

In the Supreme Court of the United States

M.W.,

Applicant,

v.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF
LOS ANGELES, N.G., AND O.A.,**

Respondents.

To the Honorable Elena Kagan, Associate Justice of the United States
Supreme Court and Circuit Justice for the Ninth Circuit

On Application to Stay Parentage Order Entered by the
Superior Court of California, County of Los Angeles

**BRIEF OF *AMICI CURIAE* FLORIDA, ALASKA, AND
11 OTHER STATES IN SUPPORT OF M.W.'S STAY APPLICATION**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION	1
ARGUMENT	4
I. The California Order violates due process.	7
A. The California Order undermines state sovereignty.	7
B. The California Order violates Baby G.’s due process rights.	13
II. The California Order is not entitled to full faith and credit.	15
III. A child’s custody may not be fixed by contract—affording no inquiry into his best interests—without offending the Equal Protection Clause.	18
IV. A child’s custody may not be fixed by contract—affording no inquiry into his best interests—without offending the Thirteenth Amendment.	20
CONCLUSION.....	24
ADDITIONAL SIGNATORIES	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arkansas Dep’t of Hum. Servs. v. Cox</i> , 82 S.W.3d 806 (Ark. 2002)	17
<i>Banks’ Adm’r v. Marksberry</i> , 13 Ky. 275 (1823)	22
<i>Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.</i> , 582 U.S. 255 (2017)	8
<i>Buchanan v. Buchanan</i> , 197 S.E. 426 (Va. 1938)	20
<i>C.M. v. M.C.</i> , 7 Cal. App. 5th 1188 (2017)	19, 20
<i>Clark v. Jeter</i> , 486 U.S. 456 (1988)	18
<i>Coyote Publ’g, Inc. v. Miller</i> , 598 F.3d 592 (9th Cir. 2010)	23
<i>Ex parte E.L.</i> , 208 So. 3d 1102 (Ala. 2015)	18
<i>Ferguson v. Winston</i> , 996 P.2d 841 (Kan. Ct. App. 2000)	14
<i>Ford v. Ford</i> , 371 U.S. 187 (1962)	19, 20
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	7, 8
<i>Gray v. Gray</i> , 139 So. 3d 802 (Ala. Civ. App. 2013)	16
<i>Hanson v. Denckla</i> , 357 U.S. 235 (1958)	7, 8
<i>In re Marriage of Tonnessen</i> , 941 P.2d 237 (Ariz. Ct. App. 1997)	16
<i>Int’l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement</i> , 326 U.S. 310 (1945)	14
<i>Johnson v. Calvert</i> , 5 Cal. 4th 84 (1993)	19, 23

<i>Levy v. Louisiana</i> , 391 U.S. 68 (1968).....	18
<i>Little v. Streater</i> , 452 U.S. 1 (1981).....	13
<i>Mallory v. Norfolk S. Ry. Co.</i> , 600 U.S. 122 (2023).....	9, 10
<i>Matter of S.D.S.</i> , 371 Or. 573 (2023).....	23
<i>McQueen v. Gadberry</i> , 507 S.W.3d 127 (Mo. Ct. App. 2016)	23
<i>Pennoyer v. Neff</i> , 95 U.S. 714 (1877).....	7
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896).....	21
<i>Ruddock v. Ohls</i> , 91 Cal.App.3d 271 (Cal. Ct. App. 1979)	14
<i>State v. Santos</i> , 702 P.2d 1179 (Wash. 1985)	14
<i>Thompson v. Thompson</i> , 484 U.S. 174 (1988).....	15, 16
<i>Trimble v. Gordon</i> , 430 U.S. 762 (1977).....	18
<i>United States v. Hatch</i> , 722 F.3d 1193 (10th Cir. 2013).....	23
<i>United States v. King</i> , 840 F.2d 1276 (6th Cir. 1988).....	20, 22
<i>V.L. v. E.L.</i> , 577 U.S. 404 (2016).....	17, 18
<i>Weber v. Aetna Cas. & Sur. Co.</i> , 406 U.S. 164 (1972).....	18
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980).....	8
Constitutional Provisions	
U.S. Const. amend. XIII, § 1.....	20
U.S. Const. art. IV, § 1.....	6

Statutes

28 U.S.C. § 1738A	3, 6, 15, 16, 17
Cal. Code. Civ. Proc. § 418.11.....	4
Cal. Fam. Code § 7960	3
Fla. Stat. § 742.15.....	3, 13

Other Authorities

Alexandra Herweck et al., <i>International gestational surrogacy in the United States, 2014–2020</i> , 121 <i>Fertility & Sterility</i> 622 (Apr. 2024).....	11
Anthony Jose Sirven, <i>No Property in Man: A Fading Principle</i> , 29 <i>Tex. Rev. L. & Pol.</i> 211 (2025)	21
Barry E. Adler, <i>Property Rights in Children</i> , 95 <i>Notre Dame L. Rev.</i> 1629 (2020)	21
Carter Dillard, <i>Future Children As Property</i> , 17 <i>Duke J. Gender L. & Pol’y</i> 47 (2010).....	21
Harriet Beecher Stowe, <i>A Key to Uncle Tom’s Cabin</i> (John P. Jewett & Co. 1853).....	22
Restatement (Second) of Torts § 194 (1981)	20

INTEREST OF *AMICI CURIAE*¹

Amici States have a sovereign interest in the enforceability of their laws regarding gestational surrogacy—laws that exist to protect their women and children citizens from harm. By issuing parentage and custody orders for children outside their jurisdiction, California courts are imposing California’s reckless, unconstitutional gestational surrogacy laws on women and children throughout the country.

INTRODUCTION

The question presented by the application is narrow, and its answer is obvious. The question: Can a state’s courts treat a limited appearance to *contest* personal jurisdiction as *consent* to personal jurisdiction without violating the Due Process Clause of the Fourteenth Amendment? The answer: Of course not.

This Court should take up that narrow question and stay or reverse the California order for two reasons. First, a child’s life hangs in the balance. Respondents N.G. and O.A. demanded that Baby G. be aborted when they learned he had a treatable heart condition. Appl. 3–5.² Applicant M.W. refused and heroically saved the child’s life. Appl. 3–5. Now that Baby G. has been born, N.G. and O.A. want to be recognized as his parents and custodians—but refuse to say whether they will continue Baby G.’s medical care, or place him on hospice. Appl. 9. Because of the order on appeal, Baby G. will be discharged from the hospital and handed over to

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from Amici States and their counsel, made any monetary contribution toward the preparation or submission of this brief.

² N.G. and O.A. do not regret that decision. Appl. 10.

N.G. and O.A. in the coming week. Appl. 2. Surely that alone is enough to warrant this Court's review.

Second, this Court should take up the narrow question presented because, if it does not, far weightier questions lie just beyond. The California courts' failure to police their jurisdiction has not only resulted in individual injustice to Applicant M.W.—it is also a direct threat to other States' sovereign authority to regulate gestational surrogacy and protect children born within their borders.

Consider what has happened here. A California court issued a decree adjudicating the parentage of a child in the womb of an Alaskan woman based solely on the “consent” of the surrogate (M.W.) and the couple contracting for parentage (N.G. and O.A.). After the child was born in Texas, N.G. and O.A. demanded that a Texas trial court give full faith and credit to the California Order. So far, it has.³ But make no mistake—if N.G. and O.A. are right about personal jurisdiction and full faith and credit, then California courts and California law will decide the fate of children born via gestational surrogacy all across the country.

They are wrong about both. M.W. did not consent to personal jurisdiction in California. But even if she had, mere consent on the part of a surrogate and contracting couple, without a demonstrated nexus between the forum state and the child, violates the Fourteenth Amendment's Due Process Clause. As for full faith and credit, the Parental Kidnapping Prevention Act (PKPA) governs when a state must enforce an out-of-state judgment “providing for the custody of a child.” 28 U.S.C.

³ That ruling is on appeal.

§ 1738A. The California Order provides for the custody of Baby G., and the California court that issued it lacked jurisdiction under the PKPA. Therefore, no part of the California Order is entitled to full faith and credit.

What's worse, the contracting couple's view of the Full Faith and Credit Clause places it on a collision course with other provisions of the United States Constitution. Recognizing its many legal and moral hazards, many states ban or strictly regulate gestational surrogacy. Amici State of Florida, for example, permits gestational surrogacy only if the contracting couple is a married man and woman, the woman is infertile or cannot safely carry a child to term, at least one member of the contracting couple is genetically related to the child, neither member of the contracting couple is a citizen or resident of a foreign country of concern, and the contract between the surrogate and contracting couple is otherwise "binding and enforceable" under the state and federal constitutions. Fla. Stat. § 742.15. By contrast, California law allows a single, biologically unrelated adult to purchase a child via gestational surrogacy contract—from any country, for any reason, and with no inquiry into the child's welfare. Cal. Fam. Code § 7960. California's radical approach raises red flags under at least two provisions of the federal constitution: the Equal Protection Clause, which does not permit states to sort children by the circumstances of their birth; and the Thirteenth Amendment, which abolished the contractual transfer of human beings.

Amici States, to be clear, do not ask the Court to decide these questions today. But the questions are coming—and fast. Faster still should the Court decline to grant the stay.

ARGUMENT

Strip away the novelty of the subject matter and this is a simple case about a court exercising personal jurisdiction based on consent it never obtained. A California couple (Respondents N.G. and O.A.) and an Alaska woman (Applicant M.W.) executed a gestational surrogacy contract selecting Alaska law and an Alaska forum. Appl. 3. During pregnancy, doctors diagnosed the baby (Baby G.) with a serious but treatable heart condition. Appl. 3–4. N.G. and O.A. demanded that M.W. abort the child. Nobly, she refused. Appl. 4–5. N.G. and O.A. then abandoned the contract’s choice-of-law and forum-selection clauses and filed a parentage petition in Los Angeles, but they never effectuated service. Appl. 5–6. M.W. appeared in the California proceedings *solely* to contest jurisdiction and forum. Appl. 6. California law promised that her special appearance would not be construed as consent to personal jurisdiction. Appl. 19 (discussing Cal. Code. Civ. Proc. § 418.11). Yet Respondent Superior Court of California, County of Los Angeles (“the Superior Court”) treated M.W.’s special appearance to contest jurisdiction as a general appearance that forfeited her ability to do so. Appl. 7. That ruling should have been swiftly reversed under California law and the federal constitution. Nevertheless, California’s appellate courts summarily affirmed it. Appl. 7–8, 10–11.

This imperious exercise of personal jurisdiction is no oversight. It is part and parcel of California’s campaign to become the surrogacy capital of the world. To that end, California has enacted the most liberal gestational surrogacy laws in the nation.⁴

⁴ See, e.g., Frances Caruso, *U.S. Surrogacy Law By State*, ConceiveAbilities (Aug. 10, 2023), <https://www.conceiveabilities.com/about/blog/u-s-surrogacy-law-by->

But California hasn't stopped there. It now seeks to *export* its liberal surrogacy laws by inviting individuals from around (and outside) the country to obtain parentage and custody orders from California courts under California law, regardless of whether the persons contracting for parentage, the surrogate, or the children have any relationship with California. No one in the Amici States voted to live under California's maximalist regime.

Thankfully, at least four provisions of the United States Constitution stand in the way of California's ability to impose its radical surrogacy laws on the rest of the country:

1. The Due Process Clause of the Fourteenth Amendment imposes limits on state courts' *in personam* jurisdiction. These limits exist both to promote fairness for individuals and to respect state sovereignty. Children have a fundamental liberty interest in the proper adjudication of their parentage. The Due Process Clause therefore prevents state courts from exercising personal jurisdiction when there are

state ("California is often thought of as the 'friendliest' state for surrogacy and for good reason—California was the first state to enact a statute that makes surrogacy available to all! California remains one of the most sought after states for surrogacy. Intended Parents, regardless of . . . genetic connection or medical need for surrogacy, can obtain a pre-birth order."); *US Surrogacy Laws by State: The Complete 2026 Guide*, Physician's Surrogacy (Apr. 29, 2026), <https://perma.cc/D73N-ULXU> (describing California as the "gold standard" for surrogacy friendliness because it "works for [a]ll family structures," offers pre-birth orders, and has the "deepest legal + clinical infrastructure"); *Surrogacy Laws By State*, Legal Professional Group, <https://perma.cc/5LR3-WNJN> ("Having more statutory law and published case law on surrogacy arrangements than any other state, California is regarded as a highly surrogacy friendly state Pre-birth and post-birth parentage orders are permitted and may be obtained . . . regardless of whether [the persons contracting for parentage] used their own gametes or donated sperm and/or eggs.").

no minimum contacts. Consent to personal jurisdiction on the part of the surrogate and contracting couple, alone, fails to establish a nexus between California and the child. So even if N.G., O.A., and M.W. had consented to personal jurisdiction in California, the Superior Court still would have lacked personal jurisdiction to issue a parentage order for Baby G.

2. The Full Faith and Credit Clause authorizes Congress to “prescribe the Manner in which [state] Acts, Records and Proceedings shall be proved, and the Effect thereof.” U.S. Const. art. IV, § 1. Under the PKPA, an order “providing for the custody of a child” is entitled to full faith and credit only if the issuing court had jurisdiction under the PKPA. 28 U.S.C. § 1738A. Because the Superior Court lacked jurisdiction under the PKPA, the California Order is not entitled to full faith and credit.

3. California law generally affords children the benefit of a best-interests analysis whenever a court grants parental rights to a person who is genetically unrelated to the child. However, California law denies this benefit to children born through gestational surrogacy. Under the Equal Protection Clause of the Fourteenth Amendment, state laws like this that discriminate against children based on the circumstances of their birth are subject to intermediate scrutiny.

4. The Thirteenth Amendment prevents, at minimum, government enforcement of contracts that transfer human beings as chattel. Here, the Superior Court facilitated the contractual transfer of a child without any regard for the child’s best interests.

I. The California Order violates due process.

Without a doubt, the California Order violated M.W.’s right to due process by treating her limited appearance to contest jurisdiction as consent to jurisdiction. But even if M.W. had consented to personal jurisdiction, the California Order would still violate the Fourteenth Amendment’s Due Process Clause. The Due Process Clause’s limits on personal jurisdiction are “driven by two principles: (1) treating defendants fairly, and (2) protecting interstate federalism.” *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 13 (2025) (cleaned up). The California Order contravenes both.

A. The California Order undermines state sovereignty.

Shortly after the Fourteenth Amendment’s ratification, this Court recognized that the Due Process Clause limits state courts’ ability to exercise *in personam* jurisdiction. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877). These limits, the Court explained, are animated by the principle “that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory.” *Id.*

This Court has repeated that doctrinal underpinning ever since. *Hanson v. Denckla* held that the Due Process Clause’s “restrictions on the personal jurisdiction of state courts . . . are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.” 357 U.S. 235, 251 (1958).

World-Wide Volkswagen Corp. v. Woodson explained that “[t]he concept of minimum contacts . . . perform[s] two related, but distinguishable, functions”: (1) “[i]t protects the defendant against the burdens of litigating in a distant or inconvenient forum,” and (2) “it acts to ensure that the States through their courts, do not reach

out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.” 444 U.S. 286, 291–92 (1980). “The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.” *Id.* at 293.

Bristol-Myers Squibb reiterated that the Due Process Clause’s restrictions on personal jurisdiction “are a consequence of territorial limitations on the power of the respective States,” since “[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States.” *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 263 (2017) (cleaned up). So “even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.” *Id.* (cleaned up).

And just last year, *Fuld* confirmed that this Court’s “Fourteenth Amendment personal jurisdiction standards emerged . . . as ‘a consequence of territorial limitations on the power of the respective States.’” 606 U.S. at 14 (quoting *Hanson*, 357 U.S. at 251). “Interstate federalism concerns accordingly may be *decisive* for Fourteenth Amendment purposes.” *Id.* at 17 (emphasis in original).

The dissent in *Mallory v. Norfolk Southern Railway. Co.* was therefore right to point out that the Due Process Clause may in some cases prevent a state from exercising personal jurisdiction *even if all the parties have given genuine consent*. 600 U.S. 122, 168–71 (2023) (Barrett, J., dissenting). The dissent catalogued “case after case” emphasizing the Due Process Clause’s “dual role.” *Id.* at 169–70 (Barrett, J., dissenting). These decisions recognize procedural due process as a “right[] with structural components”: “the Due Process Clause protects more than the rights of defendants—it also protects interstate federalism.” *Id.* (Barrett, J., dissenting). The dissent therefore concluded that Pennsylvania courts’ exercise of personal jurisdiction over “consenting” corporations in cases otherwise lacking any meaningful connection to Pennsylvania violated the Due Process Clause because it “infringe[d] on more than just the rights of defendants—it upset[] the proper role of the States in our federal system.” *Id.* at 170–71 (Barrett, J., dissenting).

Justice Alito’s concurrence agreed that “the Constitution restricts a State’s power to reach out and regulate conduct that has little if any connection with the State’s legitimate interests,” although he reasoned that this principle is “an obvious and necessary result of our constitutional order, . . . not confined to any one clause or section, . . . expressed in the very nature of the federal system that the Constitution created and in numerous provisions that bear on States’ interactions with one another.” *Id.* at 154 (Alito, J., concurring in part) (cleaned up); *see also id.* at 150 (Alito, J., concurring in part) (“A State’s assertion of jurisdiction over lawsuits with no real connection to the State may violate fundamental principles that are protected

by one or more constitutional provisions or by the very structure of the federal system that the Constitution created.”). Indeed, if it were not so, then a state could, by “[i]nvoking the label ‘consent,’” acquire power over anyone, anywhere, about anything. *Id.* at 168 (Barrett, J., dissenting).

Here, California is attempting to use the consent of surrogates and persons contracting for parentage to acquire power over surrogate children who have little-to-no connection with California. In addition to being unjust to the children (*see infra* § I.B), California’s “power grab” demeans other states’ sovereign authority to provide for the welfare of children born within their borders. *See Mallory*, 600 U.S. at 170 (Barrett, J., dissenting). The United States Constitution doesn’t tolerate such incursions into the sovereignty of co-equal States.

Another dispute unfolding in Florida illustrates the pernicious effect of California’s scheme on interstate federalism. The person contracting for parentage in that case, a single middle-aged man, is a citizen and resident of the People’s Republic of China.⁵ The surrogate and her husband are from St. Augustine, Florida.⁶ The children at issue, two boys, were born in Florida in 2024.⁷ After the Chinese man failed to retrieve the children for nearly two years, the surrogate and her husband,

⁵ See Emi Nietfeld, *Whose Babies Are These? A Chinese man hired a Florida surrogate, then didn’t pick up his kids, sparking a custody battle that could upend the industry.*, New York Magazine (Aug. 11, 2026), <https://perma.cc/365G-DMWV>.

⁶ *Id.*

⁷ *Id.*; see also Katherine Long, *A Florida Surrogate, a Father in China, and the Babies Caught Between*, Wall Street Journal (July 31, 2026), <https://www.wsj.com/us-news/a-florida-surrogate-a-father-in-china-and-the-babies-caught-between-a3717a96>.

who had raised the children in St. Augustine since their birth, filed for adoption.⁸ The Chinese man then sought to domesticate a decree from Respondent Superior Court of California, County of Los Angeles obtained with the consent of the surrogate and her husband shortly after the children's birth.⁹ The California decree declared the Chinese man to be the sole legal parent and awarded him full legal and physical custody.¹⁰ Florida's Attorney General intervened. He argues that, because the California court lacked jurisdiction under the PKPA and the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), the California decree is unenforceable. Nevertheless, the Florida trial court gave full faith and credit to the California decree's parentage determination.¹¹ That ruling is on appeal.¹²

China, in fact, is the California surrogacy mill's biggest client. One 2024 study reported that foreigners' use of American surrogates to acquire children is skyrocketing, from 780 cases in 2014 to 3,240 cases in 2019—the most recent year for which data is available.¹³ Sixty-five percent of international surrogacy agreements are facilitated by surrogacy agencies and in vitro fertilization clinics in California, and Chinese nationals account for 41.7% of all international surrogacy agreements.¹⁴

⁸ Nietfeld, *supra*.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Order, *Zhou v. Simpson*, No. 2026-DR-001134, DIN No. 250 (Fla. 7th Cir. Ct. Aug. 19, 2026).

¹² *Uthmeier v. Zhou*, No. 5D26-2569 (Fla. 5th DCA).

¹³ Alexandra Herweck et al., *International gestational surrogacy in the United States, 2014–2020*, 121 *Fertility & Sterility* 622 (Apr. 2024), <https://perma.cc/PEK3-2CKD>.

¹⁴ *Id.*

California's Chinese clientele exploit surrogacy in alarming ways. For example, in 2025, law enforcement raided the Arcadia, California mansion of Guojun Xuan (age 65) and Silvia Zhang (age 38) due to suspected child abuse.¹⁵ Authorities discovered that Xuan and Zhang had procured 26 children, most under the age of 3, by recruiting surrogates from several states, including Amici State of Florida.¹⁶ Reports note that the children had been given "gender-neutral" haircuts and clothing, "like soldiers," and were being raised, and abused, by "six house staff."¹⁷ California authorities removed the children from the home, one of whom required treatment for a severe head injury.¹⁸ Federal authorities continue to investigate the couple's actions and motives.¹⁹

Unfortunately, there are more examples. One is Xu Bo, a reclusive Chinese videogame billionaire who reportedly has acquired "more than 100 children born through surrogacy in the U.S."²⁰ "Another wealthy Chinese executive, Wang Huiwu, hired U.S. models and others as egg donors to have 10 girls, with the aim of one day marrying them off to powerful men, according to people close to the executive's

¹⁵ Ava Kofman, *The Babies Kept in a Mysterious Los Angeles Mansion*, The New Yorker (Feb. 9, 2026), <https://perma.cc/A5US-L2AJ>; Rob Hayes, *21 children - all with surrogate mothers - taken from couple amid investigation*, ABC Eyewitness News (July 16, 2025), <https://perma.cc/47NF-CXQ2>.

¹⁶ *Id.*

¹⁷ Cara Tabachnick et al., *Their 21 kids were taken by the state. Now they're fighting for custody of even more surrogate-born babies*, CBS News (Jan. 13, 2026), <https://perma.cc/AB2N-T2Y6>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Katherine Long et al., *The Chinese Billionaires Having Dozens of U.S.-Born Babies Via Surrogate*, The Wall Street Journal (Dec. 13, 2025).

education company.”²¹ California’s perverse surrogacy system is child trafficking, plain and simple.

The Florida Legislature responded by enacting HB 905, which deems gestational surrogacy contracts void and unenforceable if any party is a citizen or resident of China or another foreign country of concern. Fla. Stat. § 742.15(1)(b). But according to Karen Persis, an “assisted reproductive technology attorney” in Florida, HB 905 “honestly is not really going to stop” citizens and residents of foreign countries of concern from entering into gestational surrogacy agreements with women in Florida and obtaining children born in Florida—“[t]hey’re all just going to enter into agreements [and obtain pre-birth orders] in California.”²²

If N.G. and O.A. were right about full faith and credit (they are not, *see infra* § II), the Superior Court’s Order would guarantee that outcome: It broadcasts to every surrogacy practitioner in the country that California will get the final word on parentage whenever the parties to the surrogacy contract seek a judgment there—no matter where the persons contracting for parentage, surrogate, or child live.

B. The California Order violates Baby G.’s due process rights.

“Obviously, both the child and the [adult parties]” “have a compelling interest” in the proper adjudication of parentage. *Little v. Streater*, 452 U.S. 1, 13 (1981). As California’s own appellate courts once understood: “the establishment of the parent-

²¹ *Id.*

²² Riley Phillips, *St. Augustine surrogate fights for parental rights as intended parent leaves children unclaimed for 20 months*, First Coast News, (July 15, 2026), <https://www.firstcoastnews.com/article/news/investigations/surrogate-fights-for-parental-rights-st-augustine/77-9d74ed3f-41c9-471b-a87e-9a4648c0345c>.

child relationship is the most fundamental right a child possesses . . . next to life itself.” *Ruddock v. Ohls*, 91 Cal.App.3d 271, 277–78 (Cal. Ct. App. 1979).

Children therefore have a right to procedural due process in proceedings involving “the creation of a parent-child relationship.” *Id.*; see also *State v. Santos*, 702 P.2d 1179, 1182 (Wash. 1985) (“due process protects a child’s interest in a paternity proceeding”); see also *Ferguson v. Winston*, 996 P.2d 841, 846 (Kan. Ct. App. 2000) (“It is inconceivable to us that a child would not have a due process right in the determination of his or her parentage.”). The right to procedural due process prevents States from exercising personal jurisdiction over individuals who are not “present within the territory of the forum” and lack “certain minimum contacts with it.” *Int’l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945).

The Superior Court determined it had personal jurisdiction based solely on the consent of N.G., O.A., and M.W., ignoring that children also have due process rights in parentage proceedings. Baby’s G.’s interest in procedural due process was extraordinarily compelling—as the Superior Court acknowledged, his *survival* potentially depended on the outcome of the parentage proceedings. Appl. 8. Baby G. was not physically present in California during the California proceedings. And even if N.G., O.A., and M.W. had all consented to California’s jurisdiction, that consent alone would not have created minimum contacts between California and Baby G. The California Order therefore violated Baby G.’s right to procedural due process.

II. The California Order is not entitled to full faith and credit.

Even if the Superior Court had properly exercised personal jurisdiction over M.W. and Baby G., the California Order would not be entitled to full faith and credit. Article IV, Section 1 of the United States Constitution states: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”

Pursuant to this authority, Congress enacted 28 U.S.C. § 1738A, known as the Parental Kidnapping Prevention Act (PKPA). The PKPA requires “[t]he appropriate authorities of every State [to] enforce according to its terms . . . any custody determination . . . made consistently with the provisions of [the PKPA] by a court of another State.” 28 U.S.C. § 1738A(a). The PKPA defines “custody determination” as “a judgment, decree, or other order of a court providing for the custody of a child.” 28 U.S.C. § 1738A(b)(3). For a decree to be consistent with the provisions of the PKPA, the issuing state “must have jurisdiction under its own local law and one of five conditions . . . must be met.” *Thompson v. Thompson*, 484 U.S. 174, 176–77 (1988). “Briefly put,” the PKPA authorizes a state court to issue a custody determination “if the child’s home is or recently has been in the State, if the child has no home State and it would be in the child’s best interest for the State to assume jurisdiction, or if the child is present in the State and has been abandoned or abused.” *Id.* (summarizing 28 U.S.C. § 1738A(c)(2)).

The California Order is “a judgment, decree, or other order of a court providing for the custody of a child.” 28 U.S.C. § 1738A(b)(3); Appl. 8. The California Order is

therefore a “custody determination” for purposes of the PKPA. However, the California Order was not “made consistently with the provisions of th[e] [PKPA]” because it does not meet any of the five jurisdictional criteria of 28 U.S.C. § 1738A(c)(2)(A) through (E):

(A) California was not Baby G.’s home state when the California proceedings commenced. “[H]ome 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.” 28 U.S.C. § 1738A(b)(4). The California proceedings commenced prior to Baby G.’s birth. As of the commencement date, Baby G. had not “lived with” anyone “from birth.” Therefore, Baby G. had no home state when the California proceedings commenced. *See, e.g., Gray v. Gray*, 139 So. 3d 802, 806 (Ala. Civ. App. 2013) (“an unborn child cannot have a home state” for purposes of the UCCJEA because he or she “has not ‘lived from birth’ in any state”); *In re Marriage of Tonnessen*, 941 P.2d 237, 239 (Ariz. Ct. App. 1997) (the UCCJEA “does not contemplate the in utero period of time in determining domicile or home state; it contemplates a postnatal child”); *Thompson*, 484 U.S. at 185 (explaining that the PKPA’s jurisdictional criteria are “derived generally from the UCCJA”).

(B) No other State had jurisdiction under subparagraph (A) when the California proceedings commenced. However, it was not in Baby G.’s best interest that a California court assume jurisdiction because California did not have a

significant connection with Baby G. *See Arkansas Dep’t of Hum. Servs. v. Cox*, 82 S.W.3d 806, 813 (Ark. 2002) (the place of conception is “of no impact in the analysis of jurisdiction” under the UCCJEA).

(C) Baby G. was not physically present in California when the California proceedings commenced—he was in Alaska, in M.W.’s womb.

(D) Alaska had jurisdiction under subparagraph (B). It was in Baby G.’s best interest that an Alaska court assume jurisdiction because Baby G.’s only significant connection was with Alaska: From conception, Baby G. was gestated by M.W. and monitored by doctors in Alaska. Accordingly, substantial evidence concerning Baby G.’s present care was available in Alaska when the California proceedings commenced. M.W.—one of the contestants in the California proceedings—also had a significant connection with Alaska: She was a resident and citizen of Alaska. And no Alaska court had declined to exercise jurisdiction on the ground that California was the more appropriate forum to determine the custody or visitation of Baby G.

(E) The California court did not have continuing jurisdiction pursuant to subsection (d) of the PKPA because it had not made a previous child custody or visitation determination for Baby G.

Because the California Order is a “custody determination” that was not “made consistently” with the PKPA, the United States Constitution does not require Texas (or any other state) to give the California Order full faith and credit. 28 U.S.C. § 1738A(a); *accord V.L. v. E.L.*, 577 U.S. 404, 407 (2016) (“[B]efore a court is bound

by a judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree." (quotation omitted)).²³

III. A child's custody may not be fixed by contract—affording no inquiry into his best interests—without offending the Equal Protection Clause.

A child's legal protection should not turn on the circumstances of his birth. This Court struck down the disabilities the law once visited on children born outside marriage because "visiting this condemnation on the head of an infant" for the conduct of others "is illogical and unjust"; and "contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing"—for "no child is responsible for his birth." *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972); *see also Levy v. Louisiana*, 391 U.S. 68, 70 (1968) (rejecting any notion that illegitimate children are "nonpersons" ineligible for equal protection because "[t]hey are humans, live, and have their being"); *Trimble v. Gordon*, 430 U.S. 762, 769–70, 772, 776 (1977) (invalidating an Illinois probate law that violated the Equal Protection Clause for its discrimination against illegitimate children); *Clark v. Jeter*, 486 U.S. 456, 461, 465 (1988) (striking down a Pennsylvania paternity law that imposed an unreasonable statute of limitations on paternity actions under the Equal Protection Clause). The throughline of these cases is that

²³ The Georgia decree at issue in *V.L. v. E.L.* was made consistently with the provisions of the PKPA. The couple and child resided at a rental home in Georgia for six months prior to initiating adoption proceedings in order to establish Georgia as the child's home state under the PKPA and UCCJEA. *V.L.*, 577 U.S. at 405 ("To facilitate the adoption, the couple rented a house in Alpharetta, Georgia."); *Ex parte E.L.*, 208 So. 3d 1102, 1103 (Ala. 2015) (explaining that an attorney told the couple that they "needed to be . . . resident[s] of the state of Georgia, specifically Fulton County, for at least six (6) months to petition for adoption in Fulton County").

states may not sort children into those whose interests it will protect and those whose interests it will disregard based on nothing the child did.

Yet that is what a pre-birth surrogacy judgment does. So far as Amici States are aware, children whose parentage is fixed by such contract-backed judgments are the only class of children in American law whose parentage and custody are settled entirely by private agreement—for consideration, before birth, with no inquiry into the child’s best interests. *Cf. Johnson v. Calvert*, 5 Cal. 4th 84, 118 (1993) (Kennard, J., dissenting) (“The problem with the majority’s rule of intent[-based parentage] is that application of this inflexible rule will not serve the child’s best interests in every case.”); *C.M. v. M.C.*, 7 Cal. App. 5th 1188, 1210–11 (2017) (refusing to require a “best interest” determination as “[a] conclusion that children born to surrogates must be placed by the state using the *same* criteria that apply to adoptions or custody disputes would certainly affect—and perhaps eliminate—the willingness of intended parents to have children through surrogacy arrangements” and, more broadly, undermine California’s gestational-surrogacy statute—the same one at issue here (emphasis added)).

In every other setting in which the law assigns a child from one custodian to another—adoption, termination, custody between divorcing parents, guardianship—the child’s welfare is the controlling consideration, and no agreement between adults can foreclose the court’s independent assessment of it. *See Ford v. Ford*, 371 U.S. 187, 193–94 (1962) (observing that “Virginia law, like that of probably every State in the Union, requires the court to put the child’s interest first” and that “custody and

welfare of children are not the subject of barter” (quoting *Buchanan v. Buchanan*, 197 S.E. 426, 434 (Va. 1938)); *cf.*, *United States v. King*, 840 F.2d 1276, 1283 (6th Cir. 1988) (an agreement “affecting [child] custody [is] invalid unless ‘consistent with best interest of child’” (quoting Restatement (Second) of Torts § 194 (1981))).

Equal protection asks not whether a favored outcome usually follows, but whether the State may draw certain lines among people at all: here, a category of children, defined solely by the manner of their conception and birth, whose welfare the law refuses to consider. When the arrangement fails—when the person contracting for parentage proves unfit, or unwilling, or the parties’ intentions for the child’s very existence diverge—the child conceived pursuant to the contract has no best-interest hearing to protect him. Under California law, a child born pursuant to a surrogacy contract—unlike those naturally conceived—is met by a court asking only what the contract says, not what is best for the child. That is by design. *C.M.*, 7 Cal. App. 5th at 1210–11. The Fourteenth Amendment does not permit that sort of unequal treatment, and the Court should not construct a body of full-faith-and-credit law that assumes it away. *See Ford*, 371 U.S. at 193 (declining to enforce a child-custody contract between parents under the Full Faith and Credit Clause because, among other things, it was inconsistent with the child’s best interests).

IV. A child’s custody may not be fixed by contract—affording no inquiry into his best interests—without offending the Thirteenth Amendment.

The Thirteenth Amendment did not balance the ownership of human beings against competing interests. It ends, full stop, the treatment of a human being as the object of a property right held by another. U.S. Const. amend. XIII, § 1. Even *Plessy*,

in its shameful attempt to cabin the Thirteenth Amendment, conceded that the amendment prevents “ownership of mankind as a chattel.” *Plessy v. Ferguson*, 163 U.S. 537, 542 (1896).

That the arrangement here is dressed as a services contract does not change what it does with respect to the child. A judgment of the kind California entered recognizes—and, if respondents are right, commands every other State to recognize—a legal interest in a human being that is created by agreement, purchased for consideration, fixed before birth, and enforced afterward by the physical transfer of a child. Whatever else it may be called, that is an ownership interest asserted over the child by contract: one that includes provisions over whether the child would be permitted to make it to birth.

To be clear, Amici States do not contend that this recapitulates the whole of the antebellum institution. They do, however, contend that gestational surrogacy contracts are typically premised on the central feature the Thirteenth Amendment was ratified to forbid: property in man. See Anthony Jose Sirven, *No Property in Man: A Fading Principle*, 29 Tex. Rev. L. & Pol. 211, 220–25 (2025) (examining the property-in-man foundations of surrogacy agreements including when exercised as to “already-born” children).²⁴

²⁴ See also Carter Dillard, *Future Children As Property*, 17 Duke J. Gender L. & Pol’y 47, 49, 54 (2010) (arguing that IVF, surrogacy, and other agreements . . . run afoul of the “Reconstruction Era amendments” given they “forbid[] reading the Constitution (and most certainly [the Thirteenth and Fourteenth] amendments) as granting a fundamental right to one class of persons to treat another class of persons (even temporally disadvantaged people like prospective children) as property”); cf. Barry E. Adler, *Property Rights in Children*, 95 Notre Dame L. Rev. 1629, 1640 (2020) (arguing that once a surrogate is “implanted with an embryo, she becomes, in essence,

Lest it be forgotten, American law once recognized precisely such interests in human life, including over unborn children. Under the doctrine of *partus sequitur ventrem* (“that which is born follows the womb”), for instance, children of enslaved women were deemed to belong to their owners from conception—with courts enforcing the resulting interests through ordinary instruments of property, like wills, deeds, and mortgages. *See, e.g., Banks’ Adm’r v. Marksberry*, 13 Ky. 275, 280 (1823) (reversing the trial court’s refusal to enforce a deed as to “future increase of the slave, Pen,” and holding that “[t]he owner of a female slave may, by deed, give all the children which she shall *thereafter* have” (emphasis added)); Harriet Beecher Stowe, *A Key to Uncle Tom’s Cabin* 76 (John P. Jewett & Co. 1853) (“If the reader will proceed, he will find also this principle applied with equal clearness to the hiring, selling, mortgaging of **unborn** children.” (emphasis added)). Yet it is exactly *that* practice—property claims in children, including those not yet born—that the Thirteenth Amendment swept away.

For this reason, courts applying the Thirteenth Amendment have read it to reach transfers of children, holding that it “prohibits a family [from] selling its child” because “[o]ur law views the child as an individual with the dignity and humanity of other individuals, not as property.” *King*, 840 F.2d at 1283 (relying in part on *Ford*, 371 U.S. at 193, as a full-faith-and-credit case refusing to enforce a custody contract). Judges confronting that same tension in embryo-related and surrogacy disputes have

a bailee,” who would thus be “contractually obligated to relinquish the child, once born, . . . [as] property not her own”).

called out what the property framework portends. *Cf. McQueen v. Gadberry*, 507 S.W.3d 127, 158 (Mo. Ct. App. 2016) (Dowd, J., dissenting) (“[T]he Thirteenth Amendment removes all human beings from the category of property.”); *Johnson*, 5 Cal. 4th at 119 n.4 (Kennard, J., dissenting) (“It is questionable whether the parentage of children is a proper subject of contract. But even assuming that a parent could contract away parental rights to a child—for instance, by selling the child into slavery—this would not logically amount to a binding ‘concession’ that such a sale would be in the child’s best interests.”); *Matter of S.D.S.*, 371 Or. 573, 639–40 (2023) (Bushong, J., dissenting) (criticizing the notion that adults can “‘contract into’ parental rights without . . . [a]determination of what is in the child’s best interests.”).

Even courts that have sustained commercial regulation in adjacent contexts treat as settled the premise on which Amici States rely: “The Thirteenth Amendment to the U.S. Constitution enshrines the principle that people may not be bought and sold as commodities.” *Coyote Publ’g, Inc. v. Miller*, 598 F.3d 592, 603 (9th Cir. 2010) (citing both the “[p]ayment for consent to adoption of a child” and “surrogacy” as examples of human commodification); *see also United States v. Hatch*, 722 F.3d 1193, 1198 (10th Cir. 2013) (canvassing, as among the incidents of slavery as they were understood at ratification, a slaveholder’s “complete control over . . . their slaves’ children”).

This case does not require resolution of this quandary today. But the questions of whether contracts for surrogate children are enforceable under the Thirteenth Amendment, and whether out-of-state orders enforcing contracts for surrogate

children are entitled to full faith and credit, are questions Amici States' courts are already asking—and ones this Court will need to answer in time.

CONCLUSION

California's extraterritorial application of its race-to-the-bottom surrogacy laws undermines federalism and poses a dire threat to women and children across the country. Eventually, this practice will be put down by the Due Process Clause, the Full Faith and Credit Clause, the Equal Protection Clause, and the Thirteenth Amendment. For today, it is enough for this Court to take up the narrow question presented by the application and stay or reverse the California Order.

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