

In the
Supreme Court of the United States

GEORGE T. HAWES,

Petitioner,

—v—

DANIEL P. REILLY,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court for the State of Rhode Island

PETITION FOR WRIT OF CERTIORARI

JONATHAN O. HAFEN
COUNSEL OF RECORD
PARR BROWN GEE & LOVELESS
101 SOUTH 200 EAST, SUITE 700
SALT LAKE CITY, UT 84111
(801) 532-7840
JHAFEN@PARRBROWN.COM

BRYAN S. JOHANSEN
PARR BROWN GEE & LOVELESS
101 SOUTH 200 EAST, SUITE 700
SALT LAKE CITY, UT 84111
(801) 257-7907
BJOHANSEN@PARRBROWN.COM

MICHAEL S. PEZZULLO, ESQ.
303 JEFFERSON BLVD
WARWICK, RI 02888
(401) 921-4800

OCTOBER 15, 2018

COUNSEL FOR PETITIONER

QUESTIONS PRESENTED

1. Did the Supreme Court for the State of Rhode Island violate the full faith and credit clause of the United States Constitution (Article IV, Section 1) by failing to uphold and enforce an order entered by a Utah court finding that it had personal jurisdiction over defendant after (1) defendant appeared for the purposes of challenging personal jurisdiction in the Utah court, (2) defendant submitted a motion, written argument, and affidavit to dismiss for lack of personal jurisdiction, and (3) the Court, after consideration of the arguments, found that it had personal jurisdiction over defendant and denied the motion to dismiss?

2. Is the issue of personal jurisdiction “fully and fairly litigated” and an order denying a defendant’s motion to dismiss for lack of personal jurisdiction and finding that it has personal jurisdiction over defendant entitled to the full faith and credit under the United States Constitution after the defendant (1) makes a limited appearance to contest personal jurisdiction, (2) files a motion to dismiss, supporting affidavit, and written arguments contesting personal jurisdiction, but (3) withdraws from the proceedings prior to oral argument and fails to further contest personal jurisdiction?

PARTIES TO THE PROCEEDING

- Petitioner George T. Hawes is an individual and resident of Florida.
- Respondent Daniel P. Reilly is an individual a resident of Rhode Island.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
RELEVANT STATUTORY PROVISIONS	2
STATEMENT OF THE CASE.....	3
A. Introduction.....	3
B. Respondent’s Appearance, Challenge of Personal Jurisdiction, and Finding of Per- sonal Jurisdiction	4
C. Default Judgment After Respondent Fails to Appear	6
D. Efforts to Execute Judgment in Rhode Island, Collateral Attack on Personal Juris- diction, Quash of Execution, and Dismissal	7
E. Appeal.....	7
REASONS FOR GRANTING THE PETITION	10
I. THE ISSUE OF PERSONAL JURISDICTION WAS FULLY AND FAIRLY LITIGATED AND IS ENTITLED TO FULL FAITH AND CREDIT.....	12
II. THE ISSUE OF PERSONAL JURISDICTION WAS DETERMINED AND SHOULD BE AFFORDED FULL FAITH AND CREDIT	16

TABLE OF CONTENTS – Continued

	Page
III. THE ISSUES PRESENTED BY THIS CASE ARE REOCCURRING AND IMPORTANT	18
CONCLUSION.....	20

APPENDIX TABLE OF CONTENTS

RHODE ISLAND OPINIONS AND ORDERS

Opinion of the Supreme Court of Rhode Island (May 24, 2018)	1a
Decision of the Superior Court (April 27, 2015)	24a

UTAH OPINIONS AND ORDERS

Amended Default Judgment in Favour of George T. Hawes Against William J. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doyles- town Partners, Inc., and Shamrock Equities, Inc. (May 11, 2012)	37a
Notice of Entry of Judgment (May 9, 2011)	40a
Default Judgment in Favor of George T. Hawes Against William J. Reilly, Daniel P. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doylestown Partners, Inc., and Shamrock Equities, Inc. (April 28, 2011)	42a

TABLE OF CONTENTS – Continued

	Page
Notice of Entry of Order Denying Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (February 17, 2011)	45a
Order Denying Defendant’s Motion to Dismiss for Lack of Personal Jurisdiction (February 16, 2011)	46a
Notice of Pretrial Conference (January 25, 2011).....	48a
Notice of Oral Argument (November 5, 2010)	50a
OTHER RELEVANT CASE MATERIAL FROM PROCEEDINGS IN UTAH	
Transcript of Proceedings (January 11, 2011).....	52a
Memorandum in Opposition to Motion to Dismiss for Lack of Personal Jurisdiction (August 18, 2010)	72a
Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction (June 29, 2010)	128a
Affidavit of Daniel P. Reilly (October 29, 2014)	140a
Declaration of Daniel P. Reilly (April 29, 2010)	146a

TABLE OF CONTENTS – Continued

	Page
Declaration of Shannon P. Reilly (April 30, 2010)	149a
Declaration of William J. Reilly (April 30, 2010)	152a
Amended Notice of Withdrawal as Counsel (July 30, 2010)	154a
Notice to Appear or Appoint Counsel (July 30, 2010)	156a
Affidavit of Service of Complaint on Daniel Reilly (March 22, 2010)	158a

TABLE OF AUTHORITIES

Page

CASES

<i>Baker by Thomas v. General Motors Corp.</i> , 522 U.S. 222, 118 S.Ct. 657 (1998)	10, 11
<i>Baldwin v. Iowa State Traveling Men's Ass'n</i> , 283 U.S. 522, 51 S.Ct. 517, 75 L.Ed. 1244 (1931)	12, 14
<i>Davis v. Davis</i> , 305 U.S. 32, 59 S.Ct. 3 (1938)	14
<i>Durfee v. Duke</i> , 375 U.S. 106, 84 S.Ct. 424, 11 L.Ed.2d 186 (1963)	10, 12, 14, 15
<i>Estin v. Estin</i> , 334 U.S. 541, 68 S.Ct. 1213 (1948)	11
<i>Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee</i> , 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982)	12, 13
<i>Marshall v. Marshall</i> , 547 U.S. 293, 126 S.Ct. 1735 (2006)	14
<i>Practical Concepts, Inc. v. Republic of Bolivia</i> , 811 F.2d 1543 (D.C. Cir. 1987)	12
<i>Sherr v. Sherr</i> , 334 U.S. 343, 68 S.Ct. 1087 (1948)	10, 13, 14
<i>Stoll v. Gottlieb</i> , 305 U.S. 165, 59 S.Ct. 134 (1938)	15

TABLE OF AUTHORITIES—Continued

	Page
<i>Underwriters National Assur. Co. v. North Carolina Life & Accident & Health Insurance Guaranty Ass'n.</i> , 455 U.S. 691, 102 S.Ct. 1357, 71 L.Ed.2d 558 (1982)	11

CONSTITUTIONAL PROVISIONS

U.S. Const. Art IV, § 1	i, 2, 10
-------------------------------	----------

STATUTES

28 U.S.C. § 1254(1)	2
28 U.S.C. § 1257(a)	2
28 U.S.C. § 1738.....	2
R.I.G.L. § 9-32-1.....	2, 7
R.I.G.L. § 9-32-2.....	2
Restatement (Second) of Judgments § 65.....	12



PETITION FOR WRIT OF CERTIORARI

Petitioner George T. Hawes respectfully petitions this Court for a writ of certiorari to review a decision from the Supreme Court of Rhode Island upholding a decision by the Newport County, Rhode Island Superior Court (1) denying full faith and credit to the decision of the Utah state court denying Respondent's motion to dismiss for lack of personal jurisdiction, (2) quashing the execution of a Judgment entered against Respondent Daniel P. Reilly by a Utah state court, and (3) dismissing Petitioner's motion to enforce the Utah judgment on grounds that the Utah court erred in finding personal jurisdiction over Respondent.



OPINIONS BELOW

The order of the Rhode Island Supreme Court, which affirmed the decision of the Newport County, Rhode Island Superior Court, issued on May 24, 2018 is reproduced herein at Appendix 1a. The order of the Rhode Island Superior Court issued on April 27, 2015 is reproduced herein at Appendix 24a. The orders are unpublished at this time.



JURISDICTION

The Supreme Court for the State of Rhode Island entered its opinion on May 24, 2018. The Court has

jurisdiction pursuant to 28 U.S.C. Sections 1254(1) and/or 1257(a).



RELEVANT STATUTORY PROVISIONS

- **U.S. Const. Art IV, § 1**

The Full Faith and Credit Clause of the U.S. Constitution (Article IV, Section 1) states:

Full Faith and Credit shall be given in each State of the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect hereof.

See also, 28 U.S.C. § 1738.

- **R.I.G.L. § 9-32-1**

Rhode Island General Laws, Uniform Enforcement of Foreign Judgments Act. States that a foreign judgment is

. . . any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.” RIGL § 9-32-1 *et seq.* A foreign judgment under the act “has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the court and may be enforced or satisfied in like manner to any Rhode Island state court judgment.”

Id. § 9-32-2.



STATEMENT OF THE CASE

A. Introduction

This petition arises from an attempt to domesticate a judgment in Rhode Island against Respondent that Petitioner obtained from a Utah state court on May 11, 2012. That judgment has a history going back to a civil suit brought by InnerLight Holdings, Inc. (hereinafter referred to as “InnerLight”), in the Fourth Judicial District Court in and for the County and State of Utah against the Petitioner, William Reilly, his children, including the Respondent, and various entities controlled by the Reillys in March of 2010. (*R.I.S.C. Decision*, (App.2a-5a)).

InnerLight was in the business of marketing nutritional and healthcare products. (*Id.*) In anticipation of going public, InnerLight retained the Respondent’s father, William Reilly, to act as its corporate counsel in order to obtain authorization from the Securities and Exchange Commission (SEC) to publicly trade shares of its stock. (App.2a). Reilly drafted the SEC required registration statement, subscription agreements, prospectus, and other required documents. (*Id.*) However, InnerLight failed to receive final authorization from the SEC to publicly sell its shares. (*Id.*) By way of its complaint, InnerLight alleged Reilly, without permission, transferred unauthorized shares of its stock through the use of several of his own corporate entities. (App.3a-4a). Petitioner was one of the unfortunate purchasers of InnerLight’s unauthorized stock and warrants. (*Id.*) Upon discovery of the transactions

executed by Reilly, InnerLight rescinded the stock offerings. (*Id.*) Petitioner never received a refund from either InnerLight or Reilly. (*Id.*) In 2010 InnerLight filed suit against Reilly, the entities involved, Respondent, the Petitioner and other investors who had purchased shares of InnerLight stock. (App.3a-4a); (App.159a).

On June 30, 2010, Petitioner retained counsel, answered InnerLight's complaint, counter-claimed against InnerLight and cross-claimed against Reilly, his children, including Respondent, and various entities controlled by the Reillys. (App.6a). The cross-claim asserted that the Respondent, while acting within the scope of his authority, sold and transferred shares and warrants of InnerLight stock through entities under his control. (*Id.*)

B. Respondent's Appearance, Challenge of Personal Jurisdiction, and Finding of Personal Jurisdiction

Respondent retained counsel in Utah and filed a motion to dismiss the claims against him for lack of personal jurisdiction.¹ (App.128a). With the motion to dismiss Respondent filed a memorandum of points and authorities setting forth his basis for dismissal

¹ As noted by the Rhode Island Supreme Court, Respondent also removed the action to the United States District Court for the District of Utah, Central Division on April 19, 2010. The case was ultimately remanded to the state court in which the complaint had originally been filed—the Utah Fourth District Court. Respondent filed his motion to dismiss in federal court initially and then in state court on June 29, 2010, after the case was remanded to state court. In the end, only the Utah state court ruled on the motion to dismiss. (App.1a, 4a).

for lack of personal jurisdiction and a sworn affidavit in support. (*Id.*).

Respondent's motion to dismiss for lack of personal jurisdiction was briefed and submitted for decision to the Court. (App.46a).

Prior to argument on Respondent's motion, Respondent's Utah counsel withdrew. (App.154a). A notice to appear and appoint counsel was issued on or about July 30, 2010. (App.157a). Oral argument on Respondent's Motion to Dismiss for Lack of Personal Jurisdiction was scheduled for January 21, 2011. (App.50a); (App.57a, 71a). Respondent did not appoint counsel or appear at oral argument on his motion to dismiss. (App.57a).

After considering the arguments presented in the briefs submitted by Respondent and InnerLight and the sworn testimony of Respondent the Utah court denied Respondent's motion to dismiss and found that it had personal jurisdiction over Respondent. (App.43a); *see also*, (App.72a). Specifically, the Utah Court held:

Based upon consideration of the case file, and the memoranda submitted by the parties, and good cause appearing therefor, IT IS HEREBY ORDERED as follows:

That Defendants' Motion to Dismiss be DENIED. InnerLight made a prima facie showing by pleading sufficient facts to establish that this Court may exercise personal jurisdiction over each of the non-resident Defendants. As a result, this Court possesses personal jurisdiction over Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Devel-

opment LLC, Beachview Associates, Inc. and Shamrock Equities, Inc.

(App.11a-12a)(emphasis added).

C. Default Judgment After Respondent Fails to Appear

At the hearing on Respondent's motion to dismiss for lack of personal jurisdiction a pre-trial conference was set. (App.50a). On January 25, 2011, notice of the pre-trial conference was sent to all parties, including Respondent. (App.48a). In addition, on February 17, 2011, InnerLight separately provided notice to Respondent and other defendants, that the motion to dismiss for lack of personal jurisdiction was denied. (App.45a).

Respondent failed to appear at the pre-trial conference and default was entered against him and others. (App.37a). After entry of default, notice was provided to Respondent that an evidentiary hearing before the Court was scheduled to determine the amount of damages to be awarded against him and the other defendants. (App.57a). Respondent did not appear at the evidentiary hearing on damages and a default judgement was entered against him. (*Id.*) Notice of the default judgment was sent to Respondent. (App.40a).

Respondent did not seek to set aside the default, the default judgment, or appeal the Court's ruling on personal jurisdiction at any time. (App.22a).

D. Efforts to Execute Judgment in Rhode Island, Collateral Attack on Personal Jurisdiction, Quash of Execution, and Dismissal

On April 14, 2014, the Petitioner commenced an action to enforce the Utah judgment against the Respondent in Rhode Island pursuant to RIGL § 9-32-1 *et seq.*, entitled the “Uniform Enforcement of Foreign Judgments Act”. (App.5a). After service, Execution was issued and Respondent responded by filing a Motion to Dismiss and Quash Execution. (*Id.*). On April 27, 2015, after briefing and oral argument, the Court granted Respondent’s motion on the grounds that the Utah court lacked personal jurisdiction over Respondent despite the prior ruling of the Utah court denying Respondent’s motion to dismiss for lack of personal jurisdiction. (App.36a). Petitioner timely filed an appeal.

E. Appeal

On appeal to the Rhode Island Supreme Court, Petitioner asserted that the Superior Court of Rhode Island erred as a matter of law in failing to grant full faith and credit to the judgment of the Utah court. (App.7a). Petitioner also argued that the motion justice further erred as a matter of law in granting the Respondent’s motion on grounds that the Utah District Court lacked personal jurisdiction over the Respondent. (App.14a-20a). And finally, the motion justice erred as a matter of law in determining that the Utah District Court lacked personal jurisdiction over the Respondent. (App.21a-22a).

The Rhode Island Supreme Court upheld the decision of the Rhode Island Superior Court based upon

its finding that the decision of the Utah court was not entitled to the full faith and credit of Rhode Island courts under the United States Constitution. (App.7a-13a).

The Rhode Island Supreme Court noted that “it is our first responsibility to determine whether that order [denying Respondent’s motion to dismiss for lack of personal jurisdiction] is entitled to full faith and credit and res judicata effect.” (App.7a). This is the first question that must be determined because, if the order denying Respondent’s motion to dismiss is entitled to res judicata effect, the Superior Court’s collateral attack and assessment of Utah’s personal jurisdiction over Respondent would be improper. The Rhode Island Supreme Court acknowledged that Respondent

did not simply fail to appear in Utah with a default judgment subsequently being entered against him in that state. Rather, he initially elected to submit to the limited jurisdiction of Utah for the sole purpose of determining personal jurisdiction by filing the motion to dismiss for lack of personal jurisdiction.

(App.8a). Rather than conceding that Respondent was bound by the ruling of the Utah court after submitting to its jurisdiction the Rhode Island Supreme Court agreed with the Superior Court that the ruling provided by the Utah court was not substantial enough in its estimation to afford full faith and credit. (App.7a-13a).

Specifically, the Rhode Island Supreme Court held that because Respondent did not appear at oral argument to argue his motion to dismiss, the issue of

personal jurisdiction had not been “fully and fairly litigated”. (App.13a). Additionally, the Rhode Island Supreme Court stated that it did not believe that the Utah order denying the motion to dismiss for lack of personal jurisdiction contained sufficient legal analysis to be a final determination on personal jurisdiction over Respondent that should be afforded full faith and credit. (App.11a-12a) (“the Utah court did not include any insight into the arguments of the parties or, more importantly, the court’s reasoning.”). On these two bases alone, the Rhode Island Supreme Court held that the Utah Court’s decision finding personal jurisdiction was not entitled to the full faith and credit of the United States Constitution:

Consequently, it is obvious to us from the dearth of reasoning in the Utah court’s order and from the fact that neither Daniel, nor counsel for Daniel, appeared at the hearing on the motion to dismiss that the issue of personal jurisdiction was not fully and fairly litigated in Utah.

(App.13a).

Petitioner respectfully disagrees with the Rhode Island Superior Court and the Rhode Island Supreme Court and believes that the cases of this Court require the order of the Utah court denying Respondent’s motion to dismiss and affirmatively finding that it had personal jurisdiction be afforded full faith and credit under the United States Constitution.



REASONS FOR GRANTING THE PETITION

The decision of the Rhode Island Supreme Court undermines a cornerstone of the United States federal system that affords the decisions of other states the full faith and credit in other jurisdictions as guaranteed by the United States Constitution:

The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation.

Baker by Thomas v. General Motors Corp., 522 U.S. 222, 231, 118 S.Ct. 657 (Kennedy concurring) (*quoting Sherr v. Sherr*, 334 U.S. 343, 355, 68 S.Ct. 1087, 1092-1093 (1948)).

The Full Faith and Credit Clause set forth in Article IV of the United States Constitution states as follows:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

The United States Supreme Court has roundly held that “judicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . As they have by law or usage in the courts

of such State . . . from which they are taken”. *Durfee v. Duke*, 375 U.S. 106, 109, 84 S.Ct. 424, 11 L.Ed.2d 186 (1963). “[W]hen a judgment is presented to the courts of a second State it may not be denied enforcement based upon some disagreement with the laws of the State of rendition. Full faith and credit forbids the second State to question a judgment on these grounds.” *Baker by Thomas*, 522 U.S. at 243 (Kennedy, O’Connor, Thomas concurring in the decision) (citing *Estin v. Estin*, 334 U.S. 541, 544-546, 68 S.Ct. 1213 (1948)). Similarly, “[a] party cannot escape the requirements of full faith and credit and *res judicata* by asserting its own failure to raise matters clearly within the scope of a prior proceeding.” *Underwriters National Assur. Co. v. North Carolina Life & Accident & Health Insurance Guaranty Assn.*, 455 U.S. 691, 710, 102 S.Ct. 1357, 1368, 71 L.Ed.2d 558 (1982).

The Rhode Island Supreme Court violated the above principles when it upheld the Rhode Island Superior Court’s decision to collaterally attack and reconsider the issue of personal jurisdiction already decided in Utah. The Rhode Island Supreme Court relied upon two novel factors to overcome the rulings of this Court. First, the Rhode Island Supreme Court (and the Superior Court below) found that because Respondent’s Utah counsel withdrew prior to oral argument on Respondent’s motion to dismiss for lack of personal jurisdiction and Respondent chose not to appear or appoint substitute counsel for oral arguments on his motion to dismiss, the matter of personal jurisdiction was not “fully and fairly litigated” such that it should be afforded full faith and credit. (App.13a-14a). Second, the Rhode Island Supreme Court did not believe that Utah court provided sufficient analysis of the

basis for its rulings and, as such, no final ruling was made regarding personal jurisdiction by the Utah Court. (App.7a-14a). Both of these justifications are, respectfully, in error.

I. THE ISSUE OF PERSONAL JURISDICTION WAS FULLY AND FAIRLY LITIGATED AND IS ENTITLED TO FULL FAITH AND CREDIT

It has long been held that a party faced with an action in a foreign jurisdiction, but believes that the foreign court lacks personal jurisdiction, has an election. He or she may choose to appear and challenge jurisdiction in the forum court “without losing his right to press on direct review the jurisdictional objection, along with objections on the merits.” *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (Ginsberg J.) (citing *Durfee v. Duke*, 375 U.S. 106, 84 S.Ct. 424, 11 L.Ed.2d 186 (1963); *Baldwin v. Iowa State Traveling Men’s Ass’n*, 283 U.S. 522, 51 S.Ct. 517, 75 L.Ed. 1244 (1931)). In the alternative, he or she may refrain from appearing, allow a default judgment against him or her and challenge the jurisdictional issue at the time the default judgment is enforced against him. *Id.* (citing *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706, 102 S.Ct. 2099, 2106, 72 L.Ed.2d 492 (1982) (“A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding.”)); RESTATEMENT (SECOND) OF JUDGMENTS § 65 comment b (1982).

A party may not have it both ways. If a party elects to appear and challenge personal jurisdiction, “he may not renew the jurisdictional objection in a collateral

attack”. *Id.*; *see also, id.* (holding that if a party allows a default to be entered and challenges on jurisdictional grounds in enforcement proceedings and loses “he ordinarily forfeits his right to defend on the merits.”); *Ins. Corp. of Ireland, Ltd v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982) (“by submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, the defendant agrees to abide by that court’s determination on the issue of jurisdiction: that decision will be *res judicata* on that issue in any further proceedings.”).

In *Sherr v. Sherr*, 334 U.S. 343, 68 S.Ct. 1087 (1948) this Court stated the issue as follows:

the doctrine of *res judicata* applies to adjudications relating either to jurisdiction of the person or of the subject matter where such adjudications have been made in proceedings in which those questions were in issue and in which the parties were given full opportunity to litigate.

Sherr, 334 U.S. at 1090 (bold and italics added); *see also, id.* (“the doctrine of *res judicata* must be applied to questions of jurisdiction in cases arising in state courts involving the application of the full faith and credit clause where, under the law of the state in which the original judgment was rendered, such adjudications are not susceptible to collateral attack.”). Further, this Court has held that a collateral attack on a judgment for alleged lack of jurisdiction is barred

where there has been participation by the defendant in the [] proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues, and where

the decree is not susceptible to such collateral attack in the courts of the State which rendered the decree.

Sherr, 334 U.S. at 1091 (citing *Davis v. Davis*, 305 U.S. 32, 59 S.Ct. 3 (1938)) (emphasis added). After the challenger appears in the underlying litigation and makes his or her arguments regarding jurisdiction, “[i]f respondent failed to take advantage of the opportunities afforded him, the responsibility is his own” and he or she is not entitled to reopen the challenge via collateral attack on “a decree valid in the State in which it was rendered.” *Id.* 334 U.S. at 1091.

Baldwin v. Iowa State Traveling Men’s Association, 283 U.S. 522, 525-26 (1931), articulated the following related and instructive general principle:

Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

In express accordance with that principle, the Supreme Court went on to state “the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court’s inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the

original judgment.” *Durfee*, 375 U.S. at 111; *see also Marshall v. Marshall*, 547 U.S. 293, 297, 126 S.Ct. 1735, 1740 (2006) (“(A) state court’s final judgment determining its own jurisdiction ordinarily qualifies for full faith and credit, so long as the jurisdictional issue was fully and fairly litigated in the court that rendered the judgment.”). Likewise,

Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issues previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.

Durfee, 375 U.S. at 113-114 (citing *Stoll v. Gottlieb*, 305 U.S. 165, 172, 59 S.Ct. 134, 138 (1938)).

There is no dispute that Respondent appeared to contest personal jurisdiction over him. There is also no dispute that the Utah court found that it had personal jurisdiction over Respondent after considering the arguments set forward by his counsel and Respondent’s own sworn testimony. (App.3a-14a); (App.72a); (App. 43a). The unique question here is: may a party submit to the jurisdiction of a foreign court for purposes of challenging personal jurisdiction, affirmatively challenge personal jurisdiction and lose, but withdraw and collaterally attack a foreign court’s ruling on personal jurisdiction grounds when a default judgment is

entered against him or her? The law and equities require that this question be answered in the negative.

Respondent made his election. Respondent affirmatively chose to appear before the Utah Court and submit the issue of personal jurisdiction to it. He retained counsel, prepared and filed a motion to dismiss for lack of personal jurisdiction, provided written argument and a sworn affidavit of Respondent in support of the motion to dismiss. (App.3a-14a). Furthermore, no appeal was taken by the Respondent in Utah relative to the denial of the motion to dismiss. Nor did the Respondent move for a stay of execution of the default judgment in Utah. In short, Respondent had a full and fair opportunity to present his argument to the court on the matter of jurisdiction. That he chose not to appear at oral argument is of no moment. The fact that he chose to challenge jurisdiction in Utah and did so through argument and sworn testimony settles the matter of whether Respondent had every opportunity to fully and fairly litigate the issue of personal jurisdiction. Accordingly, the ruling of the Utah court should be afforded full faith and credit and the Rhode Island Supreme Court erred in failing to do so.

II. THE ISSUE OF PERSONAL JURISDICTION WAS DETERMINED AND SHOULD BE AFFORDED FULL FAITH AND CREDIT

The Rhode Island Supreme Court also found that it need not give the order denying Respondent's motion to dismiss for lack of jurisdiction full faith and credit because it believed (1) that the Utah Court found only a prima facie showing of personal jurisdiction had been made and (2) lacked sufficient findings of law and fact to satisfy the Rhode Island Supreme Court that

a final determination on personal jurisdiction had been adequately made. (App.3a-14a).

Respectfully, the ruling of the Rhode Island Supreme Court does not give due credit to the Utah court, which had before it the argument of Respondent in his motion to dismiss, the affidavit of Respondent in support, and the opposition to the motion. (App.3a-14a); (App.72a); (App.46a). The Utah court expressly stated that it made its decision after a full consideration of the arguments made by Respondents (and his testimony) and the plaintiff. (App.46a). The matter of personal jurisdiction was submitted to the Court for decision and, after considering all of the arguments, the Utah Court found that it had personal jurisdiction over Respondent. (*Id.*) Thus, the issue of personal jurisdiction had been decided once the Utah court denied the Respondent's motion to dismiss for lack of personal jurisdiction and issued an order that it had personal jurisdiction over Respondent. That the Utah court did not issue a multi-paged decision or opinion setting forth its detailed reasoning in the event of a collateral attack many years later has no bearing on the fact that the issue of personal jurisdiction was fully presented, decided, and is afforded full faith and credit under the United States Constitution.

Also, the Rhode Island Supreme Court's statement that the Utah court found that a mere *prima facie* case had been made for personal jurisdiction and that "[n]o final determination of personal jurisdiction was reached prior to the entry of default judgment" is belied by the Utah Court's unequivocal statement that "this Court possesses personal jurisdiction over Defendants Daniel P. Reilly . . .". (App.13a); (App.47a). Similarly,

the Utah court in its Default Judgment against Respondent noted that Respondent's "motion to dismiss has been previously denied", found that Petitioner's claim against Respondent were well pled, and that Hawes was entitled to the relief requested. (App.37a). In short, the Utah court found that it had personal jurisdiction over Respondent such that it could enter the Default Judgment in favor of Petitioner. As such the matter was "fully and fairly litigated" and is entitled to the full faith and credit of the United States Constitution.

III. THE ISSUES PRESENTED BY THIS CASE ARE REOCCURRING AND IMPORTANT

Under the Rhode Island Supreme Court's reasoning, a party could appear for purposes of contesting personal jurisdiction, file motions and affidavits in support of a motion to dismiss for lack of personal jurisdiction, and, after having the opportunity to assess the strength of the opponents' claim for personal jurisdiction, choose to withdraw and collaterally attack personal jurisdiction a second time when a default judgment is enforced against him or her. Such gamesmanship is contrary to the role of the courts in determining the final rights and remedies of the parties before it, undermines the full faith and credit afforded to rulings from sister states in the Union, and undermines the policies of judicial deference and comity. In short, rulings of other courts are afforded deference absent compelling reasons to the contrary.

Similarly, the Rhode Island Supreme Court's subjective weighing of the alleged substance or lack thereof of the Utah Court's order, despite its language finding that it had personal jurisdiction over Res-

pondent, critically undermines the principles of full faith and credit afforded under the United States Constitution and the need for finality in judgments.

Because these matters occur routinely, but may often evade the decision of this Court given the economic positions of the parties, the Court should take this opportunity to resolve critical nuances regarding the law of full faith and credit that otherwise leave parties without a remedy.

For example, here, the Rhode Island Supreme Court found that it could collaterally attack a ruling from the Utah court regarding personal jurisdiction, quash the execution of the default judgment and dismiss Hawes' enforcement action. Given statutes of limitation, however, Petitioner is without the ability to bring an action against Respondent in Rhode Island on the claims underlying the default judgment obtained in Utah. Had Respondent not appeared and contested personal jurisdiction or had Respondent succeeded in his challenge to personal jurisdiction in Utah, Petitioner would have had the opportunity to timely pursue an action against Respondent in Rhode Island. The late collateral attack allowed by the Rhode Island Supreme Court denied Petitioner this option and has left him without remedy. It is certain that many are left in this same position on a routine basis and the Court has an opportunity to clarify for the courts of this nation the types of orders and rulings afforded full faith and credit.



CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

JONATHAN O. HAFEN

COUNSEL OF RECORD

PARR BROWN GEE & LOVELESS

101 SOUTH 200 EAST, SUITE 700

SALT LAKE CITY, UT 84111

(801) 532-7840

JHAFEN@PARRBROWN.COM

BRYAN S. JOHANSEN

PARR BROWN GEE & LOVELESS

101 SOUTH 200 EAST, SUITE 700

SALT LAKE CITY, UT 84111

(801) 257-7907

BJOHANSEN@PARRBROWN.COM

MICHAEL S. PEZZULLO, ESQ.

303 JEFFERSON BLVD

WARWICK, RI 02888

(401) 921-4800

COUNSEL OF RECORD FOR PETITIONER

OCTOBER 15, 2018