Docket No. 1080440

IN THE SUPREME COURT OF ALABAMA

N.B.,

Petitioner,

v.

A.K.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CIVIL APPEALS
Case No. 2070086

On Appeal from the Juvenile Court of Houston County, Alabama
Juvenile Court No. JU 2006-455.01

RESPONDENT'S BRIEF

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Petitioner has requested oral argument and Respondent joins in that request. This case should be resolved with a straightforward application of the federal Parental Kidnapping Prevention Act (the "PKPA"), 28 U.S.C. § 1738A, as it was by the Court of Civil Appeals. Respondent wants to assist the Court by responding to Petitioner's novel arguments concerning the PKPA's applicability, including any variations or new authority that Petitioner may submit in a reply brief. Moreover, this matter is a legally significant one, as Petitioner is asking this Court not only to revisit this state's existing law decreeing the PKPA's provisions to be mandatory, but also to break new ground nationally in reading a "public policy exception" into the PKPA's plain language that affords no such exception.

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STATEMENT OF JURISDICTION

Respondent agrees that the procedurally proper steps were taken to appeal this matter to this Court. Respondent maintains that the courts of Alabama are without jurisdiction to enter any order affecting the custody or visitation of the child A.R.B.-K., except for enforcement of orders issued by the courts of California.

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STATEMENT OF THE CASE

On September 22, 2005, Respondent A.K. filed a Petition to Establish Parental Relationship in the Superior Court of California, Sutter County (the "California court"). In her petition, A.K. sought a determination that she is A.R.B.-K.'s parent as well as an award of joint custody and visitation with regard to the child. A.K.'s claim was based on her standing as a presumed and de facto parent under California law.

Petitioner N.B. defended the action in the California court by retaining an attorney and filing a Response to Petition to Establish Parental Relationship on December 7, 2005. In the place to indicate which statements in the Petition were false, N.B. cited only those reflecting where she and A.R.B.K. lived, as they had moved to Alabama. N.B. did not take issue with A.K.'s factual assertions regarding A.K.'s relationship with A.R.B.-K. N.B.'s Response also did not challenge the jurisdiction of the California court. N.B.'s only affirmative defense was her assertion that, legally, "[A.K.] is not the parent of the minor child." N.B.'s Response asked the California court for fees and costs of suit, for an order finding that A.K. was not a

legal parent of A.R.B.-K. and should have no visitation; or alternatively for child support.

N.B. returned to California and she and A.K. continued to litigate custody and visitation matters in the California court. In a court hearing on August 15, 2006, both A.K. and N.B. were present and represented by counsel. Neither N.B. nor her attorney objected to the California court's exercise of personal or subject matter jurisdiction at that time. (R. 21.)

N.B. filed a Petition for Temporary Custody with the Houston County Juvenile Court in Alabama on September 8, 2006, almost one year after the California action commenced. (C. 3-25.) The Petition acknowledged that A.K. was "seeking court ordered visitation of the child" in a pending proceeding in California. Nevertheless, neither A.K. nor the California court was apprised of the Alabama proceedings until months later.[1]

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[1] In her brief to the Court of Civil Appeals, N.B. cavalierly stated that A.K. had not demonstrated an entitlement to notice of a parentage proceeding in Alabama(CCA Brf. at 9) even though the N.B. and A.K. were then concurrently involved in litigation in California over parentage, custody and visitation with regard to the child who was the subject of the Alabama proceeding and even though N.B. expressly was asking the Alabama court to issue orders specifically directed at A.K.

N.B.'s Petition for Temporary Custody requested both that N.B. be recognized as the sole legal parent of the child and that A.K. be restrained from removing the child from N.B.'s care in Alabama. The same day the Petition was filed, the Juvenile Court issued an ex parte order granting all requested relief on a temporary basis until further order of that court. (C. 26.) Nowhere in the Juvenile court record does it indicate that A.K. was ever notified of this proceeding or the issued orders.

On September 11, 2006, the California court issued an order recognizing both N.B. and A.K. as the legal parents of A.R.B.-K. (C. 41-42; R. 10, 24-25: Evidentiary Exhibit: R Respondent #1, and copy birth certificate of A.R.B.-K. attached as Exhibit A.)

On November 14, 2006, a Juvenile Court hearing was held, again without notice to A.K. This hearing resulted in the Juvenile Court's November 16 Order holding that California never had jurisdiction over the custody or visitation of A.R.B.-K. The Juvenile Court ruled that Alabama does not recognize standing for a "de facto parent," and that "any proceeding based upon this California standing does not oust Alabama on the issue of

jurisdiction." The order did not mention A.K.'s alternative basis that she is a "presumed" parent under California Family Code Section 7611. The Juvenile Court also purported to determine that it alone had jurisdiction over the child's custody and visitation, and that N.B. is A.R.B.-K.'s *sole* parent and A.K. "has no right of visitation with the said child." (C. 29.)

On December 28, 2006, the California court conducted a hearing that led to its January 12, 2007 Order requiring that A.R.B.-K.'s birth certificate be amended to comport with that court's prior order determining parentage.

On January 12, 2007, the California court conducted a further hearing that led to its February 1, 2007 Order granting visitation, per a specified schedule the court set out. The California court set the entire case for review on March 15, 2007. (C. 46-50.)

After A.K. learned of the Alabama proceedings , on April 12, 2007, she filed a motion to dismiss the action and to set aside the Juvenile Court's rulings for lack of subject matter and personal jurisdiction. (C. 30-50.)[2]

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[2] As the Court of Civil Appeals discussed, A.K.'s motion to dismiss, filed after the Juvenile Court's November 2006

On June 1, 2007, N.B. filed her objection to A.K.'s motion to set aside and dismiss the Houston County Juvenile Court action (C. 59-113.) N.B.filed a memorandum in Juvenile Court arguing that Alabama, and not California, had jurisdiction. According to N.B., California's exercise of jurisdiction did not comport with the federal Parental Kidnapping Prevention Act (the "PKPA"), 28 U.S.C. § 1738A, for two reasons. First, she argued that the California **Legislature** had not granted A.K. standing, and that the California Supreme Court's interpretation of who is a "presumed" parent under California Family Code Section 7611 therefore was legally ineffective. Second, she argued that N.B. did not have adequate "notice" of the California proceedings, despite the fact that she appeared personally and through counsel in those proceedings.

In an order filed October 10, 2007, the Juvenile Court denied the relief requested by A.K. (C. 115-116.) A.K. timely appealed.

The Court of Civil Appeals reversed in a 4-1 decision without a written dissent. A.B. v. N.K., ___ So.2d ___, 2008 WL 2154098 (Ala. Civ. App. 2008). In a

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judgment is treated as a motion for relief from judgment under Rule 60(b). See Opinion at n.2.

straightforward application of the PKPA, the Court of Civil Appeals held that the filing of the California action, which was commenced within six months of A.R.B.-K.'s leaving California, operated to vest jurisdiction in the California court and to preclude the court of any other state from exercising jurisdiction over matters concerning custody of or visitation with A.R.B.-K. *Id.* at *3. The Court of Civil Appeals also rejected N.B.'s attempt to invoke the subterfuge of proceeding through a "parentage action," both because A.K. was not subject to personal jurisdiction in an Alabama parentage action, and because the PKPA precludes any action, however denominated, that affects the custody or visitation of a child when a court in another state has preexisting jurisdiction over that issue. *Id.* at *4.

STATEMENT OF THE ISSUES

Under the PKPA, can an Alabama court entertain a proceeding for a custody or visitation determination commenced during the pendency of a California proceeding properly brought under the PKPA for a visitation determination when the person who filed the California

action seeking visitation has remained a California resident?

Does the PKPA preempt conflicting provisions of Alabama law?

Does the so-called Defense of Marriage Act (28 U.S.C. § 1738C) have any effect on the PKPA's applicability to this case?

STATEMENT OF FACTS

N.B. and A.K. became a couple in July of 1996 when N.B. and her older (and then only) daughter moved in with A.K. in Coloma, California. In 1997, N.B. and A.K. discussed having a baby together and accordingly moved to Fair Oaks, California so that N.B. could be closer to the hospital at the time of birth. Their plan was for N.B. to conceive and carry the child and to select a donor with characteristics and appearance as close to A.K.'s as possible. The insemination effort was eventually successful and N.B. became pregnant in July 1998.

A.K. attended the baby showers and all the doctor appointments during N.B.'s pregnancy, caring for N.B. when she was sick, and taking off work as necessary to do these

tasks and whatever else needed to be done. They agreed on the child's name: a first name they both liked, and the second name after A.K.'s mother. The child's hyphenated last name is made up of N.B.'s and A.K.'s last names.

A.R.B.-K. was added to A.K.'s insurance coverage by May 1999. A.K. also claimed A.R.B.-K. as her dependent for tax purposes.

A.K. acted fully as A.R.B.-K.'s parent from before the child's birth through the time that N.B. moved out when the couple's relationship ended in March 2004. From the day after the overnight hospital stay when A.R.B.-K. was born, the child home was A.K.'s house, and A.K. openly held out to the world that A.R.B.-K. is her daughter. A.K. did the things that went with her new title of "momma:" comforting A.R.B.-K., bathing her, and taking her to gymnastics class, her first camping trip and her first trip to the snow. A.R.B.-K. likewise went for her first Seadoo ride and her first horseback ride with A.K.

Both A.K. and N.B., and their child A.R.B.-K., lived in California continuously from A.R.B.-K.'s birth in April 1999 until August 2005, when N.B. moved to Alabama with the child. A.K. remains a California resident to this day.

STATEMENT OF THE STANDARD OF REVIEW

Respondent agrees with Petitioner's Statement.

SUMMARY OF ARGUMENT

Notwithstanding N.B.'s novel arguments, this is a remarkably easy case. The Court of Civil Appeals correctly held that the PKPA prohibits Alabama from exercising jurisdiction over the issue of A.R.B.-K.'s custody or visitation. That court held that California legally was A.R.B.-K.'s "home state" as of August 2005 when N.B. moved with the child to Alabama. Under the PKPA, a petition for custody or visitation filed in a California court within six months after the Alabama move vested jurisdiction in that court and precluded the courts of every other state from exercising jurisdiction if the person filing was a California resident who continued to live there.

None of N.B.'s attempts to attack the PKPA's clear jurisdictional scheme is availing. First, N.B. argues that A.K. is not a "contestant" under the PKPA, because Alabama law supposedly does not recognize A.K.'s rights to custody or visitation. The PKPA broadly defines "contestant,"

however, to mean any person "who claims a right to custody or visitation of a child." N.B.'s attempt to engraft onto the statute additional language that the claim be recognized as legitimate in the state to which a parent moved the child is not only contrary to statutory construction principles but also completely eviscerates the statute's purpose of discouraging forum shopping.

N.B. claims that the PKPA does not apply to the "Petition for Temporary Custody" that she filed, because her action was "in essence a parentage action." The Court of Civil Appeals correctly ruled that Alabama has no jurisdiction over any proceeding, however denominated, that affects the custody or visitation of A.R.B.-K. [

N.B. also claims that the PKPA's plain language, set forth in 28 U.S.C. § 1738A(g), which forbids a second state from assuming jurisdiction, does not mean what it says, but rather includes an unwritten exception allowing a second state to ignore and contravene the first state's orders if it finds them counter to he second state's public policy.[3]

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[3] "A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of

N.B. relies on a supposed "public policy exception" to the Full Faith and Credit Clause of the U.S. Constitution which does not exist with respect to judgments from other states. More fundamentally, N.B.'s approach contradicts the plain meaning of the PKPA statute and undermines Congress's efforts to discourage forum shopping. Analogies to the Full Faith and Credit Clause are especially inappropriate when the very need for the PKPA arose because of Congress's assessment that that Clause did not ensure sufficient respect for sister state judgments and its selection of statutory language designed to eliminate any such problem.

N.B. also misses the mark in invoking Alabama and federal law regarding recognition of marriages by same-sex couples. N.B. even complains that the Court of Civil Appeals did not discuss Alabama Constitution Art. I, § 36.03, Alabama Code § 300-1-19(b), or 28 U.S.C. § 1738C, while not mentioning that she never cited any of those provisions in the appeal below; her fanciful contention that this case has anything to do with marriage surfaced in her petition for certiorari to this Court. The parties here were not married. Moreover, the case on which the

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this section to make a custody or visitation determination." 28 U.S.C. § 1738A(g).

California court relied (*Elisa B. v. Superior Court*, 37 Cal.4th 108, 117 P.3d 660 (2005)) found a woman to be a presumed parent based on her conduct toward and relationship with the child, not her relationship with her same-sex partner. Indeed, *Elisa B.* involved a couple that had not even registered as domestic partners. DOMA simply does not apply.

N.B. raises various other arguments concerning the correctness of the California court's ruling, all of which can be addressed only to the courts of that state and cannot justify jurisdiction in this state's courts.

While not denominated a separate argument, N.B.'s brief repeatedly attempts to distract the Court from the weakness of her legal position by urging this Court not to let a "single unelected judge from a State some 2500 miles removed dictate" what happens with respect to A.R.B.-K. (who is repeatedly referred to as an "Alabama child" even though she was born in California and lived her entire life there up until a month before the commencement of the proceeding in the California court). Whether a decision is rendered in a state that borders Alabama or comes from another member of our union across the country makes

absolutely no difference in how that decision must be treated. In addition, if the rulings of a "single" judge applying another state's law are in error, they must be corrected by the appellate courts of that state, not simply ignored by a sister state's courts - yet N.B. has declined to seek the avenue of review open to her. Finally, the validity of a judge's rulings do not turn on whether the judge is appointed or elected. A justice of this Court appointed by the governor need not wait until his or her retention election to acquire legitimacy.[4]

Rather than be swayed by such parochial and blatantly political appeals, this Court should uphold Alabama's impressive record of applying the PKPA to reject forum shopping attempts. In enacting the PKPA, Congress mandated parents that a state where a child resides for six months or more will be the proper forum for a custody proceeding for six months after the child leaves the state with a parent. N.B. was a longtime California resident before and

[4] While it is not relevant to the weight entitled her decision, this Court might be interested to know that the judge N.B. impugns was *twice* elected by the voters. After twenty-five years of service on the California Municipal Court and Superior Court, she retired in 2001 but continues in public service, *appointed* by the Chief Justice of the California Supreme Court as part of the state's Assigned Judges Program.

after A.R.B.-K. was born in California in 1999. The child lived her entire life there with N.B. prior to becoming an "Alabama child" in summer 2005. There is nothing untoward with the PKPA's jurisdictional provisions applying in this case, just like all others.

ARGUMENT AND AUTHORITY

I. THE PKPA PRECLUDES ALABAMA JURISDICTION OVER A PROCEEDING AFFECTING CUSTODY OR VISITATION OF A.R.B.-K., BECAUSE A.K. CLAIMS A RIGHT TO VISITATION AND CONTINUES TO LIVE IN CALIFORNIA.

N.B. argues that Alabama's jurisdiction is consistent with the PKPA, and California's is not, because A.K. is not a "contestant" under the PKPA.[5] The PKPA plainly and broadly provides that any person "who claims a right to custody or visitation of a child" is a contestant. 28 U.S.C. § 1738A(b)(2). N.B. argues that A.K. is not a "contestant" because A.K.'s claim to visitation rights would be rejected by an Alabama court. N.B. effectively reads into the PKPA's definition of "contestant" the words

[5] "'[C]ontestant' means a person, including a parent or grandparent, who claims a right to custody or visitation of a child." 28 U.S.C. § 1738A(b)(2).

"and such claim would be accepted in the courts of the state to which another contestant removed the child." N.B.'s interpretation has no support in the statute or case law and is completely untenable, in that it improperly would reward a parent who removed a child to a jurisdiction that does not recognize the rights of the contestant who continues to live in the child's home state - in contravention of the very purpose of the PKPA.

Under the plain language of the PKPA, as construed consistently by Alabama's courts for thirty years, Alabama has no jurisdiction over a proceeding for a visitation determination if A.B. is a "contestant" as the PKPA defines that term. In keeping with the PKPA's purpose of deterring parents from moving children to more favorable jurisdictions (discussed in more detail, below), the PKPA provides that, from the date of such a move, a contestant remaining in the state has six months to file an action in that state seeking custody or visitation. 28 U.S.C. § 1738A(c)(2)(A). If the contestant files, that court will have jurisdiction so long as the contestant continues to

live there.[6] 28 U.S.C. § 1738A(d). And, most critically, this jurisdiction is not only continuing but ***exclusive***; a court of another state cannot exercise jurisdiction over custody and visitation matters when a proceeding properly brought under the PKPA is proceeding elsewhere. 28 U.S.C. § 1738A(g);[7] *Webster v. Webster*, 723 So.2d 59, 60 (Ala. Civ. App. 1997) ("The crux of the *Blanton* holding was that once jurisdiction is established in one state, that state continues to have jurisdiction under the P.K.P.A., as long as the child or one of the contestants remains in that state.") (*citing Ex parte Blanton*, 463 So.2d 162, 167 (Ala.1985)). Indeed, this state was among the first to recognize that the "recently enacted" PKPA prohibited exercising jurisdiction and modifying a New York custody decree "so long as one of the contestants resides" there. *Bloodgood v. Whigham*, 408 So.2d 122, 125 (Ala. Civ. App.

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[6] The only exceptions to this rule, not applicable in this case, are when the court where the contestant files chooses not to continue to exercise jurisdiction, or when the laws of that state preclude the continued exercise of jurisdiction.

[7] "A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination." 28 U.S.C. § 1738A(g).

1981); *accord Wheeler v. Buck*, 452 So.2d 864, 866 (Ala. Civ. App. 1984); *Ex parte Lee*, 445 So.2d 287, 289 (Ala. Civ. App. 1983) (Texas had continuing, exclusive jurisdiction because "[t]he proceedings were commenced in Texas only six days" after the mother moved with the children to Alabama "and the father continued, and continues, to live in" Texas.)

N.B. cites no authority for her fanciful interpretation of "contestant." Courts consistently have simply applied the plain language used by Congress and held that anyone claiming a right to custody or visitation qualifies as a contestant. *Patrick v. Williams*, 952 So.2d 1131, 1138 (Ala. Civ. App. 2006) ("The maternal grandmother has lived in Tallapoosa County at all times relevant to this appeal, and she meets the criteria outlined in the PKPA to be a 'contestant' because she is a person claiming a right to custody of the children. *See* 28 U.S.C. § 1738A(b)(2)."); [8]

[8] Notably, in *Patrick v. Williams*, the court quickly concluded that the grandmother's assertion of a right to custody satisfied the PKPA's additional requirement for continuing jurisdiction and then engaged in a protracted analysis of whether she met the more demanding standard of "person acting as a parent" necessary to satisfy the applicable prerequisite in Alabama law for the courts of this state to exercise *continuing* jurisdiction. *See* 952 So.2d at 1139.

Adoption of Zachariah K., 6 Cal. App. 4th 1025, 1037, 8 Cal. Rptr. 2d 423, 430 (1992) (parties who had been appointed guardians and filed a petition for adoption "qualify as 'contestants' who claim a right to custody" under the PKPA). N.B.'s interpretation also is contrary to the principle that, in deciding whether a proceeding in another state operates under the PKPA to prevent Alabama from exercising jurisdiction, Alabama will look to the law of the other state. *Ray v. Ray*, 494 So.2d 634, 636-37 (Ala. Civ. App. 1986) (holding that Georgia guardianship proceeding was a "custody determination" under the PKPA, thus precluding Alabama from exercising jurisdiction to modify rulings from Georgia, because "the guardian of a minor child in Georgia has the same claim to custody as a parent would have" under Georgia law).

Adding the qualification urged by N.B. is especially inappropriate in that Congress sought to discourage parents from seeking more favorable forums for custody matters and permitting the parent's forum selection to govern ould allow exactly what Congress sought to prevent and undermine the PKPA's very purpose. *See Rogers v. Platt*, 199 Cal. App. 3d 1204, 1215, 245 Cal. Rptr. 532, 539 (1988)

("Congress intended to dissuade parties from removing a child from one state to another and thereby taking advantage of more favorable substantive law in the second jurisdiction."); *Owens, By and Through, Mosley v. Huffman*, 481 So.2d 231, 239 (Miss. 1985) (a "main purpose of the PKPA [was] to discourage forum shopping" because the preexisting law "encouraged parents in child custody disputes to abduct a child and carry it to another state in order to have the most favorable forum for a custody lawsuit."); *see also Rogers v. Platt*, 641 F. Supp. 381, 388-89 n.3 (D.D.C. 1986) (citing 126 Cong.Rec. 22, 803 (1980) [statement by Senator Wallop that some court-shopping parents flee to another state seeking more favorable decree]; Reform of the Federal Criminal Laws, Hearing before the Senate Judiciary Committee on S. 1722 and S. 1723, 96th Cong., 1st Sess. at 10670 [difference between state laws tempt parents to forum shop for jurisdiction with favorable substantive law]), *rev'd on other grounds*, 814 F.2d 683 (D.C. Cir. 1987).[9] It is

[9] *See alo Barndt v. Barndt*, 397 Pa.Super. 321, 330-31, 580 A.2d 320, 324 (1990) (citing the "wide room for forum shopping" the legal system allowed before the passage of the PKPA); *Tufares v. Wright*, 98 N.M. 8, 11, 644 P.2d 522, 525 (1982); *Justis v. Justis*, 81 Ohio St.3d 312, 318, 691

difficult to think of a provision that would encourage forum shopping more than N.B.'s proposal to give the forum selected by the departing parent veto power over the custodial and visitation rights of would-be contestants.

This Court has maintained a longstanding reluctance to add words to a statute that the legislature did not include. *State v. Dawson*, 89 So.2d 103, 105 (Ala. 1956) ("To construe the exemption as contended by the taxpayer, it is necessary to prefix the word 'retail' to the word 'business' and we have said that the courts must confine themselves to the construction of the law as it is and not attempt to amend or change the law under the guise of construction."); *Smith v. City of Pleasant Grove*, 672 So.2d 501, 506 (Ala. 1995) (refusing to assume a statutory distinction between part-time common laborers from full-time common laborers where the legislature "could have easily done so by adding the words 'part-time'" but did not); see also *Gray v. Gray*, 947 So.2d 1045, 1050 (Ala. 2006) (". . . nor may we read into the statute additional

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N.E.2d 264, 270 (1998) ("One of the main goals of the PKPA was to deter parents from crossing state lines to 'forum shop' in order to relitigate custody disputes to reach more favorable results.") *NMC v. JLW ex rel. NAW*, 90 P.3d 93, 97 (Wyo. 2004);

language the legislature might have included to facilitate the result it might desire in this case.").

The reluctance to add words becomes a refusal when a court is not sure the addition comports with legislative intent, and certainly an absolute prohibition if the added words would actually undermine the legislative purpose in enacting the statute. *See Ex parte Clayton*, 552 So.2d 152, 154 (Ala. 1989) (a court "should supply an omission only when the omission is palpable and the omitted word plainly indicated by the context; and words will not be added except when necessary to make the statute conform to the obvious intent of the legislature or prevent the act from being absurd.").

A.K. is a contestant under the PKPA because she claims a right to visitation with the child. Because she is a contestant, the California court has continuing, exclusive jurisdiction under the PKPA. N.B.'s attempt to limit the type of "claim" that qualifies one as a "contestant" is not supported by the statute's language, by caselaw, or by legislative intent.

II. THE PKPA PRECLUDES ALABAMA JURISDICTION OVER ANY PROCEEDING, HOWEVER IT MIGHT BE DENOMINATED, AFFECTING CUSTODY OR VISITATION OF A.R.B.-K.

Again ignoring the actual language of the statute, N.B. argues that the PKPA did not affect the trial court's ability to exercise jurisdiction over what she now contends was a parentage action. Under the PKPA, California's continuing jurisdiction precludes any court in another state from exercising jurisdiction "in any proceeding for a custody or visitation determination." 28 U.S.C. § 1738A(g). Despite N.B.'s revisionist history attempt in characterizing her "Petition for Temporary Custody" as "in essence a parentage action," the Petition specifically prayed for and resulted in a temporary order restraining A.K. from removing A.R.B.-K. from N.B.'s care in Alabama. Moreover, the Juvenile Court's final judgment specifically provided that A.K. "had no right of visitation with the said child."

The cases cited by N.B. do not help her. As she acknowledges, in a case that is substantively identical on this issue (in which N.B.'s current appellate counsel also was counsel for the unsuccessful party), the Virginia Court of Appeals held that a preexisting Vermont proceeding

involving a custody dispute between former same-sex partners precluded the biological mother from filing a parentage action in Virginia (where she had moved herself and her daughter) seeking a declaration both that she was the child's sole parent and that her former partner had no parental rights. *Miller-Jenkins v. Miller-Jenkins*, 49 Va. App. 88, 633 S.E.2d 330 (2006).[10]

The other parentage action case cited by N.B. actually undermines her argument. In *Sheila L. on Behalf of Ronald M.M. v. Ronald P.M.*, 195 W.Va. 210, 465 S.E.2d 210 (1995), the West Virginia Supreme Court of Appeals held that a parentage action in Ohio was not a "custody determination" under the PKPA, because Ohio law mandated that custody and visitation issues be considered "in a proceeding separate from any action to establish paternity." 195 W.Va. at 221, 465 S.E.2d at 221 (quoting Ohio Rev.Code Ann. § 3111.13(C) (Anderson 1993)). That is not so in Alabama. Indeed, *Sheila L* is distinguishable because, however the proceeding

[10] The only distinction of *Miller-Jenkins* that N.B. offers is the legally irrelevant point that the biological parent in that case filed the action in Vermont that asked for a custody determination and thus precluded Virginia or any other state from assuming jurisdiction to determine custody or visitation. It is the existence of the first custody proceeding that is controlling under the PKPA; who filed it is of absolutely no relevance.

N.B. brought in Alabama might be labeled, N.B. sought and obtained orders in it eviscerating the visitation awarded to A.K. by the California court.

The remaining cases cited by N.B. are largely irrelevant, in that most of them involve neglect and dependency proceedings, which generally have been held not subject to the PKPA for reasons that shed no light on whether the action filed in, and rulings made by, the Juvenile Court were jurisdictionally proper under the PKPA. Specifically, courts have relied on the fact that the Uniform Child Custody Jurisdiction Act, after which the PKPA was patterned, explicitly included dependency and neglect proceedings in the definition of custody proceedings, and Congress did not include that language in the parallel PKPA definition. Additionally, courts have relied on the fact that Congress intended, in enacting the PKPA, to affect the conduct of parents, by removing the incentive to transport children to new jurisdictions, a motivation courts have recognized does not apply to the government's initiation of neglect and dependency proceedings. *L.G. v. People*, 890 P.2d 647, 661-62 (Colo.

1995); *In re L.W.*, 241 Neb. 84, 105-06, 486 N.W.2d 486, 500-01 (1992).

Yet the greatest deficiency of the string-cite of cases offered by N.B. is the absence of ***Alabama*** law that provides the proper framework for assessing what proceedings are covered by the PKPA. A proceeding is subject to the PKPA if its intent or result is to affect the custodial or visitation rights of a contestant. In *Guernsey v. Guernsey*, 794 So.2d 1108 (Ala. Civ. App. 1998), a father who found out that he was not biologically related to his son petitioned the court for a termination of the custody of his son that he previously had convinced the court to grant. However, because the father, mother, and son all had moved away from Alabama more than six months prior to the father's motion to terminate custody, it was impossible to satisfy the PKPA's prerequisites for continuing jurisdiction to issue orders affecting the custody of the son. *Id.* at. 1110. The trial court granted the father's motion, apparently due to the fact that neither the trial court nor the parties considered the jurisdictional issue.

When the mother appealed, the father argued that the PKPA did not apply because "this is not a custody

proceeding and . . . this case 'involves a petition for relief from a judgment, not a modification of it.'" *Id.* The court deemed the father's argument about the form of his motion to be "one of semantics" that ignored the true intent and effect on custodial rights. *Id.* The court held that the PKPA should apply both to "actions to determine who will have custody [and also] '. . . when determining who will not have custody.'" *Id., quoting In the Interest of L.C.*, 18 Kan.App.2d 627, 629, 857 P.2d 1375, 1377 (1993). "Mr. Guernsey's request that he be declared not to be the father of the minor child is a custody-determination proceeding of the most drastic kind." *Id.*

In short, Alabama courts look to the substance of what the litigants are attempting to accomplish and the state's courts do not permit Alabama's residents to do indirectly what they cannot do directly. *Guernsey*, 794 So.2d at 1110; *see also Matter of McKenzie*, 439 So.2d 700, 701 (Ala. Civ. App. 1983) (mother could not seek to modify another state's proper custody order by seeking a "protective order" in an Alabama court where the court found the "purpose of the petition to be the blocking or thwarting of a properly entered judgment of a court of general jurisdiction of a

sister state."). Here, it always was apparent that N.B. filed the parentage action in an attempt to undermine A.K.'s parental and visitation rights, and not because of any question as to whether she is a legal parent of A.R.B.-K. Indeed, N.B. openly admits the intention of her parentage action: to try to prevent the situation where a California court determines that A.K. is a parent and that determination "will gain recognition in" Alabama. Pet. Brf. at 15. The Court of Civil Appeals thus correctly ruled that the relief that N.B. sought and that which the Juvenile Court granted invaded the authority of the California court and thereby violated the PKPA's proscriptions against concurrent custody proceedings.

III. BY INCLUDING MANDATORY COMMANDS THAT A SECOND STATE "SHALL NOT EXERCISE JURISDICTION" AND "SHALL ENFORCE ACCORDING TO IT TERMS AND SHALL NOT MODIFY" ORDERS UNDER VERY SPECIFIC CONDITIONS, THE PKPA FORECLOSES RESORT TO PUBLIC POLICY ARGUMENTS AGAINST ITS APPLICABILITY.

N.B. argues that, even if A.K. is a contestant and N.B.'s parentage action is covered by the PKPA, the Juvenile Court's exercise of jurisdiction and issuance of a conflicting parentage order is still proper because the

PKPA is actually a toothless statute that only requires states to refrain from duplicative jurisdiction and conflicting orders when that state agrees with the other state' public policy. The plain language of the PKPA flatly contradicts such an interpretation. The statute imposes various unequivocal, mandatory obligations on states, including mandates both to refrain from initiating concurrent jurisdiction and to enforce, without modification, orders from other states. N.B. cites no case holding that the PKPA defers to state policy, and dozens of cases have held to the contrary. Instead, N.B.'s notion of a "public policy exception" to the PKPA rests on her premise that (1) the respect for judgments due under the Constitution's Full Faith and Credit Clause is subject to a "public policy exception", and (2) that the PKPA was intended to incorporate whatever limitations on interstate recognition exist or in the future might be deemed to exist by certain courts or circuit. Neither of these propositions is correct.

A. The PKPA's Requirements Are Stated in Mandatory Terms and Have Been So Construed, Preempting Any Conflicting State Law.

Alabama courts were among the first in the nation to recognize that the PKPA enacted bright-line rules and imposed mandatory obligations on the states that were missing under the Uniform Child Custody Jurisdiction Act. Since its enactment, the PKPA's requirements repeatedly have been treated as mandatory by the courts. The widespread and apparently unanimous view of the courts is that the PKPA preempts conflicting state law rather than yielding to it.

The PKPA provided a legal framework where only one state will have jurisdiction to make decisions about a child's custody and visitation. "The federal act is very rigid, permits the exercise of little or no judicial discretion and seeks to give more certainty to the assumption of jurisdiction by courts in interstate child custody conflicts." *Ex parte Lee*, 445 So.2d 287, 290 (Ala. Civ. App. 1983); *Mitchell v. Mitchell*, 437 So.2d 122, 126 (Ala. Civ. App. 1982) ("Almost exclusive child custody jurisdiction is initially granted to the home state by the federal act, while the uniform act grants alternative

jurisdiction."). The PKPA "allows less judicial discretion" and "eliminates many instances of concurrent jurisdiction which can, and did, occur under the uniform act." *Id.*; *Ex parte Punturo*, 928 So.2d 1030, 1034-35 (Ala. 2002) (The PKPA "foreclosed" the circuit court from exercising jurisdiction regarding custody and rendered its orders "void for lack of subject-matter jurisdiction," because of the continued exercise of jurisdiction by Michigan, where the father remained.)

Additionally, the PKPA provides a mandatory obligation on the courts of other states to enforce and not modify custody and visitation orders from a state having proper jurisdiction. 28 U.S.C. § 1738A(a). "Here, the circuit court had no alternative but to enforce the Texas judgment according to its terms and without modification. Such a determination is inescapable under the federal act." *Ex parte Lee*, 445 So.2d at 290. "Alabama courts are required under the PKPA to enforce according to its terms a sister state's custody determination rendered in accordance with the PKPA; an Alabama court has no authority to modify such order unless the sister state loses jurisdiction or

declines to exercise such." *Wheeler v. Buck*, 452 So.2d 864, 866 (Ala. Civ. App. 1984).

Alabama courts have held on numerous occasions that, when presented with a sister state's custody or visitation order, an Alabama court should inquire only as the jurisdiction of the issuing court and should not impose any other legal requirement before affording full recognition.[11] In *Wheeler v. Buck*, 452 So.2d 864, 866-67 (Ala. Civ. App. 1984), the trial court modified a Tennessee custody grant to the mother because the child had not seen the mother in four years. The *Wheeler* court reversed, holding that Alabama looks to jurisdiction of the courts of the sister state and that inquiry into "circumstances of the child" is prohibited; *In re McBride*, 469 So.2d 645, 646 (Ala. Civ. App. 1985) (proper for trial court to "deny hearing testimony as to the best interest or welfare of the child" where Indiana had continuing jurisdiction and was thus the "proper forum to present this evidence".

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[11]California had subject-matter jurisdiction, notwithstanding N.B.'s creative definition of "contestant" in the PKPA. *See* Sec. I, *supra*. Any objection to personal jurisdiction was waived by N.B.'s defense on the merits and requests for affirmative relief. *Dial 800 v. Fesbinder*, 118 Cal.App.4th 32, 52, 12 Cal.Rptr.3d 711, 726 (2004).

Even allegations of child abuse will not justify failing to honor or trying to modify the order of a state that had jurisdiction. "[T]he Alabama court was correct in concluding that it did not have jurisdiction to issue any orders concerning custody. [citation omitted]. This is true even though the mother made an allegation of abuse by the father. . . . [T]he PKPA does not recognize an emergency as granting modification authority" in another state. *K.L.W. v. T.W.C.*, 586 So.2d 4, 4-5 (Ala. Civ. App. 1991); *accord Shook v. Shook*, 651 So.2d 6, 9 (Ala. Civ. App. 1994); *Stanley v. State, Dept. of Human Resources*, 567 So.2d 310, 312 (Ala. Civ. App. 1990); *Via v. Johnston*, 521 So.2d 1324, 1236 (Ala. Civ. App. 1987).

N.B. fails to cite any case suggesting there is a "public policy exception" in the PKPA, because there apparently are no such cases. To the contrary, other state supreme courts have recognized that the PKPA mandates respect for the orders of other states, even if they violate the forum state's laws or public policy. In *Perez v. Tanner*, 332 Ark. 356, 965 S.W.2d 90 (1998), the Arkansas Supreme Court reversed a trial court's ruling that a parent had no visitation rights under Arkansas law. *Perez* held

that Arkansas could not assume jurisdiction and enforce its own policy choices but instead would have to respect an existing Mississippi court order because "Mrs. Tanner was merely shopping for a forum that would completely deny Mr. Perez's visitation rights," and "[s]uch forum shopping directly contravenes the express purposes of the UCCJA and PKPA." 965 S.W.2d at 94-95. Similarly, the Michigan Supreme Court rejected the contention that Michigan could assume jurisdiction over a custody dispute because "the Iowa proceeding was repugnant to Michigan public policy." *In re Clausen*, 442 Mich. 648, 675, 502 N.W.2d 649, 660 (1993). Instead, the court held that, even assuming such repugnancy, "[a]fter passage of the PKPA, we are not free to refuse to enforce the Iowa judgment as being contrary to public policy." *Id.*, 442 Mich. at 676, 502 N.W.2d at 661.

That the PKPA has no "public policy exception" is confirmed further by the unanimous position of dozens of courts recognizing that the PKPA preempts any contrary state law. *Miller-Jenkins*, 49 Va. App. 88, 96, 637 S.E.2d 330, 334 (2006) ("it is well settled that the PKPA preempts any conflicting state law."); *accord Ex parte Punturo*, 928 So.2d 1030, 1034 (Ala. 2002); *Ex parte Blanton*, 463 So.2d

162, 164 (Ala. 1985); *Webster v. Webster*, 723 So.2d 59, 60 (Ala. Civ. App. 1997); *Flannery v. Stephenson*, 416 So.2d 1034, 1038 (Ala. Civ. App. 1982) (citing U.S.Const. art. 6, cl. 2).[12] Most directly on point here, the *Miller-Jenkins*

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[12] Indeed, the cases holding that the PKPA preempts any contrary state law or policy are legion. *See, e.g., Meade v. Meade*, 812 F.2d 1473, 1476 (4th Cir. 1987), *overruled on other grounds, Thompson v. Thompson*, 484 U.S. 174, 108 S. Ct. 513 (1988); *Martinez v. Reed*, 623 F. Supp. 1050, 1054 (E.D.La. 1985), *aff'd without opinion by* 783 F.2d 1061 (5th Cir. 1986); *Esser v. Roach*, 829 F. Supp. 171, 176 (E.D.Va.1993); *Rogers v. Rogers*, 907 P.2d 469, 471 (Alaska 1995); *Atkins v. Atkins*, 308 Ark. 1, 823 S.W.2d 816, 819 (1992); *In re Marriage of Pedowitz*, 179 Cal.App.3d 992, 999, 225 Cal.Rptr. 186, 189 (1986); *Matter of B.B.R.*, 566 A.2d 1032, 1036 n. 10 (D.C.App. 1989); *Yurgel v. Yurgel*, 572 So.2d 1327, 1329 (Fla. 1990); *In re Marriage of Leyda*, 398 N.W.2d 815, 819 (Iowa 1987); *Wachter v. Wachter*, 439 So.2d 1260, 1265 (La.App. 1983); *Guardianship of Gabriel W.*, 666 A.2d 505, 508 (Me. 1995); *Delk v. Gonzalez*, 421 Mass. 525, 531, 658 N.E.2d 681, 684 (1995); *In re Clausen*, 442 Mich. 648, 502 N.W.2d 649, 657 n. 23 (1993); *Glanzner v. State, DSS*, 835 S.W.2d 386, 392 (Mo. Ct. App. 1992); *Ganz v. Rust*, 299 N.J. Super. 324, 334 n. 5, 690 A.2d 1113, 1118 n. 5 (1997); *Tufares v. Wright*, 98 N.M. 8, 644 P.2d 522, 524 (1982); *Leslie L. F. v. Constance F.*, 110 Misc.2d 86, 441 N.Y.S.2d 911, 913 (Fam.Ct. 1981); *Dahlen v. Dahlen*, 393 N.W.2d 765, 767 (N.D. 1986); *Holm v. Smilowitz*, 83 Ohio App.3d 757, 767, 615 N.E.2d 1047, 1053-54 (1992); *In re Henry*, 326 Or. 166, 172, 951 P.2d 135, 138 (1997); *Barndt v. Barndt*, 397 Pa. Super. 321, 322, 580 A.2d 320, 326 (1990); *Marks v. Marks*, 281 S.C. 316, 315 S.E.2d 158, 160 (1984); *Brown v. Brown*, 847 S.W.2d 496, 499 (Tenn. 1993); *In re Interest of S.A.V.*, 837 S.W.2d 80, 87-88 (Tex. 1992); *State in Interest of D.S.K.*, 792 P.2d 118, 128 (Utah App. 1990); *State v. Carver*, 113 Wash.2d 591, 607, 781 P.2d 1308, 1316, 789 P.2d 306 (1990); *Arbogast v. Arbogast*, 174 W.Va. 498, 502, 327 S.E.2d 675, 679 (1984); *Michalik v. Michalik*, 172 Wis.2d 640, 649, 494 N.W.2d 391, 394 (1993);

court rejected a biological mother's effort to invoke Virginia's statute prohibiting recognition of civil unions entered by same-sex couples, holding that, even if the state's statute otherwise would have been relevant, it was preempted by the PKPA. Moreover, the preemptive effect extends to all state law, including the state constitution. U.S. Const. Art. VI, cl. 2 (federal law "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 809 n.19 (1995) ("We are aware of no case that would even suggest that the validity of a state law under the Federal Constitution would depend at all on whether the state law was passed by the state legislature or by the people directly through amendment of the state constitution.").

In sum, the plain language of the PKPA, as interpreted consistently by court after court, refutes any notion that a state can invoke its policy preferences to justify noncompliance.

B. The Purpose of the PKPA Was To Enhance Interstate Recognition of Custody and

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State ex rel. Griffin v. District Court, 831 P.2d 233, 237 n. 6 (Wyo. 1992).

Visitation Orders Beyond the Requirements of the Full Faith and Credit Clause.

N.B.'s argument that there must be a "public policy exception" to the PKPA, because there is one to the Full Faith and Credit Clause, is wrong for two reasons. First, especially the language of the PKPA, but also its legislative history, make clear that Congress wanted custody and visitation orders, whether temporary or not, to be enforced without modification nationwide. Second, there is no public policy exception to judgments under the Full Faith and Credit Clause.

As the Supreme Court explained in *Thompson v. Thompson*, 484 U.S. 174 (1988), the PKPA drafters sought to improve upon the limitations of the Full Faith and Credit Clause with respect to enforcing non-final custody decrees. Congress was concerned that "custody orders held a peculiar status under the full faith and credit doctrine, because they "are subject to modification as required by the best interests of the child" and thus arguably not "sufficiently 'final' to trigger full faith and credit requirements." *Id.* at 180. However, what was more problematic than a few states denying full faith and credit is that every state,

even those embracing full faith and credit were only under a legal obligation to afford custody decrees as much respect as the issuing state would. *Id.*, *citing New York ex rel Halvey v. Halvey*, 330 U.S. 610, 614-15 (1947). Given the general status of custody decrees as being always subject to modification in a child's best interests, full faith and credit had little meaning. *Thompson*, 484 U.S. at 180-81. This is what Congress sought to change with the PKPA.[13]

Thus, by its very mandate that states "enforce according to its terms and [] not modify" a decree from another state where it could be modified, the PKPA very intentionally and unequivocally goes beyond substantive Full Faith and Credit Clause requirements. This thus

[13] N.B. cites *Thompson* for the proposition that Congress intended to give the PKPA the same "operative effect" as the Full Faith and Credit Clause. Pet. Brf. at 29. The meaning of that phrase is defined by what was at issue in Thompson: whether the PKPA provided a right of action in federal court to a party aggrieved by a state court's failure to abide by it provisions. Thompson answered that question in the negative, holding that "[u]nlike statutes that explicitly confer a right on a specified class of persons, the PKPA is a mandate directed to state courts to respect the custody decrees of sister States." 484 U.S. at 183. Thus, as is the case with full faith and credit issues, an aggrieved party should exhaust appeals in the state that is alleged to be disobeying federal mandates, and then turn to the U.S. Supreme Court. *Id.* at 187.

precludes reliance on any case decided under the Full Faith and Credit Clause that is invoked to suggest limitations on a state's obligation to enforce another state's custody orders under the PKPA.

N.B.'s "public policy exception" argument fails for the additional reason that there is no such exception for ***judgments*** under the Full Faith and Credit Clause.

Perhaps still the most dramatic example of the nonexistence of a public policy exception to the Full Faith and Credit Clause is Justice Holmes' opinion for the Court a century ago in *Fauntleroy v. Lum*, 210 U.S. 230 (1908). There, a Mississippi arbitrator issued an award on a cotton futures contract that was criminalized as a gambling contract by statute. *Id.* at 233-34. When suit was brought against the defendant in his temporary residence of Missouri, the court there mistakenly confirmed the award, despite the 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: the judgment of the Missouri court had to be respected because it was a final judgment, and for no other reason. 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 restriction on court's enforcement powers. Yet the *Fauntleroy* Court insisted that the final judgment of the Missouri court be respected.

Fauntleroy was reaffirmed in a series of later decisions that 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 a state is asked to respect or enforce a sister state's judgment, any hostile "local policy" is irrelevant. *Williams v. State of North Carolina*, 317 U.S. 287, 294 (1942). As just one example of how family law issues are covered by the Full Faith and Credit Clause, 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, holding that Louisiana' reliance on its own public policy to refuse recognition of the Texas order was constitutionally forbidden. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 438 (1943)("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" by other states, instead creating a "single nation, in which rights judicially established in any part are given nation-

wide application."); *see also Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948) (mandating that Florida give full faith and credit to a Florida divorce decree; "If in [the Full Faith and Credit Clause's] application, local policy must at times be required to give way, such 'is part of the price of our federal system.").

The Supreme Court reaffirmed these precedents less than a dozen years ago in *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222 (1998). There, the Supreme Court explained that the lower court had "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." *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.

Alabama courts also recognize that the Full Faith and Credit does not permit a court to make policy judgments in deciding which judgments to respect. *Camp v. Kenney*, 673 So.2d 436, 438 (Ala. Civ. App. 1995) ("We conclude that in the case of a sister state's judgment that is nonmodifiable in the rendering state, Alabama courts are required to give full faith and credit to that judgment, including its child support provisions. Public policy considerations cannot override constitutional mandates."); *Century Intern. Management v. Gonzalez*, 601 So.2d 105, 108 (Ala. Civ. App. 1992) (mandating enforcement of judgment; "the trial court was without authority to determine whether the arbitration clause was against public policy. The doctrine of full faith and credit prohibits consideration of the merits of the underlying action of the foreign state.").

Respondent submits that it is now clear that no public policy exception exists to a state's obligation under the Full Faith and Credit Clause to respect a sister state's judgments. What cannot be disputed is that Congress chose very different words to define a state's obligation to respect and enforce a sister state's custody order, compare 28 U.S.C. § 1738A(a) (a state "shall enforce according to its terms and shall not modify") than it did in setting forth a state's responsibilities for another state's judgments generally, with 28 U.S.C. § 1738 (such proceeding "shall have such full faith and credit" as it has in the issuing state). While A.K. submits that this distinction ends up being irrelevant in that a state's obligation even under the Full Faith and Credit Clause does not have the gaping exception urged by N.B., it is sufficient here to note that Congress wisely chose statutory language for the PKPA that renders the constitutional analysis academic.

C. The Mandatory Provisions of the PKPA Apply Without Some Exception Based On Assumptions About How Members of Congress Might Have Addressed a Particular Situation That They Did Not Specifically Consider.

Instead of discussing the PKPA's actual provisions and the caselaw applying them, N.B.'s brief time and again baldly asserts what it believes Congress must have intended, which N.B. maintains would not include a requirement to recognize the California court's parentage judgment. N.B. fails to cite to any actual evidence of such intent but, more importantly, what Congress might have believed but not enacted is legally irrelevant.

N.B. fares no better in her argument that the PKPA should be interpreted to allow the Juvenile Court's exercise of jurisdiction because her actions do not implicate the child-snatching concerns that Congress had in enacting the PKPA. In addition to advancing the incorrect assertion of Congress's motivations -- and an unverifiable one regarding her own -- N.B.'s argument fails for the simple reason that the PKPA is not drafted to excuse those with pure intentions, nor most likely could it be.

N.B.'s argument that the PKPA Congress did not intend the result reached by the Court of Civil Appeals is

certainly not self-evident. Indeed, the willingness of courts around the country to apply the PKPA as written has resulted in the orderly approach and behavioral incentive structure Congress intended. *See In re Clausen*, 442 Mich. at 674, 502 N.W.2d at 660 ("Custody litigation is full of injustice-let there be no doubt about that. No system of laws is perfect. Consistency in the application of the laws, however, goes a long way toward curing much of the injustice."), quoting Roger M. Baron, Federal Preemption in the Resolution of Child Custody Jurisdiction Disputes, 45 Ark. L. Rev. 885, 912 (1993).

Moreover, it is well-established that a court should apply statutory provisions as written, even if a situation covered by the statute is not one the legislators contemplated. In 1998, the Supreme Court unanimously ruled that same-sex sexual harassment could be actionable as discrimination based on sex, even if the 1964 Congress that passed Title VII did not contemplate such a result. *Oncale v. Sundowner Offshore Servs, Inc.*, 523 U.S. 75 (1998). Justice Scalia, writing for the Court, explained the irrelevance of the legislator's thoughts on the case:

> As some courts have observed, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.

Id. at 79; *Gray v. Gray*, 947 So.2d 1045, 1050 (Ala. 2006) ("Thus, we are not at liberty to ponder whether and how the legislature might have written the statute differently to further its intention in the case now before us . . .").

These cases make clear that the personal preferences that members of the 96th Congress might have had regarding the number or gender of the legal parents A.R.B.-K. should be deemed legally to have is wholly irrelevant. This is true generally as a principle of statutory construction; moreover, it is especially appropriate here where Congress passed rigid, objective procedural rules, to the point of ending the ability of courts to use merits-based inquiries that undermined uniformity and predictability.

N.B. makes another, legally untethered policy appeal, urging this Court to "interpret" the PKPA to allow for Alabama's jurisdiction over her Petition because she claims

she did not engage in parental kidnapping. She states that,

> In passing the PKPA, Congress merely sought to remedy the national problem of natural parents kidnaping their children after an unsatisfactory child custody order in order to find a more favorable forum. That concern is not implicated here. Under these circumstances, the PKPA should be interpreted to permit Alabama to exercise jurisdiction over a parentage action.

Pet. Brf. at 16-17. First, her premise that Congress merely sought to reduce parental kidnapping is incorrect. *See Miller-Jenkins, supra*, 49 Va.App. at 95, 637 S.E.2d at 334 ("despite its unofficial and common title, the PKPA is not limited to parental kidnapping cases."); *see also Wilson v. Gouse*, 263 Ga. 887, 889, 441 S.E.2d 57, 60 (1994) ("the PKPA was intended not only to apply where a child was abducted by a parent and removed to another state but to remedy what was widely considered to be the inapplicability of the full faith and credit statute to child custody orders" (footnote omitted)); *Barndt v. Barndt*, 397 Pa.Super. 321, 331, 580 A.2d 320, 324-25 (1990) ("The title of the act is misleading and unfortunate, as it was by no means limited to criminal matters relating to kidnapping."). Instead, Congress intended to and did,

establish a set of rules for exercising jurisdiction, and respecting and enforcing judgments. "[O]ne of the principle purposes of the PKPA was to protect the right of a decree issuing state to exercise exclusive continuing jurisdiction over its child custody orders in certain cases, and to channel custody litigation into the court having continuing jurisdiction by requiring" respect for that state's orders. *Id.* The fact that Congress was concerned about the overall health of the nation's judicial apparatus for deciding custody disputes, and not merely about those driven to child-snatching because of it, led the Illinois Court of Appeals to reject a similar argument to N.B.'s: "The mother argues that the PKPA did not apply in this case because this case did not involve kidnapping or child abduction. However, contrary to the mother's assertion, the purpose of the PKPA is not only to prevent kidnapping. Rather, '[i]t applies generally to situations of interstate custody disputes.'" *In re Marriage of Wiseman and Dorshorst*, 316 Ill. App. 3d 631, 638, 737 N.E.2d 325, 332 (2000) (citation omitted).

IV. LAWS RESTRICTING RECOGNITION OF THE MARRIAGES OF SAME-SEX COUPLES ARE TOTALLY IRRELEVANT TO THIS CASE CONCERNING VISITATION RIGHTS.

After the Court of Civil Appeals held that the PKPA precluded the Juvenile Court's exercise of jurisdiction, N.B. appealed to this Court, devising a new strategy in her effort to argue that the California Supreme Court decision in *Elisa B.* somehow bears on the issue of jurisdiction which is the solely determinative issue before this Court. N.B. suggests that the California Supreme Court, in its *Elisa B.* decision, was honoring a marriage-like, same-sex relationship. Based on this false premise, N.B. now asserts that the so-called Defense of Marriage Act (28 U.S.C. § 1738C), Alabama Const. § 36.03, and Ala. Code § 30-1-19 permit the Juvenile Court to ignore what otherwise would be its obligation under the PKPA to refrain from exercising jurisdiction over A.R.B.-K.'s custody and visitation and to enforce the California court's orders. This argument is wrong for several reasons. The most obvious is that A.K. and N.B. were never married in California (or anywhere else); thus, DOMA does not apply. Secondly, far from granting parental rights based on a marriage, *Elisa B.* stands for the opposite proposition, as

is reflected by the fact that the lesbian couple in that case had no legally recognized relationship whatsoever. Finally, N.B.'s theory that DOMA effected an implied repeal of the PKPA provisions that discourage child-snatching and forum shopping, for married couples of the same sex and their children, in unsupportable.

A. California Domestic Partnerships, and Other Non-Marital Relationships, Simply Are Not Covered by DOMA.

N.B.'s DOMA argument fails because of the basic proposition that DOMA is targeted towards marriages, not California domestic partnerships. N.B. cites no cases in which DOMA was applied to a California domestic partnership and ignores authority specifically holding that domestic partnerships and other non-marital forms of recognition of same-sex couples that are not treated as marriages simply are not covered by DOMA.

Smelt v. County of Orange, 447 F.3d 673 (9th Cir. 2006), rejected a DOMA challenge brought by a couple who had entered into a California registered domestic partnership. *Smelt* held that the couple lacked standing because they were "not even married under any state law" and that even a valid California domestic partnership was

"not by any means a marriage" *id.* at 683 and n.26, but simply gave "registered domestic partners certain legal rights and obligations." *Id.* at 684. Indeed, when A.K. and N.B. registered, a California domestic partnership provided "only limited substantive benefits." *In re Marriage Cases*, 43 Cal.4th 757, 801, 183 P.3d 384, 413 (2008). Receiving certain benefits simply does not make the relationship one that "is treated as a marriage" for the purposes of DOMA. *See* 28 U.S.C. § 1738C.[14]

Likewise, in *Bishop v. Oklahoma*, 447 F.Supp.2d 1239 (N.D. Okla. 2006), a couple who had a Vermont civil union brought a challenge to DOMA. The court held that the couple also lacked standing to challenge DOMA "because

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[14] Disparities in the legal treatment of marriage compared to domestic partnership were reduced over the years, including a major reform that became effective the January after A.K. and N.B. split up. *In re Marriage Cases*, 43 Cal.4th at 802, 183 P.3d at 414. There are still certain legal distinctions that persist, however, *id.*, 43 Cal.4th at 805 n.24, 183 P.3d at 416 n.24, and it remains the case that a California domestic partnership is not "treated as a marriage" in that state but as a different and lesser status. *Id.*, 43 Cal.4th at 852, 183 P.3d at 452 (relegation to domestic partnerships "likely will be viewed as an official statement that the family relationship of same-sex couples is not of comparable stature or equal dignity to the family relationship of opposite-sex couples. . . . [and] considered a mark of second-class citizenship.").

their Vermont civil union is not 'treated as a marriage' under Vermont law, as that term was meant to be understood when Congress passed DOMA." *Id.* at 1247-48.[15] "DOMA did not anticipate the scenario of an alternate form of legally-cognizable relationship." *Id.* at 1248.

As *Smelt* and *Bishop* recognize, a relationship status that is not treated as a marriage, but rather as something ***different*** from a marriage (and, at the time of the end of A.K.'s and N.B.'s relationship provided only "limited substantive benefits," is not covered by DOMA.

Courts in many other states also reject the notion that a Vermont civil union is equivalent to marriage. "The dissimilitude between the terms 'civil marriage' and 'civil union' is not innocuous; it is a considered choice of language that reflects a demonstrable assigning of same-sex, largely homosexual, couples to second-class status." *In re Opinions of the Justices to the Senate*, 440 Mass. 1201, 1207, 802 N.E.2d 565, 570 (2004); *Kerrigan v. Comm'r of Pub. Health*, 289 Conn. 135, 151 n.14, 957 A.2d 407, 417 n.14 (2008) ("Any married couple [reasonably] would feel

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[15] The *Bishop* court did find that two other plaintiffs had standing to challenge Section 3 of DOMA, because in addition to a Vermont civil union, they had been married in Canada. *Id.* at 1249-50.

that they had lost something precious and irreplaceable if the government were to tell them that they no longer were "married' and instead were in a "civil union."'"); *Varnum v. Brien*, --- N.W.2d ----, 2009 WL 874044 (Iowa April 3, 2009) (To create parallel civil institutions for same-sex couples "would be difficult to square with the fundamental principles of equal protection embodied in our constitution.").

In short, the basic premise of N.B.'s argument - that DOMA has any applicability to a California domestic partnership - is incorrect.

B. DOMA Does Not Apply Because the *Elisa B* Opinion Has Nothing Whatsoever to Do with Recognizing Any Formal Relationship Between Same-Sex Partners.

In addition, DOMA is inapplicable because A.K. was ruled to be a parent based on A.K.'s parental relationship with her daughter, not her romantic relationship with N.B. N.B. makes the deceptive statement that *Elisa B* "ruled that a woman in a same sex relationship approximating marriage can be deemed" a presumed mother to the child they raised. Pet. Brf. at 1. What the court actually ruled is that any woman who meets the requirement of receiving a child in to

her home and holding out the child as hers may qualify to be a presumed parent.

The California court held that A.K. was a presumed parent under Cal. Family Code section 7611(b) as someone who opened her home to the child and held her out to the world as her daughter. That ruling was supported by the California Supreme Court decision in *Elisa B. v. Superior Court*, which held that a woman can invoke Section 7611(d), especially in light of Cal. Fam. Code Section 7650, which provides that decisions about who is a presumed mother should parallel those for establishing who is a presumed father insofar as practicable. The court held that there was no logical reason for a blanket rule that a woman cannot qualify as a legal parent by receiving a child into her home and holding the child out as her own, while a man could.

A simple reading of the *Elisa B* case reveals the fallacy of the position that *Elisa B*'s holding makes DOMA relevant to this case. First, the court specifically stated that the same-sex couple in that case never entered into a domestic partnership. 37 Cal.4th at 114. Thus, there was no marriage or any other legal relationship

between persons of the same sex that motivated the court's decision. Second, presumed parent status under Section 7611(d) has nothing to do with whether one is single, married, divorced, partnered, widowed or in some other status, as is proven by looking at the presumed parents in *Elisa B.* and the key cases on which *Elisa B.* relied.

Elisa B. approved of a California Court of Appeal decision, *In re Karen C.*, 101 Cal. App. 4th 932, 938 (2002), in which presumed parent status under Section 7611(d) was afforded to a woman who raised her child since birth. There, the biological mother, after unsuccessful attempts to terminate her pregnancy, instead decided to give the child to Leticia (as arranged by a friend; Leticia and the biological mother apparently were strangers at the time). The biological mother, when checking into the hospital for labor, gave Leticia' name as her name, so that the birth certificate would reflect the name of the person who would parent the child. The court held that Leticia opened her home to the child and held her out as her own, and that Section 7650 operated to make Section 7611 gender-neutral, at least under these circumstances.

A different division of the California Court of Appeal followed *In re Karen C.* the next year by affording presumed parent status under Section 7611(d) to a boy's half-sister, who, beginning at age 18, raised him as her own after his parents died. *In re Salvador M.*, 111 Cal.App.4th 1353, 4 Cal.Rptr.3d 705 (2003). The *In re Salvador M* court relied on *In re Karen C.* to hold that a woman can qualify under Section 7611(d). Another potential obstacle was that, while holding herself out generally as the boy's mother, she had disclosed that she was not his biological mother to certain public employees (school officials, police officers, social worker). However, the previous year, the California Supreme Court held that a public admission of not being the biological father is not necessarily fatal to a successful claim under Section 7611(d). *In re Nicholas H.*, 28 Cal.4th 56, 120 Cal.Rptr.2d 146, 46 P.3d 932 (2002). In that case, the boy's mother was pregnant with him when she met and moved in with Thomas, the presumed father. The couple wanted Thomas "to act as a father to Nicholas, so Thomas participated in Nicholas's birth, was listed on Nicholas's birth certificate as his father, and provided a home for Kimberly and Nicholas for several years." 28

Cal.4th at 61. When the county social services agency came to take the child from his mother, the issue of Thomas's paternity was integral to the child's care.

These cases demonstrate that California applies Section 7611(d) in a wide variety of contexts, with the common denominator being only whether the presumed parent met the statutory criteria of having welcomed the child into his or her home and holding out the child as his or her own. One may share parenting duties with a life partner or raise the child alone. Parental duties may start out at birth or later. One's level of preparation prior to becoming a parent could be so complete as to have included planning the conception, or nonexistent, as when notice of the child's need for a parent come in the form of news about a car crash. In short, the courts of California are not factoring in the existence or nonexistence of a domestic partnership in determining whether one qualifies as a presumed parent under Section 7611(d); indeed, the information about the relationship largely serves as background for how the petitioner came to be in a situation to become a presumed parent. Nothing about *Elisa B.* or the

California court's parentage order in this case, renders DOMA relevant.

C. DOMA Does Not Eviscerate the Careful Jurisdictional Rules Established by the PKPA.

N.B.'s argument depends both on the applicability of DOMA to this case and her theory that DOMA eviscerates the PKPA's jurisdictional scheme to allow forum-shopping when same-sex couples have disputes over parental rights. The notion that DOMA affects the PKPA should be rejected because it would require finding a repeal by implication that is not supportable.

The PKPA carefully established a jurisdictional scheme to prevent forum-shopping by requiring all states to enforce the proper custody and visitation orders of other states. *Miller-Jenkins*, 49 Va. App. at 95, 637 S.E.2d at 334, *quoting Scott v. Rutherfoord*, 30 Va. App. 176, 187, 516 S.E.2d 225, 231 (1999) ("[T]he purpose of the PKPA was to provide for nationwide enforcement of custody orders . . ."). There is "no authority holding that either the plain wording of DOMA or its legislative history was intended to affect or partially repeal the PKPA." *Miller-Jenkins*, 49 Va. App. at 100-01. That court properly recognized that

"[t]herefore, any Congressional intent to repeal must be by implication", which is disfavored, especially when the statutes can be reconciled. *Id.* at 101 (citation omitted). The court then explained that, because the purposes of the PKPA and DOMA do not conflict, the Court of Appeals properly held that the statutes readily can be reconciled. The PKPA was enacted specifically "to extend the requirements of the Full Faith and Credit Clause to custody determinations. " *Miller-Jenkins One*, 49 Va. App. at 101 (citations omitted). By contrast, in passing DOMA, Congress was concerned about "heterosexual marriage" and the ability of "homosexual couples to acquire marriage licenses." *Id.*; *see also* H.R. REP. 104-664, 18, 44, 1996 U.S.C.C.A.N. 2905, 2922, 2947 (the stated purpose of DOMA, not implicated here, is to allow states to "define the institution of marriage" and not honor "same-sex 'marriage' licenses."). "Nothing in the wording or the legislative history of DOMA indicates that it was designed to affect the PKPA and related custody and visitation determinations." Notably, federal courts and Alabama courts have an equal or greater disapproval or repeal by implication. See *Miller-Jenkins*, 49 Va. App. at 102.

Hawaii v. Office of Hawaiian Affairs, __ U.S. __, 129 S.Ct. 1436, 1439 (2009)("[R]epeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal [is] clear and manifest."); *Hurley v. Marshall County Comm'n*, 614 So.2d 427, 430 (Ala. 1993) ("A later statute may repeal an earlier statute by implication only under certain circumstances, such as when the two statutes, taken together, are so repugnant to each other that they become irreconcilable.").

As *Miller-Jenkins* held, DOMA and the PKPA can be reconciled because DOMA did not purport to interfere with the PKPA's careful jurisdictional scheme. Even if there were a conflict, it is notable that the PKPA is the more recent word on Congress's intent, as the PKPA was amended two years ***after*** DOMA to address visitation orders specifically - the exact type of order at issue here. *See Willis v. Kincaid*, 983 So.2d 1100, 1106-07 (Ala. 2007) (in determining whether a repeal by implication was intended, a court should consider instances in which the two laws have been "revisited" and amended since their enactment); See Pub. Law 104-199 (1996) (DOMA) and Public Law No. 105-374 (1998) (amendment to PKPA explicitly providing that the

PKPA covers visitation); *Bruner v. Tadlock*, 338 Ark. 34, 39-40, 991 S.W.2d 600, 603 ("Public Law 105-374 sought to "eliminate the hassles, obstacles, and delays that too often confront those who have valid visitation orders and are asking only that federal law be followed." *Id.* citing 144 CONG. REC. 151, S12941 (daily ed. Oct. 21, 1998).

V. ANY CHALLENGE TO THE CORRECTNESS OF THE CALIFORNIA COURT'S DECISIONS CAN ONLY BE DIRECTED TO THE CALIFORNIA APPELLATE COURTS.

Finally, N.B. sets forth various arguments that the California court's parentage and visitation orders were contrary to law and/or infringed her constitutional rights. See Pet. Brf. at 51. She then states, "It was therefore appropriate for the Alabama juvenile court to assume jurisdiction." *Id.* No authority is cited for the proposition that the courts of this state serve as a safety valve for more recent residents who consider themselves aggrieved by the legal decisions emanating from the states they left behind. To the contrary, Alabama abides by the principle that collateral attacks on another state's orders (such as N.B.'s) is improper; *a fortiori*, concerns about

those orders cannot serve as a basis for an Alabama court having jurisdiction.

"Constitutional objections to the award of visitation to the grandparents could have been raised in opposition to the [California] court's award of such visitation. If they were not, they cannot be asserted now." *G.P. v. A.A.K.*, 841 So.2d 1252, 1255 (Ala. Civ. App. 2002). On the other hand, any arguments that were raised to the California court, rejected, and not appealed properly cannot be raised in Alabama because the California court's determination "became a final and binding judgment." *Id.* at 1256; accord *McQuinn v. McQuinn*, 866 So.2d 570, 575 (Ala. Civ. App. 2003) ("The proper method by which the mother could have attacked the validity of the initial adjudication was by a direct appeal from the Tennessee judgment. . . . The mother's failure to appeal the original judgment that granted the father visitation with his stepson precludes her from attempting to place error on the Alabama court in a collateral attack.").[16]

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[16] N.B.'s arguments that the California court and *Elisa B.* court misinterpreted the "presumed father" provision of the California Family Code are barred not only by rules against collateral attacks, but also the principle that a state, in construing another state's laws, will "adopt the

N.B.'s attacks on *Elisa B.* are not only procedurally misdirected to the courts of this state but also substantively meritless. For example, N.B. defends the Juvenile Court's citation of the *Lofton* case[17] for the proposition that the California court improperly expanded the universe of who is a parent under California law, and that such expansion is legally invalid, and thus cannot assist A.K., because it must come from the legislature. The Juvenile Court's judgment of October 9, 2007, provides:

> The Eleventh Circuit Court of Appeals mandated that "If the Legislature does not provide a person with standing to obtain parental rights, the court must presume the Legislature is acting or refusing to act, by virtue of its position as representatives of the will of the people." *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804 (11th Cir.), *reh'g en banc denied*, 377 F.3d 1275 (2004), *cert.*

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construction which the Court of the State have given to those laws." *Miller-Jenkins*, 49 Va. App. at 98, 633 S.E.2d at 35, *quoting Elmendorf v. Taylor*, 23 U.S. (10 Wheat.) 152, 159, 6 L.Ed. 289 (1825); *Perez v. Tanner*, 332 Ark. 356, 368, 965 S.W.2d 90, 95 (Ark. 1998) (a belief that another state's "court erred in interpreting its own law or statutes or failed to apply the proper state law would still not be grounds for refusing to recognize the judgment.").

[17] *Lofton v. Secretary of Dept. of Children and Family Services*, 358 F.3d 804 (11th Cir.), *reh'g en banc denied*, 377 F.3d 1275 (2004), *cert. denied*, 125 S. Ct. 869 (2005).

> *denied*, 125 S. Ct. 869 (2005). Therefore, a Court cannot presume to substitute its will for that of Legislatures representing the will of the people, and Respondent lacks standing on which relief may be granted.

Neither the proffered quote nor any approximation of it appears in the *Lofton* decision. Nor is *Lofton* remotely comparable to *Elisa B.* in any conceivably relevant respect. *Lofton* was an equal protection challenge to a Florida statute providing, "No person eligible to adopt under this statute may adopt if that person is a homosexual." Fla. Stat. § 63.042(3). The Legislature's intent to exclude a specified class of people as potential adoptive parents was apparent. By contrast, *Elisa B.* is a statutory interpretation case addressing the issue of whether a Uniform Parentage Act (UPA) provision that a man is a presumed father if "he receives the child into his home and openly holds out the child as his natural child" (Cal. Fam. Code § 7611(d)) can be applied to a woman, in light of another UPA section providing that, in determining the existence of a mother and child relationship, "[i]nsofar as practicable, the provisions of this part applicable to the father and child relationship apply."(Cal. Fam. Code § 7650.) The California Supreme Court was interpreting

various provisions of the UPA, not questioning their constitutional validity. Thus, far from exceeding its authority, California's courts were engaging in the discharge of their most basic constitutional duties, as "it is emphatically the province of the court to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137; 2 L. Ed. 60 (1803).

Moreover, any suggestion that *Elisa B.* resulted in a change of law that cannot fairly be applied to N.B. and A.K. is untenable. As N.B. and the *Elisa B* court explained, a 1990 decision of the California Court of Appeal created a legal hurdle for gay parents not biologically related to their children. That hurdle was removed by the California Supreme Court's 2002 decision in *In re Nicholas H.*, 28 Cal.4th 56, 46 P.3d 932 (2002), decided while A.B. and N.K. were still a couple raising A.R.B.-K. together. Thus, N.B.'s claim of unfair surprise rings hollow and there appears to be no reason to depart from "retroactive application of judgment[, which] is overwhelmingly the normal practice." *Ex parte Town of Lowndesboro*, 950 So.2d 1203, 1214 (Ala. 2006); *see also G.P. v. A.A.K.*, 841 So.2d at 1255 n.1 ("The *Troxel* decision

did not change the law; it merely recognized or declared the law. . . . [J]udicial power is a power 'not delegated to pronounce a new law, but to maintain and expound the old one'") (*quoting Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 107 (1993) (Scalia, J., concurring).

Finally, N.B.'s argument that her constitutional rights as a parent are violated by the California parentage order is misplaced. To the extent that N.B. argues that certain facts demonstrate that A.K. did not hold herself out as A.R.B.-K.'s parent, or that the facts show that N.B. did not consent to the formation of a parent-child relationship between A.K. and A.R.B.-K., that should have been litigated in California. To the extent that N.B. argues that under *Troxel v. Granville*, 530 U.S. 57 (2000), or any other authority, she lacked the right as a parent to consent to the formation of a legally recognized parent-child relationship between A.K. and A.R.B.-K., she turns that case on its head. Notably, may cases around the country have held that it is permissible and even may be required to recognize a parent-like relationship between the child and the *de facto* parent has been actively fostered and encouraged by the biological parent. *See In the Interest*

of E.L.M.C., 100 P.2d 546 (Colo. App. 2004); *E.N.O.* v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999); *V.C v. M.J.B.*, 748 A.2d 539, 551 (N.J. 2000); *T.B. v. L.R.M.*, 786 A.2d 913 (Pa. 2001); *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000); *Middleton v. Johnson*, 633 S.E.2d 162, 169 (S.C. App. 2006); In re *Clifford K.*, 619 S.E.2d 138, 156-57 (W. Va. 2005); *In re Custody of H.S.H-K*, 533 N.W.2d 419, 435-36 (Wis. 1995). In such circumstances, the biological parent has already made the decision to treat the other party as a parent. The court's role is simply to protect the child from the severance of that critical relationship:

> [W]hen a legal parent invites a third party into a child's life, and that invitation alters a child's life by essentially providing him with another parent, the legal parent's rights to unilaterally sever that relationship are necessarily reduced. The legal parent's active fostering of the psychological parent-child relationship is significant because the legal parent has control over whether or not to invite anyone into the private sphere between parent and child. Where a legal parent encourages a parent-like relationship between a child and a third party, "the right of the legal parent [does] not extend to erasing a relationship between [the third party] and her child which [the legal parent] voluntarily created and actively fostered."

Supra, Middleton, 633 S.E.2d at 169 (citation omitted).

N.B.'s substantive disagreements with *Elisa B.* and the California court's parentage order are substantively

meritless, but more fundamentally have no place in litigation in the courts of this state.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the Court of Civil Appeals and dismiss N.B.'s action for lack of jurisdiction.

This the 6th day of May, 2009.

Respectfully submitted,

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ADDENDUM

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Parental Kidnapping Prevention Act

28 U.S.C. § 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

Defense of Marriage Act

28 U.S.C. § 1738C. Certain acts, records, and proceedings and the effect thereof

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Alabama Marriage Protection Act

Ala. Code § 30-1-19. Marriage, recognition thereof, between persons of the same sex prohibited.

(a) This section shall be known and may be cited as the "Alabama Marriage Protection Act."

(b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting the unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

(c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.

(d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

(e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

Sanctity of Marriage Amendment

Ala. Code Sec. 36.03. Sanctity of marriage.

(a) This amendment shall be known and may be cited as the Sanctity of Marriage Amendment.

(b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting this unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

(c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.

(d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

(e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

(f) The State of Alabama shall not recognize as valid any common law marriage of parties of the same sex.

(g) A union replicating marriage of or between persons of the same sex in the State of Alabama or in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state as a marriage or other union replicating marriage.

Excepts from California Uniform Parentage Act

Cal. Fam. Code § 7611. Status as natural father; presumption; conditions

A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:
(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.
(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:
(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.
(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.
(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:
(1) With his consent, he is named as the child's father on the child's birth certificate.
(2) He is obligated to support the child under a written voluntary promise or by court order.
(d) He receives the child into his home and openly holds out the child as his natural child.
(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.
(f) The child is in utero after the death of the decedent and the conditions set forth in Section 249.5 of the Probate Code are satisfied.

West's Ann.Cal.Fam.Code § 7650

West's Annotated California Codes Currentness
Family Code (Refs & Annos)
Division 12. Parent and Child Relationship (Refs & Annos)
Part 3. Uniform Parentage Act (Refs & Annos)
Chapter 4. Determination of Parent and Child Relationship (Refs & Annos)
Article 2. Determination of Mother and Child Relationship (Refs & Annos)
§ 7650. Action to determine existence or nonexistence of mother and child relationship; parties; law governing

(a) Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

(b) A woman is presumed to be the natural mother of a child if the child is in utero after the death of the decedent and the conditions set forth in Section 249.5 of the Probate Code are satisfied.
CREDIT(S)

(Stats.1992, c. 162 (A.B.2650), § 10, operative Jan. 1, 1994. Amended by Stats.2004, c. 775 (A.B.1910), § 2.3.)

LAW REVISION COMMISSION COMMENTS

Enactment (Revised Comment)

Section 7650 continues former Civil Code Section 7015 without change. This section is the same in substance as Section 21 of the Uniform Parentage Act (1973). [23 Cal.L.Rev.Comm. Reports 1 (1993)]
HISTORICAL AND STATUTORY NOTES

2009 Electronic Update

2004 Legislation
Stats.2004, c. 775 (A.B.1910), designated the former text of the section as subd. (a) and added subd. (b).

2004 Main Volume

Derivation: Civil Code former § 231, added by Stats.1921, c. 136, § 1, amended by Stats.1963, c. 1413, § 1.

Civil Code former § 7015, added by Stats.1975, c. 1244, § 11.

Uniform Law:
This section is similar to § 21 of the Uniform Parentage Act. See 9B Uniform Laws Annotated, Master Edition or ULA Database on Westlaw.

CROSS REFERENCES

Action to determine father and child relationship, see Family Code § 7630.
Paternity, orders for genetic tests, see Family Code § 7551 et seq.

Person defined for purposes of this Code, see Family Code § 105.

CODE OF REGULATIONS REFERENCES

Institutions and boarding homes for persons aged sixteen and above,
Adoptions program regulations, freeing a child for adoption, see 22 Cal. Code of Regs. § 35108.
Adoptions program regulations, services for the birth parent, see 22 Cal. Code of Regs. § 35129.

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Forcing a square into a circle: Why are courts straining to apply the *Uniform Parentage Act* to gay couples and their children? Nicole L. Parness, 27 Whittier L. Rev. 893 (Spring 2006).

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Three's company? How American law can recognize a third social parent in same-sex headed families. Laura Nicole Althouse, 19 Hastings Women's L.J. 171 (2008).

What does it take to be a (lesbian) parent? On intent and genetics. Sanja Zgonjanin, 16 Hastings Women's L.J. 251 (2005).

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Children Out-of-Wedlock ⇐34.
Westlaw Topic No. 76H.
C.J.S. Children Out-of-Wedlock §§ 49, 85 to 90.

RESEARCH REFERENCES

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5 ALR 6th 303, Child Support Obligations of Former Same-Sex Partners.

77 ALR 5th 567, Determination of Status as Legal or Natural Parents in Contested Surrogacy Births.

Encyclopedias

14 Am. Jur. Proof of Facts 2d 727, Legitimation of Child by Father Seeking Custody of Child.

64 Am. Jur. Proof of Facts 3d 403, Custody and Visitation of Children by Gay and Lesbian Parents.

10 Am. Jur. Trials 653, Disputed Paternity Cases.

50 Am. Jur. Trials 1, Liability of Sperm Banks.

CA Jur. 3d Family Law § 260, Determination of Mother and Child Relationship.

CA Jur. 3d Family Law § 263, Nature and Effect of Presumption.

CA Jur. 3d Family Law § 270, Statutory Presumptions.

CA Jur. 3d Family Law § 272, Rebutting Presumptions.

CA Jur. 3d Family Law § 284, Persons Who May Bring Action; Time of Suit.

Forms

California Transactions Forms--Family Law § 5:9, Use of Parenting Agreement to Define Rights and Responsibilities Relating to Child on Termination of Partners' Relationship Where Both Partners Are Biological Parents.

Treatises and Practice Aids

1 California Affirmative Defenses 2d § 19:3, Statutory Definitions of Real Party in Interest.

California Community Property Law § 2:21, Domestic Partnerships Registration.

California Community Property Law § 13:57, Children Conceived Postmortem by the Use of Parental Genetic Material.

Rutter, Cal. Practice Guide: Family Law Ch. 6-A, A. Child Support.

Rutter, Cal. Practice Guide: Family Law Ch. 7-A, A. Jurisdiction and Litigation Choices.

Rutter, Cal. Practice Guide: Family Law Ch. 7-E, E. Sole Parent or Nonparent Custody.

Rutter, Cal. Practice Guide: Family Law Ch. 7-F, F. Visitation Rights.

5 Witkin Cal. Proc. 5th Pleading § 856, (S 856) Special Kind of Declaratory Relief.

5 Witkin Cal. Proc. 5th Pleading § 898, (S 898) Proceedings Involving Children.

10 Witkin, California Summary 10th Parent and Child § 20, in General.

10 Witkin, California Summary 10th Parent and Child § 60, (S 60) Action to Determine Mother and Child Relationship.

10 Witkin, California Summary 10th Parent and Child § 236, Former Lesbian Partner Opposed by Other Partner.

10 Witkin, California Summary 10th Parent and Child § 60A, (New) Parental Status of Lesbian Partner After Separation.

NOTES OF DECISIONS

1/4 . Due process

Interpretation of Uniform Parentage Act (UPA) that accorded wife of father neither natural nor presumed mother status as to father's child born as result of father's extra-marital affair with mother, even though child had been living with father and his wife since one month of age, did not violate due process, given mother's prompt assertion of her legal maternity, and fact that she had been having monitored visits with child. Amy G. v. M.W. (App. 2 Dist. 2006) 47 Cal.Rptr.3d 297, 142 Cal.App.4th 1, review denied, certiorari denied 127 S.Ct. 2252, 167 L.Ed.2d 1091. Children Out-of-wedlock ⇐ 1; Children Out-of-wedlock ⇐ 3; Constitutional Law ⇐ 4392

3/8 . Equal protection

Interpretation of Uniform Parentage Act (UPA) that, given mother's prompt assertion of her legal maternity, accorded wife of father neither natural nor presumed mother status as to father's child born as result of father's extra-marital affair with mother, even though child had been living with father and his wife since one month of age, did not violate equal protection; wife was not similarly situated to partners in same-sex relationships with biological mothers or to husbands of wives impregnated by other men, which were the groups that had been accorded presumed parent status under UPA. Amy G. v. M.W. (App. 2 Dist. 2006) 47 Cal.Rptr.3d 297, 142 Cal.App.4th 1, review denied, certiorari denied 127 S.Ct. 2252, 167 L.Ed.2d 1091. Children Out-of-wedlock ⇐ 1; Children Out-of-wedlock ⇐ 3

1/2 . Construction with other laws

When a child is removed from parental custody, the child's relatives are given preferential consideration for placement, whenever possible. In re Esperanza C. (App. 4 Dist. 2008) 81 Cal.Rptr.3d 556, 165 Cal.App.4th 1042, as modified. Infants ⇦ 222

Under the Uniform Parentage Act (UPA), genetic consanguinity can be the basis for a finding of maternity just as it is for paternity. K.M. v. E.G. (2005) 33 Cal.Rptr.3d 61, 37 Cal.4th 130, 117 P.3d 673, rehearing denied. Children Out-of-wedlock ⇦ 1

Both the woman who had donated her eggs so that her former lesbian partner, with whom she was registered in domestic partnership, could bear a child through in vitro fertilization and her former partner were parents of children born by this method, despite woman's execution of written waiver of right to resulting children at time of donation; woman's genetic relationship to children constituted evidence of mother-child relationship under Uniform Parentage Act (UPA), and she did not intend simply to donate her eggs, but rather designed her donation so that her partner could give birth to a child that would be raised in their joint home. K.M. v. E.G. (2005) 33 Cal.Rptr.3d 61, 37 Cal.4th 130, 117 P.3d 673, rehearing denied. Children Out-of-wedlock ⇦ 15

1. Interested persons

Given mother's prompt assertion of her legal maternity to child born as result of father's extra-marital affair with mother, father's wife could not be either natural or presumed mother through gender-neutral interpretation of provisions of Uniform Parentage Act (UPA), although child had been living with father and his wife, and thus husband's request for joinder of his wife as party in mother's parentage action was properly denied, and wife's separate action seeking to establish her maternal status was properly dismissed. Amy G. v. M.W. (App. 2 Dist. 2006) 47 Cal.Rptr.3d 297, 142 Cal.App.4th 1, review denied, certiorari denied 127 S.Ct. 2252, 167 L.Ed.2d 1091. Children Out-of-wedlock ⇦ 1; Children Out-of-wedlock ⇦ 3

Wife of child's biological father was not an "interested person" who had standing to bring action to determine whether mother and child relationship existed between child conceived from biological father's sperm and donated egg and female who had given birth to the child as result of fertility clinic placing wrong embryo in female's uterus, since wife had neither gestational nor genetic relationship to child, and female asserted independent, competing claim to child. Robert B. v. Susan B. (App. 6 Dist. 2003) 135 Cal.Rptr.2d 785, 109 Cal.App.4th 1109, review denied. Child Custody ⇦ 274.5; Child Custody ⇦ 409

An unrelated person who is not a genetic parent is not an "interested person" within meaning of section of Uniform Parentage Act on determination of mother and child relationship providing that any interested person may bring an action to determine the existence or non-existence of a mother and child relationship. Prato-Morrison v. Doe (App. 2 Dist. 2002) 126 Cal.Rptr.2d 509, 103 Cal.App.4th 222. Children Out-of-wedlock ⇦ 34

Statutes, which dealt substantively with rights of children and procedurally with determination of parentage had no application where it was undisputed that woman who had homosexual relationship with natural mother of child, conceived by artificial insemination during relationship, and who sought custody and visitation with child, was not natural mother. Curiale v. Reagan (App. 3 Dist. 1990) 272 Cal.Rptr. 520, 222 Cal.App.3d 1597. Children Out-of-wedlock ⇦ 15

2. Best interest of child

Best interest of children, conceived through in vitro fertilization services provided by fertility clinic that allegedly involved unauthorized transfer of genetic material, dictated that alleged genetic mother and her husband should not be allowed to intrude into children's lives, or to subject children to blood tests to establish parentage, even if alleged genetic mother and her husband presented proof of genetic link to children sufficient to establish their standing to pursue parentage action; 14-year long social relationship between children and their presumed parents was more important to children than a genetic relationship with a stranger. Prato-Morrison v. Doe (App. 2 Dist. 2002) 126 Cal.Rptr.2d 509, 103 Cal.App.4th 222. Children Out-of-wedlock ⇦ 20.3; Children Out-of-wedlock ⇦ 58

3. Presumptions and burden of proof

Former lesbian partner of mother of children, who were receiving public assistance, was presumed parent under Uniform Parentage Act (UPA), and former partner's lack of genetic connection to children was insufficient to rebut presumption, so as to obligate former partner to pay child support; former partner had agreed to raise children, supported mother's artificial insemination using an anonymous donor, and received resulting twin children into her home and held them out as her own; disapproving *Curiale v. Reagan*, 222 Cal.App.3d 1597, 272 Cal.Rptr. 520, *Nancy S. v. Michele G.*, 228 Cal.App.3d 831, 279 Cal.Rptr. 212, and *West v. Superior Court*, 59 Cal.App.4th 302, 69 Cal.Rptr.2d 160. Elisa B. v. Superior Court (2005) 33 Cal.Rptr.3d 46, 37 Cal.4th 108, 117 P.3d 660. Children Out-of-wedlock ⇐ 1; Children Out-of-wedlock ⇐ 15

Presumptions of parenthood in Uniform Parentage Act for one who takes a child into the home and openly holds out the child as his or her own applied equally to women as to men, and trial court failed to consider the presumption and failed to take evidence in rebuttal in child's petition to establish mother-daughter relationship with a woman who was not her genetic mother, where court order denying mother-daughter relationship effectively rendered child an orphan. In re Karen C. (App. 2 Dist. 2002) 124 Cal.Rptr.2d 677, 101 Cal.App.4th 932. Children Out-of-wedlock ⇐ 34; Children Out-of-wedlock ⇐ 43

4. Sufficiency of evidence

Evidence was insufficient to establish status of patient at fertility clinic as genetic mother of children conceived by another patient through in vitro fertilization services provided by clinic and, thus, alleged genetic mother and her husband did not have standing to pursue parentage action against mother who conceived and her husband; only evidence suggesting patient's status as genetic mother, declaration by former fertility clinic employee and list prepared by her to show that pregnancy resulted from alleged genetic mother's eggs, was properly excluded as inadmissible hearsay that did not satisfy business records exception. Prato-Morrison v. Doe (App. 2 Dist. 2002) 126 Cal.Rptr.2d 509, 103 Cal.App.4th 222. Children Out-of-wedlock ⇐ 15; Evidence ⇐ 351

5. Estoppel

Mother of child born as result of father's extra-marital affair with mother was not equitably estopped from denying maternity right asserted by husband's wife, who was living with the child; mother's role was not that of a surrogate mother, father and his wife did not assert that purported stepparent adoption agreement executed by mother was valid, and father and his wife never took any steps to implement purported adoption agreement. Amy G. v. M.W. (App. 2 Dist. 2006) 47 Cal.Rptr.3d 297, 142 Cal.App.4th 1, review denied, certiorari denied 127 S.Ct. 2252, 167 L.Ed.2d 1091. Children Out-of-wedlock ⇐ 14

6. Presumed mother

In a heterosexual relationship, there can be only one mother under the Uniform Parentage Act (UPA). Scott v. Superior Court (App. 3 Dist. 2009) 89 Cal.Rptr.3d 843, 171 Cal.App.4th 540. Children Out-of-wedlock ⇐ 1

Former cohabitant with father could not be a presumed mother under the Uniform Parentage Act (UPA), absent evidence that the children's natural biological mother's parental rights were terminated or that there was an action pending to terminate her parental rights. Scott v. Superior Court (App. 3 Dist. 2009) 89 Cal.Rptr.3d 843, 171 Cal.App.4th 540. Children Out-of-wedlock ⇐ 3

7. Standing

A former cohabitant with father, who did not qualify as a presumed mother because the biological mother's parental rights had not been terminated, lacked standing to initiate a Uniform Parentage Act (UPA) custody proceeding concerning the children. Scott v. Superior Court (App. 3 Dist. 2009) 89

Cal.Rptr.3d 843, 171 Cal.App.4th 540. Children Out-of-wedlock ⇨ 20.4

West's Ann. Cal. Fam. Code § 7650, CA FAM § 7650

Current with urgency legislation through Ch. 1 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 4/15/2009

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PL 104-199, September 21, 1996, 110 Stat 2419

UNITED STATES PUBLIC LAWS
104th Congress - Second Session
Convening January 3, 1996

Additions and Deletions are not identified in this document.
For Legislative History of Act, see LH database or Report for
this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 104-199 (HR 3396)
September 21, 1996
DEFENSE OF MARRIAGE ACT

An Act to define and protect the institution of marriage.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 1 USCA § 1 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defense of Marriage Act".

SEC. 2. POWERS RESERVED TO THE STATES.

<< 28 USCA § 1738C >>

(a) IN GENERAL.--Chapter 115 of title 28, United States Code, is amended by adding after section 1738B the following:

"§ 1738C. Certain acts, records, and proceedings and the effect thereof

"No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.".

<< 28 USCA Ch. 115 >>

(b) CLERICAL AMENDMENT.--The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738B the following new item:

"1738C. Certain acts, records, and proceedings and the effect thereof.".

SEC. 3. DEFINITION OF MARRIAGE.

<< 1 USCA § 7 >>

(a) IN GENERAL.--Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

"§ 7. Definition of 'marriage' and 'spouse'

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.".

<< 1 USCA Ch. 1 >>

***2420** (b) CLERICAL AMENDMENT.--The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by inserting after the item relating to section 6 the following new item:

"7. Definition of 'marriage' and 'spouse'.".

Approved September 21, 1996.

PL 104-199, 1996 HR 3396
END OF DOCUMENT

PL 105-374, November 12, 1998, 112 Stat 3383

UNITED STATES PUBLIC LAWS
105th Congress - Second Session
Convening January 27, 1998

Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed.

PL 105-374 (HR 4164)
November 12, 1998
CHILD CUSTODY AND VISITATION

An Act to amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 28 USCA § 1738A >>

SECTION 1. CHILD CUSTODY.

<< 28 USCA § 1738A >>

(a) SECTION 1738A(a).--Section 1738A(a) of title 28, United States Code, is amended by striking "subsection (f) of this section, any child custody determination" and inserting "subsections (f), (g), and (h) of this section, any custody determination or visitation determination".

<< 28 USCA § 1738A >>

(b) SECTION 1738A(b)(2).--Section 1738A(b)(2) of title 28, United States Code, is amended by inserting "or grandparent" after "parent".

<< 28 USCA § 1738A >>

(c) SECTION 1738A(b)(3).--Section 1738A(b)(3) of title 28, United States Code, is amended by striking "or visitation" after "for the custody".

<< 28 USCA § 1738A >>

(d) SECTION 1738A(b)(5).--Section 1738A(b)(5) of title 28, United States Code, is amended by striking "custody determination" each place it occurs and inserting "custody or visitation determination".

<< 28 USCA § 1738A >>

(e) SECTION 1738A(b)(9).--Section 1738A(b) of title 28, United States Code, is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting "; and', and by adding after paragraph (8) the following:
"(9) 'visitation determination' means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and

modifications.".

<< 28 USCA § 1738A >>

(f) SECTION 1738A(c).--Section 1738A(c) of title 28, United States Code, is amended by striking "custody determination" and inserting "custody or visitation determination".

<< 28 USCA § 1738A >>

(g) SECTION 1738A(c)(2)(D).--Section 1738A(c)(2)(D) of title 28, United States Code, is amended by adding "or visitation" after "determine the custody".

<< 28 USCA § 1738A >>

(h) SECTION 1738A(d).--Section 1738A(d) of title 28, United States Code, is amended by striking "custody determination" and inserting "custody or visitation determination".

<< 28 USCA § 1738A >>

(i) SECTION 1738A(e).--Section 1738A(e) of title 28, United States Code, is amended by striking "custody determination" and inserting "custody or visitation determination".

<< 28 USCA § 1738A >>

(j) SECTION 1738A(g).--Section 1738A(g) of title 28, United States Code, is amended by striking "custody determination" and inserting "custody or visitation determination".

<< 28 USCA § 1738A >>

***3384** (k) SECTION 1738A(h).--Section 1738A of title 28, United States Code, is amended by adding at the end the following:
"(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.".

Approved November 12, 1998.

PL 105-374, 1998 HR 4164
END OF DOCUMENT

Next Part>>

U.S.C.A. Const. Art. VI cl. 2

United States Code Annotated Currentness
Constitution of the United States
Annotated
Article VI. Debts Validated--Supreme Law of Land--Oath of Office (Refs & Annos)
Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

LAW REVIEW COMMENTARIES

Adjudication of federal causes of action in state court. Martin H. Redish and John E. Muench, 75 Mich.L.Rev. 311 (1976).

Adventures in federalism: some observations on the overlapping sphere of state and federal constitutional law. Jennifer Friesen, 3 Widener J.Pub.L. 25 (1993).

Against foreign law. Robert J. Delahunty, 29 Harv. J.L. & Pub. Pol'y 291 (2005).

Against preemption: How federalism can improve the national legislative process. Roderick M. Hills, Jr., 82 N.Y.U. L. Rev. 1 (2007).

Antitrust and the supremacy clause. Richard Squire, 59 Stan. L. Rev. 77 (2006).

Are the judicial safeguards of federalism the ultimate form of conservative judicial activism?. Saikrishna Prakash, 73 U.Colo.L.Rev. 1363 (2002).

Assault on Securities Act Section 12(2). Louis Loss, 105 Harv.L.Rev. 908 (1992).

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Automobile passive restraint claims post-Cipollone: An end to the federal preemption defense. Comment, 46 Baylor L.Rev. 141 (1994).

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Cipollone and the clear statement rule: Doctrinal anomaly or new development in federal preemption? 44 Syracuse L.Rev. 769 (1993).

Connecticut mandatory cable access statute: Ripe for review. Note, 7 U.Bridgeport L.Rev. 329 (1986).

Cooperative agreements: Government-to-government relations to foster reservation business

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Respondent's Brief was served upon **L. Jan Laney, Attorney for Appellee, 2057 S. Oates St., Dothan, AL 36301**, and upon **J. Christopher Capps, Esq., Guardian *ad litem*, 170 South Oates St., Dothan, AL 36301**, by electronic notice or by placing a copy of same in the United States Mail, postage prepaid and properly noticed on the 6th day of May, 2009.

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