The Extent of Congress’ Power Under the Full Faith and Credit Clause

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NOTES

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I. INTRODUCTION

Lord, what fools these mortals be!

William Shakespeare
A Midsummer Night’s Dream

When substituting “the 104th Congress” for the words “these mortals,” this undying utterance by Puck the mischievous fairy\(^1\) takes on a contemporary and very serious meaning. Although one can apply the above characterization to a large number of the 104th Congress’ undertakings, the specific action referred to here is the ironically titled “Defense of Marriage Act,”\(^2\) (“DOMA”). This bill (1) denies federal recognition of same-sex marriages and (2) allows states to deny recognition of same-sex marriages legally performed in sister states.

Although proponents of DOMA claimed that the impetus behind the legislation was the need to reaffirm the status of traditional marriage being attacked by marauding herds of predatory homosexuals,\(^3\) the reality speaks

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1. The Lord referred to in the quote is not the Almighty, but Oberon, the proud Fairy King.


3. See, e.g., Joe Carroll, Senate in Double Blow to Gay Rights, IRISH TIMES, Sept. 12, 1996, at 10 (quoting Sen. Robert Byrd: “Out of such relationships no children can result. Out of such relationships emotional bonding oftentimes does not take place. And many such relationships do not result in the establishment of families as society universally interprets that term . . . .”); Cheryl Wetzstein, Senate Rejects Gay ’Marriage’ 85-14; Job-Bias Bill Defeated by One Vote, WASH. TIMES, Sept. 11, 1996, at A1 (quoting Sen. Daniel Coats: “The breakdown of traditional marriage is our central social crisis, . . . [o]ur urgent responsibility is to nurture and strengthen that institution, not undermine it with trendy moral relativism.”).

These sort of shrill squeals reached hysterical proportions:

[T]he cross hairs of the homosexual agenda are not placed on my family or my marriage.

They have a much larger target—the institution of marriage itself. If they succeed in redefining marriage to mean anything—two men, two women, three people, one adult and one child, etc. Ultimately that definition means nothing.

otherwise. In truth, DOMA was the crying call of the religious right who were watching the 1996 presidential election slip out of their claws. In a desperate attempt to create a wedge issue, and indulging in one of the

People lining up against this piece of legislation asserted the deception of the basic premise underlying the act: “The idea that same-sex marriage somehow threatens the institution of heterosexual marriage is . . . baseless.” Rita M. Kissen, Editorial, Gay Marriage Celebrates Love, and Isn’t a Threat to Anything; The ‘Defense of Marriage’ Act Responds to a Baseless Fear, MAINE VOICES, Sept. 27, 1996, at 9A.

There were also calls to return to the real issue of faltering marriage:

The truth that we know . . . is that marriages fall apart in the United States, not because men and women are under siege by a mass movement of men marrying men or women marrying women. Marriages fall apart because men and women don’t stay married. The real threat comes from the attitudes of many men and women married to each other and from the relationships of people in the opposite sex, not the same sex. Yet, this legislation is directed at something that has not happened and which needs no Federal intervention.


Sen. Barbara Boxer noted, with subtle irony, that the sponsor of the bill in the House of Representatives, Bob Barr, had been married three times! She then added, “I don’t personally believe if the Defense of Marriage Act was the law, it would have made a difference in his marriages.” Steve Adubato, Jr., Frightened Senators Caved in to Deny Gay Rights, THE RECORD (New Jersey), Sept. 15, 1996, at 5 (quoting Sen. Boxer).

4. See, e.g., 142 CONG. REC. S10,101-02 (daily ed. Sept. 10, 1996) (statement of Sen. Kennedy: “We all know what is going on here. I regard this bill as a mean-spirited form of Republican legislative gay-bashing cynically calculated to try to inflame the public eight weeks before the November Five election.” The distinguished Senator added: “This bill is designed to divide Americans, to drive a wedge between one group of citizens and the rest of the country, solely for partisan advantage.” Sen. Kennedy concluded that “[i]t is a cynical election year gimmick, and it deserves to be rejected by all who deplore the intolerance and incivility that have come to dominate our national debate.”); 142 CONG. REC. S10,104 (daily ed. Sept. 10, 1996) (statement by Sen. Moseley-Braun: “[T]he Defense of Marriage Act is all about the politics of fear and division and about inciting people in an area that is admittedly controversial.”); 142 CONG. REC. H10,113 (daily ed. Sept. 10, 1996) (statement of Sen. Boxer: “So, to me, this is ugly politics. To me, it is about dividing us instead of bringing us together. To me, it is about scapegoating. To me, it is a diversion from what we should be doing.”); Editorial, Constitution-Bashing, N.Y. TIMES, July 20, 1996, at 18 (“But in their haste to concoct an election-year wedge issue, lawmakers of both parties . . . rushed right past [the Full Faith and Credit Clause].”); Hillary S. Hardison, Gays Face Job Bias, NEW ORLEANS TIMES-PICAYUNE, July 9, 1996, at B4 (“The so-called Defense of Marriage Act . . . is nothing but election-year gay bashing.”); Bob Hughes, Letter to Editor, House Panders With Same-Sex Vote, ST. PETERSBURG TIMES, July 25, 1996, at 15A (“The cynical actions of members of the House of Representatives in their search of votes by cheap election year pandering continue to plumb new laws of civic irresponsibility.”); Kissen, supra note 3, at 9A (“The Senate vote on DOMA [is] a mean-spirited gesture in a season of political expediency . . . .”); Todd S. Purdum, President Would Sign Legislation Striking at Homosexual Marriages, N.Y. TIMES, May 23, 1996, at A1 (“The announcement [that President Clinton intended to sign the bill] intended to remove any potential controversy with Republicans over a divisive social issue . . . .”)

The article further noted that “[s]ome Republicans have urged Mr. Dole to make the topic a major campaign issue . . . .”); Eric Schmitt, Anti-Discrimination Proposal Delays Senate Vote on Bill Opposing Same-Sex Marriage, N.Y. TIMES, Sept. 6, 1996, at A24 (“President Clinton has angered gay groups by promising to sign the bill, but this has denied Bob Dole and other Republican candidates a campaign issue.”); Crossfire (CNN television broadcast, May 8, 1996) (“[The Republicans are] using this issue in an election—as an election-year baseball bat to bash gay Americans and score political points.” Furthermore, “[t]his whole flap . . . is being deliberately orchestrated by the extreme religious right to hurt Democrats by making homosexuality an issue in this year’s presidential and congres-
lowest forms of scapegoat politics (similar in motivation to Proposition 209 in California), the 104th Congress succeeded in steamrolling this act into law. The Republican majority hoped that President Clinton would veto the bill so that it would become an election issue in which gay-bashing would have been prominently featured as an effective vote-getting device. Instead, President Clinton quickly signed the bill (in the middle of the night) and the issue evaporated from the political arena, leaving only its foul smell on the federal statute books.

Because the federal government is one of limited powers, Congress had to find a hook on which to hang its authority to pass such a statute. It conveniently latched onto the Full Faith and Credit Clause of the Constitution and in particular, to the second sentence of the clause. In hearings on DOMA, Congress was told by noteworthy constitutional scholars that it almost certainly did not possess the power to enact the statute because of lack of precedent in the area and well-established federalism principles recently reiterated by the Supreme Court. Congress also heard in these hearings that the substantive portion of the statute was constitutionally dubious and likely violative of the Due Process and Equal Protection

5. This proposition eliminated affirmative action programs across the entire state.
6. This is the typical election ploy of Sen. Jesse Helms. See Kevin Sack, Gay Issues Return in Rematch for Senate Seat, N.Y. Times, Oct. 7, 1996, at B6 (stating that "[j]ust as he did six years ago, Senator Jesse Helms of North Carolina has mounted an advertising blitz this week that attempts to link his opponent, former Mayor Harvey Gantt of Charlotte, to a variety of homosexual causes."). The article goes on to point out that "[t]his year . . . gay issues are front and center in Mr. Helms’s advertising campaign against Mr. Gantt. [Helms] began broadcasting two separate commercials last week that depict Mr. Gantt as a supporter of same-sex marriages . . . "). Helms’ tactics worked: He was reelected to a fifth term in office.
8. “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.” U.S. CONST. art. IV, § 1.
Clauses of the Fifth and Fourteenth Amendments. Nevertheless, the so-called “Conservative Congress,” readily gutting its “deeply held” states’ rights approach to government regulation, and subverting its supposed devotion to federalism, handily passed the statute.

This Note argues that Congress lacks the power under the Full Faith and Credit Clause to pass such a statute. Part II undertakes a historical look at the origins of the clause’s terminology, tracing the genesis of these terms from colonial times, through the Continental Congress till the Constitutional Convention, thus giving a perspective on what the framers thought the clause meant. Part III examines the goals behind the clause that the Supreme Court and numerous scholars have articulated. This section also considers how well the current status of the law in this area serves these goals. Part IV examines the normative issue of what the appropriate role for Congress is within the full faith and credit framework by looking at precedent, congressional action, and Supreme Court dicta. Part V presents DOMA and argues that in light of the precedent outlined in the preceding sections, the Full Faith and Credit Clause does not grant Congress the right to declare that a certain class of acts, records, or judicial proceedings shall have “no effect.”

DOMA probably violates the Due Process Clause and almost certainly violates the Equal Protection Clause and the Tenth Amendment in light of recent constitutional developments in these fields. However, there is no attempt to discuss these topics in this Note. Rather, this Note

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12. The irony of conservative states’ rights legislators purportedly against “Big Government” passing all-intrusive statutes was pointed out by commentators. See, e.g., 142 CONG. REC. S10,105 (daily ed. Sept. 10, 1996) (statement of Sen. Moseley-Braun: “Indeed, this legislation represents just the opposite of smaller Government. It represents an intrusion by the Federal Government in areas that we have never trod before.”); 142 CONG. REC. S10,076 (daily ed. Sept. 9, 1996) (statement of Rabbi David Saperstein, Director and Counsel of the Religious Action Center of Reform Judaism); Charles Levendosky, Editorial, Congressional Intrusion Into Marriage Just Gets Domus and Doma, NEWS AND RECORD (Greensboro), May 20, 1996, at A6 (“What happened to the GOP motto: ‘Let’s get the government off our backs’? Perhaps, we missed the rest of the motto: ‘... and put it in our bedrooms.’

13. The vote was 85-14 in the Senate. See 142 CONG. REC. S10,129 (daily ed. Sept. 10, 1996). In the House the vote was 342-67. See 142 CONG. REC. H7505-06 (daily ed. July 12, 1996).
14. See United States v. Virginia, 116 S. Ct. 2264 (1996) (stating that in cases of gender discrimination the government has the burden of proof to show that the discrimination is substantially related to an important state interest); Romer v. Evans, 116 S. Ct. 1620 (1996) (affirming that discrimination based on sexual orientation is not rationally related to a legitimate governmental interest if motivated solely by animus towards homosexuals and therefore impermissible for the state to so discriminate).
15. The normative issues of whether states should permit same-sex marriages and whether states should recognize same-sex marriages have already produced a great amount of high quality lit-
focuses solely on congressional authority and the Full Faith and Credit Clause.

II. ORIGINS OF THE FULL FAITH AND CREDIT CLAUSE

A. ORIGINS OF THE TERMS IN THE COLONIAL ERA

The terms "faith" and "credit" or "credence" have a long, documented history that began in the Middle Ages. These terms were consistently present in diplomatic Letters of Credence, letters that emissaries carried authorizing the carrier to speak and act on behalf of the sender. Their scope was to prove to the recipient that the emissary was indeed who he purported to be and that his actions were accountable directly to the issuer.
of the letter.

More relevant to contemporary application of these terms was the instruction given concerning the authenticity and authority of notarial acts. In a Papal Bull of May 4, 1493, Pope Alexander VI instructed that the copies of the bull, when exhibited both in court and out of court, were to be given as much credit as the original. Thus, the sphere of law in which full faith and credit operates today was beginning to take shape, and the language used in these documents served as a mechanism to provide proof of the authenticity of the document. Evidentiary concerns, therefore, were the main thrust that prompted the need for this terminology.

It was within an ecclesiastical domain that these words primarily appeared in the English courtroom, and there they served as a link between the religious and secular courts. The generic issue of the time was what legal implications ecclesiastical courts' decisions would have at common law. The invocation by the judges that full faith and credit should be given to these ecclesiastical decisions was the preferred way of verbalizing the fact that these decisions had legal effect at common law. This practice of giving legal effect to what were, for all intents and purposes, foreign judgments, soon spread beyond the sphere of ecclesiastical court decisions to encompass admiralty court rulings and eventually nondomestic (that is, non-English) judgments.

Judges who rendered the decisions in which the court gave legal effect to foreign judgments articulated the purpose behind this practice. Although initially the foreign decisions were only treated as prima facie evidence and always subject to rebuttal, as time passed the English courts began giving these decisions conclusive weight. The reasoning behind the English courts in deferring judgment to another court outside its own jurisdiction was a combination of legal theory and political realism. The legal aspect concerned itself with the fact that "confusion would follow in Christendom" if foreign countries refused to "give . . . credit to [English]

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18. 2 JOHN FISKE, DISCOVERY OF AMERICA app. B (1892). It is also noteworthy that the English ecclesiastical authorities picked up on exactly the same language in exactly the same notarial context. See Nadelmann, supra note 16, at 48.
19. The typical formula used was as follows: "We must give faith and credit to [the ecclesiastical court] proceedings, and presume that they are according to their law . . . ." Grove v. Elliott, 86 Eng. Rep. 296, 298 (K.B. 1606).
20. The word "foreign" is used in its "conflicts of law" sense and therefore should be taken to mean "not of the forum's jurisdiction."
sentences." 22 Thus English courts willingly subjected themselves to the laws and policies of foreign countries by rationalizing this acquiescence as being to "the law of nations." 23 The political reasons probably stemmed from England's desire to avoid irritating its allies, especially since allegiances were hard to come by and easy to break. 24 Therefore, the words "full faith and credit" moved beyond meaning a narrow corroboration of identity to become synonymous with strong evidentiary power.

It is therefore no surprise that these words surfaced in the Colonies as part of the evidence process inside the courtroom. Historians have traced the principle reason why the words "full faith and credit" became standard legal phraseology in America to a renowned treatise of the day on evidence. 25 Several scholars of the time and of today have recognized the treatise's prominence in the legal discourse taking place inside and outside the courtroom. 26 The phrase "full faith and credit" appeared in several places throughout the work and was woven together with the problem of how much weight courts were supposed to give to evidence that could not be brought into the courtroom. 27 Gilbert focused his discourse on evidence generically before addressing the specific issue of how much weight to accord to written copies of records. 28 Again, as was the case for the Papal Bull, the emphasis of the language was on the proof that courts were to give to the written documentation, with Gilbert adding the elements that the context was confined to court activities only and that certain forms of

23. Id.
24. A Danish decree was thus enforced as a permanent injunction within the borders of England because the case "was a Matter of State, and concerned the Justice of another King in Amity with the King of England, and that what was done there was according to their Law." Bartolp v. Bamfield, 23 Eng. Rep. 102, 103 (Ch. 1674).
26. Within the academic sphere, the treatise acquired such respect that it triggered lecturers to utter "Lord Chief Baron Gilbert, the most approved, and deservedly the most approved writer on this part of the law. . . ." 1 Works of James Wilson 245 (James De Witt Andrews ed., 1896). Within the courtroom, the work seems to have been consistently referred to in cases where evidence was the main issue of the case. See Josiah Quincy, Jr., Reports of Cases Argued and Adjudged in the Superior Court of Massachusetts Bay Between 1761 and 1772 (Samuel M. Quincy ed., 1865). Nadelmann points to specific cases in Massachusetts, Maryland, and Connecticut where reference to Gilbert's work occurred. See Nadelmann, supra note 16, at 41-42 nn.40-42.
27. When discussing how to arrive at a judgment based on what someone else had reported he noted that "there is that faith and credit to be given to the honesty and integrity of credible and disinterested witnesses." Gilbert, supra note 25, at 4.
28. He distinguished between written copies under seal and without seal to stress that "[u]nder the Broad Seal such exemplifications are of themselves records of the greatest validity, and to which the jury ought to give credit, under the penalty of attaint; for there is more faith due to the most solemn attestations of public authority than any other transactions whatever. . . ." Id. at 14.
records (under seal) carried more faith and credit than others (not under seal).

The main difference in the Colonies from the English courts was the application of the evidentiary doctrine. The American Colonies seemed reluctant even to acknowledge court decrees and statutory enactments of foreign jurisdictions, let alone to give these conclusionary effect.²⁹ This was probably a consequence of the fact that a pervasive thought of independence existed in the American Colonies and the Colonies may have regarded subjecting themselves to foreign decrees as a way of relinquishing part of that sovereignty.

However, prior to the appearance of the “full faith and credit” language, several colonies in the mid-seventeenth century adopted statutes that functioned in a way that gave some legal implication to foreign decrees. Beginning in 1650, Connecticut passed a requirement that courts should give foreign judgments of the other colonies only “due respect” and account for “good evidence” so long as the foreign colony had a similar requirement for Connecticut judgments.³⁰ In 1715, Maryland passed a broader statute in that the judgments covered were neither limited to the colonies nor was there a reciprocity requirement attached to such recognition.³¹ In 1731 South Carolina passed another statute, more limited in scope, as it pertained to English or Colonial documents only and merely enunciated how these documents were to be proved authentic in court.³² It seems that the only reason behind the passage of such statutes was the practical concern that foreign judgments had begun to create problems in the courts of these jurisdictions.³³

The last colonial statute, widely regarded by scholars³⁴ as the most important and influential one in shaping the minds of the participants of

²⁹. See George P. Costigan, Jr., The History of the Adoption of Section 1 of Article IV of the United States Constitution and a Consideration of the Effect on Judgments of That Section and of Federal Legislation, 4 Colum. L. Rev. 470 (1904).


³¹. See id.

³². See id.

³³. See id.

³⁴. See, e.g., Robert E. Childs, Full Faith and Credit: The Lawyer’s Clause, 36 Ky. L.J. 30, 39 (1947); Costigan, supra note 29, at 471; Nadelman, supra note 16, at 37; Sumner, supra note 21, at 228. A hypothesis has been made that rather than the Massachusetts statute, it was the trial of Elizabeth Duchess-Dowager of Kingston for bigamy that planted the term “full faith and credit” in the minds of the Continental Congress. This trial was heavily publicized and counsel for the defendant, James Wallace, argued that the dowager’s first marriage had been declared null by an ecclesiastical court and therefore the House of Lords had to give that judgment “faith and credit.” Nadelman, supra note 16, at 46.
the Continental Congress,\textsuperscript{35} was a Massachusetts statute of 1774.\textsuperscript{36} This statute, like its predecessors in the other colonies, was intended to prevent the injustice of having prior judgments disregarded in later judicial proceedings.\textsuperscript{37} Furthermore, its layout is similar to the familiar construction of today’s Full Faith and Credit Clause, even though this statute still makes no reference to that actual terminology.\textsuperscript{38}

By the time the Continental Congress met, the foundations for the Full Faith and Credit Clause had been laid. A basic doctrine of fairness towards people who had been granted judgments was coupled with the practical necessity of having to deal with these foreign decrees in the forum colony. The only element that remained to be fulfilled was the integration of the above legal concerns with the language that Gilbert and the English courts espoused. When this was achieved, as we shall see, “full faith and credit” took on a much broader and significant purpose.

\section*{B. Full Faith and Credit in the Continental Congress}

The first time the explicit phrase “full faith and credit” appeared in a major American document was in the Articles of Confederation.\textsuperscript{39} The genesis of this article was somewhat peculiar and, as a result, the intent of its drafters remains clouded in obscurity. In the original draft of the Articles in 1776 there was no Full Faith and Credit Clause.\textsuperscript{40} The Continental Congress, a year later, appointed a committee to report back on the issue of whether any new proposals should be added to the Articles. This committee, a day later, came forth with a list of seven new articles, one of which

\begin{itemize}
  \item \textsuperscript{35} The Continental Congress was the body of lawmakers that began meeting in 1774 and was in charge of drafting the Articles of Confederation.
  \item \textsuperscript{36} See Nadelmann, supra note 16, at 40 (quoting statute).
  \item \textsuperscript{37} The preamble to the statute lays this out:
  Whereas it frequently happens that persons against whom judgments of court are recovered in the neighboring governments remove with their effects into this province without having paid or satisfied such judgment, and, upon actions of debt upon such judgments brought in the executive courts in this Province, the record of such judgments cannot be removed into the said courts in this Province, and it has been a doubt whether, by law, such judgments can be admitted as sufficient evidence of such judgments, whereby honest creditors are often defrauded of their just demands by negligent and evil-minded debtors; FOR the prevention whereof; [the act follows].
  \item \textsuperscript{38} Section 1 of the act says that it shall be “proper” to use a prior judgment in a case of debt recovery, while section 2 of the same indicates that such a judgment shall provide “good and sufficient evidence” and have “the same effect and operation” as the original judgment. Id.
  \item \textsuperscript{39} “Full faith and credit shall be given in each of the states to the records, acts and judicial proceedings of the courts and magistrates of every other state.” ARTICLES OF CONFEDERATION art. 4 (1777).
  \item \textsuperscript{40} See 5 JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789, at 674 (Worthington Chauncey Ford ed., 1906).
\end{itemize}
was the Full Faith and Credit Clause.\textsuperscript{41} The following day, the article was adopted in its shorter form without any debate. An amendment that included a bonding clause and a requirement of notice was rejected.\textsuperscript{42}

Because of the lack of debate surrounding the incorporation of this new article and the speed with which it was adopted, the intended purpose behind its enactment remains speculative. The only verifiable clues that exist are the general principles behind the creation of the Articles of Confederation as a whole.\textsuperscript{43}

The main driving force behind the adoption of the Articles of Confederation seems to have been a concerted effort to create a more intimate relationship between the different states. The Full Faith and Credit Clause fits into this frame of reasoning by contributing to ending the uncertainty that existed when a party sought to give effect to a foreign judgment in different states. Thus, the level of foreignness was reduced as to the judgments of the different states so that the Articles did manage to achieve a greater degree of closeness among the states.

However, problems still existed. First, courts of the Confederation did not interpret the article in a uniform way so that each state was free to apply the provision as it saw fit. Second, the states were not mandated to comply with this (or any other) article and thus could ignore it in its entirety. Third, the provision was limited to court judgments; hence foreign statutes were still at the complete mercy of the forum state. Fourth, this pseudo-full-faith-and-credit clause did not favor sister states over international jurisdictions but merely codified recognized principles of international law.\textsuperscript{44} Thus, as most of the limited number of cases that interpret this article demonstrate, the Full Faith and Credit Clause, when applied,

\textsuperscript{41} The proposal read: That full Faith and Credit shall be given in each of these States to the Records, Acts, and Judicial Proceedings of the Courts and Magistrates of every other State, and that an Action of Debt may lie in the Court of Law in any State for the Recovery of a Debt due on Judgment of any Court in any other State; provided the Judgment Creditor gives sufficient Bond with Sureties before Said Court before whom Action is brought to respond in Damages to the Adverse Party in Case the original Judgment Should be afterwards reversed and Set aside. JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789, at 887 (Worthington Chauncey Ford ed., 1907).

\textsuperscript{42} Id. at 889. See also Max Radin, The Authenticated Full Faith and Credit Clause: Its History, 39 ILL. L. REV. 1, 4 (1944).

\textsuperscript{43} The rejection of the proposed amendment is probably of little significance to this issue. There was a general pattern in the Continental Congress, as well as in the later Constitutional Convention, to reduce the amount of language adopted to the bare minimum. This experience with the 1774 Massachusetts statute, a very intricate and confusing law, probably influenced the framers of the Articles into concluding that only the first part of the Full Faith and Credit Clause was necessary to achieve its goals.

\textsuperscript{44} For a detailed explanation of how the problems arose, see Sumner, supra note 21, at 230.
merely codified previous American common law into giving foreign judgments only prima facie evidentiary value, subject to rebuttal and vacation by the forum state.\textsuperscript{45} It is with this background of fragmentation and disunity that the Constitutional Convention reconsidered this article and substantially strengthened its scope and application.

C. THE CONSTITUTIONAL CONVENTION DEBATE

Unlike the Continental Congress, the Constitutional Convention provides several indications as to what the framers intended when they adopted the Full Faith and Credit Clause of the Constitution as it appears today. The issue was debated, although not as heavily and vigorously as other portions of the document, and the process that led to the language in its final form sheds light on the article’s scope and purpose.

The draft of the Constitution that the Committee of Detail presented to the Constitutional Convention on August 6, 1787, contained a “full faith” clause that read: “Full Faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the Courts and Magistrates of every other State.”\textsuperscript{46} This wording was almost identical to that used in the Articles of Confederation, and, as has been noted above, this article only gave foreign judgments some evidentiary weight. The speculation then is whether the committee intended to keep the results that had accrued under the Articles of Confederation, or whether they regarded the clause as so self-explanatory that they saw no need to alter it because its substantive powers were surely going to emerge at a later stage.

Following the committee’s draft, a debate ensued on August 29, in which various framers proposed amendments and articulated the rationales behind their propositions.\textsuperscript{47} The first proposal, by Hugh Williamson, was to keep the article identical to its predecessor in the Articles of Confedera-

\textsuperscript{45} Nadelmann goes into great detail in his analysis of the cases that interpreted the Full Faith and Credit Clause in the Articles of Confederation. Although he shows that a majority of these cases gave the foreign judgments little value, some cases do exist where conclusive weight was granted to the foreign decree. He therefore concludes that “[t]hese few decisions are insufficient to support any specific construction of the Full Faith and Credit Clause in the Articles.” Nadelmann, supra note 16, at 53. But see Sumner, supra note 21, at 230 (claiming that the practice of international law of going by comity rules when assessing the value of foreign judgments was clearly left unchanged).

\textsuperscript{46} 2 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 188 (Max Farrand ed., 1911).

\textsuperscript{47} The following description is taken directly from James Madison’s own account of the debate. See JAMES MADISON, THE DEBATES IN THE FEDERAL CONVENTION OF 1787 WHICH FRAMED THE CONSTITUTION OF THE UNITED STATES OF AMERICA 481-82 (Gailliard Hunt & James Brown Scott eds., Oxford Univ. Press 1920) (1787).
tion in order to limit it to mean that prior foreign judgments should be grounds for a new cause of action in the forum.

Then Charles Pinckney proposed to add a preamble to the article explaining its application and necessity. The scope of the clause would be limited to bankruptcy cases and protests based on foreign bills of exchange. This would provide uniformity of laws and clarity of execution in the bankruptcy area.

It was then James Madison’s turn to intervene. He wished the clause to authorize the national legislature to provide for the execution of such judgments in any way that might be regarded as expedient. He justified his position by saying that it could be done safely and that the nature of the new union required this uniformity.

Edmund Randolph, Madison’s chief antagonist on this issue, was much alarmed by Madison’s proposal. He moved to narrow the scope of the clause to relate to proof of the document only. Furthermore, it was important to him that there should be no reference to a national legislature providing for execution of the judgment in a foreign state because there was no precedent of one nation executing judgments of the courts of another nation as this was an intrusion on national sovereignty.

Gouverneur Morris ended the initial discussion with the following proposition: “Full Faith ought to be given in each State to the public acts, records, and judicial proceedings of every other State; and the Legislature shall by general laws, determine the proof and effect of such acts, records and proceedings.”

Pinckney’s, Randolph’s, and Morris’ proposals were committed to further review by the Committee of Detail. It reported back a few days later with a new draft that basically looked the same as Morris’ draft. A final discussion then occurred in which the sole topics were what strength the judgments should have and what role the national legislature should be granted in the implementation process.

The camp that favored adoption of this draft stressed that it was important that the article include not only judgments but also legislative acts.

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48. Randolph’s proposal read as follows:
Whenever the act of any State, whether Legislative, Executive or Judiciary shall be attested & exemplified under the seal thereof, such attestation and exemplification, shall be deemed in other States as full proof of the existence of that act—and its operation shall be binding in every other State, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the State, wherein the said act was done.

Id. at 482.

49. Id. (emphases added).
Furthermore, it was important to have the national legislature declare the effect of the judgments because otherwise the provision would amount to no more than what was already occurring under the Articles of Confederation. The ranks of the people who generally favored the new proposal suggested that perhaps the article ought to include only judgments and judicial proceedings.

The dissenters echoed a common concern that a national legislature empowered by such a clause would usurp the powers of the state legislatures and interfere in the functioning of the court systems of all the individual states. Thus, the article should limit itself to judgments (and exclude public acts), and therefore should take the form of its predecessor.

The camp favoring uniformity and a national legislature won out, but before the clause took its final form, the framers made a couple of key revisions. The instruction on the credit to be given went from being discretionary to being mandatory while the implementation section went from being mandatory to being discretionary.50

The significance of the various metamorphoses that the Full Faith and Credit Clause went through is apparent. At each step, those seeking to preserve the status quo of the loose and unworkable Confederation yielded to the forces that strove to arrive at a "more perfect union."51 In fact, at each turn, the concept of full faith and credit became broader. For example, the framers eliminated the reference to bankruptcy judgments not because the clause was not meant to cover these documents but for the exact opposite reason: so that a broader, more general clause would certainly encompass bankruptcy judgments.52 Also, the change in wording of the first part of the clause from "ought" to "shall" clearly indicates that the provision became a mandate to the states, something necessary to avoid the wide discrepancies of interpretation that occurred under the Articles of Confederation.53 Lastly, the delegation of a discretionary power to Con-

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50. "On motion of Mr. Madison, the words 'ought to' were struck out, and 'shall' inserted; and 'shall' between 'Legislature' and 'by general laws' struck out, and 'may' inserted." Id. at 503-04.
51. U.S. CONST. preamble.
52. The bankruptcy reference was also eliminated because it raised concerns about the death penalty. In England, bankruptcy was punishable by death and the concern was raised that such a power might be easily usurped. See MADISON, supra note 47, at 504.
53. Madison comments on the difference between the constitutional clause and its counterpart in the Articles of Confederation:

The power of prescribing by general laws the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States, is an evident and valuable improvement on the clause relating to this subject in the articles of confederation. The meaning of the latter is extremely indeterminate; and can be of little importance under any interpretation which it will bear. The power here established, may be rendered a very convenient instrument of justice, and be particularly beneficial on the bor-
gress to prescribe the effect of judgments is the Damocles' sword of the clause. That is, Congress would exercise its power of enforcement should the states or the judiciary still prove reticent in doing so themselves. Thus, the framers vested in Congress, being a national body, the ultimate ability to create a uniform application of the clause.

III. THE GOALS OF FULL FAITH AND CREDIT

Because of the lack of historical materials relating to what exactly the framers meant by the second sentence of the Full Faith and Credit Clause, to avoid unnecessary inference and speculation this inquiry must reach beyond a framer's intent analysis. Furthermore, no Supreme Court case has directly interpreted the second sentence of the article, although various dicta have appeared time and again pondering the congressional role in the scheme of the clause.54

It is important to recognize that the second sentence of the Full Faith and Credit Clause does not exist in a vacuum, but is part of a constitutional mandate that precedes it in the first sentence of the clause. Thus, to better understand how Congress is to operate in this context, a framework has to be established. This framework can only be drawn by illustrating what goals the Full Faith and Credit Clause serves and by outlining the doctrine that the Supreme Court has created in the full faith and credit arena.

A. THE PUBLIC PURPOSES OF THE CLAUSE

Although the Full Faith and Credit Clause has been described as a neglected provision,55 it is undeniable that its purported goals and purposes are extremely important. As noted above, the framers conceived the clause to address the complicated issue of what courts were meant to do when confronted with an extrastate judgment. The choices were three: give the judgment conclusive effect in the forum, give it no effect at all, or find some solution in between these two extremes.56 Had the framers taken the second option, then sister state judgments would have had the same impact on the forum as extranational judgments. This would have impeded one of

54. See infra Part IV.
55. See Robert H. Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Colum. L. Rev. 1, 3 (1945).
the objectives behind the framing of the Constitution, namely the integration of the economic life of the participating states. Thus, sister state judgments had to be given "favored footing" as compared to extranational judgments. The reason for this option was clear: Only by recognizing to some degree the pronouncements of sister states would the "contemplated and necessary close relationship between the newly formed states and their residents" transpire. Indeed, in the grand scheme, the Full Faith and Credit Clause was "one of the principal assurances that the United States would have the unity of one nation instead of being thirteen (or fifty) separate little nations." Thus, significant public purposes for the clause began to take shape.

1. Federalism

When entering a federal union each state is obligated to relinquish some, but not all, aspects of its own sovereignty. This is usually achieved by having the various members of the federation adhere to a common charter where each component agrees to follow the provisions set forth in the document. In the United States this document is obviously the Constitution, which sets forth certain provisions under which both the union and its separate entities must operate. The Constitution is neither an advisory set of guidelines nor a nonbinding resolution stating abstract principles of government, but rather a statute mandating a relationship between the union and each of its parts.

The Full Faith and Credit Clause, by its emphatic language, fits in as one of those provisions under which each state is subordinated, by federal obligation, to the laws, records, and judicial proceedings of each other state in the union. Indeed, the Full Faith and Credit Clause is:

[A] nationally unifying force. . . . It altered the status of the several states

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57. Costigan, supra note 29, at 488.
58. Sumner, supra note 21, at 229.
60. The term "public" is used in this context to signify those purposes that the Full Faith and Credit Clause serves to society at large. The purposes that the clause fulfills in terms of private individuals will be discussed later. See infra Part III.B.
61. The commanding nature of the first sentence of the Full Faith and Credit Clause has been noted by several scholars. See, e.g., Jackson, supra note 55, at 30; Frederic L. Kirgis, Jr., The Roles of Due Process and Full Faith and Credit in Choice of Law, 62 CORNELL L. REV. 94, 110 (1976); James Martin, Personal Jurisdiction and Choice of Law, 78 MICH. L. REV. 872, 881 (1980) (stating that the Full Faith and Credit Clause commands that the states respect the sovereignty of other states of the union in the framework of a federal system); Sumner, supra note 21, at 237 (referring to the Full Faith and Credit Clause as an "unqualified command to the states").
as independent foreign sovereigns, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making each an integral part of a single nation, in which rights . . . established in any [state] are given nation-wide application.62

It is important to recognize that this provision does not seek to have the federal government impose its own substantive policies on the states. Rather, even if the federal government or the Supreme Court had the dubious ability to compare and evaluate each conflicting state’s local interests, “the policy ultimately to be served in application of the clause is the federal policy of a ‘more perfect union’ of our legal systems. No local interest and no balance of local interests can rise above this consideration.”63

Thus, the Full Faith and Credit Clause is not really an intrusion of the federal government into state laws; instead, it is a limited encroachment of one state into a sister state’s sovereignty.64 This provision seeks to valorize state power rather than denigrate it. This provision is therefore the great equalizer between the states as it prevents any one state from insulating itself from the others. Thus, the clause actually protects the rights of the states by assuring their equal status in the union.65

It is inevitable that with fifty different states, an infinite amount of differing laws will sprout up in the various jurisdictions. This experimentation was not intended to be stifled by the Full Faith and Credit Clause. Rather, room for state originality was left untouched by the federal provision. It is the acceptance of the fact that other states will grant different rights and causes of actions to their residents that begets the Full Faith and Credit Clause. The elimination of the right to refuse the official proceedings of a sister state is merely a price to pay for the maintenance of the

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63. Jackson, supra note 55, at 27. Justice Jackson goes on to state that:

The constitutional provision extends recognition on the basis of the interests of the federal union which supersedes freedom of individual state action by a compulsory policy of reciprocal rights to demand and obligations to render faith and credit. States under their voluntary policy may extend recognition when they could not constitutionally be required to do so; and sometimes, of course, they have interpreted the law of conflicts to refuse credit when the constitutional mandate is held to require it.

Id. at 30.

64. This subtlety was not lost on Justice Jackson, who pointed out that the real issue of federalism at play was not the traditional federal-state dichotomy, but rather this more unusual state-state dynamic. See id. at 29.

65. Professor Tribe reaches a similar conclusion and then combines this with a Tenth Amendment analysis to argue that through the Tenth Amendment, the Full Faith and Credit Clause guarantees no power intrusions by the federal government. See Tribe Letter, supra note 9, at S5932.
federal system and will provide "for the harmony and proper intercourse among the States."  

2. Coordination of Diverse Justice Systems

Distinct from the federalism goal of having each state function as an equal within a national body is the necessity of making sure that each state does not stray from a uniform way of administering a system of justice. The Full Faith and Credit Clause in this context serves as a unifying element for the recognition of judgments in the federal system.

The Supreme Court has long recognized the clause's unifying force and has often referred to it when granting full faith and credit to state proceedings. In sweeping language, the Court has pronounced that "[f]or all the great purposes for which the Federal government was formed we are one people, with one common country" and to that end "[the Full Faith and Credit Clause] was intended to . . . promote certainty and uniformity in the rule among [the states]."

Whether it is proper for a federal system to strive to achieve a uniform system of justice among the states is a normative judgment that the framers of the Constitution have made for us. Clearly, uniformity was not meant to signify that all states of the union had to have identical laws, but merely that the execution of a judgment of State X would be undertaken by State Y should the need arise. Indeed, the uniform acceptance of another state's proceedings out of a sign of reciprocal respect for the sister state was seen as a proper way of coordinating the administration of justice, and furthermore, it has been suggested that without this unification process, the progress of each state and the country would be stifled.

3. Conservation of Judicial Resources

In a time when state and federal courts are overflowing with full dockets and judicial resources are stretched beyond their limits, the conservation function of the Full Faith and Credit Clause should be welcomed.

66. This is the thesis of Max Radin. See Radin, supra note 42, at 29.
67. The Federalist No. 42, supra note 53, at 213 (James Madison).
71. That the states should maintain their independent legal systems is a point stressed by Justice Jackson. See Jackson, supra note 55, at 2.
72. See Sumner, supra note 21, at 241. See also Jackson, supra note 55, at 17 (stating that the uniformity of the diverse legal systems of the states is the main goal of the Full Faith and Credit Clause to such an extent that it is "the only hope of a national system of justice").
If the forum state is compelled to enforce the judgment of a sister state, then there will be no need to relitigate the case and the docket will be spared the depressing vision of a transported "déjà vu" in the court room.

The Full Faith and Credit Clause is therefore a tool to avoid "the delay, expense, and uncertain[ies]"\(^{73}\) attached to a new lawsuit which is a wasteful and inefficient procedure. To be remembered are not only the judicial concerns of the strain that a new lawsuit would bring on the docket but also the practical issues that a new suit in a different state entails: new lawyers, different laws to deal with, a more unreliable fact-finding process because of the time delay, transportation of witnesses, etc. The Full Faith and Credit Clause lays the foundation for a streamlined, inexpensive, and simple way of enforcing sister state proceedings that would lend a hand to the current crisis of exploding dockets.\(^{74}\)

4. Avoidance of Forum Shopping

In a federation, such as that of the United States, forum shopping is the vagrant mine that risks blowing up the very heart of the operating system. Without a Full Faith and Credit Clause, nothing is going to stop states from competing against each other for laws most favorable to a particular special interest group. Because State Z knows that State W’s different laws and judgments cannot encroach within its own borders, State Z has all the incentive to accentuate its legal differences from State W in order to attract the disgruntled resident of State W. This can be done by any state by passing statutes granting to itself exclusive jurisdiction in certain matters so long as the federal Due Process Clause is not violated.

As Professors Scoles and Hay put it, "[t]he task of ... preventing undue parochialism might then fall to the Full Faith and Credit Clause."\(^{75}\) By mandating enforcement and execution of a prior sister state judgment in

73. Lefler et al., supra note 59, § 75, at 223.

74. One may argue that the Full Faith and Credit Clause, if interpreted to require the forum state to enforce the sister state judgment, would actually increase state dockets because they would now have to entertain foreign cases as well. This is particularly weak for two reasons: First, with a uniform system of enforcement, such as a national registry, there would be no need even to enter the court system of the forum state; second, even without such a system of registration "the uniform enforceability of judgments clearly outweighs the interest of [a state] in keeping its dockets clear of foreign litigation; the burden of litigation to enforce a judgment are [sic] light, and the need for nationwide enforcement is great." Brainerd Currie, Full Faith and Credit, Chiefly to Judgments: A Role for Congress, 1964 Sup. Ct. Rev. 89, 120. According to Justice Jackson, if the Full Faith and Credit Clause allowed a choice of systems for execution of sister state judicial proceedings, "the [choice to be] made ... is the one that will foster a modern system of administering, inexpensively and expeditiously, a more certain justice." Jackson, supra note 55, at 24.

75. Scoles & Hay, supra note 68, § 3.30, at 102.
the forum state, the Full Faith and Credit Clause significantly attenuates the risk of forum shopping. Now State Z has no interest in trying to be as different as possible from State W because it cannot prevent the proceedings covered by the clause from taking effect within its borders. Thus, the Full Faith and Credit Clause averts the abhorrent scenario of state factions forming under a protective umbrella of weak constitutional choice of law doctrines.

B. THE PRIVATE PURPOSES OF THE CLAUSE

The goals of the Full Faith and Credit Clause explored above all deal with purposes that serve society as a whole. The Full Faith and Credit Clause has a substantial impact on the regulation of private conflicts and the adversarial system in general. The clause thus serves several doctrines and policies of private law through a mandated system of recognition of sister state judgments.

1. Res Judicata and Collateral Estoppel

The Full Faith and Credit Clause is a way to implement a rule that "limit[s] repetitive litigation of the same claims and issues."76 The effect of the clause is to terminate the issues and claims in the state where the cause of action arises if those claims and issues have been properly litigated in the first instance. The necessity for this is self-evident: namely, "the practical desirability of terminating litigation once and for all after there has been a fair trial, so that it will not drag on endlessly with parties never able to know when their rights are settled,"77 is an essential component of any justice system.78

Finality is a goal that ties in with several other goals already illustrated in the section above. The Full Faith and Credit Clause, operating as a federal doctrine of estoppel, not only avoids unnecessary exploitation of

76. Id. at 916. Res judicata and collateral estoppel are related doctrines, although they are slightly different from one another. "Res judicata" bars relitigation of the same cause of action between the same parties where there is a prior judgment, whereas 'collateral estoppel' bars relitigation of a particular issue or determinative fact." BLACK'S LAW DICTIONARY 1306 (6th ed. 1990). Therefore, "a prior judgment between the same parties, which is not strictly res judicata because based upon different cause of action, operates as an 'estoppel' only as to matters actually in issue or points controverted." Id. at 552.

77. LEFLAR ET AL., supra note 59, § 75, at 223. Currie reaches the same conclusion. See Currie, supra note 74, at 105.

78. The value of finality and its operation in the federal system through the Full Faith and Credit Clause's mandated recognition of a sister state judgment was pointed out by Chief Justice Marshall at the dawn of the nation. See Hampton v. McConnel, 16 U.S. (3 Wheat.) 234 (1818).
limited judicial resources but quashes any possibility of conflicting decisions on the same cause of action, or discrepancies between holdings on the same issue. The clause also prevents harassment by a dissatisfied claimant of a victorious party who, without interstate enforcement of a prior judgment, is held ransom to a possible relitigation in all fifty states with disastrous consequences for the private parties and the public institutions alike.

Other concerns dictate why finality of judgment is a desirable goal. In addition to avoiding the costs of relitigation to the parties and the public, finality also ensures that the court rendering the initial judgment will receive the respect for its jurisdiction and competence that is due. The integrity of the rendering court, and of the whole system at large, gets put on the line because public confidence is likely to be undermined if courts cannot agree on how particular problems ought to be resolved and continually contradict and reverse one another. The Full Faith and Credit Clause, therefore, keeps the doctrine of res judicata alive and relevant instead of relegating it to an insular and ineffectual application.

2. *Fairness to the Parties' Expectations*

Separate from the doctrinal goals of res judicata and collateral estoppel is the detrimental psychological effect that a lack of finality would have on private parties. In this context, the Full Faith and Credit Clause exists to avoid disappointment of the legitimate expectations of the private parties involved in a dispute. Indeed, for a state to apply its own law to invalidate a prior judgment unfairly defeats these reasonable expectations.80

Questions of fairness are inextricably linked to the expectations of private parties. The Full Faith and Credit Clause ensures that the forum state will not arbitrarily disregard the judgment of a sister state. Without the clause, the forum could ignore a previous judgment with dire consequences. The rationale for applying a law different from that in which the rights of the parties arose implicates serious issues of due process and lack of fair warning. Therefore, in the interests of fairness, the Full Faith and

79. This is a different scenario from higher courts reversing lower courts’ rulings. In that case, the integrity and respect for the system are derived from the inherent and publicly accepted hierarchy of the courts in question as well as the nature of the appeals process. In the scenario of recognition of interstate judgments, there is no hierarchical assumption about the courts of the different states, and given that each state is recognized as an equal in the federal system, discrepancies resulting from multiple litigation would plunge the credibility of the justice system into great disrepute.

Credit Clause prevents unforeseen surprises from pouncing on unaware parties.

C. THE CURRENT LAW UNDER THE CLAUSE

The Supreme Court has often ruled on issues that implicate the Full Faith and Credit Clause. When doing so, the Court has sometimes been faithful to the goals illustrated above, although in other instances, their holdings have cast doubt on whether the Court was aware of the principles behind the Full Faith and Credit Clause or whether it was deliberately ignoring them to achieve a “political-ideological” ruling. This apparent inconsistency in applying the clause has led scholars to make comments ranging from an assumption that the doctrine is weak because of the Supreme Court’s laxity to more cataclysmic proclamations that “[a]s matters stand, the Full Faith and Credit Clause means almost nothing, and state courts can often evade the little that it does mean.”

These assertions reflect a well-founded frustration with the schizophrenia of the Court when taking into consideration the state of the current law surrounding the Full Faith and Credit Clause. They often overemphasize the failure to give teeth to the clause and underplay the reach that the Supreme Court has given it. Indeed, Brainerd Currie struck the correct analytical balance when he stated that the Full Faith and Credit Clause “enjoins a high degree of deference to judgments of sister states” while it “enjoins a modest degree of deference to the laws of sister states.” The Court has carved out a distinction between the enforcement of sister state judgments and sister state acts (statutes), preferring mandated enforcement for the former and discretionary enforcement for the latter. In doing so, the Court is being partially faithful to the goals of the Full Faith and Credit Clause as it grapples with how to balance the interests of private parties with the interests of cooperative federalism among the states.

In applying the Full Faith and Credit Clause to the enforcement of sister state acts, the Court has always recognized that the forum, under certain circumstances, can disregard the act of the sister state. This was because

[a] rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result

81. See Henson, supra note 15, at 585.
83. Currie, supra note 74, at 89.
that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. 84

Thus, if the forum asserts a legitimate public policy concern such as a significant contact to the case, then it may override the sister state's act. 85 In doing so, the constitutional limitations on the power of a state are indistinguishable from those mandated by the Due Process Clause of the Fourteenth Amendment. 86 This seems to fly in the face of the uniformity goal of the clause; in fact, an aggressive Full Faith and Credit Clause would prohibit the forum from asserting its own interest if it would impair the sister state's interest or violate the national federalism interest. 87 Although this approach has generated considerable criticism, 88 it must be viewed in the overall context. That context includes a much tighter requirement that the forum give full faith and credit to sister state judgments.

A similar reasoning for the allowance of a local public policy to deny full faith and credit to a sister state record or judgment has been articulated from time to time. 89 However, this approach with regard to the treatment of judgments and records has been universally rejected. 90 The only inquiry which is allowed of the forum state in assessing the faith and credit to give a sister state judgment is whether the rendering court had jurisdiction over

85. There are some limits to the forum's ability to assert its own legitimate interest. For example, the forum has to have had that interest at the time the issue was raised in the sister jurisdiction and can not apply its interest retroactively unless the need of the forum is so great that it can brush aside the expectations of the parties involved. See Clay v. Sun Ins. Office Ltd., 363 U.S. 207, 229-32, 235-36 (1963). See also Sun Ins. Office Ltd. v. Clay, 133 So. 2d. 735, 738 (Fla. 1961).
87. See SCOLES & HAY, supra note 68, § 3.30, at 103.
88. See Jackson, supra note 55, at 27 (stating that the Full Faith and Credit Clause means nothing with the public policy exception); Sumner, supra note 21, at 248 (asserting that the Full Faith and Credit Clause is meaningless if a "forum [is] to be unrestricted in determining which policy [is] to be subjugated"). But see Currie, supra note 74, at 92-93 (implying that exceptions serve fairness concerns).
89. "It has often been recognized by this Court that there are some limitations upon the extent to which a state will be required by the full faith and credit clause to enforce even the judgment of another state in contravention of its own statutes or policy." Alaska Packers, 294 U.S at 546. See also RESTATEMENT OF CONFLICT OF LAWS § 451(2) (Supp. 1948) ("[P]arties cannot collaterally attack the judgment on the ground that the court did not have jurisdiction over the subject matter, unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction.").
90. See Edward S. Corwin, The "Full Faith and Credit" Clause, 81 U. PA. L. REV. 371, 374 (1933) (stating that the local policy of the forum has no application as to the effect of records and judicial proceedings); LEFLAR ET AL., supra note 59, § 75, at 224 (asserting that a strong local public policy of the forum state cannot invalidate a valid sister state judgment); SCOLES & HAY, supra note 68, § 3.24, at 89 (claiming that unconstitutionality can be claimed when the forum does not recognize a claim which the sister state does).
the case. However, once the jurisdiction of the sister state court has been determined, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based."\textsuperscript{91}

The finality of the rendering court's judgment is rendered unassailable by the forum state by the well-established doctrine that these judgments are conclusive of the issue being disputed if the rendering jurisdiction deems them so. Thus, full faith and credit looks to the policy of the state rendering the initial decision and defers to that state the issue of whether the judgment precludes any other action.\textsuperscript{92}

There is a small debate as to whether this mandate to look at the law of the issuing jurisdiction to determine whether a judgment precludes any other action obtains its authority from the Full Faith and Credit Clause itself or from the implementing statute that Congress passed in 1790.\textsuperscript{93} It seems as if Justice Story espoused both views: In 1813, when deciding that the forum had to give sister state judgments conclusive effect, he proclaimed that the court could "perceive no rational interpretation of the act of congress, unless it declares a judgment conclusive when a Court of the particular state where it is rendered would pronounce the same decision."\textsuperscript{94} However, later he pondered the same issue:

Does it import no more than that the same faith and credit are to be given to them, which, by the comity of nations, is ordinarily conceded to all foreign judgments? Or is it intended to give them a more conclusive efficiency, approaching to, if not identical with, that of domestic judgments; so that, if the jurisdiction of the court be established, the judgment shall be conclusive as to the merits? The latter seems to be the true

\textsuperscript{91} Milken v. Meyer, 311 U.S. 457, 462 (1940). An even stricter approach to the enforcement of judgments has been also articulated by the Court; this method would preclude even the jurisdictional inquiry if it is apparent that the subject of the rendering court's jurisdiction was already litigated in the first instance. \textit{See Durfee v. Duke}, 375 U.S. 106, 111 (1963).

\textsuperscript{92} \textit{See Indus. Comm'n of Wisconsin v. McCurtin}, 330 U.S. 622 (1947) (stating that if a worker's compensation law is not deemed an exclusive remedy in the rendering state, then the Full Faith and Credit Clause does allow further recovery). Note that in this case the court applied this rationale to a state act. \textit{See also} Aldrich v. Aldrich, 375 U.S. 75 (1963) (full faith and credit given in West Virginia to a Florida judgment deemed exclusive in that state). This policy has been eloquently phrased:

A valid judgment rendered in any judicial system within the United States must be recognized by all other judicial systems within the United States, and the claims and issues precluded by that judgment, and the parties bound thereby, are determined by the law of the system which rendered the judgment.


\textsuperscript{93} \textit{See Act of May 26, 1790}, ch. 11, 1 Stat. 122. For the text of the statute see \textit{infra} note 150.

\textsuperscript{94} Mills v. Duryee, 11 U.S. (7 Cranch) 481, 485 (1813) (emphasis added).
object of the clause; and, indeed, it seems difficult to assign any other adequate motive for the insertion of the clause, both in the confederation and in the Constitution. 95

Story resolved the issue by concluding that this mandate came directly from the clause itself. Indeed, he hinted at this in his 1813 opinion when he declared that not giving conclusive effect to a sister state judgment would leave the clause "utterly unimportant and illusory." 96 Thus, even according to law, it is the clause itself that dictates the conclusiveness of the judgments and the congressional implementation statute is therefore merely perfunctory. 97

The question then remains why the Court has allowed such a relaxed interpretation of the Full Faith and Credit Clause when it comes to recognizing a public act of a sister state, but adhered rigidly to the text of the clause when records and judicial proceedings are concerned. 98 The answer probably lies in the goals that the Court is pursuing, as illustrated in the section above. In the area of judgments, a set of facts and issues has already been litigated, and after a considerable expense of time, money, and public resources, the resolution creates a certain expectation in the parties that were involved. To frustrate these expectations, the Court considers the reliance on the law of the rendering state and the private interests concerned too big a price to pay when compared to the forum state's minimal interest in asserting its own policy. The effect of rendering a judgment meaningless by simply removing the case to another jurisdiction after completion of the trial process sets all court proceedings on their head and renders courts de facto powerless. The same argument is available for state records, as these also involve purely private matters and are more in the nature of a contract.

However, state acts are public in nature. They constitute fair warning to the residents of the state that the legislature has made a determination that a particular issue shall have a specified place within the confines of its jurisdiction. The notice is given prior to any judicial intervention and, so

95. 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1309 (Melville M. Bigelow ed., 5th ed. 1891) (1833) (emphases added).
96. Mills, 11 U.S. at 485.
97. This issue will be further explored in Part IV.A infra.
98. Even a Justice on the Court today seems to think that this distinction is problematic and he would grant Full Faith and Credit unconditionally to all categories of sister state pronouncements. See Thomas v. Washington Gas Light Co., 448 U.S. 261, 296 (1981) (Rehnquist, J., dissenting) ("The Full Faith and Credit Clause did not allot ... the task of 'balancing' interests where public 'Acts, Records, and judicial Proceedings' of a State were involved. It simply directed that they be given the 'Full Faith and Credit.'").
long as the state's determination does not violate any constitutional provision, the expectations of private individuals have to be regarded as less important. The interests of a state in asserting its own sovereignty within the federal context becomes more relevant and therefore the Court is happy to allow each state to assert its interest in this limited context.

Although the mandate created by the first sentence of the Full Faith and Credit Clause has not been interpreted religiously by the Supreme Court, the clause still provides for strict enforcement of sister state records and judgments. This is a reflection of the unifying power that the framers gave to this clause along with a careful balancing of the private and public goals that full faith and credit serves. With the precise purposes of the clause and its mandatory prerogative in mind, a role for congressional action begins to take shape.

IV. CONGRESSIONAL AUTHORITY

There seems to be general agreement that Congress has probably not exercised its Full Faith and Credit Clause power according to the framers' intentions. However, it is evident that some congressional power in the area exists and the obligation now is to consider—based on Supreme Court precedent, the purposes of the clause, and normative theories espoused by commentators—what role Congress plays in this field.

A. THE ENUMERATED POWERS OF CONGRESS

The first issue that the Full Faith and Credit Clause raises is whether the first sentence makes the clause self-executing or whether the clause is totally dependent on Congress for its implementation. Obviously, if one takes the first option then the scope of congressional authority becomes much more narrow and limited, while if one chooses the second route then Congress would seem to have free reign on the entire meaning of the clause.

The clause should be regarded as self-executing, otherwise its very language and the historical debate of the framers makes no sense at all. If it is conceded that the clause is not self-executing, why would Madison, who was against a mandate to Congress, have voted to reverse the commands in the clause, thereby making the directive of full faith and credit

99. See Corwin, supra note 90, at 388. See also LEFLAR ET AL., supra note 59, § 73, at 217 ("The second sentence of the clause authorizes Congress to prescribe [procedures for enforcement of state judgments], but the Congress has, for the most part, not yet done so.")
mandatory and the congressional specification discretionary? Surely, a non-self-executing article would have warranted that the original language of the clause remain unaltered. Also, Justice Story noted that if the execution power was left to Congress, then the clause would be nonsense because that would grant Congress the power to repeal or vary the actual full faith and credit to be given to the foreign documents, which clearly defies the purpose of the first sentence of the clause. This type of linguistic analysis led Professor Sumner to a very compelling hypothesis. If the framers had intended to grant Congress execution power in this area, why then have the two sentences, instead of condensing the whole article into one simple phrase? Indeed, the framers were obsessed with the fact that the Constitution had to be brief, as the abundant word-cutting in the Constitutional Convention demonstrates. It seems more logical that had the framers really intended the clause not to be self-executing, they would have used the simplest solutions: just have the clause read “Congress shall prescribe the full faith and credit given to . . . etc.” —a brief article with a clear message. Obviously, this was not intended to be the true meaning of the article.

Considering that the objective of the Constitution itself was to bring the states together and the scope of this clause was to give conclusive effect to the documents of other states, then this specific objective has to be “declared, and established by the Constitution itself, and is to receive no aid from, nor is susceptible of any qualification by, Congress.” This opinion has also been expressed by the Supreme Court. In McElmoyle v. Cohen the Court emphatically pronounced that “[t]he authenticity of a judgment and its effect depend upon the law in pursuance of the Constitution; the faith and credit due to it as the judicial proceeding of a state is given by the Constitution independently of all legislation.” More than a century later, the Court had not changed its mind when it declared that in deciding the full faith and credit implications of the case under review, the Court “found it unnecessary to rely on any changes accomplished by [legislative action].” In light of these opinions, it is safe to conclude

100. See MADISON, supra note 47, at 503. For an elaboration of this theory, see Nadelmann, supra note 16, at 73.
101. See STORY, supra note 95, § 1312.
102. See Sumner, supra note 21, at 239.
103. STORY, supra note 95, § 1308.
that "the Constitutional provision must now be regarded as self-executing."\textsuperscript{106}

The debate must then focus on what powers remain in Congress' hands.\textsuperscript{107} These powers can be grouped into two categories: procedural and substantive.

1. \textit{Procedural Powers Vested in Congress}

The first power of Congress under this clause harkens back to the original meaning of the terms "faith" and "credit." Specifically, the power is that which enables Congress to prescribe methods of proof, similar to the ambassadorial letters of "credence" described in Part II. To that effect, this particular exercise of power is purely an authentication procedure and the original two implementing statutes that Congress passed point towards this end.\textsuperscript{108}

The second procedural power relates to the unifying purpose that the Full Faith and Credit Clause was supposed to have. Several commentators have suggested how the framers intended Congress to exercise this enumerated power. To avoid the confusing, intricate, and somewhat contorted way of enforcing sister state judgments, the enabling provision was meant for Congress to enact a statute providing for registration of state judgments.\textsuperscript{109} This system of registration would provide for the enforcement of state judgments in other states "without the wholly useless and unnecessary process of requiring a new suit on the same and the obtaining of a new judgment upon which execution can be had."\textsuperscript{110}

\begin{itemize}
\item \textsuperscript{106} See Jackson, \textit{supra} note 55, at 11. Although Justice Jackson was making that statement in 1945, its truth remains very much alive today.
\item \textsuperscript{107} One notable commentator suggested that, in light of the self-executing nature of the clause, Congress might not be empowered to produce any proper legislation under this clause. \textit{See} RUSSELL J. WEINTRAUB, \textit{COMMENTARY ON THE CONFLICT OF LAWS} § 9.3E, at 568 (3d. ed. 1986).
\item \textsuperscript{108} See Act of May 26, 1790, ch. 11, 1 Stat. 122; Act of Mar. 27, 1804, ch. 51, 2 Stat. 298.
\item \textsuperscript{109} \textit{See} LEFLAR ET AL., \textit{supra} note 59, § 78, at 233.
\item \textsuperscript{110} Walter Wheeler Cook, \textit{The Powers of Congress Under the Full Faith and Credit Clause}, 28 YALE L.J. 421, 430 (1919). In this article Cook proposes the text of a statute that would provide such a registration of state judgments. \textit{See id.} at 436. Madison expressed an interest that "the Legislature might be authorized to provide for the execution of Judgments in other States, under such regulations as might be expedient—He thought that this might be safely done and was justified by the nature of the Union." 2 \textit{THE RECORDS OF THE FEDERAL CONVENTION OF 1787}, \textit{supra} note 46, at 448. He reiterated this interest at a later date. \textit{See} THE FEDERALIST No. 42 (Madison). \textit{See also} LEFLAR ET AL., \textit{supra} note 59, § 78, at 233; SCOLES & HAY, \textit{supra} note 68, § 24.13, at 935 (pointing out that Congress has already provided a registration process for federal judgments); Jackson, \textit{supra} note 55, at 21-22 (stating that because Congress possesses the power to integrate the states' legal systems, a scheme of compulsory reciprocal processes can be set up by the federal legislative body).
\end{itemize}
That this power to create a national procedure for the enforcement of sister state proceedings exists is probably beyond doubt. It fits squarely with the purposes of federalism, uniformity, and streamlining the judicial process that breath life into the Full Faith and Credit Clause. The question as to which state proceedings Congress can cover with such a registration scheme is more open for debate. Congress should apply such a scheme uniformly to all categories of proceedings enumerated by the clause and thus state acts, records, and judgments should all be included. It would make little sense to take the uniformity goal and only apply it selectively because no coordination would be achieved. Thus, in light of "the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by . . . sister states," the proposed registration of state proceedings should be as inclusive as the clause itself states.

2. Substantive Powers Vested in Congress

The main focus of the hullabaloo surrounding DOMA centers on what substantive powers the Full Faith and Credit Clause grants to Congress. In light of the goals of the clause, the current state of law, and the precedent in this area, the conclusion must be that the first sentence of the clause is the floor under which nothing can fall, while the second sentence ensures that a higher level of interstate cohesion can be achieved should the national legislature deem it advisable.

Because of the self-executing nature of the clause, Congress cannot enact anything that defies the premise of full faith and credit to acts, records, and judicial proceedings. The mandate of the first sentence makes this extremely clear. Commentators who suggest that the first sentence is not a mandate because if it were "that [interpretation] would render nugatory or anomalous the second sentence of the clause" commit a flaw of

111. See Corwin, supra note 90, at 388 ("Congress has under the clause power to enact standards whereby uniformity of state legislation may be secured as to almost any matter in connection with which interstate recognition of private rights would be useful and valuable."). But see Cook, supra note 110, at 434 n.27a (stating that Congress could enact a statute to enact a code of uniform national law and "the only limitation would be that Congress has the power to prescribe the effect of state statutes only, and not that of state 'common law'").


113. House Hearings, supra note 9, at 2. Professor Holland’s alternative take on the true meaning of the Full Faith and Credit Clause is equally implausible. For Professor Holland, "[t]he most reasonable understanding of . . . the full faith and credit clause is that it prohibits any state from making its own, independent determination of the content of any state’s law, but must make such determination by reference to the latter's 'public Acts, Records, and judicial Proceedings.'" Id. This explanation of the clause is completely refuted by the historical and legal evidence. It reduces Article IV,
logic in that their interpretation (giving Congress the ability to declare that a certain category of documents need not be given any faith and credit by a sister state) renders the first sentence "nugatory or anomalous."

It is true that the power granted to Congress is broader than the constitutional provision itself. Federal courts have declared so themselves on various occasions, but this has always been in the context of a further extension of full faith and credit. The second sentence of the clause can therefore be explained as an ability by Congress to enlarge the command; however, legislation that takes away what is constitutionally compulsory "may stand on a different footing." Therefore, "[u]nder the full faith and credit clause, it would seem that the function confided to Congress is that of promoting and not curtailing the extraterritorial recognition of state judgments and public acts."

The argument against this congressional power is based on the presumption that Congress can indeed expand the full faith and credit strength of the first sentence. However, that premise is twisted to say there is "no serious doubt" that Congress has the power to define the effect of sister states' acts, records, and judgments, which includes the power "to carve out such exceptions as it deems appropriate." This reading defies con-

section 1 to merely an advisory clause in which the Constitution suggests to the states what they should do, but then allows them to run amok in 50 different ways. Under this reading of the clause, any state can just pay lip service to the Constitution and play a game of charades in which it consults the foreign documentation but in the end goes with a pronouncement that is as independent as it would have been without the constitutional provision.

114. See, e.g., Costigan, supra note 29, at 488; Currie, supra note 74, at 90.
115. See Embry v. Palmer, 107 U.S. 3 (1882) (stating that by passing the first implementation statute of 1790, Congress declared that the District of Columbia court judgments shall have full faith and credit in other states, and indeed had the power to go beyond the constitutional mandate). See also American of Puerto Rico v. Kaplan, 368 F.2d 431 (3d Cir. 1966) (confirming that the statutory enactment of 1790 extends full faith and credit to the American territories including Puerto Rico, and therefore New Jersey was compelled to give effect to the Puerto Rican judgment).
117. Id. at 1230 n.42.
118. Senate Hearings, supra note 3, at 34 (statement of Prof. Lynn D. Wardle). See also House Hearings, supra note 9, at 216 (testimony of Jay Alan Sekulow, Chief Counsel, American Center for Law and Justice) ("The enabling language is clear . . . .").
119. H.R. REP. No. 104-664, at 26 (1996), reprinted in 1996 U.S.C.C.A.N. 2905, 2930. A noteworthy expression of this view is provided by Justice Stone in a very passionate dissent. The case involved a child support order that was deemed by the rendering court to preclude any other additional payment by the parent. When the child moved to a different state, the other parent sought extra money in the guise of child support. The Supreme Court, in an opinion by Justice Brandels, stated that the Full Faith and Credit Clause compelled recognition of the earlier child support order. Justice Stone, joined by Justice Cardozo, dissented, calling the result outrageous: The mandatory force of the full faith and credit clause as defined by this Court may be, in some degree not yet fully defined, expanded or contracted by Congress. Much of the confu-
ventional wisdom. It places congressional authority above a constitutional provision, something of a novelty in the realm of United States jurisprudence. It defies the principle purpose for which this clause was written, thereby approving dissension among the states and turning federalism on its head, and it sets up a nightmare scenario aptly described by Professor Tribe:

Power to specify how a sister-state’s official acts are to be “proved” and to prescribe “the effect thereof” includes no power to decree that, if those official acts offend a congressional majority, the[y] need to be given no effect whatsoever by any State that happens to share Congress’s substantive views. To read the enabling sentence of the Full Faith and Credit Clause to confer upon Congress a power to delegate this sort of nullification authority . . . would entail the conclusion that Congress may constitutionally decree that no Hawaii marriage, no California divorce, no Kansas default judgment, no punitive damages award by any state court against a civil rights lawyer . . . need to be given any legal effect at all by any State that chooses to avail itself of a congressional license to ignore the Full Faith and Credit Clause. The enabling sentence simply will not bear so tortured a reading.

It is instructive to look to other provisions of the Constitution to see if there is any text that resembles the enabling sentence of the Full Faith and Credit Clause. An affirmative result to the above search could yield some much needed light on how we are to view congressional power pursuant to the Full Faith and Credit Clause.

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sion and procedural deficiencies which the constitutional provision alone has not avoided may be remedied by legislation. . . . The constitutional provision giving Congress power to prescribe the effect to be given to acts, records and proceedings would have been quite unnecessary had it not been intended that Congress should have a latitude broader than that given the courts by the full faith and credit clause alone. . . . The play which has been afforded for the recognition of local public policy in cases where there is called in question only a statute of another state, as to the effect of which Congress has not legislated, compared with the more restricted scope for local policy where there is a judicial proceeding, as to which Congress has legislated, suggests the Congressional power.


It is very interesting to note, from an historical perspective, how the three great liberal justices of the thirties (Brandeis, Cardozo, and Stone) split on this occasion. The reason is that the dissenters were probably so offended by the result (that the child would get nothing), that they tried to jump through legal hoops in order to justify their favored outcome notwithstanding the tenuous legal ground on which they were standing. Brandeis likely realized this and found he could not support a ruling that defied precedent and established legal doctrine.

This view had some support before the DOMA controversy erupted. See Currie, supra note 74, at 115-16 (stating that Congress can water down the effect of judgments (child custody decrees in this case) but cannot eliminate the full faith and credit entirely) (citing Kovacs v. Brewer, 356 U.S. 604 (1958)).

120. See Kay Letter, supra note 9, at S10079.
121. Tribe Letter, supra note 9, at SS932.
Two alternate views have been expressed. The first view links congressional power under the Full Faith and Credit Clause to the Dormant Commerce Clause while the second view creates a parallel between the second sentence of the Full Faith and Credit Clause and section 5 of the Fourteenth Amendment. It is beyond the scope of this Note to delve into the esoteric aspects of this debate because it is likely that Congress would lack the power to pass DOMA regardless of which side prevailed.

In a recent article Professor Larry Kramer states that “most commentators today would probably favor the commerce power analogy.” As a consequence of this analogy, Professor Kramer concludes that probably Congress would have the power to pass DOMA. Under this reading, the Full Faith and Credit Clause would allow judicially mandated limits on states and these limits would have “the status of federal common law.” Hence, Congress can decide to prescribe alternative rules which would be precluded by the mandate of the Full Faith and Credit Clause absent this particular congressional action.

The assertion that Congress would certainly possess the authority to pass DOMA under a Dormant Commerce Clause reading of the enabling sentence of the Full Faith and Credit Clause is dubious. It is important to note the purpose for which the Commerce Clause was included in the Constitution and why the Supreme Court has read a “dormant” or “negative” component into the clause.

Similar to the Full Faith and Credit Clause, the Commerce Clause was adopted to avoid a “conflict of commercial regulations” that would be “destructive to the harmony of the States.” Indeed, Justice Johnson in Gibbons v. Ogden states that “if there was any one object riding over every other in the adoption of the constitution, it was to keep the commercial intercourse among the States free from all invidious and partial restraints.” This rationale led the Supreme Court to imply that the Commerce Clause “not only granted Congress express authority to override restrictive and conflicting commercial regulations” but also inflicted upon the states an ending of their power to regulate interstate commerce.

122. Larry Kramer, Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception, 106 YALE L.J. 1965, 2002 n.134 (1997) (He bases this assertion not on law review articles but on conversations with his colleagues.).
123. Id. at 2002.
124. For an elaboration of the terminology used in this area of jurisprudence, see Julian Eule, Laying the Dormant Commerce Clause to Rest, 91 YALE L.J. 425, 425 n.1 (1982).
126. Id. at 231.
In short, as the Court concluded in a 1945 case, the Commerce Clause, 
even "without the aid of Congressional legislation . . . affords some pro-
tection from state legislation inimical to the national commerce,"\textsuperscript{128} 
and thus is a limitation upon the power of the states.

This power has been universally exercised to implement the message 
of economic harmony which underlies the Commerce Clause itself. Thus, 
Congress has passed statutes regulating interstate commerce (and conse-
quently prohibiting states from discriminating against interstate com-
merce) while the Supreme Court has consistently struck down state stat-
utes that it deemed interfered with interstate commerce in those contexts 
where Congress had not yet spoken. It is undeniable that Congress pos-
sesses broad powers under this negative aspect of the Commerce Clause. 
What is much less clear is that these powers extend to an authority which 
would give Congress the power to regulate interstate commerce in a way 
that destroyed the very concept of "interstate commercial harmony."

For example, does the Commerce Clause allow Congress to pass a 
regulation where all automobiles built in Utah for export to other states 
have to use special six million-dollar-diamond-head hub caps while auto-
mobiles built in the other forty-nine states need only have six-dollar-steel 
hub caps? Clearly not. This regulation has no rational basis for the pro-
tection of interstate commerce and would subvert the very purpose of the 
clause.\textsuperscript{129} Another example: Vermont enacts a statute whereby all private 
hospitals which have at least 90\% of their patients on a yearly basis as 
residents of that state qualify for huge tax exemptions while private hospi-
tals that do not meet that in-state quota have to pay enormous regulatory

\textsuperscript{129} This conclusion stems from the assumption that the Supreme Court will not pay mere lip 

service while applying the rational basis test to the congressional act, but will rather take a closer look 
at such a statute. Although this heightened rational basis review is rare, it has surfaced at random in-
tervals to result in the Court striking down a regulation or an ordinance that a majority of the Court 
found disagreeable. See, e.g., City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985) (holding 
unconstitutional a local zoning ordinance that prohibited the establishment of a home for the mentally 
challenged in a particular area of the city); Romer v. Evans, 116 S. Ct. 1620 (1996) (affirming that 
discrimination based on sexual orientation is not rationally related to a legitimate governmental inter-
est if motivated solely by animus towards homosexuals and therefore impermissible for the state to so 
discriminate). This aggressive application of rational basis review is concededly outcome determina-
tive. That is to say, the Court only seems to utilize the higher level of scrutiny when it wants to find 
in favor of the party seeking to declare a particular governmental action unconstitutional. It is diffi-
cult to predict what exact circumstances must exist before the Court will venture into this scarcely 
trodden realm of higher rational basis review. Suffice to say that this exploration probably occurs ei-
er when the regulation under review seems decidedly peculiar to United States jurisprudence, or else 
when the result of the application of the regulation under scrutiny produces a result offensive to a 
Court majority. This set of circumstances appears to exist when looking at DOMA which is at best a 
statutory oddity and at worst a blatant attempt at offensive legislative discrimination.
fees. The statute gets challenged in federal court and is eventually struck down by the Supreme Court on the rationale that it violates the Dormant Commerce Clause. Congress then steps in and pursuant to its Commerce Clause power enacts a federal version of the Vermont statute (for the benefit of Vermont only). Although congressional power under this clause is broad, it probably does not go as far as the hypothetical outlined above. This congressional action suffers from the very malady that the Commerce Clause was meant to cure. Indeed, "by encouraging economic isolationism, prohibitions on out-of-state access to in-state resources serve the very evil that the dormant Commerce Clause was designed to prevent." 130

It is hard to see how DOMA can be characterized in any way but a noncommercial version of the two hypothetical statutes described above. Thus, DOMA seems dubious even under a Commerce Clause interpretation of the enabling provision of the Full Faith and Credit Clause. An unpleasant scenario can be imagined if one reaches the opposite conclusion: Hawaii, displeased by the fact that Indiana, pursuant to DOMA, refuses to honor the Aloha State's same-sex marriages, enacts a statute, pursuant to the local public policy exception of the Full Faith and Credit Clause, in which Hawaii denies the validity of a certain category of Indiana law within the confines of Hawaii's borders. Subsequent to Hawaii's action, other retaliatory measures by states in solidarity with Indiana may follow and the whole system of interstate judicial and statutory respect would collapse like a house of cards. This is exactly the sort of "Balkanization" 131 that both the Full Faith and Credit Clause and the Commerce Clause attempt to eradicate. Thus, it is hard to see how a parallel between Congress' power under the aforementioned clause can yield a result that gives Congress the authority to enact DOMA.

Professor Tribe finds a closer parallel with section 5 of the Fourteenth Amendment, and in particular, with the one-way ratchet interpretative theory of this section:

In perhaps the closest analogy, the Supreme Court has interpreted another of the Constitution's few clauses expressly authorizing Congress to enforce a constitutional mandate addressed to the States [the self-executing provision of section 1 of the Fourteenth Amendment] to mean that Congress may effectuate such a mandate but may not "exercise discretion in the other direction [by] enact[ing]" statutes that "dilute" the mandate's self-executing force as authoritatively construed by the Su-

131. See *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979) (using the term "Balkanization" to refer to the result that the Dormant Commerce Clause was supposed to avoid).
preme Court [citing] Katzenbach v. Morgan, 384 U.S. 641, 651 n.10 (1966). . . . A similar principle must guide interpretation of the Full Faith and Credit Clause, whose text leaves no real doubt that its self-executing reach, as authoritatively determined by the Supreme Court, may not be negated or nullified, in whole or in part, under the guise of legislatively enforcing or effectuating that clause. 132

Further light is shed on Congress' substantive power contained within the enabling provision of the Full Faith and Credit Clause by observing the Supreme Court's recent elaboration on the scope and reach of Congress' power under section 5 of the Fourteenth Amendment.

In City Of Boerne v. Flores133 the Supreme Court severely curtailed Congress' power to enact legislation pursuant to section 5 of the Fourteenth Amendment.134 In this case the Supreme Court struck down the Religious Freedom Restoration Act ("RFRA") because it deemed Congress lacked the power to enact that statute under section 5 of the Fourteenth Amendment. The Supreme Court explained that Congress' authority under section 5 did include "the power to enact legislation designed to prevent as well as remedy constitutional violations."135 In fact the Court declared that this congressional power was rather broad as Congress could enact "[w]hatever legislation is appropriate [to carry] out the objects the amendments have in view."136

132. Tribe Letter, supra note 9, at SS933. Proponents of the congressional power to poke holes in the Full Faith and Credit Clause point to the Supremacy Clause as an example of a provision, clearly self-executing, that grants no ability to withdraw from this mandate. See House Hearings, supra note 9, at 150 (statement of Maurice Holland). This analogy fails because in another provision of the Constitution, where the framers wanted to grant Congress the power to cut back on the provision, they explicitly said so: "In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." U.S. CONST. art. III, § 2 (emphasis added). Professor Holland suggests that because the Supremacy Clause is categorical and the Full Faith and Credit Clause contains an enabling provision, then, clearly, this implies an ability for Congress to carve out exceptions. However, if that is what the framers really wanted, why did they not use the same explicit formula adopted in Article III, section 2? That this power to exempt from the constitutional mandate is not what was intended is proved by the historical documentation and the purposes of the clause.

133. 117 S. Ct. 2157 (1997).

134. The applicable sections of the Fourteenth Amendment read:

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . . .

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

135. City of Boerne, 117 S. Ct. at 2163.

However, "as broad as the congressional enforcement power is, it is not unlimited."137 The Court explained in extremely emphatic language that Congress, by grant of this power, can only create legislation that is consistent with the substantive portion of the Fourteenth Amendment. Thus, "Congress does not enforce a constitutional right by changing what the right is. It has been given [by section 5] the power 'to enforce,' not the power to determine what constitutes a constitutional violation."138

After a historical analysis of the remedial nature of congressional power under section 5, the Court summed up its view of Congress' role in this area by relying on well-established principles of separation of powers. Thus, "[i]f Congress could define its own powers by altering [the meaning of constitutional provisions], no longer would the Constitution be 'superior paramount law, unchangeable by ordinary means.'"139 The court explained the rationale of Marbury by indicating that constitutional provisions exist on a higher plain and are therefore not subject to the shifting majoritarian wind of the Congress. If this was not so, it would be "difficult to conceive of a principle that would limit congressional power."140

A remedial provision needs a proven record of violations before corrective legislation can be enacted. The court stated that there was no such record that warranted the passage of RFRA. In fact, "RFRA [was] so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections."141 Therefore, under section 5, Congress' power only extends as far as to remedy those behaviors that the Fourteenth Amendment was designed to prevent.

Following this rationale, DOMA should suffer the same ignominious fate as RFRA. If we accept the parallel between section 5 and the enabling portion of the Full Faith and Credit Clause, Congress would have the power to enact legislation that either remedied violations of the Full Faith and Credit Clause, or else prevented violations of the same. This power would not encompass the authority to substantively alter the meaning of the central provision of this clause.

138. City of Boerne, 117 S. Ct. at 2164.
139. Id. at 2168 (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).
140. Id. at 2168.
141. Id. at 2170.
With DOMA, Congress is doing exactly what the Supreme Court said that Congress was attempting to do with RFRA. There is no secret that DOMA is not remedying anything, nor preventing any constitutional violation. By October 1996, when DOMA was passed, no state had legalized same-sex marriages and even the most rabid proponent of DOMA could not argue with a straight face that same-sex marriages violate the Constitution in some way. If anything, the only violations occurring in this area of the law take the form of states enacting “heterosexual marriages only” statutes in an attempt to circumvent the mandate of full faith and credit should another state legalize same-sex marriages. The record does not demonstrate any attack upon the Constitution that warrants congressional intervention and therefore DOMA is completely inappropriate.

Furthermore, by enacting DOMA it appears as if Congress is attempting to redefine the substance of the Full Faith and Credit Clause, something that City of Boerne explicitly forbids Congress from doing.\(^{142}\) Congress cannot declare what “full faith and credit” means. The provision itself does so in the mandatory words of the first sentence: “[f]ull faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state.”\(^{143}\) Congress, cannot “prescribe the effect” of acts, records, and judicial proceedings by altering the substance of the mandate in the same way that Congress by enacting RFRA could not change the substantive portions of the Fourteenth Amendment. Thus, Congress is not implementing the Full Faith and Credit Clause by enacting DOMA—because as we have seen this legislation serves none of the clause’s goals—but rather is subverting the substantive meaning of the clause’s directive. According to City of Boerne, Congress cannot implement a right by changing what that right is,\(^{144}\) and here the right under question is the right of individuals to have their interstate documents given full faith and credit in a sister state. Therefore, as was the case under a Dormant Commerce Clause reading of the enabling provision of the Full Faith and Credit Clause, Congress is equally powerless to enact DOMA under a section 5 of the Fourteenth Amendment interpretation of the clause.

Having observed the limits of Congress’ power under the enabling provision of the Full Faith and Credit Clause, it is imperative to look at what the affirmative grant to Congress can extend to. Professor Sunstein

\(^{142}\) City of Boerne, 117 S. Ct. at 2164 (declaring that Congress cannot redefine the substance of the Fourteenth Amendment’s restrictions on the states).

\(^{143}\) U.S. CONST. art. IV, § 1, cl. 1.

\(^{144}\) City of Boerne, 117 S. Ct. at 2164.
offers a bird’s-eye perspective of what the text of the enabling sentence most likely means:

[T]he best reading of the text may well be that it gives Congress power to help ensure recognition of sister-state judgments and help ensure the smooth functioning of a federal system, but emphatically not that it authorizes Congress to pick and choose among the judgments that states should be required to recognize. There is no historical evidence that this latter power was something that the framers thought to grant to Congress.145

He also offers a list of what he believes are the sort of legislative enactments that Congress can pass in attaining the broad unifying effect that the Full Faith and Credit Clause is designed to have. According to Professor Sunstein, Congress can:

1. Make judgments directly enforceable in the forum state
2. Compel states to recognize statutory rights
3. Create a system of uniform enforcement of judgments
4. Provide a uniform system of proof
5. Increase full faith and credit beyond the constitutional requirement
6. Compel recognition of judgments otherwise not recognized.146

All these provisions expand on the clause and none contract it. Therefore, the affirmative grant to Congress allows the national legislature to go beyond the mandate of the first sentence of the Full Faith and Credit Clause. However, Congress is not permitted to cut back on the substance of the constitutional provision.

B. CONGRESSIONAL ENACTMENTS PRIOR TO DOMA

Although many scholars, commentators, and politicians alike have argued that at times throughout this nation’s history Congress has usurped the power of the states, it is undeniable that until DOMA, this did not occur under the guise of the Full Faith and Credit Clause.147 It seems as if the concerns of framers such as Edmund Randolph of Virginia who disfavored the broad reach of this article have proved unfounded.148 In fact,
Congress has only acted on this power a few times in over two hundred years.

The first two statutes passed by Congress are essentially evidentiary rules governing the mode of proof pertaining to extrastate proceedings. The 1790 Act concerns the method of proof for judicial records while the 1804 Act does the same with nonjudicial records. Thus, the power of prescribing an authentication process, being the first procedural power described in the section above, was at the forefront of the mind of the Congress closest in time to the framing of the Constitution.

These two early statutes also possess substantive portions. The 1790 Act, by providing that the records and judicial proceedings of sister states shall bind "every court within the United States," extended the full faith and credit mandate beyond the constitutional provision, thereby binding federal courts as well as state courts. The 1804 Act extended the reach of the clause beyond the borders of the United States, to encompass courts within territories and countries subject to United States jurisdiction. In each circumstance Congress reinforced the unity aspect of the clause and sought to minimize the risk of discrepancies amongst the various courts of the union.
These two statutes survive virtually untouched to the present day.\footnote{See 28 U.S.C. §§ 1738-39 (1994).} The only modification of note was that the words "And the said records and judicial proceedings, so authenticated, shall have such faith and credit" were changed to "Such Acts, records and judicial proceedings . . . shall have the same full faith and credit."\footnote{Act of June 25, 1948, ch. 646, 62 Stat. 947. Some other minor wording changes were made. For precise details, see the historical and revision notes in 28 U.S.C. §§ 1738-1739.} Congress deemed this change necessary because the original statute omitted reference to "acts" in the section directing the courts to grant full faith and credit to the aforementioned categories of documents. Because of the self-executing nature of the clause, this change did not have any impact on the status of the law in this area.\footnote{See Hughes v. Fetter, 341 U.S. 609 (1951).}

The above two statutes refer to "acts, records and judicial proceedings" in general and do not mention any specific area of the law in which the directive is meant to apply, thus implying that the mandate should apply across the board. In recent times, Congress has been more specific and has passed two statutes giving, respectively, full faith and credit to child custody decrees\footnote{See Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, 94 Stat. 3569 (codified as amended at 28 U.S.C. § 1738A (1994)).} and child support orders.\footnote{See Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994) (codified as amended at 28 U.S.C. § 1738B (1994))).} The first of these two acts, passed in 1980, came as a result of a situation that had become untenable: Parents who lost custody of their children would kidnap them, transport them to another state, and then relitigate the custody adjudication.\footnote{This unfortunate occurrence was brought about by courts trying to carve out an exception to the full faith and credit mandate for reasons similar to those articulated by Justice Stone in \textit{Yarbrough}. Yarbrough v. Yarbrough, 290 U.S. 202, 215 n.2 (1933). The problem was apparently of huge proportions. See Brigitte M. Bodenheimer, \textit{The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws}, 22 \textit{VAND. L. REV.} 1207 (1969). See also \textit{Hearings Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary, 98th Cong. 1} (1983) (statement of Sen. Specter) (stating that about 100,000 children each year are kidnapped by their parents in the context of a custody battle).} The second act, passed in 1994, was meant to establish a national standard for enforcement of child support orders.\footnote{See 28 U.S.C. § 1738B (Congressional Findings and Declaration of Purpose following the statute).}

These two statutes set out jurisdictional requirements that, if complied with by the state rendering the judgment, \textit{compel} the forum state to recognize the decrees issued by the sister state. Thus, the option does not lie with the forum state whether to accept the validity of the prior judgment,
but rather it is up to the original jurisdiction to establish itself according to the federal statute. Once that is done, the forum state is not permitted to modify the rendering state court’s judgment. Congress itself set out the purposes to be served by the legislation:

(1) [to] promote cooperation between state courts . . . .
(2) [to] promote and expand the exchange of information . . . .
(3) [to] facilitate the enforcement [of judgments] . . . .
(4) [to] discourage continuing interstate controversies . . . in the interest of greater stability . . . .
(5) [to] [a]void jurisdictional competition and conflict between state courts . . . .\footnote{161}

Both statutes contain a small negative component. Congress permits the forum to ignore or modify the prior judgment if the procedures set forth in the statute are not followed by the state issuing the judgment. However, this small negative component must be viewed in context of the full picture painted by these statutes. That is, these statutes create a super full faith and credit requirement in which complete preclusion is achieved if the correct procedures are followed by the rendering state.

Professor Wardle’s argument that “[the custody statute] means that states are free not to recognize (or to recognize, as they choose) custody decrees founded on other bases of jurisdiction”\footnote{162} and that notwithstanding that “negative dimension” the statute is clearly constitutional ignores half the story. The negative component of the child custody legislation is only a part of the act. The actual thrust of the legislation is compulsory to the states. What Professor Wardle neglects to point out is that in addition to the discretionary component, there is the overriding mandatory command giving no option to the states to avoid a prior judgment, and this trumps the negative portion of the act.\footnote{163} Therefore, this statute does not undermine, but rather enhances, the unifying purpose of the clause.

A pattern emerges by focusing in on these specific statutes. Congress’ substantive powers have been used to tighten the screws on the states in the full faith and credit context, and not to unravel the union in its entirety. Indeed, Professor Sunstein emphatically states, “it appears that

\footnote{161}{28 U.S.C. § 1738A (§ 7(c) of the Congressional Findings and Declaration of Purpose following the statute). Similar purposes are found following 28 U.S.C. § 1738B.}
\footnote{162}{Senate Hearings, supra note 3, at 36 (statement of Prof. Lynn Wardle).}
\footnote{163}{Professor Sunstein states that in a framework that strives to implement the basic goals of federalism, a negative component is surely valid. See Senate Hearings, supra note 3, at 46 (statement of Prof. Cass Sunstein).}
DOMA] is the first time in the nation’s history that Congress has expressly said that a state is permitted not to recognize a judgment of another state."\textsuperscript{164} Congress’ power only entails a furthering of the goals of unity and cannot include the authority to cut back on the mandatory section of the article as this would negate the whole spirit and meaning of the Full Faith and Credit Clause.

V. THE DEFENSE OF MARRIAGE ACT

DOMA essentially allows the federal government not to recognize same-sex marriages legally performed in one of the states and permits another state to do the same thing.\textsuperscript{165} This runs afoul of all the purposes and goals that the Full Faith and Credit Clause serves. Indeed, DOMA dismantles the national unifying structure that the clause creates and produces that "sad spectacle of . . . forum shopping, and repeated litigation"\textsuperscript{166} that the provision was designed to prevent.

The federalism goal of the Full Faith and Credit Clause is wrecked by DOMA because the equality of each state is put on the line by this legislation. If Hawaii sanctions same-sex marriages, then DOMA permits the other states to refuse recognition of such a marriage. This makes Hawaii a "B" class state, and allows a certain category of Hawaii marriage to be cast asunder by the rest of the union. Professor Wardle’s statement that "[a]s the federalism principle protects the integrity of the states from possible overreaching by the national government, the Full Faith and Credit Clause protects the states from possible overreaching by each other"\textsuperscript{167} completely misses the boat. The framers designed the Full Faith and Credit Clause to compel states to accept encroachment from sister states in the realm of

\textsuperscript{164} Id. at 47.

\textsuperscript{165} The actual language of DOMA reads as follows:

Sec. 2. POWERS RESERVED TO THE STATES

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

Sec. 3. DEFINITION OF MARRIAGE

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


\textsuperscript{166} WEINTRAUB, supra note 107, § 5.3C, at 276.

\textsuperscript{167} Senate Hearings, supra note 3, at 29 (statement by Prof. Lynn Wardle).
acts, records, and judicial proceedings, and not vice versa as Professor Wardle claims.

The federalism principle withdraws from Congress the ability to make evaluations as to what is the correct policy of a matter that has traditionally been wholly the domain of state law.¹⁶⁸ Furthermore, in the realm of choice of law, the federalism ideal operates to preclude a local policy from overriding the unity of the nation, and it is to this principle that the Full Faith and Credit Clause speaks.

DOMA destroys the uniformity goal of the Full Faith and Credit Clause. This clause was placed foremost among those provisions designed to guard the new union from the “disintegrating influence of provincialism in jurisprudence”¹⁶⁹ so apparent in the loose Confederation that preceded it. The legislation encourages just such an insular attitude as each state can repel a marriage at its borders. As Justice Jackson forcefully declared, “If such parochial limitations serve any good purpose in modern society, I do not know what they are.”¹⁷⁰

This act defies the plain meaning of the clause as it has been interpreted over the last two hundred years. As Professor Tribe notes, how can a law prescribing “no effect” to a judgment be a law prescribing the “effect”? The paradox is not lost on him as he laconically declares “that is a play on words, not a legal argument.”¹⁷¹ The Supreme Court has adopted a consistent practice of reversing decisions that give judgments less effect than the rendering state allowed, so it follows that judgments giving prior holdings no effect would suffer the same fate.¹⁷² Thus, the assertion by DOMA proponents that “[i]n the absence of powerful evidence to the contrary, the natural meaning of [the enabling provision] is that Congress can prescribe that a particular class of acts will have no effect at all”¹⁷³ has already been answered. Conclusive evidence—namely, the history of the

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¹⁶⁸. Justice Jackson goes even further and suggests that the Full Faith and Credit Clause must not lend itself to sociological, ethical, or economic gerrymandering, but should be merely a technical device that effectuates order and certainty. See Jackson, supra note 55, at 25. But see Currie, supra note 74, at 118 (stating that only Congress has the “facilities to bring to bear widespread and varied experience and the relevant sociological and psychological, as well as legal learning”).

¹⁶⁹. Jackson, supra note 55, at 17.

¹⁷⁰. Id.

¹⁷¹. Tribe Letter, supra note 9, at S5932.

¹⁷². See Dupasseeur v. Rochereau, 88 U.S. (21 Wall.) 130, 134 (1874) ("The refusal by the courts of one State to give effect to the decisions of the courts of another State is an infringement of [the Full Faith and Credit Clause] of the Constitution . . . ."). See also Barber v. Barber, 323 U.S. 77 (1944); Ford v. Ford, 371 U.S. 187 (1962).

¹⁷³. Senate Hearings, supra note 3, at 57 (letter from Michael W. McConnell, Professor of Law, Univ. of Chicago, to Sen. Hatch).
clause as well as the goals of cooperative federalism, unity, and prevention of forum shopping that it serves—indicates that allowing the Congress to give a particular class of state judgments no effect is indeed an “unnatural” reading of the text.

DOMA also defeats the doctrines of collateral estoppel and res judicata and with it those legitimate expectations that private parties have in such matters. For example, if a same-sex couple get married in Hawaii, live there for thirty years, and then circumstances are such that they have to move to another state that refuses to recognize the Hawaii marriage (in compliance with DOMA), they run the concrete risk of losing all those rights that they have acquired as a married couple. This unjustifiably disrupts the couples’ reliance on their marriage. Indeed, because people have the right of movement between the states, nothing can be done to prevent the couple from arriving to a new state with extrastate judgments in tow because it would impair constitutional rights “which lie at the very foundation of our special and peculiarly American system.”\(^{174}\) But although the forum state cannot prevent the couple from physically entering its territory, the effect would be identical because the couple would have to forfeit their rights at the border, which amounts to the same thing as being denied entry.

VI. CONCLUSION

It appears as if Edmund Randolph’s prediction that Congress would usurp its power acting under the enabling provision of the Full Faith and Credit Clause has finally come to pass with the passage of DOMA. DOMA was motivated by forces who disavowed “[o]ne of the most fundamental social interests[,] that the law shall be uniform and impartial. There must be nothing in its action that savors of prejudice or favor or even arbitrary whim or fitfulness.”\(^{175}\) DOMA fails this essential fiat on all fronts. This legislation is simply “a power grab of unprecedented proportions”\(^{176}\) and threatens to disrupt interstate relations on a grand scale, an effect contrary to the clause’s numerous goals.

DOMA violates the principles of a federal republic by allowing the states to take off in completely different directions. It runs afoul of the integrating force of the clause and the Constitution as a whole by encouraging forum shopping and competition among the states. It defies the self-

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176. Tribe Letter, supra note 9, at SS932.
executing power of the article by making a mockery of the mandatory language of the first sentence of the clause. Finally, it kills the private expectations that parties legitimately have when entering into a marriage, thereby taking down with it a huge slice of common law, namely, collateral estoppel and res judicata.

The power of Congress enumerated in the Full Faith and Credit Clause must be viewed as a subset of the power granted by the Constitution to compel states to recognize each other's "acts, records and judicial proceedings." Because of the self-executing dictate of the clause, congressional power must be limited: procedurally, to a context providing a method of authentication (which Congress has exercised), and towards the creation of a national system of registration and execution of state judgments (which Congress has not yet done); substantively, to a power enabling it to expand the reach of the constitutional mandate. Only in these ways can Congress truly exercise its powers granted by the second sentence of the Full Faith and Credit Clause in synchronization with the clause's meaning and spirit.