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ESSAY

Abortion, Blocking Laws, and the Full Faith and Credit Clause

Haley Amster*

Last September, a Nebraska woman named Jessica Burgess was sentenced to two years in prison for acquiring abortion pills that her teenage daughter used to terminate her pregnancy.[1] Her daughter had already been sentenced to jail time for concealing the remains.[2] How did Nebraska prove what the two had done? The State's case relied on private Facebook messages between the teenager and her mother, which Meta provided to law enforcement after receiving a search warrant for the teenager's account.[3]

Under a law since enacted in California, however, Meta would have been barred from cooperating with Nebraska law enforcement. Assembly Bill (AB) 1242[4]—part of a set of legislative protections for abortion California passed in response to *Dobbs v. Jackson Women's Health Organization*—blocks data held by California-based companies from access by law enforcement in states that have outlawed or severely curtailed abortion. And California is not the only state seeking to block law enforcement access to abortion-related data—Washington recently passed a similar "blocking law" for data held there.[5]

Opponents of these blocking laws have signaled plans to bring legal challenges under the Full Faith and Credit Clause of Article IV of the U.S.

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1. Jesus Jiménez, *Mother Who Gave Abortion Pills to Teen Daughter Gets 2 Years in Prison*, N.Y. TIMES (Sept. 22, 2023), https://perma.cc/K3XM-S2G7.
2. Andrea González-Ramírez, *Nebraska Mom Gets Prison Time for Giving Daughter Abortion Pills*, CUT (Sept. 22, 2023), https://perma.cc/S8ZG-X6KE.
3. *Id.*; *Correcting the Record on Meta's Involvement in Nebraska Case*, META (Aug. 9, 2022), https://perma.cc/6VCW-TSZ5.
4. Assem. B. 1242, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (enacted).
5. H.B. 1469, 68th Leg., 2023 Reg. Sess. (Wash. 2023) (enacted).

Constitution, which obligates states to recognize the laws and judgments of other states.

Focusing specifically on California's AB 1242 and the Full Faith and Credit Clause, I argue in this essay that limitations to the Full Faith and Credit Clause render it inapplicable to California's new blocking law. AB 1242 is therefore likely constitutional.

I. AB 1242's Key Provisions

California Assemblymember Rebecca Bauer-Kahan introduced AB 1242, which she explained was designed "to protect abortion privacy across the country."[6] Per Assemblymember Bauer-Kahan, "We have no obligation to be complicit in enforcing laws that are antithetical to our own values and legal system in California."[7]

AB 1242 operates by carving out an exemption to the existing legal mandate to comply with out-of-state search warrants, subpoenas, or other forms of legal process.

Existing law generally requires California-based electronic communication service providers to comply with legal process that originates in another state.[8] In other words, electronic communications service providers incorporated in California (e.g., Apple) or with a principal place of business in California (e.g., Google and Meta) must generally turn over user records in response to a valid subpoena, search warrant, or other form of legal process, regardless of whether that legal process originated in California or another state.[9]

AB 1242 amends this background law in several ways:[10]

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6. Press Release, Rebecca Bauer-Kahan, Assemblymember Bauer-Kahan and Attorney General Bonta's Legislation Protecting Digital Information on Abortion Heads to the Governor (Aug. 31, 2022), https://perma.cc/STB7-GL7X.

7. *Id.*

8. *See, e.g.*, CAL. PEN. CODE § 1524.2(c) (2023).

9. *Id.*; CAL. CIV. PROC. CODE § 2029.300 (2023); *see also For California Electronic and Computing Services Companies, New Processes Required Before Responding to Warrants, Subpoenas, and Other Information Requests*, BAKERHOSTETLER (Oct. 11, 2022), https://perma.cc/PVS3-J445; Dana Brusca, Mark Zwillinger & Bart Huff, *California Poised to Enact Law Prohibiting Electronic Communication Services Providers From Complying with Out-of-State Legal Process Relating to Abortion Inquiries*, ZWILLGENBLOG (Sept. 2, 2022), https://perma.cc/Y9J8-JWQ5.

10. The law also has a set of other provisions which I do not discuss in depth in this piece. Some of these provisions prohibit California judges from authorizing certain forms of digital surveillance in furtherance of investigating abortions that are legal in California. Assem. B. 1242, 2021-2022 Leg., Reg. Sess. §§ 3, 5, 7, 11 (Cal. 2022) (enacted). Others prohibit state and local government agencies from providing information to

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- Section 8 of the bill, which applies *only* to electronic communications service providers incorporated in California, prohibits providers from complying with out-of-state search warrants *unless* the warrants include "an attestation that the evidence sought is not related to an investigation into" a violation of an abortion restriction.[11]

- Section 9, which applies to *either* electronic communications service providers incorporated in California *or* those incorporated elsewhere with a principal place of business in California, prohibits providers from responding to any out-of-state legal process[12] that they know or should know relates to an abortion investigation.[13]

For example, if Apple (incorporated in California) receives a search warrant from Texas law enforcement seeking data related to an investigation of a Texas citizen's abortion in violation of Texas law, Apple is prohibited from complying with such a warrant under AB 1242. Or if Apple receives a search warrant from Texas law enforcement lacking the required attestation that the warrant is not related to an abortion investigation, Apple is prohibited from complying under Section 8 of AB 1242.

And if Meta (incorporated in Delaware but has its principal place of business in California) receives an out-of-state search warrant seeking a user's Facebook messages (as it did in the case of the Nebraska teenager) and Meta knows or should know this warrant relates to an abortion investigation, Section 9 of AB 1242 prohibits Meta from complying with the warrant and providing those messages.

II. The Full Faith and Credit Clause and Its Exceptions

Opponents of AB 1242 claim that the law violates the Full Faith and Credit Clause of the U.S. Constitution (the "Clause"). For example, in its opposition to AB 1242 before the law was enacted, the Right to Life League claimed that the bill "blatantly and impermissibly" violates the Clause by "forbid[ding] state

any individual or out-of-state agency regarding an abortion that is lawful in California. *Id.* § 11.

11. *Id.* § 8. The underlying investigation must be for an abortion that, while unlawful in the investigating state, is lawful in California. *Id.* § 2. If the abortion being investigated is also illegal under California law, the protections of AB 1242 do not apply. *Id.*

12. Specifically, the law prohibits service providers from responding to "a warrant, court order, subpoena, wiretap order, pen register trap and trace order, or other legal process issued by, or pursuant to, the procedures of another state or a political subdivision thereof." *Id.* § 9.

13. *Id.*

peace officers from complying with valid court orders issued in foreign states such as subpoenas and from sharing information properly requested by a foreign jurisdiction."[14]

The Full Faith and Credit Clause of the U.S. Constitution is found in Section 1 of Article IV, and it states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[15] The purpose of the Clause is to ensure that judgments rendered in one state are enforceable in all others, even if the enforcing state did not itself issue the judgment.[16]

But the Clause is not an inexorable command.

One long-recognized caveat to the Clause is the penal law exception. The Supreme Court has held since the nineteenth century that no state is obligated to carry out the penal law of another state.[17] While criminal law squarely fits the penal law category, the exception is not limited only to criminal law. As the Supreme Court explained in *Huntington v. Attrill*, the penal law exception to the Clause does not require a state to enforce another state's civil statute when "its purpose is to punish an offense against the public justice of the state," not to "afford a private remedy to a person injured by the wrongful act."[18] Since *Huntington*, state and federal courts continue to recognize the existence of the penal law exception in the civil context, but state courts have only applied it a handful of times to decline to enforce another state's judgment.[19]

Another exception is the public policy exception–that is, a state's own strongly held public policy can override application of another state's contrary law under some circumstances.[20] The Supreme Court articulated this exception in *Nevada v. Hall*, in which the Court upheld California's refusal to

14. S. RULES COMM., OFF. OF S. FLOOR ANALYSES, AB 1242: THIRD READING, 2021-22 LEG., REG. SESS., at 9 (Cal. 2022), https://perma.cc/GPU5-PV4F.

15. U.S. CONST. art IV, § 1.

16. Milwaukee County v. M. E. White Co., 296 U.S. 268, 276-77 (1935) (explaining that the purpose of the Full Faith and Credit Clause was to "alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others" and instead "make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin").

17. *See* Huntington v. Attrill, 146 U.S. 657, 666 (1892) (quoting The Antelope, 23 U.S. (10 Wheat.) 66, 123 (1825)).

18. 146 U.S. at 673-74.

19. *See* Diego A. Zambrano, Mariah E. Mastrodimos & Sergio F.Z. Valente, *The Full Faith and Credit Clause and the Puzzle of Abortion Laws*, 98 N.Y.U. L. REV. ONLINE 382, 401 n.119 (2023) (collecting cases).

20. *See* Nevada v. Hall 440 U.S. 410, 421-22 (1979), *overruled on other grounds by* Franchise Tax Bd. v. Hyatt, 139 S. Ct. 1485 (2019).

apply a Nevada statutory damages cap in an automobile accident case.[21] Per the Court, California was not obligated by the Clause to apply Nevada's damages cap given that it was contrary to California public policy of providing "full protection to those who are injured on its highways through the negligence of both residents and nonresidents."[22]

However, while the Court has applied the public policy exception in a *choice of law* dispute, it has declined to apply the exception to allow a state to refuse to recognize another state's *judgment*. As the Court explained in *Baker ex rel. Thomas v. General Motors*, "[a] court may be guided by the forum State's 'public policy' in determining the *law* applicable to a controversy," favorably citing *Nevada v. Hall*, but "this Court's decisions support no roving 'public policy exception' to the full faith and credit due *judgments*."[23] Per the Court, "credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded."[24] The applicability of the public policy exception thus seemingly turns on whether a state invokes it to avoid implementing another state's judgment.

One commentator has recently called attention to a third exception rooted in the Clause's language mandating full faith and credit for "*judicial proceedings*" of other states.[25] According to Professor Lea Brilmayer, "for a legal decision to be binding on decision makers elsewhere in the judicial system it must have been 'judicial' *in the sense intended by Article III*," meaning that "the dispute is a justiciable case or controversy."[26] In other words, advisory opinions or proceedings which otherwise do not satisfy Article III standing requirements are not entitled to full faith and credit from other states.

III. The Intersection of AB 1242 and the Full Faith and Credit Clause

I now turn to the application of these exceptions to AB 1242. First, I argue that the Full Faith and Credit Clause's textual limitation to "judicial proceedings" exempts from its coverage legal process that does not undergo judicial review before being issued—a significant portion of the legal process blocked by AB 1242. Second, AB 1242 may fall squarely into the penal law

21. *Id.*

22. *Id.* at 424.

23. 555 U.S. 222, 233 (1998).

24. *Id.* at 232 (quoting Milwaukee County v. M. E. White Co., 296 U.S. 268, 277 (1935)).

25. Lea Brilmayer, *Abortion, Full Faith and Credit, and the 'Judicial Power' Under Article III: Does Article IV of the U.S. Constitution Require Sister-state Enforcement of Anti-abortion Damages Awards?* (Jan. 10, 2023) (unpublished manuscript) (on file with author).

26. *Id.* at 31.

exception, as the legal process at issue often arises out of criminal investigations. Legal process arising out of enforcement of civil laws may also fall into the penal law exception, such as Texas's anti-abortion law, SB 8. And third, I argue AB 1242 should fall into the public policy exception because blocking legal process during an investigation should not implicate the credit due to other states' judgments.

A. "Judicial Proceedings"

The Full Faith and Credit Clause applies to the "public Acts, Records, and judicial Proceedings of every other State."[27] Legal process is not another state's public act or legislation. Nor is it a record.

AB 1242 should therefore seemingly be analyzed in the "judicial proceedings" category, although this categorization is imperfect because legal process is not in and of itself a judicial proceeding, nor does all legal process arise out of a judicial proceeding. While a search warrant requires a court to find probable cause and approve a warrant application, not all legal process undergoes judicial review before being issued. Under Texas Rule of Civil Procedure 176.4, a subpoena may be issued by any "attorney authorized to practice in the State of Texas."[28] If a Texas attorney serves Meta with a subpoena seeking data associated with a certain user account, that subpoena has not been judicially reviewed at the point Meta receives it.[29] In other words, it has not been the subject of a *Texas judicial proceeding*.

Therefore, at a minimum, the Clause should not even attach to legal process like subpoenas, and accordingly should not be implicated by a company refusing to comply on the basis of Section 9 of AB 1242.

At least one court has employed similar reasoning. In *Hyatt v. California Franchise Tax Board*, the California Tax Board issued subpoenas targeting individuals in New York.[30] The targeted individuals commenced proceedings in New York to quash the subpoenas.[31] The California Tax Board argued that the New York court owed the subpoenas full faith and credit.[32] The New York intermediate appellate court affirmed the lower court's rejection of the Tax Board's argument, explaining the "Full Faith and Credit Clause does not apply" to the subpoenas at issue because they "were never subjected to judicial review,"

27. U.S. CONST. art. IV, § 1.

28. Tex. R. Civ. P. 176.4(b). Subpoenas may also be issued by court clerks, officers of the court, and certain state officers. *Id.*

29. *See id.*

30. 962 N.Y.S.2d 282 (N.Y. App. Div. 2013).

31. *Id.* at 286-87.

32. *Id.* at 287.

their "propriety . . . was never determined by the courts of California," and they are therefore not "judgments of the California courts to which full faith and credit must be granted."[33]

The court also noted that the Clause "is only exacting in its requirements where judgments are concerned," pointing to a U.S. Supreme Court ruling arising out of related litigation, *Franchise Tax Board of California v. Hyatt*.[34] Per the U.S. Supreme Court:

> [O]ur precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. Whereas the full faith and credit command is exacting with respect to a final judgment rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, it is less demanding with respect to choice of laws. We have held that the Full Faith and Credit Clause does not compel a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.[35]

Accordingly, the Clause issues its strongest command with respect to the judgments of state courts—less so for anything else.

Taken together, the Clause should not apply to legal process that does not require judicial review before being issued. But for legal process that undergoes some amount of judicial review, like a search warrant for probable cause, the applicability of the Clause is somewhat less clear. While a search warrant requires a judicial proceeding to issue, the Court has nonetheless made clear that "the full faith and credit command" is "exacting" only with respect to "*a final judgment*."[36] A search warrant is not a final judgment. And AB 1242's provisions generally do not target the final judgments of other states the way California law does elsewhere. For example, AB 1666, passed in the same legislative session as AB 1242, provides that California courts shall not "enforce or satisfy a civil judgment received through an adjudication" under another state's law restricting or curtailing abortion access.[37] AB 1666 was clearly designed to prevent enforcement in California of another state's final civil judgment for a violation of another state's abortion restriction. AB 1242's provisions blocking the execution of a search warrant in the early stages of an

33. *Id.* at 291.

34. Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488 (2003) (cleaned up).

35. *Id.* at 494.

36. *Id.* (emphasis added).

37. Assem. B. 1666, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (enacted) (codified at CAL. HEALTH & SAFETY CODE § 123467.5 (2022).

investigation—long before a final civil judgment is rendered—stand in stark contrast to the provisions of AB 1666, which more clearly invoke the Clause.[38]

At a minimum, if AB 1242 implicates the Full Faith and Credit Clause by blocking enforcement of judicially reviewed out-of-state legal process, it may not receive the Clause's strictest command—which, per the Court, is reserved for final judgments. While the contours of a relaxed application of the Clause may become clearer in future litigation, this could mean that AB 1242 may be better able (as compared to AB 1666 or other state laws targeting civil judgments) to take advantage of recognized exceptions to the Clause—the penal law exception and the public policy exception. I explore the application of these exceptions next.

B. Penal Law Exception

As discussed above, the penal law exception to the Full Faith and Credit Clause applies to both (1) criminal laws and (2) civil laws in which the "purpose is to punish an offense against the public justice of the state," not to "afford a private remedy to a person injured by the wrongful act."[39]

Because the criminal laws of other states are not entitled to full faith and credit, the penal law exception removes applicability of the Clause from much of the legal process AB 1242 blocks. For example, there cannot be a successful full faith and credit constitutional challenge to AB 1242 if the law is used to block Nebraska from repeating the investigatory methods it previously employed against Jessica Burgess and her daughter (issuing a warrant to a California tech company as part of a *criminal* investigation).

And there is reason to think states will frequently turn to criminal law to target those who violate state abortion restrictions. Surveying cases prior to the *Dobbs* opinion, the reproductive justice group If/When/How "uncovered 61 cases in which an individual has been subject to the criminal legal system because they actually or allegedly self-managed an abortion or helped someone else do so."[40] And since *Dobbs*, some state legislatures in abortion-restrictive states have signaled plans to further attach criminal liability to abortion restrictions, including subjecting individuals who illegally obtain an abortion to pre-existing homicide laws.[41]

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38. Of course, the provisions of AB 1666 may also implicate exceptions to the Clause. For more on AB 1666's interaction with the Clause and questions regarding its constitutionality, see Zambrano et al., *supra* note 19.

39. Huntington v. Attrill, 146 U.S. 657, 673-74 (1892).

40. Farah Diaz-Tello & Sara Ainsworth, *The End of Roe and the Criminalization of Abortion: More of the Same for Too Many*, A.B.A. (Apr. 12, 2023), https://perma.cc/C7ZK-QQKQ.

41. *See, e.g.*, Rebecca Shabad, *S.C. Republicans Propose Bill that Could Subject Women Who Have Abortions to the Death Penalty*, NBC NEWS (Mar. 15, 2023), https://perma.cc/QF94-LMB3.

Any legal process stemming from enforcement of these criminal laws is not subject to full faith and credit by other states, and AB 1242's prohibition on compliance with such legal process presents no constitutional issue.

But beyond criminal law, the penal law exception may also apply to some civil laws restricting abortion access. Some commentators have already suggested that Texas's SB 8 may be one such law.[42] In short, SB 8 bars anyone from performing abortions in the state of Texas after detection of fetal heartbeat, as early as five weeks of pregnancy.[43] And it has an unusual enforcement scheme. The bill can only be enforced through private civil lawsuits and cannot be enforced by state or local officials.[44] Private individuals bringing the suit need not allege an injury.[45] And the law provides statutory damages of at least $10,000 per abortion, plus attorneys' fees.[46]

SB 8 seems to fit the Supreme Court's definition of a civil law in which the "purpose is to punish an offense against the public justice of the state," not to "afford a private remedy to a person injured by the wrongful act."[47] The objective of SB 8 is not to afford a private remedy to an injured plaintiff, as the plaintiff bringing an SB 8 lawsuit need not allege any injury at all, and the plaintiff receives statutory damages that are not tailored to harm actually suffered. The purpose of the law is to punish through a civil enforcement scheme that evades federal review.

Of course, as noted above, state courts have applied the penal law exception only a handful of times. But a law like SB 8 may be the relatively rare candidate that fits the penal law exemption.

C. Public Policy Exception

Last, the public policy exception can override the application of another state's contrary law, although the Supreme Court has placed limits on the use of this exception.

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42. Brilmayer, *supra* note 25, at 22; Zambrano et al., *supra* note 19, at 20-23; Paul S. Berman, Roey Goldstein & Sophie Leff, *Conflicts of Law and the Abortion War Between the States*, 172 U. PA. L. REV. 1, 94 (2024); Walker McKusick, Comment, *The Penal Judgment Exception to Full Faith and Credit: How to Bind the Bounty Laws*, WASH. L. REV. (forthcoming 2024) (manuscript at 19-23), https://perma.cc/H9L3-4RDV.

43. *See* TEX. HEALTH & SAFETY CODE § 171.208 (2021); Suzanne Bell, *A Spike in Births And Other Potential Impacts of Texas' Abortion Restrictions*, JOHNS HOPKINS (Aug. 31, 2023), https://perma.cc/7M47-8295.

44. TEX. HEALTH & SAFETY CODE § 171.208(a) (2021).

45. *See id.*

46. *Id.* § 171.208(b).

47. *Huntington*, 146 U.S. at 673-74.

As an initial matter, AB 1242's ability to invoke the public policy exception is strengthened by its language in Section 1, which reads:

> [I]t is the public policy of the State of California that a corporation that is headquartered or incorporated in California that provides electronic communications services shall not provide records, information, facilities, or assistance in response to legal process issued by, or pursuant to, the procedures of another state or a subdivision there of to investigate or enforce any violation, the investigation or enforcement of which would implicate the fundamental right of privacy with respect to personal reproductive decisions.

Further strengthening AB 1242 is that legislation surrounding abortion seems to be a quintessential matter of public policy.[48] If the statutory damages cap at issue in *Nevada v. Hall* invoked the public policy exception, it seems legislative decisionmaking regarding abortion should as well.

And although there are no cases exactly on point, the Supreme Court's decision in *Baker ex rel. Thomas v. General Motors* provides some helpful guidance on the public policy exemption and the requirements of full faith and credit.[49] *Baker* concerned the interaction between two lawsuits in two different state courts. The first lawsuit was a wrongful termination action brought by Ronald Elwell in a Michigan court against his former employer, General Motors.[50] As part of the settlement agreement, Elwell agreed to be enjoined from testifying in any litigation in the future involving General Motors.[51] The Michigan court entered the injunction.[52] The second lawsuit was a tort action brought by Kenneth and Stephen Baker in a Missouri court against General Motors, which General Motors removed to federal court.[53]

The Bakers subpoenaed Elwell to testify in the Missouri lawsuit.[54] General Motors objected, arguing that the Michigan injunction barred Elwell's testimony.[55] The district court ruled in favor of the Bakers, holding that the Michigan injunction did not need to be enforced in Missouri because the injunction violated Missouri's public policy favoring disclosure of all relevant information.[56] The Court of Appeals for the Eighth Circuit reversed, holding

48. *See, e.g.*, Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 346 (2022) (Kavanaugh, J., concurring) (describing abortion as "a consequential moral and policy issue").

49. 522 U.S. 222.

50. *Id.* at 226-27.

51. *Id.* at 228.

52. *Id.*

53. *Id.* at 229.

54. *Id.* at 229-30.

55. *Id.*

56. *Id.* at 230.

that Elwell's testimony was inadmissible due to full faith and credit for the Michigan injunction.[57]

The Supreme Court reversed the Eighth Circuit and held that Elwell's testimony in the Missouri action, despite the Michigan injunction, did not violate the Full Faith and Credit Clause.[58]

In so holding, the Court initially explained that Elwell's ability to testify was not justified by an invocation of the public policy exception to the Clause in order to ignore the Michigan injunction.[59] Per the Court, while "[a] court may be guided by the forum State's 'public policy' in determining the *law* applicable to a controversy, . . . this Court's decisions support no roving 'public policy exception' to the full faith and credit due *judgments*."[60]

But the Court also made clear that giving full faith and credit to the Michigan injunction did not equate to blind adherence to its terms, meaning that Elwell could nevertheless testify in Missouri without violating the Clause. Per the Court, "[f]ull faith and credit . . . does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments" because "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do."[61] The Supreme Court explained that full faith and credit is only due to the "matters . . . the Michigan injunction legitimately conclude[d]," meaning that Missouri owed full faith and credit only to the claims precluded by the Michigan judgment binding Elwell and General Motors.[62] But this did not mean that Missouri was bound to enforce the Michigan injunction as written.[63]

In support, the Court pointed to the fact that "[o]rders commanding action or inaction have been denied enforcement in a sister State when they purported to accomplish an official act within the exclusive province of that other State."[64] For example, "one State's judgment cannot automatically transfer title to land in another State."[65] Similarly, one state's "antisuit injunction[] regarding litigation elsewhere" cannot "control[] the second court's actions regarding litigation in that court."[66]

57. *Id.*
58. *Id.* at 240-41.
59. *Id.* at 233.
60. *Id.*
61. *Id.* at 235.
62. *Id.* at 237-39.
63. *Id.* at 238.
64. *Id.* at 235.
65. *Id.* at 239 (citing Fall v. Eastin, 215 U.S. 1 (1909)).
66. *Id.* at 236 (citing James v. Grand Trunk W. R.R. Co., 152 N.E.2d 858, 867 (Ill. 1958)).

As applied, *Baker* further strengthens AB 1242's constitutionality. The Court's statement that there is "no roving 'public policy exception' to the full faith and credit due *judgments*" while recognizing the exception "in determining the *law* applicable to a controversy," reinforces that the Clause applies with most force to final civil judgments, and less so otherwise.[67] As previously stated, an unreviewed subpoena is not a judicial proceeding,[68] let alone a judgment, so any legal process lacking judicial review should be able to take advantage of the public policy exception given California's strong public policy statement in Section 1 of AB 1242. Moreover, legal process that is judicially reviewed (such as a search warrant) is not necessarily a final civil judgment, so the public policy exception could apply there as well.

Even if a search warrant were categorized as a final judgment analogous to the injunction at issue in *Baker*, an application of the Clause nonetheless might not require California to execute the search warrant.[69] This is because "the mechanisms for enforcing the judgment do not travel with the judgment itself for purposes of full faith and credit."[70] As applied to AB 1242, while another state's court order might hold some claim-preclusive effect with respect to its decision on the legal merits, it does not force another forum to execute the order in violation of the forum's own laws. If "one State's judgment cannot automatically transfer title to land in another State,"[71] and one state's "antisuit injunction[] regarding litigation elsewhere" cannot "control[] the second court's actions regarding litigation in that court,"[72] then one state's search warrant concerning an abortion violation cannot automatically require execution of the warrant in a second state in violation of that state's laws.

In sum, California's strong public policy statement in AB 1242 may allow the public policy exception to be invoked, or, per *Baker*, even if the exception cannot be invoked, full faith and credit does not necessarily mean that AB 1242's blocking mechanism is constitutionally invalid.

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67. *Id.* at 233.

68. *See supra* Part III.A.

69. I assume for purposes of argument that a search warrant could be properly categorized as a judgment analogous to the Michigan court injunction at issue in *Baker*, but I leave the question open. The Court in *Baker* explained that the Michigan injunction was properly analyzed as a judgment because "[t]he Court has never placed equity decrees outside the full faith and credit domain," and "[e]quity decrees for the payment of money have long been considered equivalent to judgments at law entitled to nationwide recognition." *Id.* at 234. It is not clear to this author that a search warrant is necessarily entitled to equivalent status with an equity decree or a judgment.

70. *Id.* at 239.

71. *Id.* (citing *Eastin,* 215 U.S. 1).

72. *Id.* at 236 (citing *James*, 152 N.E.2d 858).

IV. Conclusion

Blocking laws like California's AB 1242 present a strong counter to the abortion restrictions of other states. Digital evidence is highly sought after by prosecutors, and much of that evidence is held by technology companies headquartered or with principal places of business in California and Washington. By blocking access to this data, these laws affect the course of investigations before they mature into charges, and lawsuits before they mature into judgments.

Moreover, blocking laws are well-positioned to survive a Full Faith and Credit Clause challenge, although this depends in part on the kind of legal process the law is being used to block. With respect to AB 1242's provisions blocking the execution of *any criminal legal process*, the Clause simply does not apply because of the penal law exception. With respect to *civil subpoenas*, the Clause likely does not apply because a subpoena lacking judicial review is not the result of another state's "judicial proceeding." With respect to *civil search warrants or other court-ordered civil legal process*, the Clause may not apply if the civil law at issue is nonetheless a penal law, such as Texas's SB 8. In the alternative, the public policy exception may apply to search warrants and subpoenas, whether judicially reviewed or not. And even if no exception applies, an application of the Clause still may not require California to enforce another state's civil search warrant, per the reasoning in *Baker*.