ORIGINAL

18-6694

No. 18-_____

In The

Supreme Court of The United States

Timothy Weakley,

Petitioner,

v.

Jennifer Roberts, Quality Companies, Inc., Celadon Trucking Services Inc. and Eagle Logistics, Inc.

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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PREFACE TO QUESTIONS PRESENTED

Our courts of appeals appear divided and confused on the question of judicial estopple with respect to when and how to apply the doctrine. The Eleventh Circuit Court of Appeals has added two additional caveats to that growing list of divisions. As it stands, the Eleventh Circuit's opinion in this case supersedes this Court's holding in *New Hampshire v. Maine* by: (1) disregarding the facial requirement that a previous position under oath be captured somewhere within the record in order to establish a *prima facie* claim for judicial estopple. (2) dismissing a plaintiff's consistent position rather than his inconsistent position. And so the very specific question presented to the Court are:

QUESTIONS PRESENTED

Whether a district court within the context of a judicial estopple claim exceeds the boundaries of judicial discretion when it dismisses plaintiff's 1st position rather than the 2nd/ inconsistent position contrary to *New Hampshire v. Maine*.

And Whether it is a violation of due process when a district court wrongly dismisses plaintiff's 1st/consistent position rather than his 2nd and clearly inconsistent position pursuant to a judicial estopple action, particularly where there has been prior inconsistent positions taken under oath.

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STATUTES

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6 Petitioner Timothy Weakley has no corporate interest to disclose to the court.

LIST OF PARTIES

This document is compliant with Rule 12.6 and lists all parties involved on the front cover.

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OPINIONS BELOW

The Eleventh Circuit's order summarily affirming the district court is published and found Section A, Part 2 and Section A, Part 6. The Eleventh Circuit's order denying Mr. Weakley's petition for rehearing *en banc* is unpublished and appears at Section A, Part 4. The district court's order granting defendant's motion for summary judgment and order are unpublished and appear at Section B, Part 1 and Section C, Part1. The district court's order granting defendant's motion for attorney's fees is unpublished and appears at Section B, Part 1 and Section C, Part1.

JURISDICTION

The Eleventh Circuit entered its order affirming the district court on June 28, 2018. Section A, Parts 4 and 6. A timely petition for rehearing *en banc* was denied by the Eleventh Circuit on September 13, 2018. Section A, Part 4. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITITIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments V and XIV – "No person shall . . . be deprived of life, liberty, or ***property***, without due process of law. . . ."

STATEMENT OF THE CASE

Succinctly stated, *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) has one primary function under the law. And that primary function is to estop a civil plaintiff from asserting a 2nd and inconsistent position that factually diverges from a previous position he has already taken on the same legal matter while under oath.

The Eleventh Circuit's ruling in this case has effectively overridden the precedent announced in *New Hampshire* by allowing Mr. Weakley's 2nd/inconsistent position to survive, while instead, foreclosing on his consistent positions. And also, by reaching a finding that Mr. Weakley made a prior inconsistent statement while under oath without proffering any alleged "prior or inconsistent" position taken while under oath for examination. It is pure fiction in theory based on bad law as we will find herein. The lower court does however make reference to Mr. Weakley's discrepancies contained within his bankruptcy schedules. But, that would mean that the district court relied on a "future" inconsistent statement rather than a "prior" inconsistent position [selah]. And as such, the instant case's holding comports to the complete antithesis of *New Hampshire*, and that fact is the bedrock issue upon which this case turns. Begging the question of this High Court, which position survives? The 1st /consistent position, or, the 2nd/ inconsistent

position when juxtaposed against *New Hampshire*. Moreover, in *New Hampshire* its made clear that the inconsistent position is the culprit due the adverse action should any be taken by a court.

This Court set forth very clear factors to be considered in the application of judicial estoppel on a straightforward boundary dispute where New Hampshire took a position in litigation against Maine that was inconsistent with the position New Hampshire had taken in an earlier dispute over the same boundary. *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001). The case was a model case for judicial estoppel warranting application to bar New Hampshire from taking a position that contradicted the very position it had succeeded upon in the litigation years earlier. Allowing the state to take an adverse position after it succeeded on the first consistent position would call into question the "integrity of the judicial process [and judicial estoppel is intended to prohibit] parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire*, 532 U.S. at 749-50.

IN A NUTSHELL

In a nutshell, *New Hampshire v. Maine* bars Mr. Weakley from taking an inconsistent position while under oath. The Eleventh Circuit's ruling in this case overrides the *New Hampshire* holding by actually allowing Mr. Weakley to successfully take an

inconsistent position in his bankruptcy claim which commenced well after he had already established a previous position in the district court pursuant to the underlying breach of contract claims that he had already filed against these defendants.

BACKGROUND

In late 2015 Mr. Weakley brought a breach of contract claim *pro se* against Eagle Logistics Inc. in Lauderdale County, Alabama Circuit Court; Eagle being one of the co- defendants in this consolidated appeal. Counsel for Eagle then lawfully removed to the proper federal venue based on diversity and the amount at controversy. It was at that time that Mr. Weakley commenced a second complaint against Eagle's parent company Celadon Trucking Service Inc. and its sister company Quality Companies Inc. along with Jenifer Roberts also, alleging breach of contract in the court below.

Subsequently, there came a point and time wherein each of the defendants moved for summary judgement alleging that Mr. Weakley had failed to disclose the existence of the claims he owned against them within his schedule of assets pursuant to his bankruptcy claim. Exculpatory in nature is the fact of record that Mr. Weakley's bankruptcy claim commenced [well after] he brought the district court claims against

each of the defendants respectively; and based on that "smoking gun" of a fact, Mr. Weakley should be exonerated and his claims in the lower court restored [emphasis added]. Digressing. Procedurally these cases were consolidated as to avoid an inconsistent verdict. Regardless, the district court granted each motion for summary judgment citing *New Hampshire* as precedent along with three other very obscure cases that when placed in proper context [*infra pages* 12 and 13], comport to quintessential bad law, particularly when examined underneath the bright antiseptic light of *New Hampshire*. Mr. Weakley then filed timely appeals with the Eleventh Circuit. However, the appeals court affirmed *per curiam* each of the lower court's decisions. Nevertheless, Mr. Weakley then filed a timely motion to be reheard wherein he raised the issue that the district court took action upon the wrong claims in opposition to *New Hampshire* but it fell on deaf ears going unheard. Mr. Weakley now makes appearance before this Honorable Court seeking redress.

REASONS FOR GRANTING THE PETITION

This case presents with a very critical issue of importance regarding the viability of a civil plaintiff's initial consistent position and the relief obtained pursuant to said position within the context of a judicial estopple claim. And whether a district court

may take adverse action against a plaintiff's consistent position.

This Court's decision in *New Hampshire v. Maine* clearly holds that a civil plaintiff may not take a 2nd/inconsistent position based on the exigencies of the moment. This point is well established in law per New Hampshire. Further, *New Hampshire* makes it even more evident that it is plaintiff's inconsistent position that should be the subject of any dismissal or adverse action, not plaintiff's 1st position as decided by the lower court. The precedent established in this case, if allowed to stand, will all but overrule the precedent contained in *New Hampshire*.

I. *New Hampshire v. Maine* Recognized Judicial Estoppel Is Meant To Prevent A Civil Plaintiff From Taking And Benefiting From His 2nd And Inconsistent Position In a Legal Matter By Punitively Foreclosing On Said 2nd Position, Not The 1st Position As Was Erroneously Done In This Case.

In *New Hampshire v. Maine*, 532 U.S. 742 (2001), this Court analyzed the doctrine of judicial estoppel recognizing it was a rule that "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory

argument to prevail in another phase." *New Hampshire*, 532 U.S. at 749 (internal citations omitted).

This Court recognized the inequity of allowing a party to change its position based upon its circumstance, particularly at the detriment of a party who acquiesced as a result of the 1st position taken, declaring:

> [W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not **thereafter**, simply because his interests have changed, assume a contrary position, especially **if it be to the prejudice of the party who has acquiesced** in the position formerly taken by him.

Id. at 749 (citing *Davis v. Wakelee*, 156 U.S. 680, 689, 15 S. Ct. 555, 39 L. Ed. 578 (1895). Neither the Appeals Court, the Lower Court or ither of the Defendants has demonstrated within the confines of the record that the Defendants have acquiesced in the least with respect to Mr. Weakley's 1st position. The record does however indicate that these Defendants have conceded nothing, and have fought Mr. Weakley like rabid dogs at every opportunity. There is not a drop of acquiesces to be found anywhere herein case [emphasis added].

More on point, this Court judicially estopped New Hampshire based on its clearly inconsistent statements in two litigation matters on the same subject. Despite New Hampshire's bad acts, this Court

did not arbitrarily or capriciously take retroactive action against the relief New Hampshire obtained pursuant to the (1977) decent decree in order to punish them. No, instead, this Court barred New Hampshire's motion for summary judgment contained within the state's 2nd/inconsistent position. And therein lies the fundamental guidance provided within the legal framework of *New Hampshire*. Summarily, this Court has held that a plaintiff's consistent or 1st position naturally survives, while the 2nd/inconsistent position is then ripe for adverse action as demonstrated in the *New Hampshire* outcome.

Regardless, the Eleventh Circuit has continued to operate under the guidance of bad law that was abolished upon this Court's decision in *New Hampshire*. Holding our mule on that argument in the meantime. New Hampshire's precedent holds that retroactive action was not taken against New Hampshire and likewise should not be taken against Mr. Weakley's 1st/ consistent position. Such an undertaking clearly overrides *New Hampshire*.

It is important to note that this is where the lower court has exceeded its discretion. There is not a scintilla of precedent held under *New Hampshire* that the district court could have relied on in order to dismiss Mr. Weakley's first positions.

A. New Hampshire clearly recognizes the legal ramifications of a plaintiff's 1st position and his 2nd position.

Hypothetically, had this Court subscribed to the District Court's legal rationale that it employed in this case when this Court adjudicated *New Hampshire*: (1) this Court would have been compelled to vacate the parties three-decade old decent decree (2) and then this Court would have had to aptly acquiesce to New Hampshire's 2nd position as was done in the instant matter.

> "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, **he may not thereafter**, simply because his interests have changed, assume a contrary position. ..." New Hampshire v. Maine, 532 U.S. 742, 749 (2001).

The record clearly indicates that Mr. Weakley took his first position in the district court pursuant to the initial breach of contract claims, and "**thereafter**" several months later during the course of his bankruptcy took an alleged "contrary" position in the form of an inadvertent omission.

That omission prompted each of these defendants to motion for dismal in the district court, albeit while the issue of inconsistency was over in the bankruptcy court across the hall in another judges court. In reality, the real party in interest, for lack of better terminology, is the bankruptcy court because that is where the alleged inconsistent position was taken, much

akin to the summary judgment sought by New Hampshire, not in the district court where the motions to dismiss were filed. Jurisdiction in matters such as these seemingly rest with the court wherein the inconsistent position is taken. But these defendants had no business before the bankruptcy court because they were not creditors within that bankruptcy claim. So they duped the district court with motions for summary judgment. No disrespect meant, but the magistrate in the cases below had been on the bench less that three weeks. This case bears proof that the court may have stepped in it with respect to these cases while trying to get up to speed while underneath a mountain of back logged cases.

Any adverse action taken should have occurred in the court where the inconsistent position was recorded pursuant to *New Hampshire*. The fact that the district court took the adverse action raises a lack of jurisdiction claim.

Typically, these sort of estopple claims setup with the civil plaintiff filing a bankruptcy. That bankruptcy claimant then somehow manages not to disclose the existence of a potential cause of action. Then after gaining some sort of relief within the bankruptcy court, claimant brings a legal complaint for damages based on that asset of that he failed to disclose in his bankruptcy schedules. Then at that point the defendant

motions for dismissal based on his discovery omission.

BAD FACTS

The facts in this case are bad and do not comport to a *prima facie* argument for estopple because: (1) Mr. Weakley's breach of contract claims were filed prior to his omissions within his bankruptcy schedules. (2) The motions to dismiss were not filed in the court where the inconsistent position occurred thus creating jurisdiction issues. (3) Most importantly, the district court wherein Mr. Weakley was estopped, cannot and did not, cite a previous position taken by Mr. Weakley while under oath.

B. The lower court erred when it dismissed Mr. Weakley's 1st position rather than his inconsistent position. The court's err raises V and XIV amendment due process claims.

When the lower court dismissed Mr. Weakley's protected 1st positions which were his breach of contract claims valued somewhere north of several million dollars, it effectively seized his property. Under *New Hampshire* it is boldly evident that the 2nd/ inconsistent position is where the lower court's concern should have lied. However, the district court had no jurisdictional authority in the venue were the inconsistent position was actually taken. And so here is where the constitutional infringement occurs. The lower court essentially strong-armed Mr. Weakley's

property based on a faulty legal premise that was abolished nearly two decades ago by *New Hampshire*. Bad law was adhered to by the lower court

C. The District Court In Its Memorandum In Both Cases Cites Three Decisions As Grounds For Estopping Mr. Weakley. *Scoggins, Chandler* And *Traylor*. However, Those Decisions Have Been Bad Law Every Since This Court gave Us New Hampshire.

BAD LAW

Often times one must examine the weaknesses that exist within his case. In this instance the weak point is the citations that the district court relied on for authority and precedent as noted within the petitioner's appendix at page 6 of 13 in the district court's memorandum opinion and dismal order:

> "Following the Eleventh Circuit's lead, district courts have applied the judicial estoppel doctrine in circumstances where plaintiffs filed lawsuits in federal court and subsequently filed bankruptcy petitions or supplements. Traylor v. Gene Evans Ford, LLC, 185 F. Supp. 2d 1338, 1340 (N.D.Ga. 2002)(plaintiff filed lawsuit and then filed bankruptcy schedule stating he was not participating in any lawsuits); Scoggins v. Arrow Trucking Co., 92 F. Supp. 2d 1372, 1376 (S.D.Ga. 2000) (plaintiff demanded

> payment from alleged tortfeasor following car accident, then filed for bankruptcy in which he stated he did not have any claims, and then filed suit against alleged tortfeasor); Chandler v. Samford Univ., 35 F. Supp. 2d 861, 863-65 (N.D.Ala. 1999) (plaintiff filed an EEOC complaint and then filed bankruptcy schedule stating that he did not have any unliquidated claims)."

Trek. The Scoggins case cited above was decided in (2000) and thus "precedes" the holding in New Hampshire. Likewise, the *Chandler* case cited by the lower court also was decided even earlier than that back in (1999). But then, [emphases added] in (2002) *New Hampshire* came down from this High Court wherein this Court provided good law. Meanwhile, the Eleventh Circuit proves that it is not possible to teach an old dog new tricks, because it failed to observe or adhere to *New Hampshire* and its guidance. Case and point, the *Traylor* case which the district court stood on.

Traylor was filed January 23, (2002,) while *New Hampshire* was filed on May 29, (2001). This fact affirmatively places *Traylor* in direct opposition to *New Hampshire*. *Traylor* is as wrong-headed as the instant matter is and merely perpetuates the same identical bad law that was held in both *Scoggins* and *Chandler*. *Traylor* should have been appealed in the same fashion as the instant case pursuant to the new precedent announced in *New Hampshire*. The forgoing legal analysis relegates

Traylor to bad law alongside *Scoggins* and *Chandler* because the practice of prejudicing a plaintiff's consistent position was abolished when *New Hampshire* became good law and the Nation's seminal case on judicial estopple. As Justice Scallia once said it, "We've evolved as a society." The Eleventh Circuit has not evolved within this particular area of law per its continued use of the forgoing.

II. The Eleventh Circuit Has Effectively Overruled This Court's Precedent Held In *New Hampshire v. Maine.*

This court recognized in *New Hampshire* that there are no clear-cut rules when deciding whether to employ judicial estopple.

> "Courts have observed that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle," Allen, 667 F. 2d, at 1166; accord, Lowery v. Stovall, 92 F.3d 219, 223 (CA4 1996); Patriot Cinemas, Inc. v. General Cinema Corp., 834 F.2d 208, 212 (CA1 1987)."

However, there are fundamental facial and evidentiary elements pursuant to the "New

Hampshire Test" that must be performed. The first prong of any such test is whether there even exists a previous inconsistent position made under oath by Mr. Weakley? It is exculpatory in nature to note that the record in this case does not support a finding that Mr. Weakley took and inconsistent position "prior" to filing his district court civil complaints that were dismissed by the lower court. Moreover, the sole purpose *New Hampshire* is to "prevent" a plaintiff from taking a 2nd position which is inconsistent with a previous position on the matter. Without any such previous position to cite, there can be no viable ground for an estopple, unless a court chooses to abuse its discretion and proceed anyhow.

The Eleventh Circuit's ruling in this case overrides the precedent held in *New Hampshire* and serves to further expand the scope of judicial estopple by unduly prejudicing Mr. Weakley's consistent position. Further, this case establishes an erroneous precedent, holding that there does not have to be a prior position taken in order to judicially estop a civil plaintiff for having taken a prior inconsistent position.

Hypothetically, had this case been published back in (2001), New Hampshire could have argued that precedent existed for its own 1st position to be vacated under the instant holding.

SUMATION

The precedent held by this court in *New Hampshire* absolutely matters. Allow this case to stand and *New Hampshire* will no longer matter. To the point of redundancy Mr. Weakley has pointed out that it is not his consistent position that is the subject of controversy but rather the second position he took in a later bankruptcy claim. Justice Ginsberg makes it so plain and clear in the opinion. The second position gets the ax, not the first. And certainly not the consistent position. God's speed to Justice Ginsberg and a speedy healing.

So as it stands, a federal magistrate has improperly seized Mr. Weakley's property while operating under the authority of an misinterpreted, abolished precedent when the lower court dismissed Mr. Weakley's breach of contract claims in the underlying civil claims against these defendants.

Surely this case is ripe for remand when this Court considers the National implication. *New Hampshire* would become bad law to some degree or another. Plaintiffs under these very same or similar circumstances will have grounds under this case to have their first positions vacated because their circumstances have changed. Or at least that

is the precedent this case establishes. Make no mistake about it, New Hampshire would have loved to have had its first position abolished and its inconsistent accepted as in the instant case.

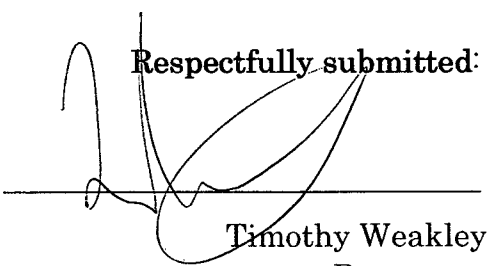
PLEA FOR RELEIF

In light of the forgoing Mr. Weakley would formally beseech this High Court to grant a writ of certiorari in this case.

CONCLUSION

After this Court's sifting deliberation of the facts and evidence in this case. The prayer is that THE COURT would grant cert in this case.

Respectfully submitted:



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