

IN THE
Supreme Court of the United States

OREN ADAR, Individually and as Parent and Next Friend
of J. C. A.-S., a minor; MICKEY RAY SMITH, Individually
and as Parent and Next Friend of J. C. A.-S., a minor,

Petitioners,

v.

DARLENE W. SMITH, in Her Capacity as State Registrar
and Director, Office of Vital Records and Statistics, State of
Louisiana Department of Health and Hospitals,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF OF SUPPORT CENTER FOR CHILD
ADVOCATES, JUVENILE LAW CENTER,
ET AL., AS *AMICI CURIAE* IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

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INTEREST OF *AMICI*

Amici, Support Center for Child Advocates et al., are children's advocacy organizations that represent children in myriad legal settings in jurisdictions across the country, including children involved in adoption proceedings. *Amici* include children's advocates committed to the protection of children's rights through advocacy, academic study, policy development and collaborative efforts. *Amici* understand not only the importance of adoption for children and families, but also the critical role full recognition of adoption plays in achieving security, permanence and stability for children who otherwise have no family.¹

Amici's collective experience provides important perspectives and insights about adoption policies and practices. *Amici* support Petitioners' request for review by this Court. Contrary to the conclusion by the United States Court of Appeals for the Fifth Circuit below, *Amici* believe that Louisiana can only provide full faith and credit to the New York adoption decree by issuing an amended birth certificate reflecting both of her adopted parents.²

1. The consent of counsel for all parties is on file with the Court. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

2. See Appendix 'A' for a complete list and description of *Amici*.

SUMMARY OF ARGUMENT

This Court should examine this case from the perspective of the child. This Court should grant review in order to assure the uniform recognition of valid adoption orders through the issuance of a valid amended birth certificate in order to give the adoption order the full faith and credit it deserves under the Constitution. A birth certificate is the mechanism through which a child gains access to her adoption rights. Only through this Court's review will that access be restored for Infant J. and children like her.

The Fifth Circuit misapprehended the fundamental issue presented in this case under the Full Faith and Credit Clause, U.S. Const. art. IV § 1, by (a) framing the issue as that of conferring a benefit to the parents rather than one of respecting a fundamental right of the child, and (b) failing to view Louisiana's actions from the child's perspective. *See Adar v. Smith*, No. 09-30036 (5th Cir. Revised *en banc* majority opinion April 13, 2011) [hereinafter "*En Banc* "] p. 23 ("[T]he full faith and credit clause does not oblige Louisiana to confer particular *benefits on unmarried adoptive parents . . .*"). Obtaining an accurate birth certificate is not a benefit but a right flowing from the application of the Full Faith and Credit Clause to the citizenry. *See II C infra*. This right extends to the child under Louisiana law, *see II A and II B infra*. In addition to her parents' rights, Infant J. has an independent right in this case - even if that right can only be exercised through her parents' Petition.

Louisiana law recognizes that a legally valid adoption confers a new status on the child that must be recognized under the Full Faith and Credit Clause of the United States Constitution, as well as principles of comity between and among the states. Louisiana's refusal to issue an accurate birth certificate that identifies the child's parentage violates the Constitution because it undermines a central goal of adoption - the security of family for vulnerable children.

The Fifth Circuit *En Banc* opinion fails to recognize that Louisiana's laws require that the adopted child be provided an amended birth certificate. Louisiana must apply its own laws in an evenhanded manner and failed to do so here. Under federal and state law, Louisiana must recognize and give meaning to New York's order.

ARGUMENT

INTRODUCTION

Children have individual interests and rights under our Constitution and laws. The child's right to be part of a stable and secure family is paramount among those fundamental rights and liberties. To effectuate this, children must be afforded legitimacy and certainty as to their familial status and parentage. This Court has repeatedly recognized that children possess individual rights under the United States Constitution.³ State and

3. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."); *In re Gault*, 387 U.S. 1, 13 (1967) ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone").

federal courts alike have specifically recognized the heightened interest that children have in their familial status, often even above the parent's interest.⁴

Just as parents have a fundamental right to have and raise children, children have a fundamental right to a permanent family relationship. A child's right to a permanent familial bond with an adoptive parent or parents is among the liberty interests protected by the Constitution. *See Santosky v. Kramer*, 455 U.S. 745 (1982) (recognizing that there is a liberty interest in child-parent relationships). Family relationships, by their very nature, involve deep attachments and commitments which are the lifeblood of liberty and happiness. *See Moore v. E. Cleveland*, 431 U.S. 494, 504-506 (1977) (preserving right of single mother with a son and two unrelated grandsons to

4. *In re Bridget R.*, 49 Cal.Rptr.2d 507 (Cal. App. 1996), review denied Cal. Sup. Ct. (1996) ("If anything, children's familial rights are more compelling than adults', because children's interests in family relationships comprise more than the emotional and social interests.... which adults have in family life; children's interests also include the elementary and wholly practical needs of the small and helpless to be protected from harm and to have stable and permanent homes in which each child's mind and character can grow, unhampered by uncertainty and fear of what the next day or week or court appearance may bring."). *See also, Smith v. Org. of Foster Families*, 431 U.S. 816, 845 (1977); *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987) (child's interest in continued companionship and society of parents is a cognizable liberty interest); *Reist v. Bay Circuit Judge*, 241 N.W.2d 55, 62 (Mich. 1976) (rights of parent and child in their "fundamental human relationship" are encompassed within the term "liberty"); *Espinoza v. O'Dell*, 633 P.2d 455 (Colo. 1981) (recognizing liberty interest in mutual relationship between child and parent).

enjoy family structure). Consistent with these principles, a child has a special interest in obtaining an accurate birth certificate setting forth the names of her adoptive parents and the certainty and legitimacy that such a document brings to the child's familial status. The child here seeks to vindicate her fundamental rights and liberties by asking for her birth state to issue her a valid birth certificate according to its own laws. Louisiana's refusal to do so is a denial of the child's rights.

I. ADOPTION IS THE ONLY WAY THAT MANY CHILDREN CAN EXPERIENCE THE PERMANENCY, STABILITY AND SECURITY OF FAMILY.

For children removed from their biological parents, adoption is one of the most important and effective ways to provide them with family security and stability. "No other form of substitute care offers children - or adults seeking children - the quality of legal, psychological, and familial belonging that adoption creates." Benson Jaffe & David Fanshel, *HOW THEY FARED IN ADOPTION V* (1970). Unlike less permanent arrangements like foster care or temporary custody, adoption provides children and families with legal certainty. This certainty encourages an environment that fosters security and stability in the child's care in a consistent and reliable manner as she grows up. Louisiana's refusal to satisfy its own laws and issue Infant J. a birth certificate that accurately reflects her parentage, frustrates this goal.

A. Promotion Of Stable And Secure Families Is Essential For Children’s Healthy Social And Emotional Development.

Children require secure and stable family relationships in order to develop into autonomous, socially responsible, psychologically well-adjusted adults. Child development research overwhelmingly shows that children form strong bonds of attachment to their parents early in life, which strengthen and develop as children grow older. *See, e.g.*, John Bowlby, ATTACHMENT (1969); Joseph Goldstein, et al., BEYOND THE BEST INTERESTS OF THE CHILD 98 (2d ed. 1979); L. Alan Sroufe, *Attachment and Development: A Prospective, Longitudinal Study from Birth to Adulthood*, 7 ATTACHMENT & HUM. DEV. 349, 365 (2005). These attachments “engage children in the human community in ways that help them define who they are, what they can become, and how and why they are important to other people.” *Young children develop in an environment of relationships*, National Scientific Council on the Developing Child. (2004), Working Paper No. 1., <http://www.developingchild.net>.

The attachments of a secure and stable family relationship are critical for children to achieve “the ability independently to define [their] identity that is central to any concept of liberty.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 619 (1984). Courts have long recognized that “children require secure, stable, long-term, continuous relationships with their parents or foster parents.” *Lehman v. Lycoming County Children’s Servs. Agency*, 458 U.S. 502, 513 (1982). Scientific research bears this out.⁵

⁵. *See Brief of Amici Curiae Adoption and Children’s Rights Organizations* filed in support of Petitioners.

Though Infant J. was the subject of a private adoption, *Amici* are entities who engage with children in state foster care systems each day who would be equally effected by the Fifth Circuit's failure to order the issuance of a birth certificate for a similarly situated out-of-state child in the foster care system. These children, who lack the support and care of family, are especially vulnerable as they approach and enter adulthood. Available data demonstrate the acute difficulties faced by children aging out of the foster care system without familial support. *See, e.g.*, Mark E. Courtney & Darcy Hughes Heuring, *The Transition to Adulthood for Youth "Aging Out" of the Foster Care System*, in *ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS 27-67* (D. Wayne Osgood et al. eds. 2007) (youth aging out of foster care disproportionately rely on public assistance, enter the criminal justice system, and face homelessness). These data confirm the need for stable and secure families for these children to avoid bad outcomes flowing from their vulnerable status. Adoption plays a central role in securing better futures for these children.

Each year almost 500,000 children enter foster care because their parents are unable or unwilling to care for them. *See* Children's Defense Fund, *The State of America's Children 2010*, <http://www.childrensdefense.org/child-research-data-publications/data/state-of-americas-children-2010-report.html>. Many of these children are victims of abuse and neglect. In 2008, only 54,000 of the 123,000 children waiting to be adopted actually were adopted out of foster care; 29,000 children aged out of foster care in 2008 without the promise of permanency and family fulfilled. United States Department of Health

and Human Services, Administration for Children and Families, Adoption and Foster Care Analysis and Reporting System (AFCARS), Fiscal Year 2008, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report16.htm

The law “has recognized that natural bonds of affection lead parents to act in the best interest of their children.” *Parham v. J.R.*, 442 U.S. 584, 602 (1979), referring to 1 W. Blackstone, Commentaries 447; 2 J. Kent, Commentaries on American Law 190. This Court has fortified the role of parents calling it “cardinal” that the “custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *see also Troxel v. Granville*, 530 U.S. 57 (2000) (noting the importance of family in reference to grandparent visitation); *Lehr v. Robertson*, 463 U.S. 248 (1983) (noting the importance of rights of parent and child to family relationships with regard to notice for adoption); *Parham*, 442 U.S. at 584 (noting the importance of child’s right to parents in reference to juvenile commitment proceedings); *FCC v. Pacifica Found.*, 438 U.S. 726 (1978), (noting the importance of child rearing in our society with regard to protecting youth from indecent language).

Louisiana law places these same values on a child-parent relationship recognizing the reciprocal rights and obligations of parents and children. A parent has a natural right to his biological child and a child likewise has a right to his parent. Courts in Louisiana have found a state-based constitutional right of children to a relationship with their parents that is equal to the fundamental right of parents

to care and control of their children. *See B.G.S.*, 556 So. 2d at 551, citing *Roy v. Speer*, 192 So. 2d 554, 556-57 (La. Sup. Ct. 1966) (“the reciprocal rights and obligations of natural parents and children are among those unremunerated rights retained by individuals pursuant to La. Const. art. 1, § 24.”) *Id.* at 551. Because adoption replicates the “status” of parent in adopted parents, and child, *see Green v. Paul*, 31 So. 2d 819, 821 (La. Sup. Ct. 1947), these reciprocal rights and obligations also must attach to the legal relationship created by the adoption decree. Such rights include the fundamental right of illegitimate children to inheritance and alimony against their fathers or fathers’ descendants. *In re Adoption of B.G.S.*, 556 So. 2d 545, 551 (La. Sup. Ct. 1990).

Federal law, in the form of the Adoption and Safe Families Act, expressly favors the adoption of children when biological families fail. 42 U.S.C. §§ 620-679. As echoed in state legislation, these laws promote the establishment of stable families for children. Unfortunately, the demand for adoptive families, especially for children in foster care, consistently goes unmet. The importance of familial bonds for children is unquestioned:

...a child who receives proper nutrition, adequate schooling and supportive sustaining shelter is among the fortunate, whatever the source. A child who also receives the love and nurture of even a single parent can be counted among the blessed. Here this Court finds a child who has all of the above benefits and *two* adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There

is no reason in law, logic or social philosophy to obstruct such a favorable situation.

In re Evan, 583 N.Y.S.2d 997, 1002 (N.Y. Sur. Ct.1992).

Louisiana's refusal to issue a birth certificate with the names of both parents who legally adopted Infant J. thwarts efforts to provide children with secure family relationships. The "paramount concern should be with the effect of our laws on the reality of children's lives." *In re Adoptions of B.L.V.B. and E.L.V.B.*, 628 A.2d 1271, 1276 (Vt. 1993). Policies that make children less secure in their families should be rejected by this and all Courts.

B. Adoption Laws Seek To Create Family Security For Children In Need And Are Guided By The Best Interests of the Child.

The central goal of adoption is to meet the child's needs by providing family security. Adoption "protects the security of family units by defining the legal rights and responsibilities of children who find themselves in circumstances that do not include two biological parents." *B.L.V.B.*, 628 A.2d at 1274.

Adoption brings the child many material and emotional benefits. For example, establishing legal parentage:

...brings the child a myriad of economic and health protections that can be critical. These include access to social security benefits in the event of the adoptive parent's death or disability, health insurance coverage, life insurance coverage, rights of inheritance, the right to

sue for wrongful death and the right to child support. Adoptive parents can make medical decisions for the child in case of emergencies. Most importantly from an emotional standpoint, parenthood means presumptive custodial rights and, upon death of the biological parent or a breakup of the adults' relationship, continuity in the child's relationships with the second parent and relatives.

Patricia M. Logue, *The Rights of Lesbian and Gay Parents and Their Children*, 18 J.Am. Acad. Matrim. Law 95, 113 (2002). Adoption provides certainty for the child in terms of expectations for the future and also allows the parents to plan for the child's future thus serving the child's best interests. *See e.g., In re Adoption of Tammy*, 619 N.E.2d 315, 320 (Mass. 1993) (listing legal rights child may acquire through adoption including inheritance, support, health insurance, and social security benefits); *In re Adoption of Two Children by H.N.R.*, 666 A.2d 535, 540 (N.J. Super. Ct. App. Div. 1995) (explaining "[i]t is surely in the best interests of children, and the state, to facilitate adoptions in these circumstances so that legal rights and responsibilities may be determined now and any problems that arise later may be resolved within the recognized framework of domestic relations law")(internal citations omitted); *Petition of K.M.*, 653 N.E.2d 888, 895 (Ill. App. 1995)(stating that "a court should consider, when resolving statutory ambiguities, whether a proposed interpretation advances the best interests of the child").

Adoption creates a family where none existed before. After a decree of adoption becomes final, adoption "endows the adoptive parents with all the legal rights and responsibilities associated with parenthood and severs,

for the most part, ties to the biological parents.” *See* ADOPTION LAW AND PRACTICE § 1-1 (Joan Heifetz Hollinger ed. 2009); *see also*, UNIFORM ADOPTION ACT § 1-104, Legal Relationship Between Adoptee and Adoptive Parent After Adoption. A court decree of adoption establishes the legal parentage of a child, placing the child on the same legal footing as any other child living with their biological parents in an extant family.

As our view of children has changed, adoption law and policy have evolved. While adoption remains a critical vehicle for managing inheritance and other estate matters, contemporary adoption law is also animated by society’s interest in providing a stable and permanent home for a child rather than simply the disposition of property upon the death of a parent. Courts have repeatedly stated that the purpose of adoption laws are to “promote the welfare of children.” *In re Camp*, 111 A. 565, 567 (Vt. 1920). Adoption laws prioritize securing stability for the adopted child. Once the state has approved the adoptive parents, the focus is on securing the legal parent-child relationship. This trend in the law demonstrates the legal “recognition of the important value to be placed on the nurturing of children.” Theresa Glennon, *Binding the Family Ties: A Child Advocacy Perspective on Second-Parent Adoptions*, 7 Temp. Pol. & Civ. Rts. L. Rev. 255, 281 (1998).

C. Accurate Birth Certificates Are The Currency Through Which Adopted Children Experience The Security Of Family.

Parents are accorded significant rights in the care and control of their children because they are viewed as the natural protectors of children. *See Parham*, 442 U.S. at 602. As this Court has said, parents “have the right,

coupled with the high duty, to recognize and prepare” their children for their adulthood and responsibilities as citizens. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Parents have unique rights to make crucial decisions about their child’s life. These include decisions about schooling, religion, medical care, and even with whom the child may have contact. *See, e.g., id.* (education and religion); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (education); *Parham v. J.R.*, 442 U.S. 584 (1979) (medical decisions); *Troxel v. Granville*, 530 U.S. 57 (2000) (visitation with relatives). Decisions of this Court, reflected in state laws, make clear that these parental rights are fundamental and may be curtailed only under exceptional circumstances. *Stanley v. Illinois*, 405 U.S. 645 (1972). These parental rights are exercised every day through innumerable small decisions - enrolling children in school, signing permission slips for field trips, picking children up from daycare, signing consent to treatment forms, approving social activities or directing their religious education – that are the basic building blocks of familial relationships.

This Court has noted the centrality of the daily interactions between parent, child in solidifying the family:

Thus the 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, and from the role it plays in “promot(ing) a way of life” through the instruction of children.

Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 844 (1977)(internal citations omitted). It is through these daily interactions and

transactions that children whose family relationship has been ‘created’ through adoption experience “the benefits and security of a legal relationship” with their parents. *B.L.V.B.*, 628 A. 2d at 1276.

II. THE FULL FAITH AND CREDIT CLAUSE REQUIRES THE ISSUANCE OF AN AMENDED BIRTH CERTIFICATE.

The Fifth Circuit’s decision usurps the express intent of the Full Faith and Credit Clause by claiming Louisiana need not enforce, but only recognize, the New York adoption order. Neither federal constitutional law, nor Louisiana’s own interpretations of their full faith and credit obligations support this reading. It is a fiction drawn by the Fifth Circuit to avoid giving the New York adoption meaning. It should not be abided by this Court.

The Fifth Circuit misapprehends the issue presented. A birth certificate is not a “benefit,” but rather the recognition of Infant J.’s adoption in order to give it meaning under certain circumstances. Without this recognition, the adoption order lacks a critical component to its meaningful implementation and it threatens the stability and certainty it was instituted to provide Infant J.⁶

The Registrar concedes, Infant J. was legally adopted by Adar and Smith; both are the legal parents of the child. *En Banc* p. 19. The benefit of that relationship

6. *Amici* agree with the long list of potential dangers if the child lacks a corrected birth certificate outlined in the *Brief of Amicus Curiae Professors of Law Joan Heifetz Hollinger, et al.*, at p. 13.

has been conferred upon the *child* through the legally valid New York adoption. Petitioners ask that this legal adoption decree be recognized to the same degree as any valid adoption decree executed within Louisiana's borders. Louisiana law explicitly mandates that a new birth certificate must be issued for every child born in Louisiana who is adopted in a court of proper jurisdiction in another state. The birth certificate must reflect "the names of the adoptive parents":

Upon receipt of the certified copy of the [out-of-state adoption] decree, the state registrar shall make a new record in its archives, showing:

- (1) The date and place of birth of the person adopted;
- (2) The new name of the person adopted, if the name has been changed by the decree of adoption; and
- (3) The names of the adoptive parents and any other data about them that is available and adds to the completeness of the certificate of the adopted child.

Section 40:76(C) of the Louisiana Revised Statutes. The Registrar concedes that Adar and Smith are the legal parents of Infant J. *En Banc* p. 6. The issuance of an accurate birth certificate is simply a reflection of that acknowledgment as required under Louisiana law.

The purpose of the Full Faith and Credit Clause is to establish a shared obligation among the states. *Milwaukee*

Co. v. M.E. White Co., 296 U.S. 268, 276-77 (1935); *see also Fauntleroy v. Lum*, 210 U.S. 230, 237-8 (1908). The Clause requires “that ‘not that some, but full’ faith and credit be given judgments of a state court.” *Williams v. North Carolina*, 317 U.S. 287, 294 (1942) (quoting *Davis v. Davis*, 305 U.S. 32, 40 (1938)). By refusing to issue a corrected birth certificate with the names of both parents, the Registrar has refused to provide “full” faith and credit to the New York judgment of adoption.

A. The Registrar’s Actions Violate Louisiana’s Own Recognition Of The Mandates Of Full Faith And Credit And Violate The Rights Of Infant J.

An adoption decree establishes the legal relationship between parents and child. This Court should instruct Louisiana to recognize the status of the family created under New York law, even though the adoption could not have occurred under Louisiana law. Indeed, Louisiana *has* accorded full faith and credit to similar out-of-state judgments.

Every child born in Louisiana has a statutory right to a birth certificate marking their birth. Section 40:44 of the Louisiana Revised Statutes provides:

A certificate of every childbirth shall be filed with the local registrar within fifteen days after birth in the parish in which the birth occurred or, at the direction of the state registrar, the certificate shall be filed directly with the central vital records registry.

An adopted child has the same right to a correct birth certificate upon adoption.⁷ As far back as 1978, the Louisiana Attorney General confirmed the existence and importance of those rights: “Inherent in the right to adopt or be adopted is the right to have all of the official records reflect the new status and relationships of the adopted persons.” Op. No. 1978-951, 1978 La. AG LEXIS 462 (Aug. 11, 1978) at *2-3. It is significant that Louisiana law does not prohibit the provision of birth certificates to unmarried “natural” or birth parents. LA. REV. STAT. § 40:34(h)(i), (i). Those same rights should carry over to adoptive parents as if they were biological parents sharing the same status.

Uniformly, birth certificates are acknowledged as legally significant documents. *See, e.g.* Office of the Inspector General, Office of Analysis and Inspections, Birth Certificate Fraud, March 1988, at p. i., (“A birth certificate issued in the States is the key to opening many doors in our society – from citizenship privileges to Social Security benefits.”).

Louisiana courts have recognized that adoption is “the establishment of the relationship of parent and child between persons not so related by nature and the

7. A birth certificate shall include the maiden name of the mother (outside of a surrogate situation), and, in the case of unmarried parents, the “full name of the father shall be included on the record of birth of the child only if the father and mother have signed a voluntary acknowledgment of paternity or a court of competent jurisdiction has issued an adjudication of paternity.” LA. REV. STAT. § 40:34(h)(i), (i). Under Louisiana law, birth certificates are *prima facie* evidence of the facts therein and are admitted as evidence. *See* LA. REV. STAT. § 40:42.

act of adoption creates a status rather than a contractual relationship.” *Green*, 31 So. 2d at 821. Once the status of adoptive parent and child is validly conferred under the law of one state, the adoption must be given effect in any other state.⁸ *Akin v. La. Nat’l Bank*, 322 F.2d 749, 758 (5th Cir. 1963); *see also, Succession of Caldwell*, 38 So. 140 (La. Sup. Ct. 1905) (a validly performed adoption in Massachusetts must be recognized in Louisiana under the Full Faith and Credit Clause and on the mere principles of comity); *Succession of Goss*, 304 So. 2d 704, 708 (La. App. Ct. 1974) (Louisiana courts “have not heretofore refused to apply the law of another state in respect to legitimacy (or any other status) merely because the child, if born in Louisiana, would not have been considered legitimate (or adopted, etc.)” under Louisiana law).

Louisiana law mandates the issuance of an accurate birth certificate for all children born in the state,⁹ including illegitimate children. No Louisiana provision supports the

8. This Court has noted that its “decisions support no roving ‘public policy exception’ to the full faith and credit due judgments.” *Baker v. General Motors Corp.*, 522 U.S. 222, 233 (1998); *see also Finstuen v. Crutcher*, 496 F.3d 1139, 1156 (10th Cir. 2007) (holding that “final adoption orders and decrees are judgments that are entitled to recognition by all other states under the Full Faith and Credit Clause” and finding Oklahoma’s adoption amendment refusing to recognize final adoption orders of other states that permit same sex adoption unconstitutional).

9. This is the case even for an illegitimate child. *See, e.g., Adoption of Baby Doe*, 492 So. 2d 508, 509 (La. App. Ct. 1986) (finding that the father of an illegitimate child secures his parental rights to the child by either signing the child’s birth certificate as the father of the child, or, where that has been prevented, by executing an act of acknowledgement).

Registrar's assertion that she may look to Louisiana's domestic adoption law for a definition of 'adoptive parent.' LA. REV. STAT. § 40:34(D), states:

The state registrar of vital records is hereby authorized to amend an original birth certificate in accordance with Louisiana laws or a final court order which specifically orders the amendments, provided the court's order complies with existing Louisiana laws.

LA. REV. STAT. § 40:77 states: "...the state registrar shall issue to the adoptive parents a certified copy of the new record ..."

B. Full Faith And Credit Requires Louisiana To Respect The Adoption As Louisiana Would Recognize Its Own Judgments.

In upholding Louisiana's denial of a birth certificate, the Fifth Circuit crafted a fictional dichotomy between the Full Faith and Credit right to recognition of a judgment and a non-constitutionally mandated request to enforce a judgment of another state. No true dichotomy exists.

Issuing an accurate certificate of birth recognizes the validity of New York's adoption order. It does not require Louisiana to adopt New York law. The Full Faith and Credit Clause is undermined where states are free to disregard a properly issued judgment from another state. Infant J. and Petitioners -- her adoptive parents -- are seeking only the recognition of the facts and issues addressed by the New York judgment: that Petitioners are both Infant J.'s legally recognized parents. Petitioners are

not seeking to force Louisiana to comply with New York's law on adoption by unmarried persons.

By denying Infant J. the right to a correct birth certificate, the Registrar has failed to recognize the New York adoption decree and, thereby, failed to recognize Infant J.'s rights: "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. at 233 (1998).

The cases cited by the Fifth Circuit are inapt because the judgments seeking to be recognized are not, as a birth certificate is to an adoption, an inherent corollary to the existing valid judgment of another state. Importantly, *Estin* was decided on jurisdiction; this Court did not decide the full faith and credit issue. Significantly, the facts in *Estin* were distinct from those here. *Estin* involved a spousal support request in New York, which was not intrinsic to the Nevada divorce decree. *Estin v. Estin*, 334 U.S. 541,548 (1948). Here the amended birth certificate is intrinsic to the adoption. Similarly, in *Hood v. McGehee*, 237 U.S. 611 (1915), this Court found that the Full Faith and Credit Clause did not require Alabama to transfer title to property to a decedent's adoptive children where the Alabama statute of descents excluded children adopted in other states, notwithstanding an adoption decree issued by Louisiana. The claim being denied in *Hood* (the right to inherit land) was entirely separate from the rights conferred by the out-of-state decree (the right to be adopted).¹⁰

10. Similarly, the Fifth Circuit's comparison of this case to that of a convicted sex offender who was not required to register as such in New York, but was required to do so in Illinois, is

Unlike *Estin* and *Hood*, Infant J. and her adoptive parents are not seeking enforcement of a tangential right or of “every legal incidence” of their parental relationship. *Estin*, 334 U.S. at 546. They are seeking application in Louisiana of the core determination that was made by the New York adoption decree, i.e., Infant J.’s status. This Court has repeatedly upheld the proposition that full faith and credit must be given to judgments in domestic relation matters, even where the laws or policies in the second state conflict with those of the issuing court’s state. In *Williams*, 317 U.S. at 288-89, for example, this Court required recognition of a Nevada divorce decree and marriage despite North Carolina’s conflicting policy against validating such decrees. *See also Davis v. Davis*, 305 U.S. 32, 43 (1938)(Virginia divorce decree recognized even though it conflicted with laws of District of Columbia). Whether or not Louisiana’s law would prohibit the adoption by unmarried persons is irrelevant. Full faith and credit must be given to the New York judgment.

C. No Proper Application Of The Full Faith and Credit Clause Justifies Louisiana’s Failure To Issue An Amended Birth Certificate.

The Fifth Circuit holds that Louisiana need not issue an amended certificate because the Full Faith and Credit Clause does not require enforcement of a judgment. This Court has never permitted an “enforcement” exception to

misguided. *En Banc* p. 22-23 (citing *Rosin v. Monken*, 599 F.3d 574 (7th Cir. 2010)). In *Rosin*, the Seventh Circuit quite properly held that the Full Faith and Credit Clause does not require a state to forego its exercise of police powers “to protect their citizens against sexual predators.” *Id.* at 577. Obviously, the police powers of Louisiana are not at issue in this petition.

trump a state's full faith and credit obligations. *See Hughes v. Fetter*, 341 U.S. 609, 611 (1951) (noting “the strong unifying principle embodied in the Full Faith and Credit Clause looking toward *maximum enforcement* in each state of the obligations or rights created or recognized by the statutes of sister states”) (emphasis added). The Fifth Circuit's reliance on *Baker v. General Motors Corp.*, 522 U.S. 222 (1998), for this contention is misplaced. *Baker* only limits a state's obligations to enforce judgments in the form prescribed by the originating state, simply leaving states free to “enforce” judgments consistent with their own laws.

Full faith and credit, however, does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law.

Id. at 235. Applying *Baker* to Infant J.'s case, Louisiana may apply its own law in enforcing an out-of-state judgment which would require Louisiana to issue a certificate for the New York adoption.

This Court's decision in *Broderick v. Rosner*, 294 U.S. 629 (1935), is likewise of little support to the Fifth Circuit's limits on full faith and credit. The Fifth Circuit's application of *Broderick* would render the Full Faith and Credit Clause a nullity. The Fifth Circuit ignored the Court's admonition that a state cannot shirk its recognition responsibilities under the “guise” of policy conflict.

But the room left for the play of conflicting policies is a narrow one. ... A State may adopt such system of courts and form of remedy as it sees fit. ... But it may not, under the guise of merely affecting the remedy, deny the enforcement of claims otherwise within the protection of the full faith and credit clause, when its courts have general jurisdiction of the subject matter and the parties.

Id. at 642-43; *Howlett v. Rose*, 496 U.S. 356, 381-82 (1990).

Far from exempting enforcement from the Full Faith and Credit Clause, *Broderick* underscores that states are obligated to enforce out-of-state judgments, although they may apply their procedural rules with respect to enforcement in an “evenhanded” manner. *Baker*, 522 U.S. at 235. The forum state may not use its procedural rules to discriminate against out-of-state judgments. *Wells v. Simonds Abrasive Co.*, 345 U.S. 514, 519-20, (1953). At the very least, “evenhanded” must require consistency with past enforcement of similar judgments under Louisiana law. Louisiana is required to enforce the Appellees’ New York adoption decree to the full extent permitted under Louisiana law.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to grant this Petition for Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX — IDENTITY OF *AMICI*

ORGANIZATIONS

Support Center for Child Advocates (Child Advocates) provides legal assistance and social service advocacy to abused and neglected children in Philadelphia. For all the children committed to Child Advocates' care, lawyers and social workers advocate to ensure safety, health, education, family, permanency and access to justice. In their advocacy, Child Advocates attorneys and social workers witness the negative effects on many child-clients who wait for adoptive, permanent homes. All children should live with a permanent family; second-parent adoptions help to increase the number and stability of adoptive homes for children.

Juvenile Law Center (JLC) is the oldest multi-issue public interest law firm for children in the United States, founded in 1975 to advance the rights and well being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies such as abused and neglected children in need of safe and nurturing families. JLC advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. JLC has worked in particular to promote permanency and stability for children in the child welfare system, and has worked extensively in the past with Pennsylvania's Statewide Adoption Network through training and technical assistance.

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Hofstra Child Advocacy Clinic (Clinic) was established in 1999 in response to the urgent need for more effective representation for children and families in crisis. It is part of the Center for Children, Families and the Law, a unique interdisciplinary program of education, community service and research designed to encourage professionals from law and mental health to work together for the benefit of children and families involved in the legal system. The Clinic has represented hundreds of children in abuse, neglect, abandonment, adoption, immigration and other matters.

Civitas ChildLaw Center (ChildLaw Center) is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its ChildLaw Clinic, the ChildLaw Center also routinely provides representation to child clients in child protection proceedings and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court involved youth. It is committed to the idea that the public entities serving at-risk children and families should always seek to minimize the harm to children following from state interventions. Professor Bruce A. Boyer, counsel of record for *Amici*, is the Director of the ChildLaw Clinic and has litigated, taught, consulted, and written extensively in the area of child abuse and neglect for more than 20 years.

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Children and Family Justice Center (CFJC) at Northwestern University School of Law is a comprehensive children's law center that has represented young people in conflict with the law for over 20 years. In addition to its direct representation of youth and families in matters relating to delinquency and crime, school discipline, immigration/asylum and fair sentencing practices, the CFJC also collaborates with community members and other advocacy organizations to develop fair and effective strategies for systems reform.

Children's Law Center of Minnesota (CLC) is a 501(c)(3) nonprofit organization that since 1995 has been advocating for children who are the victims of abuse, neglect and abandonment. CLC's mission is to promote the rights and interests of all children – especially children of color and children with disabilities – in the judicial, child welfare, health care and education systems. CLC seeks to increase the effectiveness of child-serving systems with the goal of improving the lives of foster care youth. To meet its goal, CLC employs three strategies: (1) representation of abused and neglected children; (2) systemic reform benefiting foster children; and (3) education of child advocates.

Juvenile Justice Project of Louisiana (JJPL) is the only statewide, non-profit advocacy organization focused on reform of the juvenile justice system in Louisiana. Founded in 1997 to challenge the way the state handles court involved youth, JJPL pays particular attention to the high rate of juvenile incarceration in Louisiana and the conditions under which children are incarcerated.

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Through direct advocacy, research and cooperation with state run agencies, JJPL works to both improve conditions of confinement and indentify sensible alternatives to incarceration. JJPL also works to ensure that children's rights are protected at all stages of juvenile court proceedings, from arrest through disposition, post-disposition and appeal, and that the juvenile and adult criminal justice systems take into account the unique developmental differences between youth and adults in enforcing these rights. JJPL continues to work to build the capacity of Louisiana's juvenile public defenders by providing support, consultation and training, as well as pushing for system-wide reform and increased resources for juvenile public defenders.

Legal Services for Children (LSC) ensures that all children and youth have an opportunity to be raised in a safe environment with equal access to a meaningful education and the services and support they need to become healthy and productive young adults. This mission is rooted in the belief that young people need strong families and deserve positive alternatives to unnecessary placement in foster care, juvenile justice facilities, and immigration detention. Founded in 1975, LSC provides free legal and social work services to children and youth in the San Francisco Bay Area in guardianship, dependency, school discipline, immigration, emancipation, and restraining order proceedings. LSC regularly represents abused and neglected children in child protective proceedings where the child is often seeking adoption as permanent plan if the child cannot be successfully reunified with the child's parents.

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Barton Child Law and Policy Center at Emory University School of Law (Barton Center) is an in-house legal clinic dedicated to the promotion and protection of the legal rights and interests of children who are involved with the juvenile court, child welfare and juvenile justice systems. Barton Center achieve our reform objectives in a number of ways including research-based policy development, responsible legislative advocacy, and holistic legal representation for individual youth clients. The Barton Center's faculty members are established subject-matter experts and skillful practitioners in juvenile law and policy, including adoption. We employ a multidisciplinary approach to our advocacy and research activities, expanding the depth and breadth of our knowledge and experience through collaborations with social work, public health, education and medical professionals. Barton Center's work on a conviction that every child has a right to live safely within a permanent family. Consistent with that value, the Barton Center engages in the development and advocacy of adoption policy and best practices that facilitate a child's understanding of his or her legitimate and secure place in a family.

Youth Law Center (YLC) is a San Francisco based public interest law office that has worked nationally since 1978 to protect vulnerable children, with a particular focus on the problems of children living apart from their families. The goal of the YLC's work is to ensure that vulnerable children are provided with what they need to grow into healthy, productive adults. At the core of the YLC's mission is the belief that every child has a right to a permanent home and family. Accordingly, we support establishing

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legal parents for all children and recognizing that adopted children are entitled to the legal benefits of the parent-child relationship that adoption confers. YLC attorneys have represented children in civil rights litigation in eighteen states and have brought about extensive changes and improvements in child serving systems affecting the lives of hundreds of thousands of children throughout the country. YLC's staff attorneys are widely recognized as leading legal advocates in children's law.

Children's Law Center of Massachusetts (CLCM), founded in 1977, is a private, non-profit legal advocacy and resource center providing trial and appellate representation to low income children on issues affecting their civil and criminal rights, custody, health, education and welfare. CLCM represents over 400 children annually, responds to over 1000 requests for technical assistance, and conducts over 50 trainings for parents, attorneys and other helping professionals each year. In addition, CLCM engages in research and policy work that impacts thousands of children in Massachusetts.

Child and Family Advocacy Clinic (CFAC) at Rutgers School of Law-Camden represents abused and neglected children in child welfare cases in New Jersey. The CFAC also provides legal and social services to children and families in special education and public benefits cases.

Center for Children's Advocacy (CCA), established in 1997, is non-profit law firm built on the belief that every child, no matter the circumstances, deserves justice, equity and access. CCA promotes and protects the legal

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rights of Connecticut's poorest and most vulnerable children. Its mission is to promote and protect the legal rights and interests of poor children who are dependent upon the judicial, child welfare, health and mental health, education, and juvenile justice systems for their care. The CCA employs a number of methods to achieve this and emphasizes holistic services to children.

National Center for Youth Law (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL supports the advocacy of others around the country through its legal journal, *Youth Law News*, and by providing trainings and technical assistance. NCYL has participated in litigation to improve the quality of foster care in numerous states, expanded access to children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's child welfare agenda, NCYL works to ensure the safety, stability and the wellbeing of abused and neglected children. Denying parental rights to same sex couples – who can and do provide healthy and stable foster and adoptive homes for abused and neglected children – undermines these efforts.

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Acadiana Legal Service Corporation, Child In Need of Care Unit, is an entity dedicated to providing representation to children in abuse, neglect, and dependency proceedings in southwestern and central Louisiana.

INDIVIDUALS

Andrew Block is the Director of the Child Advocacy Clinic at the University of Virginia School of Law which he started 12 years ago as an adjunct professor. As director of the clinic, Professor Block trains law students to be effective and competent lawyers for children. Prior to this position, he was the founder and Legal Director of the JustChildren Program of the Legal Aid Justice Center, a program that provides direct legal representation to low-income children across the Commonwealth of Virginia, including children in the foster care system, and engages in statewide policy reform efforts to improve the government systems serving children in poverty. During his time at JustChildren Professor Block worked extensively to change both law and practice in Virginia to provide greater educational stability (leading to greater placement stability) for children in government care. A nationally recognized and lauded advocate, Block also trains judges, lawyers, parents and child-serving professionals across the country to become more effective and informed advocates and decisions makers for the children with whom they work.

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Michael J. Dale is a professor of law at Nova Southeastern University Law Center in Fort Lauderdale, FL, where he teaches courses in juvenile law, family law, conflict of laws and civil procedure and in the family and juvenile rights clinic. Professor Dale is the former executive director of The Youth Law Center in San Francisco and was attorney in charge of the Special Litigation Unit of the Juvenile Rights Division of The Legal Aid Society of the City of New York. He has written over 70 articles dealing with children's rights issues and is the author of the two- volume text, "Representing the Child Client" published by LexisNexis. He has been plaintiffs' counsel in numerous children's civil rights cases including adoption matters and just completed a study of Florida adoption law and the Hague Convention on Inter-country Adoption.