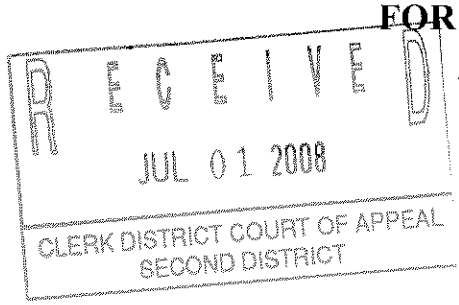
COPY

Case No. 07-14830G

FLORIDA COURT OF APPEAL
FOR THE SECOND DISTRICT



LARA EMBRY,

Appellant,

v.

KIMBERLY RYAN,

Appellee.

On Appeal from the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County Docket No. 2007 DR 014782 NC

AMICUS CURIAE BRIEF OF PROFESSORS ERWIN CHEMERINSKY, SHARON RUSH, AND ROBERT SCHAPIRO IN SUPPORT OF APPELLANT URGING REVERSAL

Jon L. Mills
(Fla. Bar No. 148286)
Univ. of Fla. Levin College of Law
Box 117625
Gainesville, FL 32611
Phone Number: (352) 273-0835

Gregory R. Nevins*
Lambda Legal Defense and Education Fund, Inc.
730 Peachtree Street NE #1070
Atlanta, GA 30308
Phone Number: (404) 897-1880
*not admitted in Florida

ATTORNEYS FOR *AMICI CURIAE*
ERWIN CHEMERINSKY, SHARON RUSH, AND ROBERT SCHAPIRO

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page(s)**

CONSTITUTIONS & STATUTES

INTEREST OF AMICUS CURIAE

As set forth in detail in the accompanying motion for leave of court, *amici curiae* are three professors of constitutional law concerned with the proper application of the Full Faith and Credit Clause in this case and the respect for final judgments from sister state courts that is required by the United States Constitution. The trial court committed a fundamental error of law in holding that local public policy provides a sufficient basis for refusing to respect the final judgment of a court of a sister state. *Amici* hope to assist the Court in appreciating its sometimes difficult duty of ensuring that trial courts do not elevate local policy preferences, however popular, over the constitutional obligation to honor decrees from other states.

SUMMARY OF ARGUMENT

This brief first explores the Supreme Court's Full Faith and Credit precedents over the past century that make clear that a court cannot invoke local public policy to refuse to recognize a final judgment from another state. These cases explain that, in creating this rule, the Founding Fathers sought to convert what had been a looser confederation of somewhat sovereign states into a single integrated nation. While the trial court largely understood these principles, it erred in believing that it was bound by two decisions of this Court that did invoke a public policy exception to

recognizing foreign adoptions. Those decisions were inapposite, however, because both involved European adoptions, to which the stringent commands of the Full Faith and Credit Clause do not apply.

Next, the brief discusses cases from state courts around the country holding that adoptions decrees, like all other judgments, must be afforded full faith and credit if the issuing court had proper jurisdiction, regardless of their own state's public policies.

This brief's Full Faith and Credit analysis concludes by examining the very recent and quite similar case of *Finstuen v. Crutcher*, in which the Tenth Circuit struck down an Oklahoma statute forbidding recognition of adoptions by same-sex couples. *Finstuen* held that the Full Faith and Credit Clause's command of respect for adoptions applied, notwithstanding an Oklahoma statute that barred recognition of adoptions by same-sex couples.

The brief concludes by retreating from the constitutional realm, where the command of recognition trumps public policy, to explain that the trial court simply got it wrong with respect to Florida public policy about recognition of adoptions. Whereas Oklahoma enacted a statute that literally orphaned certain children crossing its borders, Florida has a very liberal and child-focused policy of recognizing all adoptions that comport with due process, undoubtedly in recognition of the damage caused to a child by

taking away his or her adoptive parents. The public policy of Florida on the question before the Court is crystal clear; indeed, it is set forth by statute. That straightforward proposition also resolves this appeal.

ARGUMENT

Article IV, Section 1 of the U.S. Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. . . . " While this clause has many constitutional implications, dispositive of this case is one simple, bedrock principle of law repeatedly pronounced by the United States Supreme Court: a state cannot invoke its own public policy to refuse to respect a final judgment of another state. Following this precedent, courts around the country, culminating in the *Finstuen* decision by the Tenth Circuit last year, specifically have held that adoption decrees must be afforded full faith and credit without regard to any contrary public policy of the forum state, and that, coupled with the Florida's actual public policy regarding the respect due other state's adoptions, requires reversal.

I. THE UNITED STATES SUPREME COURT REPEATEDLY HAS STRESSED THAT ONE STATE'S JUDGMENT MUST BE RESPECTED IN ALL OTHER STATES, IRRESPECTIVE OF THOSE STATES' CONTRARY PUBLIC POLICY.

In justifying its refusal to recognize the Washington second parent adoption at issue in this case, the trial court relied on Florida Statute §

63.042(3), which excludes gay men and lesbians from the category of people who can adopt in Florida. The U.S. Supreme Court's precedents demonstrate the trial court's fundamental error in considering the ineligibility of gay people to adopt in this state as a justification for evading the state's obligation to respect the Washington adoption.

A logical place to begin the full faith and credit analysis is Justice Holmes' opinion for the Court a century ago in *Fauntleroy v. Lum*, 210 U.S. 230 (1908). There, a Mississippi arbitrator rendered an award on a cotton futures contract that was criminalized as a gambling contract by statute. *Id.* at 233-34. When a collection suit was brought against the defendant in his temporary residence of Missouri, the court there mistakenly confirmed the award, despite a Mississippi statute's provision that no such contract "be enforced by any court." *Id.* at 234. The Mississippi courts subsequently refused to honor the Missouri judgment, leading the Supreme Court to hold that "right or wrong," the Missouri judgment had to be honored. *Id.* at 237.

It is difficult to overstate the breadth of the *Fauntleroy* holding. Because the Missouri court had misapprehended Mississippi law, Missouri had no policy interest of its own at stake, save for respect for the finality of its court's judgments. By contrast, Mississippi's policy choice was clearly set forth in its criminal law and its restriction on courts' enforcement

powers. Nevertheless, the *Fauntleroy* Court in insisted that the final judgment of the Missouri court be respected because it was a final judgment, and for no other reason.

Fauntleroy was reaffirmed in a series of later decisions that eloquently explained the importance of the Full Faith and Credit clause to the very fabric of our unified republic. In 1935, the Supreme Court addressed the question of whether the fact that the forum state "may have a policy against [] enforcement" of a sister state's judgment "merit[s] recognition as a permissible limitation upon the full-faith and credit clause." *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 274 (1935). The Court held that the public policy of the forum state must give way, because the "very purpose of the full-faith and credit clause 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. . . ." *Id.* at 277-78. The Court mandated that the forum must respect the sister state's judgment even if it was clear "that considerations of policy of the forum [] would defeat" any attempt to bring the suit in the forum. *Id.* at 277.

Seven years later, the Court again stressed that, when enforcing a sister state's judgment, hostile public policy of the forum state that would

preclude such relief there is irrelevant. *Williams v. State of North Carolina*, 317 U.S. 287, 294 (1942) ("Thus even though the cause of action could not be entertained in the state of the forum either because it had been barred by the local statute of limitations *or contravened local policy*, the judgment thereon obtained in a sister state is entitled to full faith and credit.") (emphasis added). The *Williams* Court held that North Carolina could not refuse to respect a Nevada divorce decree despite the argument that "one state's policy of strict control over the institution of marriage could be thwarted by the decree of a more lax state." *Id.* at 302. The Court stressed the importance of the Full Faith and Credit Clause to unifying our nation: "It is a Constitution which we are expounding -- a Constitution which in no small measure brings separate sovereign states into an integrated whole through the medium of the full faith and credit clause." *Id.* at 303.

The following year, the Court ordered Louisiana to respect a Texas judgment affecting Louisiana workers. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943). The Court held that Louisiana's reliance on its own policy was constitutionally forbidden. *Id.* at 438 ("Nor are we aware of any considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to such a judgment outside the state of its

rendition."). That Louisiana had to sacrifice its own policy interests was the price to be paid by the national unity secured by the Constitution. *Id.* at 439 ("The full faith and credit clause like the commerce clause thus became a nationally unifying force. It altered the status of the several states as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application.").

Continuing on this path, the Court next ordered Massachusetts to give full faith and credit to a Florida divorce decree. *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). The Court again reiterated that the ceding of the forum state's policy concerns was necessary to achieve the Constitution's goals: "The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation. If in its application local policy must at times be required to give way, such 'is part of the price of our federal system.'" *Id.* at 355.

Only a decade ago, the Court reaffirmed this body of law in *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222 (1998). There, the Court chastised the trial court for having "misread our precedent" in applying a

"'public policy exception' permitting one State to resist recognition of another State's judgment." *Id.* at 233. "[O]ur decisions support no roving "public policy exception" to the full faith and credit due judgments," the Supreme Court explained. *Id.* Citing *Fauntleroy*, *Magnolia*, *Sherrer*, and specifically *Milwaukee County*'s recognition of the Full Faith and Credit Clause's purpose to make the states "integral parts of a single nation" (522 U.S. at 232, quoting 296 U.S. at 277), *Baker* reiterated the principle that, even though a state may be able to apply its own law to litigation that is initiated there, it must respect the judgment of a sister state that had proper jurisdiction: "Regarding judgments, however, the full faith and credit obligation is exacting. 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." 522 U.S. at 233.

The court below thoughtfully analyzed the *Baker* opinion and recognized that *Baker*'s logic would compel recognition of the Washington adoption. Yet inexplicably, the court held that it was bound by language supporting a public policy exception in *Tsilidis v. Pedakis*, 132 So.2d 9 (Fla. 1st DCA 1961) and *Kupec v. Cooper*, 593 So.2d 1176 (Fla. 5th DCA 1992). Those holdings need not be reconsidered, and indeed are irrelevant to this

case, because those decisions involved purported European adoptions. They therefore do not affect the respect due the Washington decree under the Full Faith and Credit clause, which does not apply to judgments from foreign countries. *Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185, 190 (1912); *Parker v. Parker*, 155 Fla. 635, 21 So.2d 141, 141-42 (Fla. 1945); *Nicor Intern. Corp. v. El Paso Corp.*, 318 F.Supp.2d 1160, 1173 (S.D. Fla. 2004).

II. THERE IS NATIONWIDE RECOGNITION THAT ADOPTION DECREES ARE JUDGMENTS THAT MUST BE RESPECTED WITHOUT REGARD TO A FORUM STATE'S CONTRARY PUBLIC POLICY.

Courts around the country have applied the Supreme Court's Full Faith and Credit jurisprudence to hold that full faith and credit must be afforded adoption decrees of other states. *In re Morris' Estate*, 56 Cal.App.2d 715, 723, 133 P.2d 452 (1943); *Russell v. Bridgens*, 264 Neb. 217, 647 N.W.2d 56 (Neb. 2002);[1] *Delaney v. First Nat. Bank in Albuquerque*, 73 N.M. 192, 196, 386 P.2d 711, 714 (N.M. 1963); *Wachovia Bank and Trust Co., N.A. v. Chambless*, 44 N.C.App. 95, 260 S.E.2d 688 (N.C. Ct. App. 1979); *see also In re Doe*, 7 Misc.3d 352, 357, 793 N.Y.S.2d

[1] *Russell* is instructive in this case. Although no public policy argument was addressed, the Nebraska Supreme Court upheld the validity of a Pennsylvania co-parent adoption, in which the legal mother of the child put up the child for adoption so that she and her same-sex partner could adopt her jointly. 647 N.W.2d at 58-59. That court recognized the validity of the Pennsylvania adoption, despite having held a few months earlier that second parent adoptions were not authorized by Nebraska law. *In re Adoption of Luke*, 640 N.W.2d 374 (Neb. 2002).

878 (N.Y. Sur. 2005).[2] In accordance with this principle, many courts have recognized the corollary principle that the Full Faith and Credit Clause also mandates recognition of a sister state's final appellate judgment resolving a challenge to an adoption decree. *Estate of Hart*, 165 Cal.App.3d 392, 397, 209 Cal. Rptr. 272 (1984) (respecting Oklahoma Supreme Court decision upholding validity of adoption); *In re Estate of Arthurs*, 87 Wash. App. 1088 (Wash. Ct. App. 1997) (respecting Ohio Court of Appeals' decision invalidating adoption).[3]

Several of these courts expressly recognized that full faith and credit is due irrespective of a claim that the adoption violates the public policy of the forum state. In *Delaney*, the New Mexico Supreme Court addressed the validity of a Colorado adoption of an adult in the face of a New Mexico statute that forbade such adoptions if the adopting parent was not at least twenty years older. 386 P.2d at 714. Because the adoptive parent was only 13 years older, the adoption was challenged on public policy grounds. The

---

[2] *See also Long v. Long*, 251 Cal.App.2d 732, 59 Cal.Rptr. 790, 795 (1967); *Byrum v. Hebert*, 422 So.2d 322 (La. Ct. App. 1982); *Estate of D'Angelo*, 139 Misc.2d 5, 10, 526 N.Y.S.2d 729 (Sur. Ct. Bronx Cty. 1988); *Application of Osborne*, 284 A.D. 143, 130 N.Y.S.2d 450 (1954); *In re Bosworth*, 1987 WL 14234 (Ohio Ct. App. 1987); *In re Crossley's Estate*, 135 Pa.Super. 524, 7 A.2d 539 (1939).

[3] *Accord In re Estate of Wagner*, 50 Wash. App. 162, 748 P.2d 639 (Wash. Ct. App. 1987) (respecting Oregon Court of Appeals' decision upholding validity of adoption); *Lemley v. Barr*, 176 W.Va. 378, 343 S.E.2d 101 (1986) (respecting Ohio Court of Appeals' decision invalidating adoption)

court acknowledged the differing public policies but held, "However, the fact that a judgment entered by a foreign court could not have been entered by a New Mexico court, because it would have offended the public policy of New Mexico, will not permit the courts of New Mexico to deny it full faith and credit as required under Art. IV, § 1, U.S. Constitution." *Id.*

One of the authorities relied on in *Delaney* is *In re Morris' Estate*, which also addressed the validity of a sister state adult adoption decree. The *Morris* court began by noting that "it is legally impossible to adopt an adult under the laws of this state." 133 P.2d at 454. Nevertheless, the court recognized that it was constitutionally obligated to recognize the adult adoption decree. The court extensively analyzed the Supreme Court's decision in *Williams v. State of North Carolina*, 317 U.S. 287, 294 (1942) and held that, in light of the "valid adoption proceedings" of Rhode Island, "full faith and credit must be given to such decree and the status thereby created must be recognized by the State of California, notwithstanding a claimed conflict with the announced policy of the latter state." *Id.* at 456.

In a similar context, *In re Doe* faced the issue of enforcing a California judgment that arose as a result of a surrogacy contract, a species of contract banned by New York statutory law. While the court questioned whether New York public policy would support nonrecognition, it held that

even a public policy clash would be irrelevant in the face of a final decree from another state. 793 N.Y.S.2d at 882 ("full faith and credit cannot be denied the California judgment on grounds of some countervailing New York public policy [against surrogacy contracts].") (*citing Baker*, 522 U.S. at 233); *see also Estate of Hart*, 165 Cal.App.3d 392, 397, 209 Cal. Rptr. 272 (1984) (upholding Oklahoma adoption decree, explaining that ". . . the differing public policy or laws of the enforcing state cannot contravene the full faith and credit clause of the Constitution. As has been repeatedly stated, California must, regardless of policy objections, recognize the judgment of another state as res judicata"); *Wachovia Bank*, 260 S.E.2d at 692 (rejecting claim that Missouri adoption decree "must meet the requirements of" North Carolina adoption statute).[4]

[4] To the extent that there are limitations to the absolute command of recognition, they would not appear to be applicable in this case. Appellee does not appear to be even contesting the jurisdiction of the Washington court to enter the adoption, let alone have borne the burden she would have of establishing such lack of jurisdiction. *Williams v. North Carolina*, 325 U.S. 226, 233-34 (1945). Language in some opinions provides that a judgment can be attacked collaterally based on fraud, despite the Supreme Court's holding in *Christmas v. Russell*, 72 U.S. 290 (1866) that a Kentucky judgment could not be impeached for fraud by Mississippi courts. E.g., *Application of Osborne*, 130 N.Y.S.2d at 452 ("The West Virginia decree is entitled to full faith and credit unless shown to have been obtained by fraud or that the court lacked jurisdiction . . ."). That issue would appear to be irrelevant here, since it does not appear that Appellee alleged fraud or produced evidence to discharge the heavy burden the proponent of such a claim would bear. Moreover, it would violate Full Faith and Credit principles to entertain a collateral attack based on fraud, where Washington State would not permit such an attack so long after the adoption was finalized. RCW 26.33.160 & 26.33.260; *see generally Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 373 (1996) (all courts must "treat a state court judgment with the same respect that it would receive in the courts of the rendering state."); *Durfee v. Duke*, 375

These decisions of sister states' courts uniformly make clear that the judgment below should be reversed.

III. EVEN WHERE A STATE SPECIFICALLY PROVIDES BY STATUTE ITS POLICY AGAINST ENFORCING CERTAIN ADOPTIONS, THE FULL FAITH AND CREDIT CLAUSE PREVAILS.

Perhaps the most compelling case reflecting the error of the trial court is *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007), not so much for the superficial similarity of the anti-gay public policies invoked by those attempting to invalidate adoptions, but because, unlike most other full faith and credit cases, Oklahoma actually had passed a statute demanding nonrecognition of adoptions by same-sex couples. As the Tenth Circuit correctly held, it is irrelevant how clearly and forcefully the forum state articulates its antipathy to recognizing the decrees of sister states; regardless of the strength of any such state policy, the Full Faith and Credit Clause must prevail.

Before 2004, Oklahoma, like Florida at present, had a statute that generously recognized adoptions from all other jurisdictions. That year, however, Oklahoma amended its statute to insert a provision forbidding recognition of adoptions by same-sex couples. Okla. Stat., tit. 10 § 7502-1.4

U.S. 106, 109 (1963) (forum state must "give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.").

(Supp. 2004) (" . . . Except that, this state, any of its agencies, or any court of this state shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction."). Suit was brought promptly, and the provision was held to violate the Full Faith and Credit Clause. *Finstuen v. Edmonson*, 497 F. Supp.2d 1295 (W.D. Okla. 2006). Last August, the Tenth Circuit affirmed the holding that the 2004 nonrecognition provision violated the Full Faith and Credit Clause. *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007).

The Tenth Circuit relied on *Milwaukee County*, *Magnolia Petroleum*, *Sherrer*, and *Baker* in arriving at its conclusion that the respect due judgments did not permit Oklahoma to invoke its public policy to deny recognition to adoption decrees granted to same-sex couples in other states: "OSDH makes no persuasive argument as to why the Full Faith and Credit Clause of the Constitution should not apply to its recognition of out-of-state adoption orders." *Id.* at 1155. "We hold today that final adoption orders and decrees are judgments that are entitled to recognition by all other states under the Full Faith and Credit Clause." *Id.* at 1156.

The Tenth Circuit's careful reliance on controlling Supreme Court precedent led to the difficult but unquestionably correct decision to strike down the Oklahoma statute. By comparison, *amici* submit that this Court's

task is easy. The *Finstuen* case addressed the situation in which the forum state had not merely provided that a certain adoption could not occur in the state but also specifically had ordered its courts not to recognize those adoptions from sister states. By contrast, the Florida legislature has staked out the opposite position of Oklahoma, in mandating respect for all adoption decrees that are issued in accordance with due process. See Fla. Stat. § 63.192 (discussed in Section IV of this brief, below). While the Tenth Circuit had to reject the clearly-stated -- but constitutionally impermissible -- goals of Oklahoma, this Court need only enforce the Florida legislature's mandate to respect the familial bonds created by final adoption decrees.

In sum, the law is firmly established that the Full Faith and Credit Clause mandates that adoption decrees, and all other final judgments of a state court, be honored nationwide irrespective of any contrary public policy of another state. The supposedly contrary authority of this Court, involving European adoptions, has no relevance to this inquiry.

IV. FLORIDA'S PUBLIC POLICY SUPPORTS RECOGNITION OF THE WASHINGTON ADOPTION.

Although Florida maintains a public policy that gay people are ineligible to adopt *in* Florida, Florida also has a clearly articulated public policy that any adoption from another jurisdiction must be honored in Florida, so long as due process was met. Thus, while the resolution of this

case is simple when one looks at Full Faith and Credit jurisprudence, it also is simple when one realizes that the trial court reached for the wrong source of public policy. It is Florida's rule regarding recognition of other jurisdictions' adoptions that is relevant, not its eligibility criteria for who may adopt within the State.

In 1973, the Florida Legislature passed Florida Statute § 63.192, which provides in relevant part: "A judgment of court . . . establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state." In so doing, the Florida Legislature placed foreign adoptions in a different category than other foreign judgments, which are subjected to a typical comity analysis and respected only if "the foreign decree does not offend the public policy of the State of Florida." *Cochrane v. Nwandu*, 855 So.2d 1276, 1277 (Fla.App. 3 Dist. 2003). Because a court ruling invalidating a longstanding adoption wreaks untold emotional havoc on the family involved, Florida has made the laudable decision to limit the circumstances in which such nonrecognition would occur.[5]

[5] Of course, as explained in the previous sections of this brief, Florida would have to recognize the Washington adoption irrespective of whether Florida public policy supported recognition. Section 63.192 authorizes this Court to recognize the adoption either on the basis of Florida public policy or the Full Faith and Credit Clause.

A brief review of the effects of Section 63.192 is appropriate. First, and most pertinent to this Appeal, it provides the authority to recognize a sister state's adoption decree as a matter of state law without resort to the Full Faith and Credit Clause. Thus, as is the case here, when the sister state proceeding raises no due process issues, a court simply may recognize the adoption pursuant to Section 63.192 without resort to federal constitutional law. It should be noted that, where there is a question whether due process was afforded, the Full Faith and Credit Clause would still mandate recognition, so long as the sister state had jurisdiction.[6]

Secondly, the clear effect of the 1973 enactment of Section 63.192 was to supersede by statute the *Tsilidis* holding that foreign adoptions be subjected to a public policy analysis. *See Tsilidis*, *supra*, 132 So.2d at 12-13. Any suggestion that public policy difference still factors into adoption recognition decisions in Florida is flatly contradicted by the plain language

[6] Many decisions contain language to the effect that a judgment that was issued by a court having no jurisdiction over one of the parties violates due process and thus is not entitled to full faith and credit. *E.g.*, *National Exchange Bank v. Wiley*, 195 U.S. 257, 270 (1904). To the extent that Section 63.192 defines "due process" to refer to a sister's state proper jurisdiction, it is fully consistent with the Full Faith and Credit Clause. However, beyond jurisdictional questions, the Constitution generally precludes Florida from scrutinizing the procedure of courts in sister states to decide whether to honor their judgments. *See Fehlhaber v. Fehlhaber*, 702 F.2d 81, 82 (5th Cir. 1983) (former Fifth Circuit case) (Florida federal court properly gave full faith and credit to California decree despite its unfairness; "We have not concealed our feeling that the California property judgment was unjust. But we do not sit as roving chancellors to deny full faith and credit to any judgment that we consider unjust."); *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1028 (5th Cir. 1982) (former Fifth Circuit case) (same; observing that "procedural errors in the instant case, although they are serious and "seem to present a case of injustice," did not preclude giving judgment full faith and credit).

of Section 63.192. Notably, the statute does not include an exception for adoption decrees that violate state public policy, in contrast to other state's statutes that do.[7] The Florida statute contains no such limitation, and the courts are not free to "modify, or limit, its express terms." *Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984); see also 2001 Ind. Op. A.G. 8 (2001) (broadly interpreting Indiana's similar adoption validation statute; "[R]egardless of whether an adoption decree from a foreign jurisdiction were made in accordance with the laws of the state of Indiana or not, courts are required to give the adoption decree the same force and effect 'as it would [have],' had it been made in accordance with the laws of the state of Indiana. To hold otherwise would be to ignore the rule of statutory construction regarding commonly accepted dictionary meanings.").

As the trial court pointed out, *Kupec v. Cooper* continued to cite approvingly *Tsilidis*' notion of a public policy exception, despite the fact that Section 63.192 was enacted after *Tsilidis*. 593 So.2d at 1178. Nevertheless, that portion of the *Kupec* decision is dicta, as the court was convinced that no German adoption had ever occurred in the first place. There, the mother was abandoned by the biological father and then married

[7] E.g., Ohio Rev. Code § 3107.18(a) ("Except when giving effect to such a decree would violate public policy of this state . . ."); Texas Family Code § 162.023(a) (". . . unless the adoption law or process of the foreign country violates the principles of human rights or laws or public policy of this state.").

another man. She secured a German birth certificate listing the child's stepfather as a parent, although she and the stepfather "never went before a court or a judge to legally adopt" the child. *Id.* at 1177. When an inheritance issue arose around whether the stepfather had "adopted" the child, the *Kupec* court readily found that he had not: "There is no judgment of any court which provides for the adoption of [the child by the stepfather.] As such, there is nothing that the Florida courts can recognize." *Id.* at 1178.

The final effect of Section 63.192 is to establish the rule that adoption proceedings from foreign countries must comport with due process, and when that occurs, the resulting decree will be honored in Florida. In this respect, Section 63.192 establishes a rule of recognizing foreign adoptions that Florida otherwise is under no federal constitutional obligation to recognize (save for a specific treaty or federal statute), because the Full Faith and Credit Clause is inapplicable to foreign judgments.

This case thus can easily be resolved by the recognition that Section 63.192 requires that Florida recognize the Washington adoption decree.

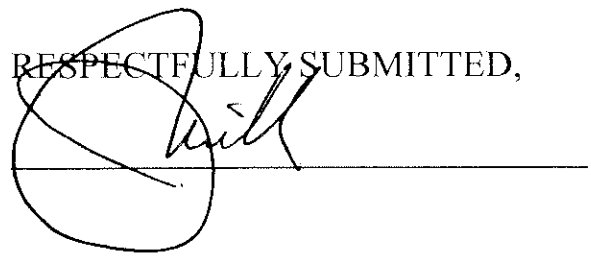
CONCLUSION

The Full Faith and Credit Clause, and Florida's own public policy as codified in Florida Statute § 63.192 both compel recognition of the

Washington State adoption. Accordingly, the judgment below should be reversed.

Dated: June 30, 2008

RESPECTFULLY SUBMITTED,



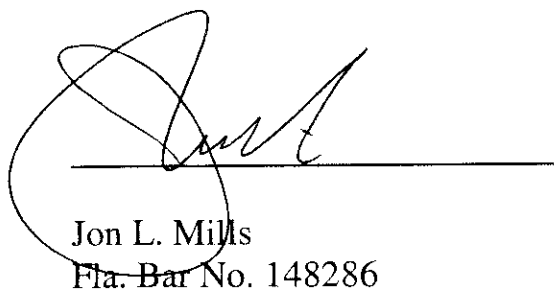
Jon L. Mills (Fla. Bar No. 148286)
Univ. of Fla. Levin College of Law
Box 117625
Gainesville, FL 32611
Phone Number: (352) 273-0835
Fax Number: (352) 392-1457

Gregory R. Nevins (not admitted in Fla.)
Lambda Legal Defense and Education Fund, Inc.
730 Peachtree Street NE #1070
Atlanta, GA 30308
Phone Number: (404) 897-1880
Fax Number: (404) 897-1884

ATTORNEYS FOR AMICUS CURIAE ERWIN CHEMERINSKY, SHARON RUSH, AND ROBERT SCHAPIRO

CERTIFICATE OF SERVICE

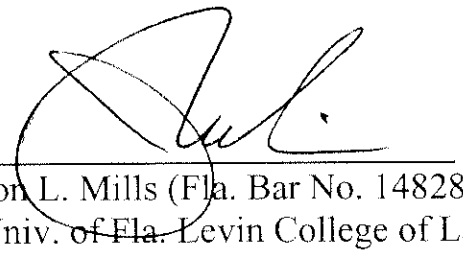
The undersigned hereby certifies that on this 30th day of June, 2008, a true and correct copy of the foregoing *AMICUS CURIAE* BRIEF OF ERWIN CHEMERINSKY, SHARON RUSH, AND ROBERT SCHAPIRO IN SUPPORT OF APPELLANTS URGING REVERSAL was served by United States Mail, postage prepaid, upon **Leslie D. Talbot, Esq.**, Leslie D. Talbot, P.A., *Trial Counsel for Appellant/Petitioner*, 434 South Washington Boulevard, Suite 200, Sarasota, Florida 34236; **Brenda Nelms, Esq.**, W. Russell Snyder P.A., *Attorney for Appellee/Respondent*, 355 West Venice Avenue, Venice, Florida 34285; **Casey Walker, Esq.**, Murphy & Walker, P.L., *Attorney for Appellee/Respondent,* 817 Beachland Boulevard, Vero Beach, FL 32963; **Shannon P. Minter, Esq.**, *Attorney for Appellant/Petitioner*, National Center for Lesbian Rights, 870 Market Street, Suite 370, San Francisco, CA 94102; and **John R. Blue, Esq.**, *Attorney for Appellant/Petitioner*, Carlton Fields, P.A., 100 SE Second Street, Suite 4000, Miami, FL 33131.



Jon L. Mills
Fla. Bar No. 148286

CERTIFICATE OF COMPLIANCE

This brief complies with the font requirements of Florida Rules of Appellate Procedure 9.210(a)(2).



Jon L. Mills (Fla. Bar No. 148286)
Univ. ~~of Fla.~~ Levin College of Law
Box 117625
Gainesville, FL 32611
Phone Number: (352) 273-0835
Fax Number: (352) 392-1457