Cornell Law Review

Volume 71
Issue 1 *November 1985*

Article 8

Title 14 New York Choice of Law Rule for Contractual Disputes: Avoiding the Unreasonable Results

Barry W. Rashkover

TITLE 14, NEW YORK CHOICE OF LAW RULE FOR CONTRACTUAL DISPUTES: AVOIDING THE UNREASONABLE RESULTS

On July 19, 1984, New York Governor Mario Cuomo signed into law Assembly Bill 7307-A,[1] codified primarily as title 14 of the New York Law of General Obligations.[2] The new statute modifies New York's conflicts of law doctrine. Prior to title 14, New York courts generally enforced contracting parties' choice of New York law to govern an agreement only if the state maintained a reasonable relationship with the agreement.[3] In contrast, title 14 requires New York courts to enforce such clauses in large agreements even in the absence of a reasonable relationship between New York and the contract.[4] In addition, the new statute expands New York's in personam jurisdiction by permitting parties who stipulate New York law to consent to New York jurisdiction.[5]

This Note addresses the constitutionality of title 14 under the full faith and credit clause. Section I presents a historical backdrop to title 14. It first demonstrates that choice of law implicates two competing values: recognition of the legislative policies of interested jurisdictions and the autonomy of contracting parties to choose a particular jurisdiction's law to govern their multijurisdictional agreement.[6] Second, the section discusses the constitutional limitations imposed on states' choice of law decisions by the full faith and credit clause.[7] The section then reviews New York's common law doctrine for solving conflict of law problems in contractual disputes.[8] Section II discusses the mechanics and legislative goals of title 14 and highlights the significant changes that the statute implements.[9] Focusing on these significant changes, section III analyzes title I4 in light of the full faith and credit clause. This analysis demonstrates that title I4 is unconstitutional because it requires New York courts to apply New York law to contracts bearing no significant contact to the state, and in circumvention of other inter-

---

1 1984 N.Y. Laws ch. 421.

2 N.Y. GEN. OBLIG. LAW §§ 5-1401, 5-1402 (McKinney Supp. 1984-85). Part of the session law is codified in New York civil practice law. N.Y. CIV. PRAC. R. 327(b) (McKinney Supp. 1984-85) [for convenience, the session law is hereinafter cited as title 14].

3 *See infra* notes 68-84 and accompanying text.

4 *See infra* notes 92-100 and accompanying text.

5 *See infra* notes 101-05 and accompanying text.

6 *See infra* notes 11-19 and accompanying text.

7 U.S. CONST. art. IV, § 1. *See infra* notes 24-67 and accompanying text.

8 *See infra* notes 68-91 and accompanying text.

9 *See infra* notes 92-113 and accompanying text.

ested states' legislative policies. This Note concludes that New York should amend title 14 so that the new law will conform to the contours of the full faith and credit clause and proposes the content of this amendment.[10]

I
HISTORICAL BACKGROUND

A. The Values Underlying State Conflict of Law Doctrines

The various approaches to conflict of law issues in interstate and international contractual disputes reveal two competing values. First, conflict of law rules should allow contracting parties some freedom to select the law that will govern their agreement.[11] Second, conflict of law rnles should recognize the various legislative policies of jurisdictions that are interested in a particular dispute.[12] Contracting parties' freedom to designate governing law fosters certainty, whereas the recognition of other jurisdictions' policies furthers comity and discourages parties from seeking to avoid the policies of a given state.[13]

Almost all modern conflicts theories place at least some weight on the intent of the parties when deciding what law should apply to a multijurisdictional contractual dispute. At one extreme stands the "objectivist approach" which gives only limited weight to governing law clauses and emphasizes the legislative policies of the competing jurisdictions.[14] This approach provides that when a contract does not include a governing law clause, a court should look to the law of the jurisdiction maintaining the "most substantial contacts" with the agreement.[15] Correspondingly, when a contract includes a governing law clause, the parties' choice of law becomes only one of several factors that a court should consider in determining which jurisdiction bears the "most substantial contacts."[16]

At the other extreme is the autonomist position, maintaining that courts should honor the contracting parties' choice of gov-

---

10 *See infra* notes 116-38 and accompanying text.

11 *See infra* notes 17-19 and accompanying text.

12 *See infra* notes 14-16, 20-23 and accompanying text.

13 *See infra* notes 14-23 and accompanying text.

14 Note, *Effectiveness of Choice-of-Law Clauses in Contract Conflicts of Law: Party Autonomy or Objective Determination?*, 82 COLUM. L. REV. 1659, 1678 (1982); *see also* Haag v. Barnes, 9 N.Y.2d 554, 175 N.E.2d 441, 216 N.Y.S.2d 65 (1961) (application of objectivist approach to conflict of law problems in contractual dispute with governing law clauses).

15 *See* Auten v. Auten, 308 N.Y. 155, 160, 124 N.E.2d 99, 101-02 (1954) ("most substantial contacts" refers to jurisdiction with greatest interest in litigation).

16 *See* Haag v. Barnes, 9 N.Y.2d 554, 559, 175 N.E.2d 441, 443, 216 N.Y.S.2d 65, 68 (1961) (intention of parties is not decisive).

erning law.[17] The autonomists stress that upholding governing law clauses will assure the parties that courts will interpret their agreement pursuant to their intent.[18] The autonomists minimize the importance of legislative policies in contractual disputes and reject the need for a relationship between the contract and the chosen jurisdiction.[19]

The *Restatement (Second) of Conflict of Laws* (*Restatement Second*) represents an intermediate position between the objectivists and autonomists.[20] The *Restatement Second* grants contracting parties the freedom to stipulate a governing law but also recognizes the legislative policies of competing jurisdictions. Under this intermediate approach, a court should apply the law of the jurisdiction bearing the "most substantial contacts" to the agreement when the agreement does not contain a governing law clause.[21] When the agreement does include a governing law clause, however, a court should honor the stipulation unless "no reasonable relationship" exists between the contract and the chosen state or no other "reasonable basis" exists for the stipulation.[22] Notwithstanding these rules, the *Restatement Second* does not require courts to enforce a stipulation of governing law that circumvents the public policies of a foreign jurisdiction. When parties stipulate the forum's law in circumvention of a foreign jurisdiction's public policy, a court should ignore the contractual stipulation of forum law and apply the law of the foreign jurisdiction if the foreign jurisdiction has more substantial contacts with the contract.[23]

B. The Full Faith and Credit Clause

The full faith and credit clause[24] of the United States Constitution requires that a forum state recognize the legislative policies of more interested foreign states when making choice of law decisions.[25] The clause refutes the idea that each state is a completely

---

17 *See* Note, *supra* note 14, at 1678.

18 *See id.* at 1662 n.14; *see also* A. EHRENZWEIG, A TREATISE ON THE CONFLICT OF LAWS § 176 (1962) (honoring governing law clauses promotes private contracting by assuring parties that judicial interpretation will conform to their intent).

19 EHRENZWEIG, *supra* note 18, at § 176.

20 RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 187, 188 (1971).

21 *Id.* § 188.

22 *Id.* § 187(2)(a).

23 *Id.* § 187(2)(b).

24 U.S. CONST. art. IV, § 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State." *Id.* "Public Acts" include state statutory law. Bradford Elec. Light Co. v. Clapper, 286 U.S. 145, 154-55 (1932); Modern Woodmen of Am. v. Mixer, 267 U.S. 544, 550 (1925).

25 *See* Allstate Ins. Co. v. Hague, 449 U.S. 302, 322-23 (1981) (Stevens, J., concurring); *see also infra* notes 37-67 and accompanying text (discussing development of foreign state legislative policy prong of Court's full faith and credit clause analysis).

autonomous jurisdiction. Indeed, the clause builds national unity upon a foundation of mutual respect among the states for one another's statutory law.[26] Of course, not every circumvention of a foreign state's statutory law will trigger a federal concern for national unity.[27] Consequently, the full faith and credit clause allows states considerable leeway to apply different conflict of law rules.[28] Nevertheless, the Supreme Court has interpreted the full faith and credit clause to establish certain boundaries within which a state's conflict of law rules must operate.

Since the mid-1930s, the Supreme Court has recognized that as long as the forum state maintains some contact with the transaction or occurrence, giving rise to a sufficient interest in the application of the forum's law, policy should not require application of a foreign state's statute.[29] Thus, in most full faith and credit clause cases the Court has investigated whether the forum state bears a sufficient interest in the dispute to apply its own law.[30] For example, in *Pacific Employers Insurance Co. v. Industrial Accident Commission,*[31] the Court allowed California to apply its worker's compensation statute to an employment contract even though the contracting parties, a Massachusetts corporation and a Massachusetts resident, formed the agreement in Massachusetts. The contract provided for the em-

---

26 *See* R. WEINTRAUB, CONFLICT OF LAWS 408 (1971).

27 *Hague,* 449 U.S. at 322-23 (Stevens, J., concurring).

28 *See infra* notes 31-67 and accompanying text. The Supreme Court has not applied the full faith and credit clause to curtail significantly the choice of law decisions of individual states. *See* Note, *supra* note 14, at 1662-63. Despite its leniency, however, the Court does not permit a forum state to apply its own law in cases where the state possesses only minimal contact to a transaction and where a foreign state maintains a strong interest in the application of its law.

Many scholars prefer the Court to take a more commanding role in resolving interstate choice of law problems. *See generally Choice of Law: A Symposium,* 14 U.C.D. L. REV. 839 (1981). The dissent of three justices in the Court's most recent decision on state choice of law decisions suggests the possibility of increased federalization in the near future. *See Hague,* 449 U.S. at 332-40 (Powell, J., dissenting). Why the Court has not vigorously exercised the full faith and credit clause to curb states' choice of law decisions remains unclear. Some commentators suggest that the Court desires to wait until more uniformity comes to conflicts law. *See, e.g.,* Note, *supra* note 14, at 1663 n.21.

29 Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532, 547 (1935).

30 *See, e.g.,* Allstate Ins. Co. v. Hagne, 449 U.S. 302, 313-20 (1981) (plurality opinion); Clay v. Sun Ins. Office, 377 U.S. 179, 183 (1964); Carroll v. Lanza, 349 U.S. 408, 412-13 (1955); Watson v. Employers Liab. Assurance Corp., 348 U.S. 66, 71-74 (1954); Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493, 502-05 (1939).

Prior to the mid-1930s, the Court used a strict full faith and credit test that balanced the interests of the competing jurisdictions to apply the law of the state with the dominant interest in the litigation. Bradford Elec. Light Co. v. Clapper, 286 U.S. 145, 158-59 (1932). The sufficient interest approach is an outgrowth of Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935), which recognized that "*[p]rima facie* every state is entitled to enforce in its own courts its own statutes, lawfully enacted." *Id.* at 547 (emphasis in original).

31 306 U.S. 493 (1939).

ployee's temporary employment in California, where he subsequently suffered a job related injury. The California worker's compenstation law permitted the employee to recover greater benefits than did the Massachusetts statute.[32] The Supreme Court upheld the California state court's application of California law and emphasized that application of Massachusetts law would preclude California from enforcing its statutory protection of employees injured within its boundaries.[33] California thus maintained a sufficient interest in the dispute to warrant the application of its law.[34]

Since *Pacific Employers,* the Supreme Court has applied the sufficient interest test to permit forum states to choose their own law in a variety of situations. For instance, the Court upheld a Florida district court's use of Florida law to settle a claim on an Illinois insurance policy when the contract covered ambulatory personal property, present in Florida at the time of the injury.[35] Similarly, the Court permitted California, the forum state, to apply its worker's compensation law to an employment contract formed in that state, even though the parties performed the contract in Alaska and the job-related injury occurred in Alaska.[36]

The Court, however, has not relied exclusively on the sufficient interest test. In other cases the Court has adopted a second approach, considering whether applying the forum state's law would frustrate an important legislative policy of a foreign state.[37] In *Order*

---

32 *Id.* at 498-99.

33 *Id.* at 501.

34 *Id.*

35 Clay v. Sun Ins. Office, 377 U.S. 179 (1964). The Court explained that "Florida has ample contacts with the present transaction and the parties to satisfy any conceivable requirement of full faith and credit." *Id.* at 183.

36 Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532 (1935). The Court stated that California had an interest in protecting workers who enter into contracts in its territory. *Id.* at 550. *See also* Cardillo v. Liberty Mutual Ins. Co., 330 U.S. 469, 476 (1947) (District of Columbia Workmen's Compensation Commissioner had jurisdiction to hear claim over employment contract formed in D.C. but performed in Virginia).

Compare John Hancock Mutual Life Ins. Co. v. Yates, 299 U.S. 178 (1936). *Yates* exemplifies the fact pattern that fails to establish sufficient contacts between the forum state and the transaction to warrant application of the forum state's law. In *Yates,* the Supreme Court required a Georgia state court to apply New York law to an insurance contract for which "there was no occurrence, nothing done [in Georgia] to which the law of Georgia could apply." *Id.* at 182. The facts involved an insurance contract, "applied for, issued and delivered in New York," *id.* at 179, where the policy-holder lived, and subsequently expired. Georgia's only contact to the agreement was that the policy-holder's widow, beneficiary of the contract, lived in Georgia at the time of the ligitation. *Id. See also* Allstate Ins. Co. v. Hague, 449 U.S. 302, 310 (1981) (plurality opinion) (citing *Yates* approvingly).

37 *See* Thomas v. Washington Gas Light Co., 448 U.S. 261, 272 (1980) (plurality opinion) (full faith and credit clause should prevent circumvention of important inter-

of United Commercial Travelers of America v. Wolfe[38] the Court required a South Dakota state court to apply Ohio's statute of limitations to a contract claim by a resident of South Dakota against an Ohio fraternal benefit society.[39] The state court explained that Ohio's interest in regulating the rights and duties of members of fraternal organizations chartered in Ohio outweighed any interest that South Dakota might maintain as the place of contract formation.[40] Similarly, in *Hughes v. Fetter*[41] the Court required Wisconsin, the forum state, to apply the wrongful death statute of Illinois to an administrator's action seeking damages for a fatal auto accident that occurred in Illinois.[42] Illinois law recognized the administrator's claim whereas Wisconsin law did not.[43] The Supreme Court reasoned that Illinois, the foreign state, maintained a strong interest in the rights and duties created under its wrongful death statute.[44] The Court concluded that "the strong unifying principle embodied in the Full Faith and Credit Clause" mandated the application of the Illinois statute in the Wisconsin action.[45]

The Supreme Court's latest discussion of the full faith and credit clause's application to public acts is *Allstate Insurance Co. v. Hague,*[46] a plurality opinion demonstrating the continuing conflict between the sufficient forum interest and the foreign state legislative policy approaches. Justice Brennan, announcing the judgment of the Court, focused on whether the forum state maintained a sufficient interest in the application of its own statutory law.[47] Justice Stevens, concurring to form the plurality, evaluated whether application of the forum state's law would thwart the legislative policies

---

ests of foreign state); Carroll v. Lanza, 349 U.S. 408, 413 (1955) (dictum) (full faith and credit clause restrains forum state's hostility to public acts of foreign states).

38 331 U.S. 586 (1947).

39 *Id.* at 589.

40 *Id.* at 616-17. "The foundation of the [fraternal] society is the law of Ohio. It provides the unifying control over the rights and obligations of its members." *Id.* at 606 (citing Sovereign Camp of the Woodmen of the World v. Bolin, 305 U.S. 66, 75 (1938)).

To illustrate the *Wolfe* Court's emphasis on the foreign state's policies, compare its facts with those in Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939), *see supra* text accompanying notes 31-34. The contact with the forum state is similar in both cases. Adopting the *Pacific Employers* test would have led the *Wolfe* court to mandate the application of fornm state law. Instead, *Wolfe* evaluated the significance of the foreign state's legislative policies and reached a contrary result.

41 341 U.S. 609 (1951).

42 *Id.* at 613.

43 Wisconsin's wrongful death statute allowed recovery only when the tort occurred in Wisconsin. *Id.* at 610 & n.2.

44 *Id.* at 613.

45 *Id.* at 612-13.

46 449 U.S. 302 (1981).

47 *Id.* at 313-20 (plurality opinion).

of the interested foreign state.[48]

The plaintiff in *Hague,* domiciled in Wisconsin but employed in Minnesota, purchased automobile insurance from Allstate. On his way home from work, Hague died in a highway accident in Wisconsin. After establishing residence in Minnesota, Hague's widow sued Allstate for compensation under the insurance contract in a Minnesota state court. The Minnesota court applied Minnesota law and awarded judgment to the widow in an amount exceeding the potential recovery under Wisconsin law.[49] The Minnesota Supreme Court affirmed, holding that the full faith and credit clause did not mandate the application of Wisconsin law.[50]

In the plurality opinion, Justice Brennan approved of Minnesota's application of its law because the forum state maintained "significant contacts" to the transaction.[51] Citing previous cases which used the sufficient interest test,[52] Justice Brennan rephrased this full faith and credit approach: "[T]his Court has traditionally examined the contacts of the State, whose law was applied, with the parties and with the occurrence or transaction giving rise to the litigation."[53] Absent "siguificant contacts" implicating an interest for the forum state, the Court would require the application of the interested foreigu state's law.[54] Justice Brennan noted that in the instant case, Minnesota maintained three contacts with the transaction that cumulatively provided "significant contacts" creating a state interest that warranted the application of Minnesota law.[55] First, the decedent's participation in Minnesota's work force triggered the forum state's interest in the estate rights of Minnesota employees.[56] Second, Allstate's presence in Minnesota gave the forum an interest in regulating the company's contractual obligations to Minnesota employees.[57] Last, Minnesota had an interest in the protection of the widow's well-being because of her Minnesota residence.[58]

In his concurrence Justice Stevens found "it unnecessary to evaluate the forum State's interest in the litigation."[59] Emphasizing

48 *Id.* at 320-32 (Stevens, J., concurring).

49 *Id.* at 305-08 (plurality opinion).

50 Hague v. Allstate Ins. Co., 289 N.W.2d 43 (Minn. I979).

51 449 U.S. at 307-20 (plurality opinion).

52 *See* cases cited *supra* notes 35-36 and accompanying text.

53 *Hague,* 449 U.S. at 308 (plurality opinion).

54 *Id.* ("the Court has invalidated the choice of law of a State which has no siguificant contact or significant aggregation of contacts, creating state interests, with the parties and the occurrence or transaction").

55 *Id.* at 313 (plurality opinion).

56 *Id.* at 314-15.

57 *Id.* at 317-18.

58 *Id.* at 318-19.

59 *Id.* at 326 (Stevens, J., concurring in judgment).

the full faith and credit clause policy of fostering "national unity by [preventing a forum state from] unjustifiably infringing on the legitimate interests of another State,"[60] Justice Stevens found that application of Minnesota law did not frustrate an important policy interest of Wisconsin.[61] He noted that any conceivable concern that Wisconsin might have about the interpretation of the contract could not control the choice of law decision because the facts did not indicate that the parties intended Wisconsin law to govern the insurance policy.[62] Moreover, even if the parties had intended the application of Wisconsin law, Justice Stevens indicated that this intent would not trigger a Wisconsin legislative policy interest under the full faith and credit clause.[63]

Although the Court has failed to articulate a single standard delineating the parameters of the full faith and credit clause,[64] the cases demonstrate that the clause will not void a court's choice of forum state law unless the forum state has no "significant contact" to the transaction or occurrence implicating the forum's interest *and* a foreign state maintains an important interest in the application of its legislative policies to the dispute. Exclusive use of the foreign state legislative policy test would yield unreasonable results because the existence of an important foreign state interest does not preclude the existence of an important forum state interest.[65] If the forum state maintains significant contact to the transaction or occurrence, comity should not require the court to apply a foreign state's law.[66] On the other hand, a standard that examines only the degree of the forum state's interest in the dispute may also yield unreasona-

---

60 *Id.* at 323.

61 *Id.* at 324.

62 *Id.* Justice Stevens did not address whether Wisconsin maintained, as the site of the accident, an interest in regulating recovery for torts occurring within its territorial boundaries.

63 *Id.* at 324-25 n.11.

64 The division of opinion among the justices regarding the standard embodied in the full faith and credit clause may be more apparent than the *Hague* decision indicates. The dissenting justices stated that their "disagreement with the plurality is narrow." *Id.* at 332 (Powell, J., dissenting). Justice Powell, writing for the dissent, noted that he "accept[ed] with few reservations [the overall full faith and credit standard set out in] the plurality opinion." *Id.* The dissenters' disagreement with the plurality stemmed from the exact formulation and application of the "significant contacts" standard to the *Hague* facts. They would require a higher threshold of contacts than the plurality required to warrant application of a forum state's law to the litigation. *Id.* at 333-36. The dissent characterized the contacts between Minnesota and the litigation in *Hague* as "trivial." *Id.* at 332.

65 *See* Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532, 547 (1935) ("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 that, whenever conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.").

66 *Hague*, 449 U.S. at 323-24 (Stevens, J., concurring in judgment) ("[T]he fact that

ble results. Application of forum state law will not necessarily frustrate the policies of a foreign state even if the forum state maintains no significant interests in the transaction or occurrence. Therefore, the full faith and credit clause sets up a two-pronged standard of review: a court must examine both the forum state's interest and the legislative policies of foreign states.[67]

C. New York's Common Law Rules for Conflicts of Law in Contract Actions

New York courts will not consider the parties' intent when determining the applicable law for a multijurisdictional agreement unless the contract includes a governing law clause.[68] If the contract does include a governing law clause, New York courts generally will give some consideration to the parties' intent by using tests similar

---

a choice-of-law decision may be unsound as a matter of conflicts law does not necessarily implicate the federal concerns embodied in the Full Faith and Credit Clause.").

67 Ordinarily, the Court will not require the application of foreign state law when the forum maintains significant contacts with the transaction. In extraordinary situations, however, where the foreign state policy is vital, the court will require its application notwithstanding a signficant interest of the forum. *See, e.g.*, Hughes v. Fetter, 341 U.S. 609 (1951) (rights and duties created under foreign state's wrongful death statute); Order of United Commercial Travelers of Am. v. Wolfe, 331 U.S. 586 (1947) (contracts for membership to fraternal organizations); Converse v. Hamilton, 224 U.S. 243 (1912) (corporate bankruptcy law).

68 Auten v. Auten, 308 N.Y. 155, 160-61, 124 N.E.2d 99, 101-02 (1954) (rejecting older rules which honored nonexplicit but discoverable intent of parties). *See generally* Note, *supra* note 14, at 1662 (American trend is not to honor parties' intent unless explicit).

Early New York cases exhibited little uniformity in the rules used to solve choice of law disputes over multijurisdictional agreements *without* governing law clauses. Some cases applied strict territorial rules, looking to the law of the place of formation to answer questions of contract formation, to the law of the place of performance to resolve controversies about interpretation, and to the forum's law to settle disputes regarding remedies. Union Nat'l Bank v. Chapman, 169 N.Y. 538, 65 N.E. 672 (1902). Other cases, however, used these territorial rules only in the absence of a discernable choice by the parties of a desired jurisdiction's substantive law. Stumpf v. Hallahan, 101 A.D. 383, 91 N.Y.S. 1062 (1906). Still other cases ignored any reference to the territorial rules for a direct search for the implied intent of the parties. Wilson v. Lewiston Mill Co., 150 N.Y. 314, 44 N.E. 959 (1896).

In Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954), however, the New York Court of Appeals rejected both the rigid territorial rules and the search for the implied intent of the parties. Instead, the court articulated a new "grouping of contacts" test, used today to determine the applicable law for a multijurisdictional contact without a governing law clause. *See* Intercontinental Planning, Ltd. v. Daystrom, Inc., 24 N.Y.2d 372, 248 N.E.2d 576, 300 N.Y.S.2d 817 (1969); Speare v. Consolidated Assets Corp., 367 F.2d 208 (2d Cir. 1966); *see also* Gruson, *Governing Law Clauses in Commercial Agreements—New York's Approach*, 18 COLUM. J. TRANSNAT'L L. 323, 327 (1979) ("Although *Auten v. Auten* is a noncommercial case, its approach has been applied to commercial cases.") (footnote omitted).

to the *Restatement Second*[69] and objectivist approaches.[70] Most New York courts will honor a contractual governing law clause if the chosen jurisdiction maintains a "reasonable relationship" to the agreement.[71] This approach is similar to the rule of the *Restatement Second*. A few New York courts, however, use an objectivist "interest analysis" test, considering the parties' stipulation of governing law as only one of several factors leading to a determination of which jurisdiction bears the most significant contacts to the agreement.[72] Both of these approaches fit comfortably within the confines of the full faith and credit clause.

In *A. S. Rampell v. Hyster Co.*[73] the New York Court of Appeals adopted the reasonable relationship test previously adopted by lower New York courts[74] and the United States Court of Appeals for the Second Circuit.[75] Rampell, a New York distributor, contracted with Hyster, an Oregon manufacturer of trucks, cranes, and related parts, stipulating the application of Oregon law.[76] The court upheld the stipulation because Oregon maintained a reasonable relationship to the contract as the situs for the production of the goods.[77]

Most New York courts have adopted the reasonable relationship test.[78] Use of this rnle, however, does not imply that New York courts always honor governing law clauses. Admittedly, no New York state court has refused to honor a contractual stipulation of New York law to avoid circumventing a public policy of a foreign state.[79] New York courts will not honor a stipulation of a foreign jurisdiction's law that thwarts New York public policy even if the

---

69 RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 187-88 (1971); *see supra* notes 20-29 and accompanying text.

70 *See supra* note 14 and accompanying text.

71 *See infra* notes 73-84 and accompanying text (discussing contours and development of reasonable relationship test in New York). *See generally* Gruson, *supra* note 68, at 352 ("Today the reasonable relationship test is clearly a rule of New York law.").

72 *See infra* notes 85-88 and accompanying text (discussing Court of Appeals adoption of interest analysis). *See generally* Note, *supra* note 14, at 1670-72.

73 3 N.Y.2d 369, 144 N.E.2d 371, 165 N.Y.S.2d 475 (1957).

74 *In re* Rosenberger's Estate, 131 N.Y.S.2d 59, 66 (Sur. Ct. N.Y. County 1954) (honoring contractual stipulation of New York law for financial transaction performed by depositing $12,000 in New York bank).

75 Hal Roach Studios, Inc. v. Film Classics, 156 F.2d 596, 598 (2d Cir. 1946) (upholding contractual stipulation of New York law because New York, among many states, had close association with contract).

76 *Rampell,* 3 N.Y.2d at 373-74, 144 N.E.2d at 374, 165 N.Y.S.2d at 479-80.

77 *Id.* at 381, 144 N.E.2d at 379, 165 N.Y.S.2d at 485-86.

78 *See, e.g.,* Gambar Enters., Inc. v. Kelly Servs., Inc., 69 A.D.2d 297, 418 N.Y.S.2d 818, 822 (1979) (stipulated jurisdiction must bear reasonable relation to agreement); I.S. Joseph Co. v. Toufic Aris. & Fils, 54 A.D.2d 665, 666, 388 N.Y.S.2d 1, 3 (1976) (same); *In re* Sik's Estate, 205 Misc. 715, 719, 129 N.Y.S.2d 134, 138 (Sur. Ct. N.Y. County 1954) (same).

79 Gruson, *supra* note 68, at 377. The Federal District Court for the Southern District of New York, however, has disregarded governing law clauses to prevent circum-

transaction bears a reasonable relationship to the foreign jurisdiction.[80] Furthermore, not every "contact" to the chosen jurisdiction rises to the level of a reasonable relationship. For example, the presence of one party's business office in the chosen state did not constitute a reasonable relationship to that state when performance and formation of the contract occurred elsewhere.[81] Similarly, the presence of one party's business office in the chosen state, and a contractual condition requiring arbitration in the chosen state, did not constitute a reasonable relationship between the chosen state and the contract.[82]

On the other hand, various aspects of contract performance frequently have constituted a reasonable relationship to the chosen jurisdiction. New York courts have upheld stipulations of New York law when loan agreements provided for the flow of money through New York banks.[83] Various combinations of performance, party domicile, and contract formation also have constituted a reasonable relationship. For example, a New York court upheld a stipulation of Michigan law in an employment contract, formed in Michigan and providing for the employee's performance of certain duties in that state.[84]

Although most New York courts use the lenient reasonable relationship test, a few New York courts have applied the stricter "interest analysis" test to contracts stipulating governing law. In *Haag v. Barnes*[85] the New York Court of Appeals refused to give controlling weight to a governing law clause stipulating the law of Illinois. Rather, the court focused on determining which jurisdiction main-

---

vention of a foreign jurisdiction's public policies. *See* Southern Int'l Sales Co. v. Potter & Brumfield Div. of AMF, 410 F. Supp. 1339 (S.D.N.Y. 1975).

80 *See, e.g.*, Gambar Enters., Inc. v. Kelly Servs., Inc., 69 A.D.2d 297, 303, 418 N.Y.S.2d 818, 822 (1979) ("[E]nforcement of the [contract] provision applying a foreign rule of law must not violate a fundamental public policy of New York.") (citations omitted); *cf.* J. Zeevi & Sons v. Grindlays Bank (Uganda), 37 N.Y.2d 220, 229, 333 N.E.2d 168, 173, 371 N.Y.S.2d 892, 899 (principle of comity does not require application of foreign nation law where it would violate New York public policy), *cert. denied*, 423 U.S. 866 (1975).

81 Joy v. Heidrich & Struggles, Inc., 93 Misc. 2d 818, 822-23, 403 N.Y.S.2d 613, 615-16 (N.Y. Civ. Ct. 1977).

82 Duplan Corp. v. W.B. Davis Hosiery Mills, 442 F. Supp. 86, 88 n.1 (S.D.N.Y. 1977).

83 *E.g.*, J. Zeevi & Sons v. Grindlays Bank (Uganda), 37 N.Y.2d 220, 226-28, 333 N.E.2d 168, 172-74, 371 N.Y.S.2d 892, 898-900, *cert. denied*, 423 U.S. 866 (1975); *In re* Rosenberger's Estate, 131 N.Y.S.2d 59 (Sur. Ct. N.Y. County 1954).

84 Gambar Enters., Inc. v. Kelly Servs., Inc., 69 A.D.2d 297, 305-06, 418 N.Y.S.2d 818, 822 (1979). *See* Fleishman Distilling Corp. v. Distillers Co., 395 F. Supp. 221, 229 (S.D.N.Y. 1975) (partial performance of contract and defendant's presence in England constituted "reasonable relationship" for governing law clause selecting English law).

85 9 N.Y.2d 554, 175 N.E.2d 441, 216 N.Y.S.2d 65 (1961).

tained the most significant contacts to the contract.[86] The court considered the parties' stipulation of governing law a salient factor, but it also examined where the parties formed their agreement and where they carried out its terms and conditions.[87] Although *Haag v. Barnes* is the minority view in New York, the case still stands as good precedent, and some lower New York courts have used its interest analysis investigation in choice of law decisions.[88]

Both the reasonable relationship and "interest analysis" tests fit within the confines of the full faith and credit clause. The Supreme Court will not mandate use of foreign state law when the forum possesses significant contacts to the transaction.[89] Applied to a contractual stipulation of forum state law, the reasonable relationship test requires at least these same contacts.[90] Similarly, the "interest analysis" approach requires that the fornm state maintain significant contacts to an agreement stipulating the forum state's law. Permitting the application of the forum state's law only when that state bears the "most substantial contacts" to the transaction, this test resembles the balancing test of *Bradford Electric Co. v. Clapper*,[91] a stricter test than the *Hague* plurality's "significant contacts" approach.

II
TITLE 14

Title 14 alters New York's common law rules for choice of law in certain contractual disputes. It abolishes the reasonable relationship test for large commercial agreements that stipulate the application of New York law and requires New York courts to honor the

---

86 *Id.* at 557, 175 N.E.2d at 443, 216 N.Y.S.2d at 68.

87 *Id.*

88 *See* Joy v. Heidrich & Struggles, Inc., 93 Misc. 2d 818, 821-23, 403 N.Y.S.2d 613, 615-16 (N.Y. Civ. Ct. 1977); *see also* Levey v. Saphier, 83 Misc. 2d 146, 149, 370 N.Y.S.2d 808, 813 (N.Y. Sup. Ct. 1975) (court applied stipulated New York law because New York maintained most significant contacts to agreements as site of principal contracts).

89 *See supra* notes 46-67 and accompanying text.

90 *Compare* Clay v. Sun Ins. Office, 377 U.S. 145 (1964), *with* Duplan Corp. v. W.B. Davis Hosiery Mills, 442 F. Supp. 86 (S.D.N.Y. 1977). In *Duplan Corp.* the presence of one party's business office in New York and a contractual condition requiring arbitration in New York did not constitute a reasonable relationship for New York to apply its own law. *Id.* at 88 n.1. Yet, in *Clay* the Supreme Court held that the mere presence of ambulatory property in Florida gave the forum state a sufficient interest to apply its law to an insurance contract covering damage to the property. *Clay*, 377 U.S. at 182-83; *see supra* note 35 and accompanying text. Argnably, the contacts held insufficient to constitute a "reasonable relationship" in *Duplan Corp.* exceeded the contacts that gave rise to a sufficient interest in *Clay*. Thus, satisfaction of the reasonable relationship test probably implies satisfaction of the significant contacts test.

91 286 U.S. 145 (1932).

parties' explicit choice of New York law.[92] Title 14 also permits parties stipulating New York law to consent to New York jurisdiction and requires New York courts to hear the action.[93] In essence, title 14 is an extreme enactment of the autonomy rule[94] which calls on the courts to honor the parties' intent whenever possible.

Title 14 includes two sections: section 5-1401 and section 5-1402. Section 5-1401[95] requires courts to honor contractual stipulations for the application of New York law to agreements involving $250,000 or more.[96] The section excludes such "large" agreements if they involve "personal, family, or household services"[97] or "labor or personal services."[98] Section 5-1401 explicitly applies to large contracts for the sale of goods under the Uniform Commercial Code section 1-105(1),[99] but not to special, third party agreements under

---

92 1984 N.Y. Laws ch. 421; N.Y. GEN. OBLIG. LAW § 5-1401 (McKinney Supp. 1984-85). Section 5-1401 provides, in part:

> The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the uniform commercial code.

Id.

93 194 N.Y. Laws ch. 421; N.Y. GEN. OBLIG. LAW § 5-1402. Section 5-1402 provides, in relevant part:

> 1. Notwithstanding any act which limits or affects the right of a person to maintain an action or proceeding, including, but not limited to, paragraph (b) of section thirteen hundred fourteen of the business corporation law and subdivision two of section two hundred-b of the banking law, any person may maintain an action or proceeding against a foreign corporation, non-resident, or foreign state where the action or proceeding arises out of or relates to any contract, agreement or understanding for which a choice of New York law has been made in whole or in part pursuant to section 5-1401 and which (a) is a contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate, not less than one million dollars, and (b) which contains a provision or provisions whereby such foreign corporation or non-resident agrees to submit to the courts of this state.

1984 N.Y. Laws ch. 421; N.Y. GEN. OBLIG. LAW § 5-1402 (McKinney Supp. 1984-85).

94 *See supra* notes 17-19 and accompanying text.

95 N.Y. GEN. OBLIG. LAW § 5-1401; *see supra* note 92.

96 *Id.* § 5-1401(1).

97 *Id.* § 5-1401(1)(b).

98 *Id.* § 5-1401(1)(a).

99 *Id.* § 5-1401; U.C.C. § 1-105(1) (1983) (allowing parties to choose governing law where transaction bears "reasonable relation" to more than one state).

UCC section 1-105(2).[100] In sum, section 5-1401 covers large transactions involving bank loans, property, or the sale of goods but does not apply to small agreements, consumer agreements, or employment contracts.

If parties to a contract of at least $1 million stipulate New York law under section 5-1401 they may also avail themselves of New York courts under section 5-1402.[101] Section 5-1402 allows the parties to contracts stipulating New York law pursuant to section 5-1401 to consent to New York in personam jurisdiction.[102] When the parties consent to jurisdiction, the statute prohibits New York courts from dismissing the case on the grounds of inconvenient forum.[103] Section 5-1402 also removes prior restrictions on the rights of foreign corporations and banks to sue in New York.[104] A foreign corporation, bank, or individual may now sue a foreign bank or corporation in New York if both parties have stipulated New York law pursuant to section 5-1401 and have consented to New York jurisdiction under 5-1402.[105]

Title 14 reflects a legislative intent to maintain New York City's posture as a leading financial and commercial center and thereby benefit New York state.[106] Proponents of the bill recognized that the City's preeminent status in this realm stood "by no means un-

---

100 N.Y. GEN. OBLIG. LAW § 5-1401(1)(c); U.C.C. § 1-105(2) (1983) (prohibiting parties from choosing law where code governs particular transaction).

101 N.Y. GEN. OBLIG. LAW § 5-1402 (McKinney Supp. 1984-855); *see supra* note 93.

102 N.Y. GEN. OBLIG. LAW § 5-1402(1).

103 N.Y. CIV. PRAC. R. 327(b) (McKinney Supp. 1984-85). Rule 327(b) was enacted as part of Assembly Bill 7307-A. 1984 N.Y. Laws ch. 421. Rule 327(b) provides in relevant part:

> Notwithstanding the provisions of subdivision (a) of this rule [regarding the power of a court to dismiss an action because of inconvenient forum], the court shall not stay or dismiss any action on the ground of inconvenient forum, where the action arises out of or relates to a contract, agreement or undertaking to which section 5-1402 of the general obligations law applies, and the parties in the contract have agreed that the law of this state shall govern their rights or duties in whole or in part.

N.Y. CIV. PRAC. R. 327(b) (McKinney Supp. 1984-85). Prior to enactment of the new law, rule 327 permitted a New York court to "dismiss an action when it [found] that 'in the interest of substantial justice' the case should be heard in another forum." Committee Report, *Proposal for Manditory Enforcement of Governing-Law Clauses and Related Clauses in Significant Commercial Agreements,* 38 REC. A.B. CITY N.Y. 537, 546 (1983) (quoting rule 327).

104 N.Y. GEN. OBLIG. LAW § 5-1402(1). Prior to title 14, a foreign bank, corporation, or individual could sue another foreign bank or corporation in New York only if the litigation involved a contract made or performed in New York, the property was situated in New York, the cause of action arose in New York, or defendant was "doing business" in New York. N.Y. BANKING LAW § 200-b(2) (McKinney 1973).

105 N.Y. GEN. OBLIG. LAW § 5-1402(1).

106 Committee Report, *supra* note 103, at 548-50 (title 14 needed to attract new businesses to New York City); Letter from New York City Mayor Edward I. Koch to New York Governor Mario M. Cuomo (July 10, 1984) (title 14 will assure contracting parties

challenged"[107] and recommended that the state "remain alert to ways in which, at relatively little cost, its position [could] be enhanced."[108] The proponents reasoned that parties to multijurisdictional agreements frequently stipulate the law of a particular jurisdiction to govern their contract. In New York the possibility existed that state courts would refuse to honor the contractual stipulation of New York law because the agreement lacked a reasonable relationship to the state.[109] This possibility, one advocate argued, "has frequently deterred parties from choosing the law of New York for major contracts, to the detriment of the standing of New York as a commercial and financial center."[110] Thus, proponents of the bill argued that New York should modify its conflict of law doctrine to give parties certainty that New York courts will uphold their stipulation of New York law.[111]

In sum, the new statute affords parties considerable autonomy to stipulate New York law. The statutory language commands courts to honor governing law clauses applying New York law to agreements that come within the enumerated statutory qualifications.[112] Title 14 makes no exception for situations in which application of New York law might circumvent an important public policy of another jurisdiction.[113] Thus title 14 may become an instrument for parties to apply New York law to their agreements and circumvent the important legislative policies of other interested states.

III
ANALYSIS

Title 14 is an extreme example of the autonomy doctrine regarding choice of law decisions. As such, it forwards one important conflicts "value"—the freedom of parties to stipulate a governing law.[114] Title 14, however, does not advance or accommodate the

---

of desired New York law and thereby promote commercial and financial activity in state) [hereinafter cited as Letter].

107 Letter, *supra* note 106.

108 *Id.*

109 Committee Report, *supra* note 103, at 537-38.

New York courts have recognized, however, the legitimacy of protecting the status of New York City as a financial center. *See* J. Zeevi & Sons v. Grindlays Bank (Uganda), 37 N.Y.2d 220, 228, 333 N.E.2d 168, 172, 371 N.Y.S.2D 892, 898 (1975) (New York has a "paramount interest" in protecting its status as "a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions.") (citation omitted).

110 Letter, *supra* note 106.

111 *Id.*

112 *Id.*; Committee Report *supra* note 103, at 542.

113 *See generally* N.Y. GEN. OBLIG. LAW § 5-1401(a).

114 For discussion of this conflicts of law "value," see *supra* notes 17-23 and accompanying text.

second conflicts "value"—respect for the legislative policies of other interested jurisdictions.[115] Title 14 violates the full faith and credit clause by requiring a court to apply New York law to a contractual dispute in circumvention of the policies of an interested foreign state when New York has no significant contact with that agreement.

A. Title 14 Fails to Require a Sufficient Forum State Interest

The full faith and credit clause will not prohibit a forum state from applying its law to a transaction that implicates a sufficient forum state interest.[116] In its most recent articulation of this sufficient interest prong of its full faith and credit clause analysis, the Court searched for significant contact to the forum that implicated the forum's interest in the application of its own law.[117] Title 14 rests on the central premise that a contractual stipulation of New York law constitutes a significant contact between the agreement and the state for the use of New York law.[118] Nevertheless, an analysis of the interests New York proffers for the application of its law pursuant to title 14 demonstrates that these interests are not sufficient to warrant application of New York law in all cases.

First, the proponents of title 14 argne that enforcing governing law clauses that stipulate New York law will improve New York City's stature as a leading financial and commercial center.[119] Under full faith and credit clause scrutiny this rationale must fail for two reasons: the economic benefits flowing from title 14 may be illusory, and even if the state does realize certain benefits, these benefits do not create the level of interest in the transaction or occurrence requisite under the full faith and credit clause. The economic benefits may not materalize because the significant macroeconomic fruits of large commercial transactions extend to the jurisdictions physically connected with the transaction. Agreements involving the circulation of money through a state's banks

---

115 For discussion of this conflicts of law "value," see *supra* notes 14-16, 20-23 and accompanying text.

116 *See supra* notes 29-63 and accompanying text.

117 *Hague,* 449 U.S. at 308 ("[T]he Court has invalidated the choice of law of a State which has no significant contact or significant aggregation of contacts, *creating state interests,* with the parties and the occurrence or transaction.") (emphasis added) (plurality opinion); *see also supra* notes 31-36 and accompanying text.

118 Letter, *supra* note 106.

119 *See supra* notes 106-11 and accompanying text. Significantly, however, neither the New York City Bar Association Report nor any other supporting document adequately explains how permitting parties to stipulate New York law will result in economic benefits for New York. The Bar Report attempts to provide an explanation, but its discussion is not supported by any authority. *See* Committee Report, *supra* note 103, at 549.

benefit those in-state institutions. Agreements for the production of goods or the construction of facilities generate employment at the site of production, and the positive economic effect of such employment benefits that state's economy. Ironically, title 14 does nothing to encourage increased commerce in New York state. Parties may bestow the significant fruit of their activity in other states while reaping the benefits of New York's well developed commercial law. Whereas previously parties had an incentive to maintain actual contact with New York, now they only need to include a governing law clause in their agreement.

Furthermore, even if New York will reap economic benefits from stipulations of New York law in multijurisdictional agreements, these benefits do not appear to provide the significant contacts with the transaction or occurrence required by the full faith and credit clause. By stipulating New York law and submitting to New York jurisdiction, parties may use New York lawyers for advice, drafting, and subsequent litigation on the contract. The parties may take business trips to New York, adding revenue to the state's hotels, restaurants, and stores. Thus, New York may gain a reputation as a center for multijurisdictional contracts. These incidental benefits, however, are economic interests that a forum jurisdiction always has in the application of its law. Consequently, this argument in support of title 14 is hopelessly circular. A finding that these incidental economic benefits constitute an interest sufficient to warrant application of the forum state's law would effectively do away with the requirement because these benefits always accompany the application of forum state law. Thus, a forum state would always enjoy the right to apply its law, not because it maintained an interest in the transaction or occurrence that is the subject of dispute, but merely because it took an interest in the application of its own law.

Second, supporters of title 14 argue that New York maintains an interest in providing certainty to parties who stipulate that New York doctrine will govern their agreement.[120] As discussed previously, providing parties with certainty that courts will interpret their contract using the state law they intend is an important conflict of law "value."[121] Nevertheless, the application of title 14 will do little to promote certainty. Although title 14 gives contracting parties certainty that New York courts will honor their choice of New York law, the statute does not give parties any certainty that all courts will apply New York law pursuant to a governing law clause. Most American jurisdictions do not give absolute authority to governing

120 *See supra* notes 106-11 and accompanying text.

121 *See supra* notes 17-19 and accompanying text.

law clauses. Some states apply the reasonable relationship test;[122] other states adopt the "interest analysis" approach of *Haag v. Barnes*.[123] Even if the parties consent to New York jurisdiction and stipulate New York law in their multijurisdictional contract, each remains free to bring suit in other states maintaining in personam jurisdiction.[124] Consequently, if parties with no other New York contacts stipulate New York law under title 14 and then bring their action in a different state, New York law probably will not govern the dispute. Courts applying the reasonable relationship test will void the governing law clause on the ground that New York lacks the requisite contact with the agreement. Similarly, courts using the interest analysis test will ignore the governing law clause and apply the law of a state significantly interested in the transaction.

Despite the presence of a governing law clause and consent to New York jurisdiction pursuant to title 14, a plaintiff may take advantage of distinctions between New York substantive law and the substantive doctrine of a foreign jurisdiction by suing in the foreign jurisdiction and seeking recovery under its law. Consequently, even if New York courts always honor contractual stipulations under title 14, parties to these agreements can never be certain that New York law will govern a dispute arising out of that agreement. Therefore, the argument that New York's interest in providing certainty to parties choosing New York law is sufficient to pass muster under the full faith and credit clause must fail.

B. Title 14 Fails to Consider the Legislative Policies of Other States

The full faith and credit clause advances national unity by requiring that a forum state recognize the legislative policies of foreign states.[125] Yet, title 14 requires New York courts to apply New

---

122 *See generally* E. SCOLES & P. HAY, CONFLICT OF LAWS 634-36 (1982) ("[O]rdinarily the chosen law must bear some relationship to the parties or the transaction, [and the parties may not] override certain important policies of the forum or of the state whose law would otherwise be applicable.").

123 9 N.Y.2d 554, 175 N.E.2d 441, 216 N.Y.S.2d 65 (1961); *see* Note, *supra* note 14, at 1672-73.

Courts of foreign states may become reluctant to apply New York law in conflicts disputes because of New York's attempted "imperial reach." *See, e.g,* Bushkin Assocs. Inc. v. Raytheon Co., 393 Mass. 622, 628-36 (1985) (refusing to use any specific choice of law rule to avoid application of New York's statute of frauds).

124 Many states may maintain in personam jurisdiction over the parties to a single contractual dispute. Long arm statutes usually permit courts to exercise jurisdiction over parties forming or performing contracts within that state. *See, e.g.,* McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957) (finding that due process clause does not preclude California court from exercising jurisdiction over nonresident defendant where contract in issue had substantial connection with California).

125 *See supra* notes 37-45, 59-67.

York law pursuant to the parties' choice and makes no exception for situations where the application of New York law frustrates a foreign state's public policy.[126] Hence, the statute will give rise to situations in which the application of New York law will circumvent foreign state legislative policies and violate the full faith and credit clause.

Although the Supreme Court has not delineated the particular foreign state legislative policies that will prohibit the application of the forum state's law, a few of the Court's early holdings provide some guidance. A state maintains exclusive power to regulate the rights and duties of corporations and other organizations chartered under its law.[127] A state also enjoys a strong interest in regulating transactions involving property within its borders.[128] Further, a state retains a compelling interest in the recognition and enforcement of rights and duties created under its wrongful death statutes.[129] On the other hand, a mere contractual stipulation of a foreign state's law does not mandate its application in a forum court.[130]

Other legislative policies generally fall into the scope of the Supreme Court precedents because they regulate a state's economy, public safety, or legal system by making illegal or otherwise unenforceable certain contracts. These legislative policies are prime candidates for comity by a forum state. A statute of frauds, for example, protects the integrity of a state's legal system and thus provides a stable climate for parties to contract.[131] Similarly, laws prohibiting contractual arbitration clauses serve to protect the procedural aspects of a state's legal system.[132] Further, a state may enact statutes prohibiting unlicensed contractors from bringing suits on their agreements with subcontractors.[133] Such prohibitions serve to avoid the danger of poorly constructed public buildings.[134]

---

126 *See supra* notes 92-105, 113, and accompanying text.

127 Converse v. Hamilton, 224 U.S. 243, 253 (1912); *cf.* New York Life Ins. Co. v. Cravens, 178 U.S. 389, 401 (1900) (stating that "[t]he power of a state to impose conditions upon a foreign corporation [contracting in the state] is certainly as extensive as the power over domestic corporations").

128 *See, e.g.,* Hood v. McGehee, 237 U.S. 611 (1915) (upholding state statute of descent excluding children adopted under proceedings in other states).

129 *See supra* notes 41-63 and accompanying text.

130 *See* Allstate Ins. Co. v. Hague, 449 U.S. 302, 324-26 n.11 (1981) (Stevens, J., concurring in judgment) (reviewing prior cases and suggesting that expectations of parties may generate full faith and credit clause interest for foreign state).

131 *See* Joy v. Heidrick & Struggles, Inc., 93 Misc. 2d 818, 821, 403 N.Y.S.2d 613, 615 (N.Y. Civ. Ct. 1977) (forum state has strong public policy interest to "prevent fraud and perjury in the making and enforcement of contracts").

132 Note, *supra* note 14, at 1686 (bars on arbitration clauses direct courts to "articulate and enforce fair ground rules for resolving contractual disputes").

133 MGM Grand Hotel, Inc. v. Imperial Glass Co., 65 F.R.D. 624, 632 (D. Nev. 1974), *rev'd on other grounds,* 533 F.2d 486 (9th Cir. 1976).

134 *See id.*

Restrictions on covenants not to compete serve a state's economic interest by promoting free enterprise.[135] A state may enact fair dealership laws,[136] specialized regulations governing sporting events,[137] or strict usery clauses.[138] Each of these statutes serves an important public purpose subject to frustration if a forum state failed to grant the appropriate comity to that statute.

Under title 14, parties may stipulate New York law to avoid the restrictive legislative policies of foreigu states. Moreover, when the parties do stipulate New York law in a governing law clause, title 14 requires New York courts to honor the stipulation. Given the "broad-brush" approach of title 14, the section will require application of New York law when New York maintains no significant contacts with the transaction and when application of New York law will circumvent important legislative policies of foreign states. Application of New York law in such circumstances will violate the full faith and credit clause.

C. Suggested Amendment to Title 14

Because certain applications of title 14 will violate the full faith and credit clause, the New York state legislature should amend the statute to prohibit parties from stipulating New York law to circumvent foreign states' legislative policies when New York bears no significant contacts to the transaction. New York courts are unlikely to create a foreign state policy exception to save the statute. The statutory language and legislative intent of title 14 specifically direct the courts to enforce governing law clauses in all cases covered by the statute.[139] Further, New York state courts have no tradition of voiding governing law clauses specifying application of New York law to prevent the circumvention of a foreign state's legislative policies.[140]

The amendment accounting for foreign legislative acts should presume the application of New York law unless application of an

---

135 Blalock v. Perfect Subscription Co., 458 F. Supp. 123 (S.D. Ala. 1978), *aff'd per curiam,* 599 F.2d 743 (5th Cir. 1979); Forney Indus., Inc. v. Andre, 246 F. Supp. 333 (D.N.D. 1965).

136 *E.g.,* Southern Int'l Sales Co. v. Potter & Brumfield, 410 F. Supp. 1339, 1341-42 (S.D.N.Y. 1976) (court applied law of Puerto Rico instead of stipulated Indiana law under § 187 of *Restatement Second* because Puerto Rico had strong legislative policy in protecting its local dealers).

137 Foreman v. George Foreman Assocs., 517 F.2d 354, 356-57 (9th Cir. 1975) (California law, evincing significant public policy regarding protection of boxers, invalidated boxing contract), *aff'g,* 389 F. Supp. 1308 (N.D. Cal. 1974).

138 O'Brien v. Shearson Haydon Stone, Inc., 90 Wash. 2d 680, 686, 586 P.2d 830, 833-34 (1978) (protecting residents from burdensome interest rates is fundamental public policy of state), *supplemented,* 93 Wash. 2d 51, 605 P.2d 779 (1980).

139 *See supra* notes 95-105, 112, and accompanying text.

140 *See supra* note 79 and accompanying text.

interested foreign state's legislative act will affect the result of the litigation.[141] This amendment would retain the intended effect of title 14 but would avoid the constitutional problem of the current statutory scheme. Further, the reintroduction of foreign state interests into the analysis will not create constant full faith and credit clause problems for New York courts because the suggested framework will impose a three step burden of proof on the party seeking to override the stipulation of New York law. First, the party objecting to the application of New York law will have to prove that no significant contacts exist between the transaction and New York. Second, that party will have to demonstrate that the foreign statute will lead to a different result in the litigation. Finally, the same party will have to show that the foreign law significantly helps the foreign state regnlate its economy, public safety, or legal system.[142]

Amending title 14 to include an explicit legislative policy limitation will conform the statute to the contours of the full faith and credit clause. The suggested amendment accommodates the federal interest implicit in the full faith and credit clause—the protection of foreign states' public acts. The amendment does not revive the reasonable relationship test. Yet, removing the reasonable relationship test is not, by itself, a dangerous reform.[143] Conflict of law policy does not mandate a level of contact to the chosen state because stipulating the interpretative law of a jurisdiction bearing no reasonable relationship to the contract does not necessarily harm foreign jurisdictions.[144] The true conflict of law issue is not the level of contact between the transaction and the forum state but the significance of the public policy at issue to an interested foreign state. A sensible and constitutional choice of law statute need not require a reasonable relationship to the chosen state, but it must require direct investigation into the public policy interests advanced by the law of an interested foreign state.

CONCLUSION

As an extreme exercise of the autonomy rule, title 14 forwards one important conflict of law value—the freedom of parties to stipu-

141 This exception would attach to § 5-1401 and read: "Nothing in this section or in section 5-1402 shall be construed to permit contracting parties to stipulate New York law to circumvent the public policies of other interested states."

142 *See supra* notes 127-28, 131-35 and accompanying text.

143 Indeed, several commentators already have questioned the need for the reasonable relationship test. *See* A. EHRENZWEIG, *supra* note 18, at 469; R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAW 387 (1971).

144 The *Restatement Second* places no restraints on a party's stipulation of a jurisdiction's law to cover anything that he or she could have provided for through more precise language in the contract. RESTATEMENT (SECOND) OF CONFLICT OF LAW § 186 (1969).

late the governing law for their agreement. Yet, the statute ignores the second conflicts value: recognition of the important legislative policies of interested foreign jurisdictions. Although the adoption of choice of law rules remains primarily the domain of the states, the full faith and credit clause does provide some boundaries to prevent forum states from applying their own law to circumvent important legislative policies of interested foreign states. Title 14 violates the full faith and credit clause because it requires New York courts to apply New York law to contracts in circumvention of the legislative policies of interested foreign states when New York maintains no significant interest in the transaction or occurrence. Therefore, the New York State Assembly should amend title 14 to include a legislative policy exception that requires New York courts to look beyond New York law when a foreign state has a strong interest in the litigation.

Barry W. Rashkover