

No. 23-28

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In The  
**Supreme Court of the United States**

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CLAUDE TOWNSEND,

*Petitioner,*

vs.

NEW JERSEY TRANSIT,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

- 1) Can Res judicata and Collateral estoppel interfere with the Fourteenth Amendment's constitutional due process when new evidence is presented to a dismissed case?
- 2) If the Social Security Administration grants benefits for disability from a work-related injury case can it be Libel for an attorney to write on a Blog stating otherwise?
- 3) The Third Circuit Court of Appeals reversed the Claude Townsend v. Secretary United States Department of Health And Human Service; Commissioner Social Security for Social Security Benefits. The Petitioner was wrongfully terminated while under the care of the Doctor. Under the Social Security Act, is Petitioner entitled to remuneration for employment, reinstatement of employment for wrongfully discharged and back pay?

**LIST OF PARTIES**

- 1) CLAUDE TOWNSEND, PETITIONER;
- 2) NJ TRANSIT, RESPONDENT.

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## PETITION FOR WRIT OF CERTIORARI

Claude Townsend, a former employee of New Jersey Transit, respectfully petitions this Court for a Writ of Certiorari to review the Judgment of the United States Courts of Appeals for The Third Circuit.

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## OPINIONS BELOW

The decision by the United States Courts of Appeals for The Third Circuit denying Claude Townsend's Sur Petition for Rehearing is reported as *Claude Townsend v. New Jersey Transit, No. 22-2993*. The United States Courts of Appeals for The Third Circuit denied Claude Townsend's Sur Petition for Rehearing on February 28, 2023.

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## JURISDICTION

Mr. Townsend's Petition for Rehearing to the United States Courts of Appeals for The Third Circuit was denied on February 28, 2023. Mr. Townsend invokes this Court's jurisdiction under **28 U.S.C. § 1257(a)**, having timely filed this petition for a Writ of Certiorari within ninety days of the United States Courts of Appeals for The Third Circuit Judgment.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### *Fourteenth Amendment to the United States Constitution*

#### **Section 1.**

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

#### **38 C.F.R. § 3.156 – New evidence.**

*New evidence is evidence not previously part of the actual record before agency adjudicators.*

**New and material evidence.** For claims to reopen decided prior to the effective date provided in § 19.2(a), the following standards apply. A claimant may reopen a finally adjudicated legacy claim by submitting new and material evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of

*the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.*

**N.J.S.A. 34:15-39.1**

*It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim workmen's compensation benefits from such employer, or because he has testified, or is about to testify, in any proceeding under the chapter to which this act is a supplement. For any violation of this act, the employer or agent shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, if such employee shall cease to be qualified to perform the duties of his employment he shall not be entitled to such restoration and compensation.*

**28 U.S.C. § 4101 - Definitions**

In this chapter:

**(1) Defamation. -**

*The term "defamation" means any action or other proceeding for defamation, libel, slander, or similar*

*claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.*

***42 U.S.C. § 1382d – Rehabilitation services for blind and disabled individuals***

*(d) Reimbursement by Commissioner to State agency of costs of providing services to referred individuals*

*The Commissioner of Social Security is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. §§ 720 et seq.]*

***29 U.S.C. § 720 – Declaration of policy; authorization of appropriations***

*(E) enforcement of subchapter V and of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) holds the promise of ending discrimination for individuals with disabilities;*

***42 U.S.C. § 12112 – Discrimination***

*(a) GENERAL RULE*

*No covered entity shall discriminate against a qualified individual on the basis of disability in regard*

*to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.*

It is under the Social Security Act that Petitioner is entitled to employee compensation for a wrongful discharge. Respondent has discriminated by terminating Petitioner's employment while he was under the care of his Doctor. The Petitioner seeks protection and reimbursement under the Social Security Act that connects with the *Rehabilitation Act of 1973 42 U.S.C. § 1382d*, that has the enforcement rights under the *Americans with Disabilities Act of 1990* to hold the promise to end discrimination for individuals with disabilities *29 U.S.C. § 720*. Therefore, at the connection of these discrimination laws, Petitioner is entitled to back pay as reimbursement for a wrong doing *42 U.S.C. § 12112*.

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#### **STATEMENT OF THE CASE**

The Social Security Act of 1935 was established 88 years ago for the purpose of enabling each State to furnish financial assistance to the Elderly and Disabled individuals. The Social Security Act of 1935 is a law enacted by the 74th United States Congress and signed into law by US President Franklin D. Roosevelt. The law created the Social Security program as well as insurance against unemployment. The State of New Jersey passed its workers' compensation law in 1911,

making coverage mandatory for all employers. Workers' compensation is a form of insurance providing wage replacement and medical benefits to injured workers. The Americans with Disabilities Act (ADA) became law in 1990. The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government programs and services. The Rehabilitation Act of 1973 is a United States federal law, codified at **29 U.S.C. §§ 701 et seq.** The principal sponsor of the bill was Rep. John Brademas. It was established in September 26, 1973.

In ***Social Security Board v. Nierotko, 327 U.S. 358 (1946)***, this Court held that Joseph Nierotko was reinstated from being wrongfully discharged and was given directions for back pay. Under the Labor Act wages are to be treated as wages under the Social Security Act.

This case presents the question of whether the "initiation" standard of the Social Security Act is satisfied when Respondent violated contractual obligations to wrongfully discharged Petitioner.

In ***Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974)***, This Court held that Gertz a private persons was entitled to a new trial for libelous statements because it establish that ordinary citizens should be allowed more protection from libelous statements than individuals in the public eye. Under defamation

**28 U.S.C. § 4101** libel resulted in criticism and dis-honor.

This case presents the question of whether the “initiation” standard of defamation is satisfied when Respondent violated by writing a Blog stating that Petitioner’s injuries were not work-related.

In *Giglio v. United States*, 405 U.S. 150 (1972), This Court held that Giglio newly discovered evidence granted him a new trial due to the lack of all material evidence.

This case presents the question of whether the “initiation” standard of new evidence will be treated as and presented as new evidence from the Social Security Administration.

## 1. STATEMENT OF FACT

Petitioner was a former Bus Operator with Respondent for fourteen years. He was employed at NJ Transit in 1995 as a Bus Operator. On January 29, 2008 Petitioner was involved in a work-related accident that diagnosed him with bilateral carpal tunnel syndrome and right shoulder Impingement syndrome.

Respondent denied Appellant treatment for work-related injuries. Petitioner filed for Workers’ Compensation through attorney Kenneth J. Austin in May 2008. On September 1, 2008 Petitioner went on disability (New Jersey Temporary Disability) from work-related injuries that occurred on January 29, 2008.

On January 14, 2009, Petitioner was sent to Respondent's Doctor, Dr. Daniel J. Fletcher to get an "Independent Medical Examination." *Dr. Daniel J. Fletcher's examination report clearly states that the Petitioner injuries are work-related* (Emphasis added). Appellant went to his Doctor on January 28, 2009, and *Dr. Thomas K. Bills agreed with Dr. Daniel J. Fletcher as he also stated that Petitioner's injuries are work-related*. (Emphasis added).

Petitioner returned to Dr. Thomas K. Bills on April 09, 2009. Petitioner had right shoulder surgery on March 30, 2009 by Dr. Thomas K. Bills after about two months of physical therapy for right shoulder impingement syndrome by LPT. Ashwini M. Deshpande. Petitioner restarted physical therapy on April 15, 2009 for the second time by LPT. Ashwini M. Deshpande after the surgery from Dr. Thomas K. Bills for three days a week the same as before surgery. Petitioner had right hand carpal tunnel surgery by Dr. Edward J. Ford on July 30, 2009. Petitioner filed for the Family and Medical Leave Act on October 15, 2009 with Respondent.

During the end of six months on New Jersey Temporary Disability, Petitioner was given Temporary Disability Allowance (TDA) for six months from contract obligations between New Jersey Transit and Amalgamated Transit Union Division 540. Between September 2, 2008, and March 2009, Petitioner received state disability benefits. From March 2009 through September 2009, plaintiff received temporary disability allowance (TDA) from Respondent. Petitioner had left hand

carpal tunnel surgery by Dr. Edward J. Ford on November 12, 2009.

On November 24, 2009, Respondent terminated Petitioner's employment. Petitioner's Doctor released him on December 15, 2009 to perform relevant work. October 04, 2010 Judge William Lake dismissed Petitioner's Workers Compensation case with prejudice.

The March 30, 2011 Order of Judge Ronald W. Reba an Administrative Law Judge (AJL) dismissed Docket LID 07961-10. A Workers' Compensation Prescription Drug Card was issued to Petitioner and the Effective date was March 30 2011.

On January 06 2014 The United Court of Appeals for the Third Circuit issued a Judgment that vacated and remanded the matter in favor of Petitioner to the District Court's order affirming the ALJ's decision to be vacated, and the case be remanded to the District Court with directions to remand to the Commissioner for additional proceedings consistent with their opinion. Petitioner filed a claim for Workers Compensation in February 22 2016. Petitioner filed a claim for Workers Compensation in September 19 2018. On June 19 2019 the Social Security Administration enclosed a "Fully Favorable" decision in favor of the Petitioner. On October 20 2020 the Petitioner filed an appeal with the New Jersey Superior Court, Appellate Division against New Jersey Transit from the Workers' Compensation Court. On February 09 2022 Stephanie Leigh Meredith who is an Associate at Brown & Connery, LLP, wrote

an article about “Frivolous Filings” on her company’s website against the Petitioner.

On February 02, 2022 Petitioner filed a complaint in the District Court of New Jersey with submitting “New Evidence” from the June 19 2019 Social Security Administration “Fully Favorable” decision in favor of the Petitioner. On October 18, 2022 the District Court of New Jersey dismissed the case.

On October 24, 2023 Petitioner filed a Notice of Appeal with the Third Circuit Court of Appeals. On January 17, 2023 the Third Circuit Court of Appeals affirmed the Order/Judgment of the District Court of New Jersey. On January 25, 2023 Petitioner filed a Petition for Rehearing. On February 28, 2023 the Third Circuit Court of Appeals

Denied the Sur Petition for Rehearing.

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#### **REASONS FOR GRANTING THE PETITION**

- A. To avoid erroneous deprivation of the right to Workers’ Compensation, this Court should clarify the “initiation” standard under the Social Security Act that applies when an employee is listed as disabled.**

Over 77 years ago, this Court held in *Social Security Board v. Nierotko*, that Nierotko was found by the National Labor Relations Board to have been wrongfully discharged for union activity by his employer,

the Ford Motor Company, and was reinstated by that Board in his employment with directions for “back pay.”

In the ***Claude Townsend v. Secretary United States Department of Health And Human Service; Commissioner Social Security for Social Security Benefits, No. 13-2380 (3d Cir. 2014)***, The United States Court of Appeals for the Third Circuit held that Claude Townsend was disabled and terminated from New Jersey Transit while under doctors’ care.

This case presents the question of whether the “initiation” standard of Social Security Act is satisfied when an employee is terminated while under the care of a physician.

Over 49 years ago, this Court held in ***Gertz v. Robert Welch, Inc., 418 U.S. 323*** establishing the standard of First Amendment protection against defamation claims brought by private individuals.

In ***Claude Townsend v. New Jersey Transit***, The United States Court of Appeals for the Third Circuit held that New Jersey Transit did nothing Libelous when writing that Claude Townsend injuries were not work-related.

This case presents the question of whether the “initiation” standard of Defamation is satisfied when a written Website Blog accused Claude Townsend of filing a Frivolous Workers’ Compensation claim even after he sustained work-related injuries.

Over 51 years ago, this Court held in ***Giglio v. United States, 405 U.S. 150 (1972)*** establishing the

standard held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted.

In *Claude Townsend v. New Jersey Transit*, The United States Court of Appeals for the Third Circuit Court of Appeals held and overlooked the new evidence presented by Claude Townsend.

This case presents the question of whether the "initiation" standard of New Evidence is satisfied when presented but overlooked.

The Third Circuit Court of Appeals and the District Court of New Jersey have erred so I ask the Supreme Court to examine the factual issues and compare them with the issues explored in the prior case as this Court will find the new claim of "defamation" and the evidence in the Social Security Administration decision to be new *38 C.F.R. § 3.156*.

To claim the benefit of collateral estoppel the party relying on the doctrine must show that: (1) the issue at stake is identical to the one involved in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue in the prior litigation must have been "a critical and necessary part" of the judgment in the first action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.

Petitioner has entered "new evidence" that is not identical to the one involved in the prior case. The

defamation is also a new incident that has occurred. In that case, we found that a judgment against the plaintiff on prior claims of gender discrimination did not collaterally estop a subsequent claim for retaliation, even though the testimony offered in the first trial “touched on” the defendant’s retaliatory actions. *Pleming v. Universal-Rundle Corp.*, 142 F.3d 1354, 1357 (11th Cir. 1998).

The Third Circuit Court of Appeals and the District Court of New Jersey have erred by closing out a “Libel” case 28 U.S.C. § 4101. On February 09 2022 Stephanie Leigh Meredith who is an Associate at Brown & Connery, LLP, that represented the Respondent wrote an article about “Frivolous Filings” on her company’s website against the Petitioner that were untrue *Gertz v. Robert Welch, Inc.*, 418 U.S. 323.

Petitioner was wrongfully terminated from Respondent while under the care of his Doctor and is entitled to just compensation for a wrong doing *N.J.S.A. 34:15-39.1*.

This case presents this Court with an opportunity to clarify the Social Security Act “Initiation” standard in the face of violations of new evidence, Libel, remuneration for employment, reinstatement of employment for wrongfully discharged and back pay.

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## **CONCLUSION**

For the foregoing reasons, Mr. Townsend respectfully requests that this Court issue a Writ of Certiorari to review the Judgment of the Third Circuit Court of Appeals.

Respectfully submitted,

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Dated 07/06/2023