WHAT HAPPENS IN ~~VEGAS~~ NEW YORK, STAYS IN ~~VEGAS~~ NEW YORK: A CRITICISM OF *ADAR V. SMITH*.

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I. Introduction

From the Defense of Marriage Act to individual state bans on homosexual adoptions, governmental actions are preventing homosexuals from enjoying the rights of parenthood.[2] As of 2007, over 200,000 children have parents of the same sex, and many of these children are adopted.[3] More specifically, in Louisiana, more than a quarter of the state's 12,000 same-sex couples are raising around 3,000 children.[4] Despite the rising presence of same-sex parents, various laws and other governmental efforts hamstring these parents' efforts at legitimacy. Some of these actions come at a constitutional cost.

One particular Louisiana couple sought to legitimize their out-of-state adoption. Oren Adar and Mickey Ray Smith requested a Louisiana birth certificate listing both individuals as parents of "Infant J."[5] Their application was denied.[6] Attempting to assuage the couple's concerns, the Louisiana Registrar offered to issue a birth certificate naming only one partner.[7] When the couple turned to the judiciary to seek help, the federal Fifth Circuit rejected the parents' request in *Adar v. Smith*.[8] As a result of this decision, the parents of Infant J are without a legal Louisiana birth certificate identifying them as such.

This note will analyze *Adar* temporally: addressing its past, present, and future. Part II sets the stage by laying out the case's past, comparing the Fifth and Tenth Circuit's opinions on Full Faith and Credit and out-of-state adoptions. This part also outlines background information: the adoption process in New York where the couple adopted Infant J and the history of the Full Faith and Credit Clause (the "Clause"). Part III then takes on the case's present, arguing that the Fifth Circuit creates a circuit split over Full Faith and Credit and out-of-state adoptions, despite the court's claims to the contrary. Part IV resolves the case's future, applying Full Faith and Credit history to the circuit split. This note urges future courts addressing these issues to follow the Tenth Circuit's rationale as it is more consistent with the Clause's history and will have less detrimental effects for parents and children. Finally, Part V predicts how the errors of the *Adar* decision specifically will be detrimental for out-of-state parents, homosexual parents, and the adopted children themselves. Unless and until future courts reject the rationale in *Adar*, these parties will continue to be severely disadvantaged—at a Constitutional cost.

II. The Past: Opinions, Adoptions, and Full Faith and Credit

A. The Fifth Circuit Denies: Adar v. Smith[9]

Oren Adar and Mickey Ray Smith legally adopted Infant J in a New York family court in 2006.[10] Because the California couple could not add Infant J to their employer's insurance without proof of parentage, they requested a birth certificate from the infant's state of birth—Louisiana.[11] The Registrar, who directs the issuing of birth certificates, relied on advice from the state Attorney General and denied the couple's request based on the state's public policy.[12]

The parents then sued Darlene Smith in her official capacity as State Registrar and Director of the State's Vital Records and Statistics in federal district court.[13] The couple sought both injunctive and declaratory relief, asking the court to find: (1) that the Registrar's denial violated the Equal Protection Clause of the Fourteenth Amendment,[14]

(2) that the Registrar's denial violated the Full Faith and Credit Clause,[15] and (3) that the Registrar ought to issue a new birth certificate listing both parents.[16] The district court granted the couple's motion for summary judgment.[17] On appeal, a three-judge panel for the Fifth Circuit affirmed.[18] However, the Fifth Circuit, sitting *en banc*, vacated, reversed, and remanded this judgment for an entry dismissal of the couple's claims.[19]

1. The Majority's Rejection

The majority's opinion largely addressed the Full Faith and Credit questions, glossing over both the justiciability and Equal Protection issues.[20] The court's narrow holding determined that complaints alleging a breach of Full Faith and Credit are not "redressable in federal court in a § 1983 action."[21] The court further stated that the Clause and its accompanying statute[22] only relieve litigants of having to *retry* their case in every forum—the "res judicata" effect.[23] Therefore, the court stated, the couple only had *procedural* rights—not substantive rights—, which are not protected by § 1983 in federal courts.[24] However, the court did not stop there. The Fifth Circuit went on to hold that even if the couple's claims were cognizable under § 1983, the Registrar did not violate the Full Faith and Credit Clause when it "determin[ed] how to apply Louisiana's laws to maintain its vital statistics records."[25]

The *Adar* court also discussed the breadth of the Clause and the state actors to whom it applies, briefly examining the historical purpose of the Full Faith and Credit Clause for its finding.[26] The Fifth Circuit noted the Clause's historically evidentiary function and found that the Clause imposes a duty only on sister-state courts to give "the same res judicata effect which the issuing court would give it."[27] The court extended this proposition to hold that Full Faith and Credit, coupled with the res judicata principle of not having to retry the merits of a case, only imposes a duty on state *courts*.[28] Thus, in the majority's view, the only entities that can violate Full Faith and Credit are courts; non-judicial state actors are exempt from the constitutional mandate of the Clause.[29] The court then addressed a practical concern regarding which state actors are capable of assessing Full Faith and Credit.[30] After all, "a judgment is not entitled to full faith and credit unless the second court finds that the questions at issue in the first case" have been properly argued and that the original court had proper jurisdiction.[31] Therefore, the Fifth Circuit pointed out that only courts are able to determine whether jurisdiction is proper. Because other state actors lack such judicial acumen, Full Faith and Credit can only bind state *courts*.

Next, the court addressed relief under § 1983.[32] The Fifth Circuit cited a case involving the Clause and the Parental Kidnapping Prevention Act, *Thompson v. Thompson*,[33] and adopted the *Thompson* court's rationale for its own holding that Full Faith and Credit complaints are not redressable under § 1983.[34] Moreover, the *Adar* court held that Full Faith and Credit claims alone are insufficient to invoke federal jurisdiction[35]; the couple should have sought enforcement of the original judgment in Louisiana *state* court.[36] The Fifth Circuit tied this procedural requirement back to its reading of *Thompson*—that Full Faith and Credit claims were not redressable in federal courts under § 1983.[37] Thus, the Fifth Circuit ultimately found that federal courts are not the proper fora for Full Faith and Credit claims.[38]

Another rationale for the court's holding was a potential procedural protection.[39] Under usual procedures, litigants seek enforcement of other state court judgments in another state's court.[40] If the second forum denies recognition of the sister-state's judgment, claims of a violation of Full Faith and Credit are reviewable only by the United States Supreme Court.[41] The Fifth Circuit pointed out that if litigants were able to bring such claims in federal court under the Clause vis-à-vis § 1983, those litigants would enjoy the full purview of the federal appellate system.[42] This more immediate review would be a considerable—indeed, "impermissible"—advantage over those litigants who are at the hands of the Supreme Court's discretion.[43]

Finally, the court presupposed that even if a federal court could hear the couple's claim and Full Faith and Credit applied to non-judicial state actors, the Registrar did not violate Full Faith and Credit.[44] In reaching this conclusion, the court largely relied on the Supreme Court's most recent Full Faith and Credit decision—*Baker v. General Motor Corp*.[45] In *Baker*, the Court differentiated between the level of recognition afforded to a state's judgments and to its statutes.[46] The credit owed to judgments is "exacting," while a state may make exceptions to another state's

laws based on public policy.[47] Furthermore, as the Court outlined in *Baker*, a state must only *recognize* another state's judgments all the while retaining the right to enforce those judgments with "practices regarding the time, manner, and mechanisms" for enforcement.[48] In this subsection of the opinion, the Fifth Circuit latched onto the "mechanism of enforcement" aspect of *Baker*.[49] The court held that the Registrar had not refused to recognize the validity of the New York judgment when it applied Louisiana's enforcement mechanisms to an out-of-state adoption decree.[50] Although the Registrar acknowledged the couple as legal parents of Infant J, the couple did not acquire a right to a birth certificate, which is Louisiana's mechanism of enforcement.[51] Succinctly, the court stated that "no right created by the New York adoption order . . . has been frustrated" when the court denied the couple a birth certificate.[52]

B. *The Tenth Circuit Accepts:* Finstuen v. Crutcher[53]

The catalyst for the *Finstuen* case was an Oklahoma amendment to its adoption code refusing to recognize the validity of any same-sex adoption from another state.[54] The *Finstuen* plaintiffs were three homosexual couples who sought an injunction of the amendment in federal district court.[55] In the end, the court of appeals found that only one couple had standing, but it nonetheless struck down the amendment and ordered the Oklahoma State Department of Health to issue birth certificates listing both parents.[56]

Although the *Finstuen* court devoted much of its attention to the issue of standing, the court discussed Full Faith and Credit issues as well.[57] Interestingly, the Tenth Circuit cited the same *Baker* case as the Fifth Circuit, but for a different holding concerning Full Faith and Credit.[58] In doing so, the court rejected the State's argument that requiring it to issue a birth certificate would be "tantamount to giving the sister state control over the effect of its judgment in Oklahoma."[59] Rather, the court stated that the argument "conflates Oklahoma's obligation to give full faith and credit to a sister state's judgment with its authority to apply its own state laws in deciding what state-specific rights and responsibilities flow from that judgment."[60] In this way, the Tenth Circuit tied the Clause's historically evidentiary purpose to Oklahoma's role as a sister-state recognizing another state's judgment.[61] The court explained that if Oklahoma had no existing "mechanism" dealing with re-issuing birth certificates, then the couple's claims would fail.[62] However, since the state already had statutes instructing families on how to obtain a birth certificate, the State must apply the mechanisms to all people in the same situation.[63] Thus, the amendment violated Full Faith and Credit by singling out homosexual couples and out-of-state adoptions.[64]

Next, the court focused on arguments as to how the Oklahoma amendment violated Full Faith and Credit.[65] The court noted that many state courts acknowledge the validity of out-of-state adoption decrees and afford them Full Faith and Credit.[66] The Tenth Circuit then cited a Supreme Court decision, which held that Full Faith and Credit is honored so long as the second forum "does not deny the effective operation of the [out-of-state adoption] proceedings."[67] Thus the Tenth Circuit held that to deny the effective operation of an out-of-state judgment is to deny Full Faith and Credit.[68]

Addressing similar facts five years earlier, the Tenth Circuit reached the opposite conclusion. The *Finstuen* couple brought their Full Faith and Credit claim under § 1983 and the court did not dismiss the case.[69] Instead, the court held that adoption decrees are entitled to recognition under Full Faith and Credit.[70] Additionally, the *Finstuen* court directed a non-judicial state actor to comply with Full Faith and Credit and issue a birth certificate for the couple.[71] This holding diametrically opposes the Fifth Circuit's holding. The Tenth and Fifth Circuits appear to treat adoption decrees differently, but both courts nevertheless discuss the level of "faith and credit" due to adoption decrees. The following section outlines adoption proceedings to better understand these adoption cases.

C. *Becoming a Parent*

The adoption process transforms people into legal parents and severs former parents' relationships with the adoptee.[72] In this way, adoption orders are judgments because they are "a court's final determination of the rights and obligations of the parties in the case . . . ."[73] This section emphasizes the thoroughness and finality of adoption decrees

and, because of these qualities, shows that they are entitled to the highest level of Full Faith and Credit as judgments.[74]

New York statutorily authorizes those who may adopt and what effect that adoption decree has.[75] Furthermore, the New York legislature has given its adoption decrees the same force as judgments from any other state court.[76] To effect the parental transformation, the judges "make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent" so long as the best interests of the child are being served.[77] Although there are slight differences between perfecting a private adoption and agency adoption, most steps are largely the same.[78] For example, both private and agency adoptions require a personal showing for examination of character, the filing of a formal petition, and completing numerous affidavits.[79] Thus, in either scenario, adoptive parents are determined and pronounced the parents of the child—a transformation entitled to the highest level of Full Faith and Credit.[80]

In addition to the adoption procedures, New York explicitly states the effects of an adoption.[81] Upon the issuance of a New York adoption order, the biological parents lose all rights and responsibilities when the adoptive parents gain them.[82] Furthermore, another effect of a valid adoption is that the vital statistics statutes provide for the issuing of a new birth certificate after the adoption.[83] Most notably, the language of the section allows for no discretion for issuing the new birth certificate. Rather, the section states that a:

> new certificate of birth *shall* be made *whenever* . . . notification is received by . . . the commissioner from . . . a judgment, order or decree relating to the adoption of such person. Such judgment, order or decree shall also be sufficient authority to make a new birth certificate with conforming change in the name of such person on the birth certificate of any of such person's children.[84]

New York's laws are comparable to those of most other states, which similarly do not allow for discretion in issuing a new birth certificate upon a valid adoption decree.[85]

The importance of this statutory background and comparison is that adoptions transform former non-parents into full-fledged parents. Additionally, it also shows that many states treat the issuance of birth certificates as part-and-parcel of a valid adoption decree and an incidental effect of perfecting a valid adoption.[86] In this way, receiving the new birth certificate is the final step towards parenthood. Even if the statutes do not tether adoptions and birth certificates, they certainly show that states have their own ways of issuing birth certificates. The Full Faith and Credit Clause obligates states to apply these statutes even-handedly, and the following section on the Clause's history and jurisprudence helps illustrate this inter-state obligation.

D. States Interact: Full Faith and Credit

James Madison described the predecessor to the current Full Faith and Credit Clause as "of little importance under any interpretation which it will bear."[87] This description referred to an almost identical provision in the Articles of Confederation, which drew inspiration from former practices and principles of English courts.[88] Although the Clause's history and jurisprudence do not decisively resolve the current circuit split, an overview aids the discussion of how to ultimately resolve it.

1. From England to America

Many Full Faith and Credit scholars have discussed the evidentiary purposes of the Clause.[89] Their research reveals that English courts used the terms "faith" and "credit" when discussing which documents may properly be submitted to the English courts.[90] From the court's perspective, enforcing a judgment from a foreign court may allow the infiltration of an "inferior" system of justice.[91] Thus, English courts of record distinguished documents allowed into evidence based on the origin of the judgment.[92] Because the drafters of the Articles of Confederation were familiar with English law and legal terminology, they likely used the phrase "full faith and credit" with this evidentiary meaning in mind.[93]

Nevertheless, as Madison's quote indicates, early jurisprudence from various state courts reveals

how differently the Clause was interpreted.[94] Representative of the nation's relative disunity under the Articles, some states enacted their own legislation regarding what faith, credit, and effect were given to sister-state judgments.[95] This legal uncertainty about the meaning of the Articles of Confederation Clause prompted Madison to describe it as "extremely indeterminate."[96]

The Constitutional Convention delegates did not spend much time debating the Clause when they drafted the federal Constitution.[97] When the Clause was first brought up for discussion on August 29, 1787, the drafters sought to clarify the meaning of the article.[98] The issue was then delegated to a sub-committee for clarification, and on September 3, the Convention voted in the current constitutional Article.[99] Notably, Congress could now discretionarily declare the inter-state effects of a sister-state's public acts, records, and judicial proceedings.[100] James Wilson remarked that without this "Effects Clause," the constitutional Article would "amount to nothing more than what now takes place among all Independent Nations,"[101] indicating that the Framers envisioned a more unified country than that under the Articles of Confederation. Many scholars further argue that the addition of this discretionary power means that the first part of the Clause is a self-executing replica of the former Clause.[102] That is, despite trying to unify the country by replacing the Articles of Confederation, some contend that the framers used the terms "faith" and "credit" for evidentiary purposes only.[103] The first time Congress acted on its Full Faith and Credit power was in 1790, passing an act with the same language of the Clause itself.[104] This act restated Congress's power to declare effects of one state's judgments, all while passing on the opportunity to do so.[105] Indeed, the Effects Clause is "relatively neglected in legal literature"[106] and has proven "little use for" the legal community."[107] However, this is not to say that Congress has *never* acted on its discretionary power.

As one scholar points out, Congress's discretionary power has not historically commanded much legal attention.[108] The Effects Clause—perhaps the entire Full Faith and Credit clause—has generated little attention until recent decades.[109] The recent attention may be due to the increased mobility of citizens and how the Clause operates in a modern federalist society. A particular source of interest is the advent of homosexual marriage and how the Clause obligates states to acknowledge those marriages.[110] Indeed, Congress has only exercised its discretionary power in family law, enacting statutes concerning child custody and support.[111] The increasing attention culminated in 1996 with the passage of the Defense of Marriage Act (DOMA).[112]

The Clause's history does not decisively determine its scope, much less how it resolves the *Adar/Finstuen* split. What this history does show is that the framers likely had the evidentiary function in mind when drafting the Clause. Furthermore, in an effort to unify the country from independent sovereignties and to resolve the confusion of the Articles of Confederation, the framers also gave Congress a new discretionary power to determine nationwide effects. Unfortunately for the issue of deciding the *Adar/Finstuen* split, Congress has not legislated specifically on the nationwide effects of adoption decrees. Nevertheless, the historical purpose of the Clause will indicate that the Tenth Circuit's holding in *Finstuen* is most consistent with this purpose because it prevents states from denying other states' citizens the full rights granted by those other states. Examining the Clause's jurisprudence will bolster this argument as well.

2. The Courts Tackle the Clause

As early as 1794, judges asserted that Congress had already declared the substantive effects of a sister-state's judgments.[113] Not all circuit judges, however, agreed with this point of view.[114] The issue finally reached the United States Supreme Court in 1813 in a case concerning what plea was available to a New York debtor in a Washington, D.C. court.[115] The Court held that "Congress have therefore declared the *effect* of the record" in the Act of 1790.[116] Some argue that this Court's decision on Congress's power was a "revolution."[117] However, this decision concerning the substantive effects of sister-state's judgment was not definitive; if it were, no discussion would remain today as to what effects are given to a sister-state's judgment. For years to come, courts would continue to struggle with the issue of effects of sister-state judgments.[118]

Two centuries later, the Court would again address the Full Faith and Credit conundrum in *Baker*.[119] There the Court held that the Clause did

not prevent a witness from giving testimony in the second forum's courts despite the first forum's issuance of an injunction against the testimony.[120] The Court cited broadly-worded precedent that envisioned an expansive scope for Full Faith and Credit.[121] Nevertheless, the *Baker* Court differentiated between the "credit owed to laws (legislative measures and common law) and to judgments."[122] However, states were still left to determine for themselves the "time, manner, and mechanisms for enforcing judgments . . . subject to the even-handed control of forum law."[123] In the end, the second forum applied its own mechanism to admit evidence into trial.[124]

The Clause's jurisprudence throughout the years has been inconsistent. Early cases conflicted over whether Congress had acted on its power to determine substantive effects of sister-states' judgments.[125] The most recent decision tempers broadly-worded precedent and the unifying force of Full Faith and Credit by carving out exceptions for time, manner, and mechanisms for enforcement, as well as creating a tiered system of credit owed to acts, judgments, and records.[126] Although inconsistent, the jurisprudence and Clause history will become a platform for this note's urging that the Tenth Circuit's rationale is the most consistent with the purpose of the Clause.

III. The Present: Circuit Split

Supreme Court Rule 10 speaks to the Court's exercise of jurisdiction for writs of certiorari.[127] The Rule states that a factor influencing the Court's discretion is when a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same "important matter."[128] No matter the minor factual differences, the Fifth and Tenth Circuits are split on three important matters: (1) what claims are actionable under § 1983, (2) how to treat birth certificates with adoption orders, and (3) which state actors are obligated under Full Faith and Credit. Because the Supreme Court passed on resolving the issue,[129] future courts should recognize the split and consider competing arguments as to why one rationale is preferable over another.[130]

A. Bad Facts Make Bad Law

A court may distinguish its holding from another court's decision based on factual and legal distinctions, although these distinctions may not be the "important matters" of the cases.[131] If this occurs, then the second court mistakenly creates a circuit-split based on unimportant factual differences. A more noticeable split is created if the second court cites factual differences, which, in the end, are not differences at all. The Fifth Circuit has done just that.[132]

Most noticeably, the legal impediment facing the *Adar* couple was different from the one facing the *Finstuen* couple.[133] That is to say, the Tenth Circuit found a statutory amendment unconstitutional, whereas the Fifth Circuit affirmed an administrative decision of a state actor. Not only was the Oklahoma amendment a more formal legislative act, it was more broadly worded than the administrative decision of the Louisiana Registrar. According to the amended Oklahoma statute, the state would "*not recognize an adoption* by more than one individual of the same sex *from any other state* . . . ."[134] The *Adar* court, in contrast, insisted that the Registrar *did recognize* the validity of the out-of-state decree but merely determined its effects in accordance with Louisiana law.[135] In fact, the Registrar offered to issue a Louisiana birth certificate listing one of the plaintiffs as a parent.[136] Because the Clause commands states to *recognize* out-of-state judgments, Oklahoma's broad non-recognition of all out-of-state decrees was so patently in violation of the Clause that it necessitated invalidation. The Tenth Circuit's holding is thus inevitable, whereas the Fifth Circuit's decision is merely explainable because the Louisiana Registrar's actions were not so patently in violation of Full Faith and Credit. Nevertheless, this note argues that the Fifth Circuit's denial of a birth certificate amounted to the same non-recognition of the adoption decree.[137]

Another factual distinction is the types of adoption in each case. The *Adar* couple jointly adopted Infant J as an unmarried couple.[138] When they sought recognition and enforcement of that adoption, the Registrar and Fifth Circuit denied their request.[139] On the other hand, the *Finstuen* couple sought recognition and enforcement of a stepparent adoption.[140] California recognizes stepparent adoptions and gives them the effect of any other

adoption decreed in the state.[141] Therefore, in terms of rights and responsibilities granted to adopted parents, the New York and California adoption orders carried the same weight for the respective parents.

Factually, these cases are not too different—both couples sought the same legal recognition and enforcement of substantively similar adoptions. The *Adar* court attempted to distinguish these similar cases when it could have and should have adopted the Tenth Circuit's rationale, which is more consistent with the Constitution and less detrimental to adoptive families. In contrast to the factual "distinctions," the two circuits' legal holdings are wholly opposite. This note urges that the legal differences are, in fact, the "important matters" which ultimately create a circuit split.

B. The Important Matters

The Fifth Circuit's narrow holding was that a violation of Full Faith and Credit is not actionable under § 1983, but the court expanded the holding in dicta.[142] In *Adar* and *Finstuen*, the Fifth and Tenth Circuits reach different holdings on three vital issues: (1) federal jurisdiction under § 1983, (2) birth certificates vis-à-vis adoption orders, and (3) obligations of state actors under Full Faith and Credit. Thus, the courts created a split on these three important matters.

While the Fifth Circuit attempts to distinguish *Finstuen* on the jurisdictional issue, the court was misguided. The Fifth Circuit's dismissal of subject matter jurisdiction creates a split with the Tenth Circuit's exercise of jurisdiction. Specifically, the Tenth Circuit has allowed recovery for Full Faith and Credit violations under § 1983, whereas the Fifth Circuit has foreclosed on exercising such jurisdiction. Because the *Finstuen* court allowed recovery, the court clearly found the jurisdiction upon which to decide the case and grant relief.[143] Although the majority of the Tenth Circuit opinion is devoted to justiciability, the absence of any discussion concerning subject matter jurisdiction does not mean the court lacked the jurisdiction.[144] Thus, the varying treatments of Full Faith and Credit violations with § 1983 remedys constitute a split concerning an important legal issue—subject matter jurisdiction.

The circuits further differ on how each treats birth certificates vis-à-vis adoption decrees. The Oklahoma adoption statutes still afforded adoptive parents the ability to receive "a supplementary birth certificate . . . with the names of the adoptive parents listed as the parents."[145] For the Tenth Circuit, this practice of singling out some out-of-state adoption decrees as unrecognizable rendered the amendment unconstitutional, so the Doel couple was entitled to a birth certificate because of their adoption order.[146]

In contrast, the Fifth Circuit singled out the birth certificate as merely a mechanism of enforcement.[147] The *Adar* court cited a Revised Statute and Children's Code articles for its proposition that the couple does not have a right to a supplemental birth certificate.[148] However, similar to Oklahoma, Louisiana has a statute granting adoptive parents the right to "a new certificate of live birth of the person adopted."[149] Louisiana also provides for the recognition of "foreign adoptions" which instructs the Registrar to make a "new record in its archives showing . . . the names of the adoptive parents . . . that [are] available and adds to the completeness of the certificate of the adopted child."[150] However, despite this directive to the state registrar, the Fifth Circuit singles out the birth certificate and places it "in the heartland of enforcement, and therefore outside the full faith and credit obligation of recognition."[151] Thus, the Fifth Circuit does not see birth certificates as part-and-parcel of valid adoptions despite the plain language of Louisiana's laws. This conclusion stands in stark contrast with the Tenth Circuit.

Finally, the circuits differ on which state actors are obligated by Full Faith and Credit. Again, the Tenth Circuit's decision on this matter was not as detailed as the Fifth Circuit's. Nevertheless, the *Finstuen* court directed the Oklahoma Commissioner of Health to issue a new birth certificate to the Doel couple in compliance with Full Faith and Credit.[152] In contrast, the Fifth Circuit granted the Louisiana Registrar immunity from Full Faith and Credit, even though the respective state officers have substantially similar duties for keeping records of vital statistics.[153] One may attempt to distinguish the two cases because the focus of the Tenth Circuit was an amendment and not the state actor's decision. However, this distinction is irrelevant because the *Finstuen* court nevertheless directed the commissioner to comply with Full Faith and Credit and issue the birth certificate. The distinction is further without merit because, in both cases, the couples initially sought out the respective

state actors for the reissued birth certificates. Thus, in both cases, the state actor denied the request, yet only one circuit held the non-judicial state actor to the Full Faith and Credit obligation.

Although the *Adar* majority denied creating a circuit split by distinguishing *Finstuen*, the dissent rightfully pointed out that the majority did, in fact, create a split.[154] This split ultimately highlights the difference in the respective courts' treatments of the issues and demonstrates the superiority of the Tenth Circuit's rationale concerning out-of-state adoptions. Future courts, then, will need guidance as to decide cases in line with either the Fifth or Tenth Circuit.

IV. The Future: Settling the Split

Applying the historical analysis of Full Faith and Credit to the split reveals that the Tenth Circuit's rationale is the most consistent with the Clause. The effects of a sister-state's judgment ought to be applied in the second-forum evenhandedly. Furthermore, the evidentiary nature of the Clause caused the Fifth Circuit to hold mistakenly that the Clause only binds state courts. Additionally, the broad principles of § 1983 compel an interpretation giving plaintiffs a wide avenue into federal courts to seek redress for any rights—substantive or procedural. The Fifth Circuit narrowed rather than opened future litigants' access to federal courts under § 1983.

A. Full Faith and Credit to the Rescue

Without clear indication from either the Clause's history or case law, this article posits three alternative possibilities for resolving the existing circuit split.[155] Combining history and jurisprudence, the split should be resolved consistent with the Tenth Circuit for three reasons: (1) the Framers sought a more unified country; (2) case law consistently states that judgments are the most protected class of documents; and (3) no exceptions ought to be made for the recognition of adoption decrees.

First, one may take an *a fortiori* approach to the Constitutional Clause.[156] That is to say, if the Framers sought to create a less fragmented Union, then it follows that they sought a change from both the English court system and the Articles of Confederation. This is exemplified in the nationwide power Congress has to declare inter-state effects.[157] Congressional determination of effects of judgments unified the states with each other and marked a change from the English system and the Articles of Confederation. On the other hand, the Framers were either lawyers or familiar with English terminology used in the Articles of Confederation and thus understood the evidentiary meaning of "full faith and credit."[158] However, contextual quotes from James Madison and James Wilson indicate a different approach. No longer was the article supposed to be "indeterminate . . . and of little importance."[159] Rather, the new article was to amalgamate the states into a new union so that each state could not ignore its federalist obligations. Under this analysis, the Clause imposes a much more stringent duty on states with respect to judgments, including adoption agreements. This is the Tenth Circuit's view of not undermining the judgment of a sister-state whatsoever.

Secondly, early cases might have held that the first forum determines the effects of judgments, like adoption decrees.[160] Although the *Baker* Court distinguished tiers of recognition for different classes of documents, the Court has never lessened the recognition due to judgments.[161] This exception-free treatment of judgments is consistent with early quotes indicating that the Clause was meant to unite the separate states. Thus, under the Court's assessment of judgments, adoption decrees are consistently given the highest level of faith and credit. States cannot make exceptions or temper a sister-state's judgments. The Tenth Circuit decided *Finstuen* without making exceptions for a sister-state's adoptions, thus conforming its decision to the Clause's jurisprudence and history.

As for the scope of Full Faith and Credit, the Clause's history perhaps excuses, but does not necessitate, the Fifth Circuit's holding that Full Faith and Credit binds only courts. Because of the evidentiary force of the Clause's first sentence, one might think that only *courts* should be concerned with Full Faith and Credit.[162] However, the plain language of the Clause speaks to states as a whole.[163] Furthermore, the classes of protected documents extend to every branch of government: legislative ("public acts"), executive ("records"), and judicial ("judgments"). These two elements of the Clause indicate that Full Faith and Credit obligates state actors across the board, not just the judiciary. Although Congress's 1790 Act speaks to "courts"

specifically as under the command of full faith and credit, early legislators were likely concerned only with the evidentiary role of the Clause rather than interstate effects of judgments.[164] The fact that the rest of the statute addresses how courts authenticate documents for evidence bolsters this argument.[165] The early Congress balked on the issue of declaring the effects of judgments, meaning it only addressed the Clause's evidentiary aspect. Therefore, the 1790 Act only addresses evidence and necessarily only speaks to courts.[166] This notion does not, and cannot, derogate from the Constitutional command, which speaks to states as a whole. Therefore, the Fifth Circuit was misguided when it applied the inter-state command to courts alone. The Tenth Circuit's implicit holding that non-judicial state actors are obligated is more in line with the historic analysis of the Full Faith and Credit Clause.

Finally, more specific to the cases at hand, recent jurisprudence and state adoption statutes read together indicate that the Tenth Circuit's rationale is more fitting. New York's adoption procedures, despite the lack of some adversarial setting, are certainly "judgments" because they determine the best interest of the child and pronounce the legal transformation of the biological and adoptive parents' relationship to the child.[167] Because Full Faith and Credit is "exacting" for judgments, courts have almost no leeway in denying recognition of judgments like adoption decrees.[168] The denial of a birth certificate puts an onerous burden on an adoptive parent attempting to prove legal parenthood, which may amount to effective non-recognition of the adoption decree. [169] Because the jurisprudence and adoption statutes indicate that judgments are to be given the highest level of faith and credit, any practice that even subtly undermines the inter-state recognition of adoption decrees ought to be greatly scrutinized. The Fifth Circuit imposed such a burden on adoptive parents, whereas the Tenth Circuit did not. The remaining resolution, then, is the federal redressability of § 1983 for Full Faith and Credit claims.

B. Petitioners at the Doorway: 42 U.S.C. § 1983

Section 1983 of Title 42 broadly states the rights it protects: any "rights, privileges, or immunities secured by the Constitution and laws."[170] So long as the rights created by some law are "enforceable," the section provides protection for violations of those rights and an avenue into federal court.[171] The Court has articulated three purposes for the statute: (1) to "override certain kinds of state laws"; (2) to "provide a remedy where state law was inadequate"; and (3) "to provide for a federal remedy where the state remedy . . . was not available in practice."[172]

This expansive avenue into federal court, however, is not without limitations. For example, the *Rooker-Feldman* doctrine prohibits unsuccessful state court[173] plaintiffs from reasserting their claim in federal court under § 1983.[174] Furthermore, the section does not create an independent right; rather, it only protects existing rights.[175] Nevertheless, these enforceable rights are not restricted to substantive rights; rather, the Court has established a factored test to determine the enforceability of rights under § 1983.[176]

The first factor addresses whether a law contains a "federal right," which, if found, creates a rebuttable presumption that the right is enforceable under § 1983.[177] The presumption is defeated only if there is "textual indication" that Congress intended to foreclose a remedy within the law that granted the right.[178] Jurisprudence has further provided factors to aid courts in deciding the first inquiry.[179] Courts first ask whether "Congress . . . intended that the provision in question benefit the plaintiff . . . . Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain the judicial competence . . . . Third, the statute must unambiguously impose a binding obligation on the States . . . couched in mandatory rather than precatory terms."[180]

Thus, on the one hand, courts have held that the Dormant Commerce Clause, the Medicaid statute, and other federal laws grant rights enforceable under § 1983.[181] On the other hand, the Court has held that the Supremacy Clause, the Natural Born Citizen Clause, ERISA, and the Telecommunications Act do not grant enforceable rights.[182] Courts denying the enforceability of rights generally cite the comprehensive nature of the statutes that preclude additional recovery under § 1983.[183] Other concerns are that laws do not convey a *personal* right or that the rights are too amorphous to be enforceable.[184] The Full Faith and Credit Clause passes this test. The Clause grants a right—procedural or not—to an

individual to have a sister-state recognize a judgment. The right is not "vague or amorphous" because it is clear in its intention to relieve litigants from having to retry their case in every forum and to bind the states in recognition of those judgments. Finally, the Clause is phrased in mandatory terms—"Full Faith and Credit *shall* be given . . . ."[185]

As applied to the circuit split, the plain words and precedent indicate that the statute be read as broadly as possible for enforcing rights of the Constitution or federal laws.[186] The *Adar* court determined that the Full Faith and Credit Clause does not create any substantive rights, merely procedural rights.[187] Although this may be a mischaracterization of the couple's claim,[188] the language of § 1983 and the case law explain that *any* right granted by the Constitution or its statutes is enforceable under the statute.[189] The law does not distinguish, nor should the court.[190] The Clause grants adoptive parents the right to have their adoption decrees recognized by interstate courts—a right protected under the plain language and case history of § 1983.

Furthermore, the Fifth Circuit was misguided when it argued against a potential procedural protection.[191] As mentioned, the Supreme Court has articulated very broad purposes for the statute.[192] Therefore, for the Fifth Circuit to rationalize its holding based on an argument that § 1983 is too protective of plaintiff's rights clearly go against the Court's express articulation of the statute's purpose.

This historical analysis and jurisprudence examinations illustrate that the existing *Adar/Finstuen* split should be resolved in favor of the Tenth Circuit's rationale. The *Finstuen* decision upholds the function of Full Faith and Credit in a newer, more unified nation. The Tenth Circuit also makes no exceptions for a sister-state's judgment and it correctly applies Full Faith and Credit to all state actors. Finally, the Tenth Circuit also keeps open the broad avenue of federal courts for § 1983 litigants. Holdings contrary to these rationales will result in substantial harm to certain classes of people.

V. The Future: Some Parents Will Not Be Parents

This section will address the legal and factual errors of *Adar*. This section shows that, without proper resolution of the circuit split, these effects will continue to hamper the parental rights and put children at a severe disadvantage. Extrapolating *Adar*'s holding highlights the decision's detrimental effects for homosexual couples and their legally adopted children. It also shows that future courts ought not perpetuate these detrimental effects by deciding cases in line with the Tenth Circuit.

A. Legal Blunders of Adar

Besides the mistakes pointed out in the *Adar* dissent and the issues regarding the circuit split, *Adar* is flawed for several reasons.[193] First, the Fifth Circuit superficially assessed the couple's claim by glossing over the substantive rights and limiting its assessment to the inter-state vehicle, the Full Faith and Credit Clause.[194] Because of this insincere valuation, the court dismissed the claim as procedural, not substantive.[195] Furthermore, the court mistakenly claimed that the decision would not frustrate any right conferred by the New York adoption decree.[196]

1. Parenthood is More Than Procedure

The Fifth Circuit did away with the *Adar* couple's claim because § 1983 does not protect procedural rights.[197] However, the court failed to fully appreciate the couple's claim when it addressed only the legal procedure for recognition of rights. Beneath the veneer of Full Faith and Credit lay the couple's economic, legal, and social rights. Adoption is inherently transformational—extinguishing the rights and duties of the biological parents and conferring them upon the adoptive parents.[198] These rights constituted the couple's claim—not a procedural mechanism.

a. Economic Benefits

After the adoption is finalized, adoptive parents are given a substantial amount of economic benefits. There are some far-fetched examples of these economic benefits, but many are practical for adoptive parents.[199] Common examples of the economic benefit of parenthood are the tax consequence of "writing off" expenses or the individual right to child support.[200] Without a birth certificate listing one's self as a "parent," an individual would have trouble enforcing these rights. These typical economic rights

of parenthood were the rights that the *Adar* couple was seeking to enjoy with a re-issued birth certificate.

For a practical application of these rights, imagine the consequences if, upon crossing the Louisiana border, an unlisted parent decided to ignore his obligation to contribute to the expenses of rearing the child. The left-behind spouse would have little to no recourse to recover financial aid from the other person, despite the fact that a court determined both parents were morally fit and declared them both the legally adoptive parents of the child.[201] The Fifth Circuit cited this unstable relationship as the reason for Louisiana's prohibiting unmarried couples from adopting—the "freely severable" nature of such relationships might hurt the child and left-behind spouse.[202] However, if the court and state were serious about protecting the family, the court and state would want to insure that the left-behind spouse had some redress against a delinquent "parent." Without a birth certificate evidencing that the irresponsible individual is a legal parent of the child, the other spouse is unduly burdened with the full costs of rearing the child. This scenario results in a secondary denial—first, the state denies a birth certificate request; second, the state denies recourse to recover financial aid from the other parent. This double denial will continue to affect adoptive families if future courts adhere to the *Adar* rationale rather than *Finstuen*.

b. Non-Economic Benefits

Without any hard data, one would not think that tax benefits or inheritance rights would factor into the decision to adopt. Rather, the legal and social non-economic benefits that are enjoyed by parents and perceived by others everyday are the common-sense perks of parenthood.

Legal benefits include everyday decisions parents make for the child. Generally, any situation wherein a parent represents a child as his agent is the parent's legal right. These situations include choosing where to enroll the child in school and making medical and emergency decisions for the child.[203] Other aspects of parenthood involve access to the child's legal documents and the right to contact the child's biological parents after adoption.[204] Finally, the social benefits of parenthood may be the most important for adoptive parents. Social benefits include day-to-day rearing of the child, influencing the child's development, and watching the child grow. While a parent does not necessarily need a birth certificate to be a positive influence on a child, legal recognition becomes immensely important if the couple splits up.[205] Parents who completed the adoption proceedings have evidenced a strong desire to become a parent, and each parent is entitled to his or her social parental rights. At the end of a relationship, a parent without a birth certificate might lose the right to custody and visitation.[206] In this sense, a legal document memorializing legal parenthood is crucial for parents seeking their non-economic rights.

The situation of the *Finstuen* couple captures these benefits well. Their child required swift medical attention, an emergency ambulance ride, a potentially life-saving decision, and a stay in an emergency room.[207] One parent was not able to ride in the ambulance and had trouble getting into the hospital room because she did not have a birth certificate.[208] If the legally recognized parent was not there, the un-listed person might have been unable to exercise her decision-making authority, resulting in further injury to the adopted child. The legal ability to make these decisions is beneficial for the child's health and equally important as a parental right.

Thus, in *Adar* the parents sought the ability to enjoy these substantive rights of parenthood—economic, legal, and social. Full Faith and Credit was merely the vehicle carrying these rights from state to state. However, the Fifth Circuit's assessment superficially glanced at the couple's complaint and labeled the rights asserted as merely procedural rather than substantive. This dismissal of the *Adar* couple's claims effectively denied them enjoyment of their substantive parental rights.[209] Future courts deciding these issues would perpetuate this denial of substantive rights if they adhere to *Adar*.

2. The Parents are Frustrated

The *Adar* court held that the couple's adoption was validly recognized and that the State had not "frustrated" their rights.[210] For the court to maintain this holding, it must follow that the parents do not need birth certificates to fully enjoy substantive parental rights.[211] This is not the case, however, and future courts ought not to make the same mistake.

Louisiana's statute regarding the evidentiary value of birth certificates contradicts the court's

holding.[212] The statute states that birth certificates serve as "prima facie evidence of the facts therein stated."[213] The content, or facts, of a birth certificate are also statutorily determined, and they include information about the child and parents—residences, races, surnames, maiden names, etc. [214] These statutes, read together, declare that birth certificates serve as prima facie evidence of the parents' identities. Because certificates evidence who the parents are, those parents need the legal document to prove their parental status and enjoy their parental rights. The Fifth Circuit claimed it had not "frustrated" the couple's rights, but Louisiana law clearly reveals that birth certificates serve as legal evidence of determining who the parents are.[215] Without evidence, parents are sure to face frustrations in enforcing their substantive parental rights.

It may be that in some situations, an adoption decree alone is not needed to enjoy the various benefits of parenthood.[216] However, the withholding of a birth certificate surely serves as an unnecessary obstacle for adoptive parents. These parents have already filed numerous forms and affidavits and have been judicially examined for moral fitness.[217] Adding another administrative hurdle to proving the validity of an out-of-state adoption decree frustrates parental rights, and the *Adar* court disregarded this burden for adoptive parents when it held otherwise.[218]

Because judgments are greatly protected and should not be undermined, this burden is also likely unconstitutional.[219] As the Tenth Circuit aptly noted, the denial of the birth certificate is the denial of the effective operation of the judgment.[220] The Fifth Circuit's effective denial undermines the most protected judgments and frustrates, if not denies, parents' substantive rights.[221] This frustration will continue under *Adar*'s precedent.

B. Extrapolating Adar

Besides the Fifth Circuit's legal errors, the court's holding will have detrimental effects for several classes of people: homosexual parents, adoptive parents, and adopted children. Going forward, the *Adar* decision will allow state officials to single out, at their whim, individuals seeking the enforcement of rights from out of state. The decision also places homosexuals in a Catch-22 rendering them unable to receive certain family rights whatsoever. Finally, this decision ultimately hurts not only the parents, but the child as well.

1. Unbridled Discretion

Non-judicial state actors are currently free to disregard Full Faith and Credit obligations under *Adar*.[222] This freedom alone would allow non-judicial state actors wide latitude to undermine the most protected class of documents and disregard the determinations of a sister state. Moreover, under *Adar*, liability-free actors can single out the effective operations of sister-state judgments. Thus, state actors have a dual-layered protection for violating Full Faith and Credit. States can create self-governed mechanisms to deny a judgment's effective operation and certain actors are not even obligated by Full Faith and Credit.[223]

If the *Adar* court allowed this type of denial for a judgment—an adoption decree—then subsequent courts will certainly be able to deny operation for lesser protected acts and records. Drivers' licenses provide an instructive example. Law enforcement officers will not have to acknowledge an out-of-state license because licenses are a state's own mechanism of enforcement. Thus, a driver would have to seek each state's mechanism where he wishes to drive—that is, he would have to apply for a license in each state's DMV. This is assuming, of course, that policemen even think about Full Faith and Credit when they discretionarily deny recognition. After all, the second layer of protection means that the Clause does not apply to police officers.[224]

From a national point of view, this result is the precisely the opposite of that compelled when one considers the purpose of the Full Faith and Credit Clause. With each actor free from liability choosing which judgments to give effect to, the nation becomes a patchwork of recognition and enforcement. While some states might be willing to issue new certificates or recognize drivers' licenses—thus giving operation to the judgment or record—some states may not. This end game smacks of a country of "Independent Nations,"[225] each free to ignore another's judgment vis-à-vis a denial of effective operation.[226] This result is inconsistent with the view of the Framers and the Constitution itself.[227]

2. Homosexuals: Never Spouses nor Parents

With the newfound discretion and immunity for certain state actors, one has to wonder what criteria will influence that discretion. Of course, any decision based on gender, race, or sex might subject the actor to an Equal Protection claim.[228] Homosexuals have not yet been so statutorily protected.[229] Although the Louisiana adoption statute only prohibits unmarried couples from adopting, one need not stretch the imagination to see that non-judicial state officials will discriminate against homosexuals with statutes, the discretion, and the Full Faith and Credit immunity granted by the *Adar* court.[230]

Non-judicial state officers' discretion and immunity can have an awful impact on homosexual couples through the denial of the effective operation of out-of-state judgments. Of course, homosexuals will not be the only class discriminated against with state actors' newfound powers of discretion and immunity. There will certainly be others. However, unlike other discriminated classes, homosexuals will be ensnared in a catch-22 when it comes to family matters. That is to say, if an unmarried heterosexual couple wishes to circumvent the Louisiana statute to receive a Louisiana birth certificate, they need only to marry each other.[231] A gay couple cannot marry in Louisiana (and many other states) to escape the statute's prohibition against *unmarried* couples from adopting.[232] Thus, homosexual couples can do nothing to become either spouses or parents—stuck in this family rights abyss.

3. Child as Ultimate Sufferer

The parents' loss of substantive rights can be considered from the adoptee's point-of-view. If a state actor chooses not to list either adoptive parent on a birth certificate, the child will be stuck in a parent-less limbo where the biological parents no longer have any rights but the State is frustrating or denying the adoptive parents' substantive rights.

For example, the child ought to be able to inherit from both adoptive parents and may need a birth certificate to do so.[233] This illustrates how the denial of a birth certificate hampers the child's substantive rights. Another practical example would be the issue of child support. As discussed, the non-listed parent might be free to ignore his obligation to contribute finances for the child.[234] Besides the effect on the other parent, the child will likely suffer the most harm from that scenario, as he is the one with fewer resources. Furthermore, there are practical considerations, which might impact the child's development; the most noticeable would be the issue of custody and visitation.[235] A child's relationship with his parents is a deeply psychological one.[236] A parent faces an obstacle for custody or visitation rights with the adoptee if he does not have a birth certificate. From the child's point-of-view, then, the inability to see and visit a parent with whom he grew up will detrimentally affect his personal development. In a broader sense, a child's loss of all these substantive rights might render the child parent-less as soon as he crosses a state-line.

Ultimately, the state is presumed to have the best interest of the child in making decisions of family law. Without birth certificates evidencing a complete and "normal" family, the adopted children might lose economic support of a former parent, lose total contact with the parent, and even question the legitimacy of their own family structure. All of these effects carry long-term psychological damages.[237] These detriments will continue if future courts do not resolve the current circuit split in line with the Tenth Circuit.

IV. Conclusion

In Article IV, the Constitution addresses the internal workings of sister states in relation to one another. Coming out of a fragmented system of government, the Framers sought a more perfect Union. One aspect of this new society would be the level of respect each state owed to another, and over the years, judicial decisions have been regarded as the most protected class of sister-state documents. Because adoption decrees are the judicial proclamation of legal parenthood, transforming formerly childless people into full-fledged parents, these decrees deserve the same level of exacting faith and credit. Nothing ought to undermine the decrees or their effects. When a state refuses to grant birth certificates to some adopting couples, the state is denying the effective operation of those adoption decrees, which is not only unconstitutional, but also detrimental to couples and, more importantly, the children. The

Fifth Circuit's decision in *Adar v. Smith* created a circuit-split on important issues of procedure and Constitutional interpretation. The Fifth Circuit has perpetuated an unconstitutional and discriminatory practice of denying adopting parents the full benefits of legal parenthood. Consequently, future courts should resolve the existing circuit split in line with the Tenth Circuit whose decision concerning out-of-state adoption decrees conforms with the Full Faith and Credit Clause and causes less harm to several classes of citizens: homosexual parents and adoptive families.

(Endnotes)

[1] Drew Lambert will graduate Paul M. Hebert Law Center at Louisiana State University in May 2013. While there, he was a member of moot court, American Constitutional Society, and Senior Editor of the *Louisiana Law Review*. Upon taking the Louisiana bar, he will practice insurance litigation in New Orleans for Johnson, Johnson, Barrios Yacoubian. He would like to thank Professor Andrea Carroll and now-Dean of Appalachian School of Law Lucy McGough for their insight and assistance in writing this paper.

[2] *See, e.g.*, Defense of Marriage Act, Pub. L. No. 104-199, § 2(a), 110 Stat. 2419, 2419 (1996); *see also Overview of Lesbian and Gay Parenting, Adoption, and Foster Care*, American Civil Liberties Union of Utah, www.acluutah.org/dcfsfacts.htm ("Arkansas, like Utah, passed an administrative policy last year prohibiting lesbians, gay men, and those who live with them from serving as foster parents.") (last visited Nov. 9, 2011).

[3] 2009 American Community Survey 1-Year Public Use Microdata Sample (2009). The same source indicates that 30,000 children have been adopted.

[4] Clayton Crockett, *Baton Rouge Ranks Second in Same-Sex Couples in LA*, The Daily Reveille, August 23, 2011, at 1.

[5] Adar v. Smith, 639 F.3d 146, 149 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 400 (2011).

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] Adar v. Smith, 591 F. Supp. 2d 857, 859 (E.D. La. 2008), *aff'd*, 597 F.3d 697 (5th Cir. 2010), *vacated en banc*, 639 F.3d 146 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 400 (2011) (citing Compl. for Declaratory and Injunctive Relief at 6, *Adar*, 591 F. Supp. 2d 857.

[11] *Id.*

[12] *Id.*

[13] *Id.* Defendant Smith's authority derives from La. Rev. Stat. Ann.§ 40:36 (2012).

[14] U.S. Const. amend. XIV, § 1.

[15] U.S. Const. art. IV, § 1.

[16] *Adar*, 591 F. Supp. 2d at 859.

[17] *Id.* at 864.

[18] Adar v. Smith, 597 F.3d 697, 701 (5th Cir. 2010).

[19] Adar v. Smith, 639 F.3d 146, 150 (5th Cir. 2011).

[20] *Id.* Because the majority did not substantially address these issues and because the focus of this note is on Full Faith and Credit, these sections of the opinion will be omitted from analysis. The court found that the couple met the injury-in-fact requirement for standing. *Id.* Further, the court found that the state's law satisfied the minimal scrutiny required under Equal Protection. *Id.*

[21] *Id.* at 151. "[Section] 1983" is a reference to 42 U.S.C. § 1983 (2011) which states in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

[22] 28 U.S.C. § 1738 states in pertinent part: "Such Acts, records and judicial proceedings … shall have the same full faith and credit in every court within the United States … as they have by law or usage in the courts of such State … from which they are taken." The interplay between the Clause and its statute is discussed *infra*, part II.D.1.

[23] *Adar*, 639 F.3d at 151.

[24] *Id*.

[25] *Id.* at 152 (citing Baker v. Gen. Motors Corp., 522 U.S. 222, 235 (1984)).

[26] *Id.* The Court discussed the Clause's original evidentiary nature. For further elaboration, *see infra*, part II.D.

[27] *Id.* at 152-53 and sources cited therein.

[28] *Id*. at 154.

[29] *Id.* ("[I]t is incoherent to speak of vindicating full faith and credit rights against non-judicial state actors.").

[30] *Id*. at 155.

[31] *Id.* (citing Durfee v Duke, 375 U.S. 106, 111 (1963).

[32] *Id*.

[33] Thompson v. Thompson, 484 U.S. 174 (1988).

[34] *Adar*, 639 F.3d at 155-56.

[35] *Id.* at 157 (citing Minnesota v. N. Sec. Co., 194 U.S. 48, 72 (1904); Anglo-Am. Provision Co. v. Davis Provision Co., 191 U.S. 373, 374 (1903); 13D Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3563, at 214 (3d ed. 2008)).

[36] *Id.* at 158 n.8 (advising that future litigants with similar claims seek enforcement through a writ of mandamus); La. Code Civ. Proc. Ann. arts. 3862-63 (2011).

[37] *Adar*, 639 F.3d at 158.

[38] *Id.* To avoid a circuit-split, the majority attempted to distinguish a Tenth Circuit case allowing similar Full Faith and Credit claims in federal court under § 1983. *See id.* The court highlighted several differences between the two cases: (1) the Tenth Circuit struck down a statutory amendment; (2) unlike

the Tenth Circuit case, the Registrar in this case recognized the validity of the New York adoption; and (3) Louisiana law, unlike Oklahoma law, does not require the Registrar to re-issue a birth certificate. *Id*. (citing and distinguishing Finstuen v. Crutcher, 496 F.3d 1139 (10th Cir. 2007)).

[39] *Id.* at 154 n.6.

[40] *Id.*

[41] *Id*.

[42] *Id.*

[43] *Id.* at n.6.

[44] *Id.* at 158.

[45] Baker v. Gen. Motor Corp., 522 U.S. 222 (1984).

[46] *Adar*, 639 F.3d at 158 (citing *Baker,* 522 U.S. at 232).

[47] *Id.* at 158-59.

[48] *Id.* at 159 (citing *Baker*, 522 U.S. at 235).

[49] *Id.*

[50] *Id*.

[51] *Id.*

[52] *Id.*

[53] Finstuen v. Crutcher, 496 F.3d 1139 (10th Cir. 2007). *See supra* note 38

[54] In pertinent part, the amendment states, "Except that, this state, any of its agencies, or any court of this state shall not recognize an adoption by more than one individual of the same sex from any other state . . . ." Okla. Stat. tit. 10 § 7502-1.4(A) (2004).

[55] Finstuen v. Edmondson, 497 F. Supp. 2d 1295, 1300 (W.D. Ok. 2006), *aff'd in part rev'd in part sub nom.* Finstuen v. Crutcher, 496 F.3d 1139 (10th Cir. 2007).

[56] *Id.* As for the couple who had standing, Lucy Doel adopted an Oklahoma child ("Infant E") in California. *Id.* at 1301. A few months later, Jennifer Doel completed a stepparent adoption in California, making her Infant E's second legal parent. *Id.* The couple resided in Oklahoma after the adoptions, but they were unable to procure a birth certificate. *Id.* The couple recounted an incident wherein Infant E was taken to the hospital by ambulance and the parents had trouble traveling with the child. *Id.* Medical personnel explained to the couple that only the child's mother could ride in the ambulance and could be in the examination room. *Id.* After explaining the adoption situation to the medical staff, both mothers were eventually admitted into the room. *Id.* The couple claimed their legal parental control continued to be questioned similarly by strangers. The Tenth Circuit applied these facts to a three-step inquiry for standing, determining that injury-in-fact, causation, and redressability existed. *Finstuen*, 496 F.3d 1139.

[57] *Id*. at 1151.

[58] *Id.* at 1152 (citing *Baker*, 522 U.S. at 233, "there is 'no roving public policy exception' to the full faith and credit due judgments.").

[59] *Finstuen*, 496 F.3d at 1153.

[60] *Id.*

[61] *Id.*

[62] *Id*. at 1153-54 (quoting *Baker*, 522 U.S. at 234-35).

[63] *Id*. at 1154.

[64] *Id.* at 1156.

[65] *Id*. at 1154-56.

[66] *Id.* at 1155-56 and sources cited therein.

[67] *Id*. at 1156 (quoting Hood v. McGehee, 237 U.S. 611, 615 (1915)).

[68] *Id*.

[69] Finstuen v. Edmondson, 2004 U.S. Dist. Ct. Pleadings 41152 at 5. *See also*, Finstuen, 496 F.3d 1139.

[70] *Finstuen*, 496 F.3d at 1156.

[71] *Id*.

[72] *See, e.g.*, Joan Hollinger, *The Nature of Adoption and Adoption Laws*, *in* 1-1 Adoption Law and Practice § 1.01[1] (2001).

[73] Black's Law Dictionary (9th ed. 2009) (defining "judgment").

[74] The section discussing the level of faith given to judgments and how states ought to enforce them is forthcoming in part IV.A.

[75] N.Y. Dom. Rel. Law § 110 (Consol. 2013). It states in pertinent part that: "An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person. . . . Adoption is the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person. A proceeding conducted in pursuance of this article shall constitute a judicial proceeding. *An order of adoption or abrogation made therein by a surrogate or by a judge shall have the force and effect of and shall be entitled to all the presumptions attaching to a judgment rendered by a court of general jurisdiction in a common law action.*" *Id.* (emphasis added).

[76] *Id.*

[77] *Id.* § 114.

[78] *See id.* §§ 112-15.

[79] *Id.* §§ 112, 115.

[80] *See supra* note 83.

[81] N.Y. Dom. Rel. Law § 117 (Consol. 2013).

[82] *Id.* § 177(1)(a)-(c).

[83] N.Y. Pub. Health Law § 4138 (Consol. 2013).

[84] *Id.* § 4138 (c) (emphasis added).

[85] *See, e.g.*, 22 Me. Rev. Stat. tit. 22, § 2765 (2011); Haw. Rev. Stat. § 338-17.7 (2011); Haw. Rev. Stat. § 578-14 (2011); Idaho Code Ann. § 39-258 (2011); Iowa Code § 600.13 (2011); Kan. Stat. Ann. § 65-2423 (2011); Ky. Rev. Stat. Ann. § 199.570 (LexisNexis 2011); Ala. Code § 26-10A-32 (2011); Alaska Stat. § 18.50.220 (2011); Cal. Health & Safety Code § 102635; Colo. Rev. Stat. § 25-2-113 (2011); Conn. Gen. Stat. § 7-53 (2011); Del. Code Ann. tit. 16, § 3126; Md. Health-Gen. Code Ann. § 4-211 (2011); Miss. Code Ann. § 93-17-21 (2011); Mont. Code Ann. § 50-15-304 (2011); Neb. Rev. Stat. § 71-626 (2011); N.J. Rev. Stat. § 26:8-40.1 (2011); W. Va. Code § 16-5-18 (2011); Or. Rev. Stat. § 432.230 (2011).

[86] The acquisition of the new birth certificate is important for the practical effects of parenthood, discussed later in this case note, *infra* V.A.2.

[87] The Federalist No. 64, at 292 (James Madison) (Clinton Rossiter ed., 1961).

[88] *See generally supra* note 89.

[89] *See, e.g.*, David Engdahl, *The Classic Rule of Full Faith and Credit*, 118 Yale L.J. 1584 (2009); Stephen Sachs, *Full Faith and Credit and Early Congress*, 95 Va L. Rev. 1201 (2009); Ralph Whitten, *Full Faith and Credit for Dummies*, 38 Creighton L. Rev. 465 (2005); Daniel Crane, *Original Understanding of "Effects Clause" of FFC and DOMA*, 6 Geo. Mason L. Rev. 307 (1998).

[90] *See* Engdahl, *supra* note 91.

[91] *Id.* at 1598.

[92] *Id*.

[93] *See generally* Whitten, *supra* note 91.

[94] *See generally* Crane, *supra* note 91, at 316.

[95] Sachs, *supra* note 89, at 1221.

[96] Madison, Notes from the Constitutional Convention 546 (1987).

[97] From Madison's Conventional Notes, it seems that discussions took approximately four days to negotiate the final version of the Clause during a convention that lasted around four months. *See id.* at 546, 570.

[98] *Id.* at 546.

[99] *Id*. at 546, 570.

[100] *See id.;* U.S. Const. art. IV § 1.

[101] *Supra*, note 96 at 570.

[102] *Supra*, note 90.

[103] *See generally* Engdahl,, *supra* note 90; *see also* Peck v. Williamson, 19 F. Cas. 85 (C.C.D.N.C. 1813).

[104] *See, e.g.*, Engdahl, *supra* note 90, at 1630.

[105] *Id.* The subsequent re-enactments of the 1790 Act did make additions and some changes. For example, the term "such faith and credit" was altered to "same faith and credit." Also, public acts were included in a later enactment. For a more scholarly discussion of these changes, see Engdahl, *supra* note 90.

[106] Robert Jackson, *Full Faith and Credit: a Lawyer's Clause of the Constitution*, 45 Colum. L. Rev. 1 (1945).

[107] Crane, *supra* note 90, at 334 ("The Effects Clause has spawned no case law lineage and very little discussion as a subject distinct from the Full Faith and Credit Clause.").

[108] *Id.*

[109] *See id. at 310.*

[110] *See generally* Scott Ruskay-Kidd, *Defense of Marriage Act and the Overextension of Congressional Authority*, 97 Colum. L. Rev. 1435 (1997).

[111] William Reynolds & William Richman, The Full Faith and Credit Clause: A Reference Guide to the united States Constitution 123 (2005).

[112] By citing to this Act, I am not conceding that Congress had the right to pass this legislation. The constitutionality of DOMA is outside the scope of this article. I am merely making the point that the Congress has recently attempted to act on its power more seriously.

[113] *See* Armstrong v. Carson's Ex'rs, 2 U.S. 302, 303 (C.C.D. Pa. 1794).

[114] Peck v. Williamson, 19 F. Cas. 85, 85 (C.C.D.N.C. 1813).

[115] Mills v. Duryee, 11. U.S. 481 (1813). Inerestingly, Chief Justice Marshall joined Justice Story's opinion in this case, though Marshall penned the opposite view in *Peck*, 19 F. Cas. at 85.

[116] *Mills*, 11 U.S. at 484.

[117] Engdahl, *supra* note 90, at 1636.

[118] *See, e.g., Baker v. General Motors Corp.*, 522 U.S. 222 (1984).

[119] *Id.*

[120] *Id.* at 240-41.

[121] *See id.* The function of Full Faith and Credit "was to alter the status of the several states as independent foreign sovereignties, each free to ignore the obligations…of the others, and to make them integral parts of a single nation." *Id.* at 223 (citing Milwaukee County v. M.E. White Co., 296 U.S. 268, 277 (1935)). This function is necessary because "the practical operation of the federal system which the Constitution designed, demanded it." *Id.* at 233 (citing Estin v. Estin, 334 U.S. 541, 546 (1948)).

[122] *Id.* at 232.

[123] *Id.* at 235.

[124] *Id*. at 222-23.

[125] *Compare* Armstrong v. Carson, 2 U.S. 302 (C.C.D. Pa. 1794), *with* Peck v. Williamson, 19 F. Cas. 85 (C.C.D.N.C. 1813).

[126] *See Baker*, 522 U.S. at 235.

[127] Sup. Ct. R. 10.

[128] *Id*. Although this statement might beg the question of what the "important matter" is, I believe it is more instructive than circular. Especially as compared to the factual distinctions, the legal holdings of the two circuits would certainly be the "important matter" of the cases.

[129] Adar v. Smith, 132 S. Ct. 400 (2011).

[130] The following section of the note outlines the major arguments in favor of the Tenth Circuit's rationale.

[131] *See* Finstuen v. Crutcher, 496 F.3d1139, 1142 (10th Cir. 2007).

[132] *See supra* note 38.

[133] *Compare* Adar v. Smith, 639 F.3d 146 *with* Finstuen v. Crutcher, 439 F.3d 1139.

[134] OKLAHOMA STATSTAT. tit. 10 § 7502-1.4(A) (2004) (emphasis added).

[135] Adar v. Smith, 639 F.3d 146,159 (5th Cir. 2011).

[136] *Id.* One must always the mantra "*Quidquid id est. Timeo Danaos et dona ferentes*." (I fear the Greeks, even those bearing gifts.) P. Vergilius Maro, The Aeneid II, 49.

[137] *See, infra* part V.A.2.

[138] *Adar*, 597 F.3d at 701.

[139] *Id*.

[140] Finstuen v. Crutcher, 496 F.3d1139, 1142 (10th Cir. 2007).

[141] *See* Cal Fam. Code § 9000.

[142] Adar v. Smith, 639 F.3d 146, 153 (5th Cir. 2011).

[143] After all, a federal court must dismiss a case for want of jurisdiction at any time and *sua sponte*. Fed. R. Civ. Pro. 12(h)(3).

[144] Another useful quote to help understand this point is "*Qui tacet consentit*" (He who remains silent agrees). The Tenth Circuit did not need to explicitly discuss the presence of jurisdiction, nor does the lack of discussion mean the court lacked jurisdiction.

[145] 10 Okl. Rev. Stat. § 7505-6.6 (2011).

[146] Finstuen v. Crutcher, 439 F.3d 1139, 1156 (10th Cir. 2011).

[147] *Id.*

[148] Adar v. Smith, 639 F.3d 146, 184 (5th Cir. 2011).

[149] La. Rev. Stat. Ann. 40:79 (2011).

[150] La. Rev. Stat. Ann. 40:76 (C) (2011). One caveat to note is the potential for the Louisiana Registrar's discretion in creating this new record. Section A of La. R.S. 40:76 states that if an out-of-state adoption decree is presented, the Registrar "may create a new record of birth in the archives." Thus, one may say that the Registrar was wholly within her discretion to refuse the issuance of the new certificate. However, as the previous footnote indicates, subsection C uses the mandatory language "shall." Thus it is unclear whether the issuance is discretionary or mandatory. However, if the Registrar refuses to recognize some out-of-state adoptions as valid, she would be denying those adoption orders Full Faith and Credit. This would be the same result as the Oklahoma statute that *Finstuen* struck down as unconstitutional. Thus Louisiana cannot pick and choose which orders to acknowledge for the purposes of issuing new records of birth certificates. Furthermore, as the *Adar* decision points out, the Registrar does not deny the validity of the Adar couple as legal parents. Therefore, the legal parents are entitled to a mandatory issuance of a birth certificate pursuant to Louisiana Revised Statutes Annotated 40:79.

[151] *Adar*, 639 F.3d at 160.

[152] Finstuen v. Crutcher, 496 F.3d 1139, 1156 (10th Cir. 2007).

[153] *Compare* La. Rev. Stat. 40:36 *with* 63 Okl. Rev. Stat. § 1-304.

[154] *Compare Adar*, 639 F.3d at 156-57 ("Only one federal court decision has permitted a full faith and credit claim to be brought in federal court pursuant to § 1983 . . . . [*Finsuten v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007)] . . . . In the end, *Finstuen* is distinguishable . . . ..") *with Adar*, 639 F.3d at 166 ("I lament that…the en banc majority…creates a circuit split on the full faith and credit that must be afforded to valid, out-of-state adoption decrees by the adopted child's birth state, as well as the availability of a federal forum for deciding such claims") (Weimer, J., dissenting).

[155] *See infra* part II.D. (noting that neither the history nor case-law is dispositive).

[156] "By even greater force of logic; even more so." Black's Law Dictionary (9th ed. 2009) (defining "a fortiori"). A simple application of this idea is that if a fourteen year old is too young to serve in the military, then surely his younger brother is too young based on the same logic. As applied here, the argument runs that if the Framers sought a less fragmented union, then surely they sought to prevent states refusing to recognize another state's judgment.

[157] *See* U.S. Const. Art. IV.

[158] *See, e.g.*, Peck v. Williamson, 19 F. Cas. 85 (C.C.D.N.C. 1813).

[159] Madison, *supra* note 96.

[160] *See supra* note 125.

[161] *See* Baker v. Gen. Motors Corp., 522 U.S. 22, 236 (1984).

[162] *See*, *e.g.*, U.S. Const. Art. IV.

[163] *Id.*

[164] *Supra*, note 20.

[165] *See id.*

[166] As noted, the 1790 act has been re-enacted over the years without many substantive changes, *supra*, note 105.

[167] *Supra* note 83.

[168] *Supra* note 46.

[169] *See infra* part V.A.2.

[170] 42 U.S.C.A. § 1983 (1996).

[171] *See* CIVIL ACTIONS AGAINST STATE AND LOCAL GOVERNMENT § 7.2 at 523 (2nd ed. 1992) *and* Golden State Transit Corp. v. Los Angeles, 493 U.S. 103, 107 (1989) (holding that the Supremacy Clause of the Constitution does not create an *enforceable* right).

[172] Monroe v. Pape, 365 U.S. 167, 173-74 (1961).

[173] It should be noted that although § 1983 generally allows plaintiffs to take their case to federal court, this does not limit a state court's jurisdiction. Plaintiffs are still allowed to pursue claims for violation of state laws in state courts. *See generally* Felder v. Casey, 487 U.S. 131, 139 (1988) ("This is so whether the question of state-law applicability arises in § 1983 litigation brought in state courts, *which possess concurrent jurisdiction* over such actions…") (emphasis added) *superceded on other grounds*.

[174] Federal Judicial Center, Section 1983 Litigation 14 (2nd ed. 2008).

[175] *See generally* Civil Actions Against State and Local Government § 7.1 at 523 (2nd ed. 1992) ("42 U.S.C. §1983 does not create any substantive rights…").

[176] *See generally* Blessing v. Freestone, 520 U.S. 329, 347 (1997).

[177] Arrington v. Richardson, 660 F. Supp. 2d 1024, 1030 (N.D. Ia., 2009) (citing *Blessing*, 520 U.S. at 347) (finding that the Driver's Privacy Protection Act creates an enforceable right).

[178] *Id.*

[179] *Id.*

[180] *Id.* at 1031-32 (internal citations omitted).

[181] *See*, Dennis v. Higgins, 498 U.S. 439 (1991); Mallo v. Public Health Trust, 88 F. Supp. 2d 1376, 1391 (S.D. Fl. 2000). *See also* Hogan v. Musolf, 163 Wis. 2d 1 (1991) (holding that 4 U.S.C. § 111 grants an enforceable right); Lampkin v. District of Columbia, 27 F.3d 605 (D.C. Cir. 1994) (holding that the Stewart B. McKinney Homeless Assistance Act grants an enforceable right); Michelle P. v. Holsinger, 356 F. Supp. 2d 763 (E.D. Ky.) (holding that the Medicaid Act, Title II of Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973 grant enforceable rights).

[182] *See* Golden State Transit Corp., *supra* note 171; Berg v. Obama, 574 F. Supp. 2d 509 (E.D. Pa. 2008); Edh v. Hale, 1994 U.S. Dist. LEXIS 16617 (N.D. Ca Nov. 17, 1994); Nat'l Telecomm. Advisor, Inc. v. City of Chicopee, 16 F. Supp. 2d 117 (Ma. 1998).

[183] *See generally supra* note 194.

[184] *See generally supra* note 194. *See also* Torraco v. Port Authority, 615 F.3d 129 (2d Cir. 2010) (holding that § 926A creates a right too ambiguous to be enforceable).

[185] U.S. Const. Art. IV (emphasis added).

[186] *See, e.g.*, Monroe v. Pape, 365 U.S. 167 (1961).

[187] *Supra* note 23.

[188] Discussed *infra* part V.A.1.

[189] *See generally supra* notes 183-96.

[190] *Ubi lex non distinguit, nec nos dinstinguere debet.*

[191] *Supra* note 39.

[192] *Supra* note 185.

[193] For instance, the dissent notes that the three articles cited by the majority concern different actions (petitioning for adoption versus acquiring a birth certificate). Other concerns are that *Thompson* and PKPA specifically address the role of state courts and federal courts in parental control. Finally, and most pointedly, the dissent notes that the "instructive case" for the majority, *Rosin*, was a Full Faith and Credit claim brought into federal court under § 1983.

[194] Adar v. Smith, 639 F.3d 146, 151 (5th Cir. 2011).

[195] *Id.*

[196] *Id.* at 159.

[197] *Id.* at 156.

[198] *See, e.g.,* N.Y. Dom. Rel. Law § 110 (Consol. 2011). *See also* Hollinger, *supra* note 71, at § 1.01[1].

[199] For example, many jurisdictions allow adoptive parents to inherit from the adoptee. Hollinger, *supra* note 72, at § 12.3. The scenario in which this would occur is almost ridiculous—a parent would first have to have outlived the child and, furthermore, the child would have to own substantial property for the parent to inherit. Perhaps this argument would work for an adoption of an older child or an adult adoption, but this probability is similarly far-fetched. For a more complete list and discussion of less-common economic benefits, *see generally id. supra* note 72, at § 12.07.

[200] *See, e.g.,* I.R.C.§§ 151-52 (2013). *See also* La. Civ. Code Ann. art. 121 (1991).

[201] *See, e.g.*, La. Civ. Code Ann. art. 141 (1994) (discussing the obligations of *parents* to support the child).

[202] The court made this argument while defending the Equal Protection claim—that the statute discriminates against unmarried couples—by contending that it need only a rational relationship to a state interest. Adar v. Smith, 639 F.3d 146, 161-62 (5th Cir. 2011).

[203] *See, e.g.*, Lisa Chen, *Second Parent Adoptions: Are They Entitled to Full Faith and Credit?* 46 Santa Clara L. Rev. 171, 176 (2005).

[204] *See* Hollinger, *supra* note 72, at § 13.

[205] For a mixture of social and legal impacts, see Chen, *supra* note 203 at 177 n.42 (discussing the lack of standing of non-legally recognized parents for custody battles).

[206] *See*, *e.g.*, Troxel v. Granville, 530 U.S. 57, 71 (2000) (discussing and giving deference to a parent's visitation determination).

[207] *Supra* note 55.

[208] *Id*.

[209] Adar v. Smith, 639 F.3d 146 (5th Cir. 2011).

[210] *Id.* at 159.

[211] *Id.*

[212] *See* La. Rev. Stat. Ann. § 40:42 (2011).

[213] *Id.*

[214] La. Rev. Stat. Ann. 40:34 (2011).

[215] *Supra* note 51.

[216] For instance, the Doel couple was eventually allowed into the emergency room with only an adoption order. *Id.* note 55.

[217] *See supra* note 86.

[218] *Supra* note 51.

[219] U.S. Const. art. IV, § 1.

[220] Finstuen v. Crutcher, 439 F.3d 1139, 1156 (2007).

[221] *See generally supra* notes 205-213.

[222] Adar v. Smith, 639 F.3d 146, 154 (5th Cir. 2011).

[223] *Id.*

[224] *See id.*

[225] *Supra* note 101.

[226] For another view of how inefficient and costly such a patchwork system of recognition would be for litigation, *see generally* Brian Vines, *A Doctrine of Faith and Credit*, 94 Va. L. Rev. 247 (2008).

[227] *See generally infra* part II.D.

[228] *See, e.g.*, 42 U.S.C. § 2000a *et seq*.

[229] *Cf. id.*

[230] One need only to look to states' prohibiting homosexuals from marrying each other to find an analogous example of state actors discriminating against homosexuals. As stated in the next paragraph, state actors could just as likely discriminate against another distinct class of people. However, this note has primarily focused on the disadvantages to adoptive parents and same-sex parents.

[231] This step would take them out of Louisiana's prohibition against *unmarried* couples adopting.

[232] La. Const. Art. 12 § 15.

[233] A child adopted by a same-sex parent without that parent's last name would have little to prove his inheritance rights without a birth certificate representing the legal bond to the parent.

[234] *Infra* part V.A.1.a.

[235] Other practical impacts would be everyday situations in which a child finds himself. For instance, children with two parents of the same sex are likely made fun of by their peers already. When the Fifth Circuit forces those children to present an adoption decree, rather than a birth certificate for school purposes—matriculation, financial aid, etc.—the court adds onto the burden of those children who are already "different." This added ostracism similarly affects a child's development negatively.

[236] *See, e.g.*, Peggy Cooper Davis, *Good Mother: A New Look at Psychological Parent Theory*, 22 N.Y.U. Rev. L. & Soc. Change 347 (1996-1997).

[237] *See generally id.*