregivers can present developmental challenges for children." Lois A. Weithorn, *Developmental Neuroscience, Children's Relationships with Primary Caregivers, and Child Protection Policy Reform*, 63 *Hastings L.J.* 1487, 1531 & n.229 (2012) (collecting expert sources); National Scientific Council on the Developing Child, *The Science of Early Childhood Development: Closing the Gap Between What We Know and What We Do* 6 (2007) ("[S]table, responsive relationships build healthy brain architecture that provides a strong foundation for lifelong learning, behavior, and health."). Indeed, Alabama itself recognizes the importance of avoiding that harm: "It is the policy of this state

to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children and to encourage parents to share in the rights and responsibilities of rearing their children.” Ala. Code § 30-3-150.

The loss of legal recognition of V.L.’s parental rights also presently poses other significant risks for the children. Although one certainly hopes it never materializes, if E.L. were to become incapacitated for any reason, the children would have no legally recognized parent capable of making necessary and important decisions, such as choices about medical care or the numerous other decisions that parents must make on a regular basis. That real risk adds uncertainty and additional stress to the children’s lives now that this Court can prevent by granting a stay.

CONCLUSION

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

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Respectfully submitted,



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NOVEMBER 18, 2015

No. 15A_____

In the Supreme Court of the United States

TOBIE J. SMITH, GUARDIAN AD LITEM,
as representative of three minor children,
Applicant,

v.

E.L. and V.L.,
Respondents.

CERTIFICATE OF SERVICE

I, Marc A. Hearron, hereby certify that I am a member of the Bar of this Court, and that I have this 18th day of November 2015, caused one copy of the Application of Guardian ad Litem for Recall and Stay of Certificate of Judgment of the Supreme Court of Alabama Pending Filing and Disposition of a Petition for a Writ of Certiorari to be served via overnight mail and an electronic version of the document to be transmitted via electronic mail to:

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